



UNIVERSITI PUTRA MALAYSIA

**COMPENSATION SCHEME FOR VICTIMS OF DEVIANT BEHAVIOUR IN
THE WORKPLACE IN MALAYSIA**

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By

AMBIKAI S. THURASINGAM

**Thesis Submitted to the Putra Business School, in Fulfilment of the
Requirements for the Degree of Doctor of Philosophy**

May 2019

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DEDICATION

THE AUTHOR WISHES TO DEDICATE THIS DISSERTATION TO HER LATE PARENTS MR S THURASINGAM AND MADAM THANGAMALAR WHO WOULD HAVE BEEN VERY PROUD OF HER ACHIEVEMENTS.



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Abstract of thesis presented to the Senate of Universiti Putra Malaysia in fulfilment of the requirement for the degree of Doctor of Philosophy

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AMBIKAI S THURASINGAM

May 2019

Chairman : Associate Professor Zahira Mohd Ishan, PhD
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This study examines the operation of compensation for victims of deviant behavior in the workplace and the nature of existence of deviant behaviour against persons in the workplace. The prevalence of deviant behavior in the workplace has been the source of many interests in the social and legal studies but there is still the need to have workable mechanism to deal with the injustice to the victims of such behavior. This study aims to analyse the adequacy of legal regimes on deviant behaviour against persons in the workplace in view of proposing possible legal redress in the form of compensation scheme over different forms of deviant behaviour against persons in the workplace in Malaysia. In doing so, this study analyzes the legal rules under relevant torts and legislations on workplace deviant behaviour, and also examines the weaknesses of their compensation system, apart from the compensation mechanism under the EIS. This study applies the qualitative research approach using the doctrinal, grounded theory and normative research methods. It is found that tort law is based upon certain important conditions under which a person is permitted for the compensation, if the claims are not based on a contractual obligation. Moreover, the damages can result from the loss of life, property, or health from either financial crisis or from breach of rights. Meanwhile, the existing statutory legislation and provisions governing employer – employee relationship and work related misbehaviour and/or misconduct addresses the legal measures in the form of penalties for the victims. It is evident that these legislations impart provisions that are prohibitive in nature, and did not take cognizance of the compensation available for the injured party(s). Provisions of justice for workplace deviance victims are needed in terms of a reorientation of focus from punishment for the deviance against persons. This study suggests amendments in the existing employment laws to enable the aggrieved victims to claim compensation without the risk of litigation based on the gravity of the deviance.

Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia sebagai memenuhi keperluan untuk ijazah Doktor Falsafah

SKIM PAMPASAN UNTUK MANGSA TINGKAH LAKU DEVIAN TERHADAP DIRI DI TEMPAT KERJA DI MALAYSIA

Oleh

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Kajian ini adalah mengenai operasi pampasan untuk mangsa tingkah laku devian di tempat kerja dan sifat kewujudan tingkah laku devian terhadap diri di tempat kerja. Kelaziman tingkah laku devian di tempat kerja telah menjadi sumber banyak minat dalam kajian sosial dan undang-undang tetapi masih terdapat keperluan untuk mengadakan mekanisme yang dapat digunakan bagi menangani ketidakadilan kepada para mangsa tingkah laku tersebut. Kajian ini bertujuan menganalisa kecukupan rejim undang-undang terhadap tingkah laku devian terhadap diri di tempat kerja ke arah cadangan penyelarasan undang-undang dalam bentuk skim pampasan atas pelbagai bentuk tingkah laku devian terhadap diri di tempat kerja di Malaysia. Dalam pada itu, kajian ini menganalisa peraturan perundangan di bawah torts dan perundangan berkanun pada tingkah laku devian tempat kerja, dan juga mengkaji kelemahan-kelemahan sistem pampasan yang ada, termasuklah mekanisme pampasan di bawah EIS. Kajian ini menggunakan pendekatan penyelidikan kualitatif melalui kaedah kajian doktrinal, teori asas dan normatif. Didapati undang-undang tort tersebut adalah berpandukan syarat penting tertentu di mana seseorang itu dibenarkan untuk pampasan, jika tuntutan itu tidak berdasarkan obligasi kontrak. Tambahan lagi, gantirugi boleh diakibatkan daripada kehilangan nyawa, harta, atau kesihatan daripada sama ada krisis kewangan atau kemungkiran hak. Sementara itu, perundangan berkanun dan peruntukan sedia ada yang mengaitkan hubungan majikan - pekerja dan perbuatan salah laku berkaitan kerja menangani tindakan undang-undang dalam bentuk penalti untuk mangsa. Adalah jelas bahawa perundangan ini memberikan peruntukan yang bersifat mencegah, dan tidak mengambil tahu tentang pampasan yang tersedia untuk pihak yang cedera. Peruntukan keadilan bagi mangsa tingkah laku devian di tempat kerja diperlukan melalui perubahan tumpuan dari hukuman untuk tingkah laku devian terhadap diri. Kajian ini mencadangkan pindaan dalam undang-undang pekerjaan sedia ada untuk membolehkan mangsa yang terkilan menuntut pampasan tanpa risiko litigasi berdasarkan keseriusan tingkah laku devian.

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I certify that a Thesis Examination Committee has met on 24 May 2019 to conduct the final examination of Ambikai S. Thurasingham on her thesis entitled "Compensation Scheme for Victims of Deviant Behaviour in the Workplace in Malaysia" in accordance with the Universities and University Colleges Act 1971 and the Constitution of the Universiti Putra Malaysia [P.U.(A) 106] 15 March 1998. The Committee recommends that the student be awarded the Doctor Philosophy.

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CHAPTER 1

INTRODUCTION

1.1 Research Background

Workplace deviance has been a serious problem for centuries, with its analytical foundation dating to the Industrial Revolution as stated by Klotz and Buckley.¹ The workplace deviance has seen growing interest among researchers like Greenbag² and Robinson.³ Managing employee behaviors is a concern for any organizations globally, especially for profit oriented organizations since such behaviors can be detrimental to their financial interests.⁴ Bolin and Heatherly⁵ defined work place deviance as a voluntary behaviour that violates institutionalized norms and in so doing threatens the well- being of employees and the organisation itself. Griffin and Lopez⁶ have established that all individuals who are at work have the potential of carrying out this destructive behaviour. In Malaysia, researchers like Rahman⁷ and Mazni & Rosiah⁸ concluded that workplace deviance is more prevalent among the support staff as it is believed that employees with lower status are more prone to exhibit deviant behaviour as they can commit their free time to 'spite back' to whoever would have wronged them. The way employees conduct themselves at work would affect the organization and its members either positively or negatively. Therefore it is important to know the appropriate way to behave in a workplace. Ideally, employees should carry out their designated tasks and responsibilities at work and not engage in behaviors that can undermine the organization or other employees either physically or mentally.

The concept of workplace deviance has generated high interest among organizational researchers and practitioners because of its pervasiveness in organizations. It may be attributable to individual characteristics, to organizational climates that encourage unethical decisions, to other factors

¹ Klotz, A.C., Buckley, M.R., (2013). A historical perspective of counterproductive work behavior targeting the organization. *Journal of Management History* 19, 114–132.

² Greenbag, J., (2002). Who stole the money and when? Individual determinants of employee theft; *Organizational Behavior and Human Decision Processes*, 89, pp. 985-1003.

³ Bennett, Rebecca J., and Sandra L. Robinson (2000): "Development of a measure of workplace deviance." *Journal of Applied Psychology*.

⁴ Appelbaum, S.H., Iaconi, G.D. and Matousek, A. (2007), "Positive and negative deviant workplace behaviors: causes, impacts, and solutions", *Corporate Governance*, Vol. 7, No. 5, pp. 586-598.

⁵ Bolin, A. and Heatherly L. (2001): Predictors of employee deviance. The relationship between bad attitudes and bad behaviours. *Journal of Business Psychology*, 15 (3): 405-415.

⁶ Griffin, R.W. and Lopez V.P, (2004). Toward a mode of the person-situation determinants of deviant behavior in organizations. *Academy of Management*. New Orleans.

⁷ Rahim, A., & Rahman, A. (2008). *Predictors of Workplace Deviant Behaviour In Malaysia [HM811.R147 2008 f rb]* (Doctoral dissertation, University Sains Malaysia).

⁸ Mazni, A. and Roziah, R., (2011). Towards developing a theoretical model on the determinants of workplace deviance among support personnel in the Malaysian Public Service Organisations.

and/or to a combination of all of them.⁹ The victims of workplace deviant behaviour in this study include the employers and employees. Employee's deviant behaviour in an organization has given implications and effects to all levels of the organization and it is deemed to occur when an employee violates the policies or regulations that could affect the organization or staff wellbeing.¹⁰ For that reason, the management of employees' deviant behaviour in the workplace is a critical global issue. Not only it can affect the effectiveness of the organization, it also has financial implications.¹¹ This means it becomes costly when there is non-productive situation in the organisation or even when there is dismissal or termination wherein the employer has to incur cost to replace the employee.

Deviant behaviour has no specific definition, some of the terms used to describe are aggressive behaviour, fraud, withholding effort, theft, sexual harassment, organisational misbehaviour, antisocial behaviour, non-compliant behaviour which are agreed upon by literatures.¹² Deviant behaviour of employees has been given high priority in many organizations nowadays.¹³ Many studies have been conducted to examine the factors that contribute to deviant behavior,¹⁴ however, these studies did not address the legal redress rendered to the victims. These studies also points to show that deviant behavior victims are employees and do not seem to address that employers could also be subject to being victims of deviant behavior.

For example, according to Department of Occupational Safety and Health¹⁵, from January to October 2017, there are a total of 3,246 occupational accidents and 206 deaths. This situation means, nine (9) occupational accidents occurred every day. The manufacturing sector has the highest industrial accident, 1691, but construction section has the highest fatality rate, whereby 63 workers died out of 177 reported accidents. The fatality rate has increased from 4.21 in 2014 to 4.84 in 2016 (per 1,000 workers). Usually, the workers do not receive reasonable compensation if they encountered occupational accident due to lack of insurance, low wages and age. Many accidents happened because of negligence of employers in observing safety

⁹ Kish-Gephart, J.J., Harrison, D.A., and Trevino, L.K. (2010). Bad apples, bad cases, and bad barrels: Meta-analytic evidence about sources of unethical decisions at work. *Journal of Applied Psychology*, 95, 1-31.

¹⁰ Robinson, S. L., & Bennett, R. J. (1995). A typology of deviant workplace behaviors: A multidimensional scaling study. *Academy of Management Journal*, 38(2), 555-572.

¹¹ Greenbag (n 2) pg 985

¹² Peterson, D. K. (2002). Deviant workplace behavior and the organization's ethical climate. *Journal of business and psychology*, 17(1), 47-61; Rogoian, P. T. (2009). Deviant workplace behavior in organizations: Antecedents, influences, and remedies. na.

¹³ David J. Prottas (2013), Relationships Among Employee Perception of Their Manager's Behavioral Integrity, Moral Distress, and Employee Attitudes and Well-Being, *Journal of Business Ethics* 113 (1):51-60; Darrat, M., Amyx, D., & Bennett, R. (2010). An investigation into the effects of work-family conflict and job satisfaction on salesperson deviance. *Journal of Personal Selling & Sales Management*, 3(3), 239-251.

¹⁴ Fox, S., Spector, P. E., & Miles, D. (2001). Counterproductive work behavior (CWB) in response to job stressors and organizational justice: Some mediator and moderator tests for autonomy and emotions. *Journal of Vocational Behavior*, 59(3), 291-309.

¹⁵ Labour Rights in Malaysia: An Introduction to Current Situation. <http://teohbenghock.org.2017>.

and health regulations, causing workers' right to decent work and right to life being violated.

Numerous studies have been conducted on workplace deviance behaviors among which are by Faridahwati, Kura and Chauhan¹⁶ have revealed situations where the employees engage in various form of workplace deviance that includes absenteeism, abusing sick day privileges, abuse of drugs and alcohol, filing fake accident claims, sabotaging office resources, breaking the rules of the organization, withholding effort, stealing, taking long breaks, teasing, harassing other employees and hiding needed resources. From the legal perspective, these list of deviance by the organizational behaviour scientists are a mix of wrongful acts which are categorized into minor and major deviances. In countries like Australia, the Fair Work Act 2009 addresses these different kinds of wrongful acts or deviant behaviors depending upon the seriousness of the act and its consequences. These laws are under the domain of tort law which encompasses civil wrongdoings wherein it is the common law which recognises the wrong doing as an intentional or unintentional act.

The Code of Practice on the "Prevention and Eradication of Sexual Harassment in the Workplace" came into effect in August 1999, under the purview of the Ministry of Human Resources Malaysia. The Code encourages employers to implement in-house mechanisms to prevent, handle, and eradicate sexual harassment at workplace. The in-house mechanism provided by the Code included a policy statement prohibiting sexual harassment in the organization, a clear definition of sexual harassment, a complaint/grievance procedure, disciplinary rules and procedure against the harasser and those who make false accusations. It also included protective and remedial measures for the victims. Promotional and educational programmes were implemented to educate the company's employees, policies or rules and by doing so it will ensure the well-being of the organization and/or its members or both. Therefore, the form of deviant behavior that has received special attention from the authorities is sexual harassment and this is evident through the amendments to the Employment Act 1955 which came into effect on 1st April 2012, whereby section 81A and section 81C was introduced to criminalize sexual harassment at workplace.

The EA introduced Sexual Harassment and the definition of such an "act" coincides with the intensified anti-harassment efforts and pursuits of non-governmental organizations in Malaysia. Sexual harassment is now defined in the EA as any "unwanted conduct of a sexual nature, whether verbal, non-

¹⁶ Kura, M. K., Faridahwati Mohd. Shamsudin and Ajay Chauhan. (2013). Influence of organizational formal control on workplace deviance: A pilot study. *Middle-East Journal of Scientific Research*, 13(4), 538-544.; Othman Mohd Yunus, Khalizani Khalid and Shahrina Mohd Nordin. (2012). A personality traits and workplace deviance behaviors. *Elixir International Journal*, 47, 8678-8683; Shamsudin and Rahman (2006), "Workplace Violence in Malaysia and the Relevance of OSHA 1994, Malaysian Management Review.

verbal, visual, gestural or physical, directed at a person; the act which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment.”

The Ernest & Young 2017 Asia Pacific Fraud Survey¹⁷ shows that 27% of employees do nothing upon becoming aware of fraud and that 41% of employees and 51% of senior managers feel pressured to withhold information of misconduct. Malaysian PLCs have risk committees that will accept reports of unethical conduct. However, there is no similar avenue for sexual harassment. This is due to embarrassment, helplessness and fear of being ridiculed or, worse still, of losing their jobs, most of the victims of sexual harassment were prevented from raising the problem and therefore had to suffer in silence. In Malaysia the unfortunate victims are presently facing distressing constraints to report sexual harassment because there is no established procedure to guide them on how and where to report. At the organisational level, very few employers have so far provided complaints or grievance procedure for reporting sexual harassment, therefore, the need arises for the amendments to the employment laws. However, the amendment did not seem to incorporate any provisions for deviant behavior no matter how trivial or serious it may be. This is among the subject matter of recent debate, yet to be addressed by any legislation.

In another study by Yogeswary using 252 health care workers in three government hospitals found that there was an existence of various forms of workplace deviance.¹⁸ An empirical study by¹⁹ Awanis reported similar cases of deviant among employees in a government agencies situated in the northern region of Malaysia. Despite of the issue which has been occasionally highlighted in the mass media, empirical studies on workplace deviance are limited in Malaysia²⁰ and in the Asian context.²¹ To date, less study has also employed support staff in government organizations as sample. Researchers found that organizational-related factors such as organizational ethical climate

¹⁷ The Malaysian Insight, October 2017.

¹⁸ Yogeswary, S. (2009). Relationship between organization ethical climate and workplace deviant behaviour. Unpublished Master Dissertation. Business College Universiti Utara Malaysia, Malaysia.

¹⁹ Awanis, K.I. (2006). The relationship between deviance behavior among Mara employees in northern Malaysia and its predictors. Unpublished Master Thesis. Universiti Sains Malaysia, Malaysia.

²⁰ Alias, M., Mohd Rasdi, R., Ismail, M. and Bahaman, A.S. (2013). Influences of individual-related factors and job satisfaction on workplace deviant behaviour among support staff in Malaysian public service organizations. *Human Resource Development International*, 5(16), 538-557.

²¹ Smithikrai, C. (2008). Moderating effect of situational strength on the relationship between personality traits and counterproductive work behaviour. *Asian Journal of Social Psychology*, 11(4), 253-263.

and justice²² perceived organizational support²³ and trust in organization²⁴ are pertinent factors in employees' inclination in deviant behaviour.

Workplace deviance has been referred by a plethora of names such as counter-productive work behaviour, antisocial behaviour, misbehaviour in organizations, organizational misbehaviour, non-compliant behaviour and cyberloafing. Organizational behaviour scientists show keen interest in reducing deviant organizational behaviour because it can be very disruptive and costly in terms of the financial detriment to the company and the emotional impact of the employees.²⁵ Deviance has often been recognized as a reaction to frustrating organizational stressors such as financial, social and working conditions.²⁶ The interpersonal deviance could lead to less job satisfaction and stress, and consequently to more turnovers and decreased productivity. Earlier studies²⁷ carried out in Malaysia has found that working women were sexually harassed at workplaces. The existing statutory legislation and provisions governing employer – employee relationship for example the Employment Act 1955 (hereinafter referred to as EA) and Occupational Safety & Health Act 1994 (hereinafter referred to as OSHA)²⁸ govern work related misbehaviour and/or misconduct and provide the legal measures in the form of penalties for the employers. It is evident that these legislations have provisions that are prohibitive in nature, and did not take cognizance of the compensation available for the injured party(s). The deviant behaviour in the workplace may exist in varying degree and a distinction must be made between minor and major deviance in order to propose a legal redress for this deviant behavior.

The s.2(1) of the First Schedule of the EA states that “any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed one thousand five hundred

²² Jones, D.A. (2009). Getting even with one's supervisor and one's organization: Relationships among types of injustice, desires for revenge, and counterproductive work behaviours. *Journal of Organizational Behaviour*, 30(4). 525-542.

²³ Monnastes, S.N. (2010). Perceived Organizational support and counterproductive work behaviour: How personality moderates the relationship. Unpublished Master Dissertation. San José State University, California.

²⁴ Thau, S., Crossley, C., Bennett, R.J. and Sczesny, S. (2007). The relationship between trust, attachment, and antisocial work behaviour. *Human Relations*, 60(8), 1155-1179.

²⁵ Greenberg J. and Baron R.A. (2003) *Behavior in Organizations*, Eight Edition, Pearson Education, Inc., Upper Saddle River, New Jersey.

²⁶ Lawrence T.B. and Robinson S.L. (2007) Ain't Misbehavin: Workplace Deviance as Organizational Resistance, *Journal of Management*, Vol. 33, No. 3, June, p. 378-394.

²⁷ Ali, S. R. O., Zakaria, Z., Said, N. S. M., & Yusof, H. S. M. (2016). Sexual Harassment among Hotel Employees in Malaysia: The Risk Factor and Effect. *The Social Sciences*, 11(13), 3321-3325; Hassan, K. H., & Lee, Y. Z. (2015). Sexual Harassment in the Workplace: Selected Court Cases and New Legal Provisions in Malaysia. *Asian Social Science*, 11(16), 9; Suhaila, O., & Rampal, K. G. (2012). Prevalence of sexual harassment and its associated factors among registered nurses working in government hospitals in Melaka State, Malaysia. *Med J Malaysia*, 67(5), 506; Ismail, M. N., Chee, L. K., & Bee, C. F. (2007). Factors influencing sexual harassment in the Malaysian workplace. *Asian Academy of Management Journal of Accounting and Finance*, 12(2), 15-31.

²⁸ In this study the emphasis is placed on the application of Employment Act 1955 and Occupational, Safety & Health Act 1994.

ringgit a month”.²⁹ This provision is only applicable in West Malaysia for the private sector employees, further, the Employment (Termination and Lay-Off Benefits) Regulations 1980³⁰ may provide termination benefits, lay-off benefits and retirement benefits to the employees by regulations made under the Act 265.³¹ For instance, stipulates that an employer should pay termination or lay-off benefits to an employee who has been employed under a continuous contract of service for the past 12 months.³² However, both the Act 265 and Regulation 1980 only provide a minimum amount of termination or lay-off benefits payment to the employees. The existing laws neither encourage the employees to actively seek re-employment nor strengthen their employability in the labour market. Hence, the Employment Insurance System Act 2017 (EIS), which came into force on 1 January 2018,³³ is a timely yet comprehensive law to protect the workers in Malaysia. The Act sets out provisions to provide certain benefits and a re-employment placement programme for insured persons in the event of loss of employment which will promote active labour market policies.

The EIS, accompanied by the Employment Insurance System (Registration and Contribution) Regulations 2017 are administered by the Social Security Organisation. The EIS provides financial assistance for eligible employees who have lost their employment.³⁴ Categories of loss of employment are:

- (a) voluntary resignation by the employee;
- (b) expiry of the contract of service of the employee;
- (c) termination of the contract of service by mutual consent of the employer and the employee without terms and conditions;
- (d) completion of the work in accordance with the terms of the contract of service;
- (e) retirement of the employee; and
- (f) termination of the contract of service of the employee due to misconduct.

The EIS involves contribution from both employer and employee towards what is called the Employment Insurance Fund. Rates of contribution are dependent on wages, ranging from RM0.05 for wages up to RM30 per month to RM7.90 for wages exceeding RM4,000. This contribution is in addition to what is currently required under the Employees’ Social Security Act 1969 (SOCSO), which covers indirect loss of employment caused by, among others, death and

²⁹ First Schedule of the Employment Act 1955

³⁰ EA (Regulation 1980)

³¹ Section 60J(1) of the Employment Act 1955.

³² Regulation 3(1) of the Employment (Termination and Lay-Off Benefits) Regulations 1980.

³³ Bernama, “Employment Insurance System to be Implemented Next Year, Says Minister”, The Malaymail Online, 31 October 2017,

<<http://www.themalaymailonline.com/malaysia/article/employment-insurance-system-to-be-implemented-next-year-says-minister>> accessed on 30th June 2019

³⁴ Employment Insurance System Act 2017 [Act 800].

personal injury. The Act specifies certain qualifying conditions that would have to be met in order to make a claim for post-exit benefits based on the number of claims made by the employee and the length of contribution under the Act.

All private sector employers with one or more employees will be required to register under the EIS scheme, and all employees will need to be insured. The EIS is administered by SOCSO and the EIS contribution total approximately 1.5% of monthly wages, with the employee and employer contributing 50% each. The rate of contribution is subject to a maximum wage cap of RM4,000.³⁵ Employers are prohibited from reducing wages and removing or reducing any similar existing benefits in response to their EIS obligations. Failure to comply is a criminal offence, and will subject the employer to a fine of maximum RM10,000 or 2 years' imprisonment, or both. Employees who are terminated for misconduct, who voluntarily resign, retire or whose fixed-term employment contract expired, will be excluded from the benefits. Those who exit because of force majeure events, through voluntary separation schemes or constructive dismissal, remain eligible.

SOCSO is officially assigned to administer the Fund³⁶ which consists of contributions payable by the employers, insured persons and all other moneys and properties lawfully received by SOCSO³⁷ including an allocation of RM52 million by Government of Malaysia ("Government") under the 10th Malaysia Plan and RM70 million announced by the Prime Minister during the Labour Day 2017 celebration.³⁸ The government has concomitantly demonstrated its commitment to support this system financially, even though the Government is not a party to pay the contribution payable in respect of the insured person. In this context, the Fund can only be utilised for the payment of benefits, training fees, expenses incurred for the re-employment placement programme, evaluation costs, administration expenditure and other relevant purposes.³⁹ The Board is empowered to invest the Fund subject to such terms and conditions as may be determined by the Minister after consultation with the Minister of Finance.⁴⁰ Furthermore, SOCSO will have to prepare a budget annually showing the probable receipts and the estimated expenditure of SOCSO for the ensuing year.⁴¹ The budget is to be submitted for the approval of the Minister accordingly⁴² and the account must be audited annually by the Auditor General.⁴³ The Board is required to submit the annual report and the

³⁵ Available at: <http://www.bakermckenzie.com/en/insight/publications/2017/08/new-compulsory-allowances-and-benefits/>, accessed on 5th December 2018

³⁶ Section 46(1) of the Employment Insurance System Act 2017.

³⁷ Section 46(2) of the Employment Insurance System Act 2017.

³⁸ Hansard, House of Representative, Thirteenth Parliament, Fifth Session, Third Meeting, 25 October 2017, page 144, (Pandikar Amin Mulia).

³⁹ Section 47 of the Employment Insurance System Act 2017.

⁴⁰ Section 50(2) of the Employment Insurance System Act 2017.

⁴¹ Section 52(1) of the Employment Insurance System Act 2017.

⁴² Section 52(2) of the Employment Insurance System Act 2017.

⁴³ Section 54(1) of the Employment Insurance System Act 2017.

audited account to the Minister and subsequently, the Parliament. Furthermore, the Board is tasked to carry out actuarial review on the implementation of the System and the report should be submitted to the Minister every five years.⁴⁴ It is opined that this check and balance mechanism is necessary to examine the relevance of the System from time to time. A similar approach based on the operation of EIS is adopted in this study to propose amendments to the existing EA in the award of compensation and maintaining a similar pool of fund to be administered by the Employee Provident Fund (EPF).

The empowerment by the EA of the employer to justifiably dismiss wrongful employees in a way helps ensure that the system of work is relatively safe. It does not have any provision regarding what the employers need to do in order to prevent future misconduct and violence from happening and thus to provide a safe system of work.⁴⁵ Hence, the Act is an umbrella legislation to protect the safety and health of all persons at work and those affected by persons at work.

The employees too must comply with the provisions of the Act and cooperate with employers in their attempt to ensure a safe and healthy workplace. This is in line with the philosophy of the Act that is: responsibility for safety and health in the workplace lies with those who create the risks (employers) and those who work with the risks (employees). OSHA provides the legislative framework to secure the safety, health and welfare among all Malaysian workforce and to protect others against risks to safety or health in connection with the activities of persons at work. Section 15 outlines the duties of the employer includes maintenance of plant and systems that are safe and without risk to health, provides information, instruction, training and supervision to ensure the safety and the health at work. Section 16 requires the employer to formulate safety and health policy at the workplace and regularly revise the policies to align the policies with changes and best practices in the business world.

Therefore, the health and safety provisions are to demonstrate the company's commitment and concern to ensure safety and health at place of work but does not address the nature of deviant behavior. On the other hand, the EA, is the main legislation on labour matters in Malaysia, which provides minimum terms and conditions (mostly of monetary value) to certain category of workers however, does not address issues with regards to deviance against employees or employers. Therefore, this study encompass a different view of

⁴⁴ Section 57(1) of the Employment Insurance System Act 2017.

⁴⁵ Faridahwati M.S and Rohana A.B (2006), Workplace Violence in Malaysia and the Relevance of OSHA 1994, Malaysian Management Review.

legal treatment and begins to raise and explore wider questions regarding legal redress to deviant behaviour.

This study provides legal remedies for deviance victims and there needs to be a reorientation of focus from punishment for the 'core' harm (or wrong) of deviance against persons. To do so, it will suggest increasing the possibility of additional and alternative routes to legal redress, such as restorative justice and claims in tort for compensation and shifting the criminal justice focus on traditional forms of punishment, typically imprisonment, towards reparative outcomes. The compensation and/or punishment must be considered for the employer and/or employee.

This research focuses on addressing the deviant behaviour in an organization by exploring a set of amendments, as it is evident through earlier studies that relying on the EA and the OSHA are insufficient. The implementation of EIS is a way forward to provide post-exit benefits to the aggrieved employees who have been terminated. Therefore, this study proposes provisions in the existing law in order to prevent future deviant behaviour activities at workplaces and provide a mechanism to compensate these victims, perhaps a pool funds which can be utilized to establish a novel legal redress in the workplace in Malaysia.

Although the existing employment legislation may provide some form of punishment or dismissal for misconduct, however, it does not seek to remedy the loss incurred by the victim. For example, if the employee had taken long breaks from and there is a loss of productivity, the employer may punish the employee for such conduct but, however, the employer is not compensated for the "loss" incurred for the productivity, thereby leading to unfairness. Thus, it is proposed that this study will nurture a legal redress by formulating amendments to be part of the employment legislation.

1.2 Problem Statement

Deviant behaviour at the workplace is a phenomena which each and every organisation faces and has significant direct economic consequences to the organisation.⁴⁶ Deviance in the workplace is not a fresh knowledge to discuss in corporate world⁴⁷ but resources which create deviance workplace behavior are still guiding new dimension to examine with the passage of time and

⁴⁶ Chirasha, V., and Mahapa, M. (2012). An Analysis of the Causes and Impact of Deviant Behaviour in the Workplace. The Case of Secretaries in State Universities. *Emerging Trends in Economics and Management Sciences (JETEMS)*, 3(5), 415-421.

⁴⁷ Javed R, Amjad M, Ul-Ummi LUY, Bukhari R (2014) Investigating factors affecting employee workplace deviant behavior. International Journal Innovation Applied Stud 9: 1073-1078.

circumstances. In Malaysia, there are two statutory legislations governing workplace “misconduct” and/or “violence” which are the EA and OSHA.

These statutory mechanisms were enacted as a means of addressing issues and preventing workplace misconduct, misbehaviour and violence. It was observed that there were increasing cases of workplace violence.⁴⁸ The study further notes that the society has acknowledged the need for addressing violence at workplaces and ascertained that Malaysia has been relying on the EA and the OSHA, which were not sufficient to tackle the deviant behaviours in an organization. Although these legislations empowers the authorities to punish the wrongdoers, its application is limited to the govern employees only.

The existing statutory legislations governing employer – employee relationship, for example, the EA and OSHA govern work related misbehaviour and/or misconduct and provide the legal measures in the form of penalties for the employers. Section 14 of the EA provides the following:

(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry—

(a) dismiss without notice the employee;

(b) downgrade the employee; or

(c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.⁴⁹ It is evident that these legislations are prohibitive in nature, and do not take cognizance of the compensation available for the injured party(s). Domestic inquiry must be held for serious misconduct cases and the accused employee must be accorded to a fair hearing based on the rules of natural justice⁵⁰ but failure at the employers’ part signify violation of natural justice process and amount to deviant behaviour at the workplace. The misbehavior and/or misconduct which are considered as deviant in the workplace may exist in varying degree and a description must be made between minor and major deviance in order to propose a legal redress for this deviant behavior.

⁴⁸ Ayoko, O and Hartel, C. (2010). Workplace Conflicts, Bullying and counterproductive Behaviors — The Case of Asia. *Journal of Organizational Analysis* 11: 283- 301

⁴⁹ Section 14 (1) Employment Act 1955

⁵⁰ Muniappan.B, (2007), Misconduct, Domestic Inquiry and the Rules of Natural Justice in the Context of Malaysian Employment Relations, [2007] 6 MLJ cxlix.

In other words, other than the special treatment by the existing law over sexual harassment, the current application of safety and health at workplace, which were based on the general principles of safety responsibility and safe working⁵¹ is seemingly inclined to safe handling and operation of equipment, machinery or chemical to the premise and workplace.⁵² Section 27 of the OSHA provides for discrimination against employee; whereby it states:

(1) No employer shall dismiss an employee, injure him in his employment, or alter his position to his detriment by reason only that the employee-

(a) makes a complaint about a matter which he considers is not safe or is a risk to health;

(b) is a member of a safety and health committee established pursuant to this Act; or

(c) exercises any of his functions as a member of the safety and health committee. Further, subsection (3) provides that an employer who, or a trade union which, contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to a term of imprisonment not exceeding one year or to both. This means OSHA imposes punishment for employers who have discriminated the employees and there are no provisions in the Act for compensation for deviant behaviour. Therefore, it is possible to widen the intended aims of EA and OSHA on safety and health to deviance behavior against persons in workplace as preceded by the anti-sexual harassment provisions in the EA. The basic and over-riding responsibilities of persons at workplace, either the employer or employee, should also include non-committal act of deviant behavior against one and another.

In addition, the existing statutory provisions governing employer – employee relationship and work related misbehaviour and/or misconduct addresses the legal measures in the form of penalties for the employers. The deviant behaviour in the workplace has been acknowledged in the workplace⁵³ and this study proposes a compensation scheme for the victims of such behavior,

⁵¹ Robens, A. (1972). Safety and Health at Work: Report of the Committee, 1970-71 (Vol. 1). London: Her Majesty Stationery Office. Pp. 41, 51-53.

⁵² Schneid, D.T. (2014). Workplace safety and health: assessing Current Practices and Promoting Change in the Profession. Boca Raton, Florida: CRC Press taylor & Francis Group.; Hughes, P. & Ferrett, E. (2013). International Safety and Health at Work. New York: Routledge, p.457; Saad, A. (2011). Occupational Safety and Health Management. Penang: Penerbit USM.

⁵³ Shamsudin Mohd. Faridahwati, Subramanian Chandrakantan and Ibrahim Hadziroh –(HR practices and Deviant Behaviour at Work: An Exploratory Study),Published in 2011 International Conference on Business and Economics Research, IPEDR Vol.16 (2011), IACSIT Press, Singapore. Dynamics of Deviant Workplace Behaviour-A Literature Review. Available from:

https://www.researchgate.net/publication/303682869_Dynamics_of_Deviant_Workplace_Behaviour-
[accessed Nov 23 2018].

without a litigation process, which means the victims are entitled to compensation should they subject to act of deviance and this study also proposes that the interpretation of 'victim' should include employer and employee.

There were previous studies⁵⁴ which confirmed deviant behavior among workers in Malaysia but not on the mechanism of redress or compensation for the injury and/or loss to the victim (employer/employee) of deviant behavior in the workplace. However, this study does not address the quantum of the compensation to be awarded but establishing a pool of funds from which the victims are compensated. Thus, the door is still open for another formulation of legal redress that may help to clear the loopholes in the employment law.

1.3 Research Questions

- (i) What is deviant behavior in the workplace?
- (ii) What are the current laws regulating deviant behavior against persons in the workplace?
- (iii) Whether the current legislations provide adequate compensation for the victims of deviant behaviours in workplace?
- (iv) What are the reforms needed in the current legislations and mechanisms in order to compensation the victims of deviant behavior in the workplace?

1.4 Objectives of the Study

1.4.1 General Objective

This study sets out:

To analyse the adequacy of legal regimes on deviant behaviour against persons in the workplace in view of proposing a possible legal redress and a compensation scheme over different categories of deviant behaviour against persons in the workplace in Malaysia.

1.4.2 Specific Objectives

- (i) To identify the nature and criteria of deviant behaviours against persons in the workplace in Malaysia.
- (ii) To examine current common law on deviant behaviour against persons in the workplace in Malaysia.

⁵⁴ Rahim (n 7) page 22

- (iii) To examine the legislative framework regulating deviant behavior in the workplace;
- (iv) To examine the weaknesses of the compensation system in deviant behaviors against person in the workplace
- (v) To propose a compensation scheme for the victims of deviant behaviour in the workplace which is embodied in the proposed amendments to the employment law.

1.5 Scope and Significance of the Study

This study embraces socio-legal perspective, whereby, much of the literature considered may include organisational behaviour, management and law. However, this is done by highlighting the legal perspective and without eliminating the organisational behaviour perspective. Therefore, this study also intends to offer a considerable intellectual challenge to industrial/organisational psychologists, HR practitioners and indeed for effective management practice. This study has important legal implications, which, underscores the need to broaden the legal conceptualizations of deviant behaviour so the conduct can be recognized as an offensive and objectionable condition of employment.

The current formulation of legal protection conferred upon the victims of deviant behaviour at the workplace, is still inadequate because the EA addresses on provisions to tackle 'misconduct', the Sexual Harassment Act 2010 considers punishment for the harasser and OSHA governs safety issues. This study proposes with amendments to the existing employment law that will, hopefully, lead Malaysia more properly regulated in terms of act of deviance towards persons in the workplace. This study also contributes towards having a legal redress whereby compensation is awarded for the victims of deviant behavior in the workplace through a workable compensation scheme that is proposed in the recommendation part of this thesis. Nonetheless, as amount payable to victims would vary according to the degree of injury resulting from the deviant behaviour, the issue of quantum of damages for the compensation is not the concern of this study. Without the determination of the quantum of compensation awarded to the victims may render this study ineffective. This study also suggest ways to develop the amendments to the law on the legal redress of deviant behavior by considering the loopholes in the EA and OSHA, therefore, limiting its scope to civil laws, hence, not taking into account the provisions of the Penal Code.

In addition the existing protections available to selected common law jurisdictions including Australia, India, Canada and UK is referred to measure their effectiveness to address deviant behavior against persons in the Malaysian context. It analyses what Malaysia can learn from these jurisdictions. In brief, the prime objective of the research is to establish that there are inadequacies of the current employment laws on deviant behaviour

protection in Malaysia which result in lack of remedies to victims in addressing such cases in the workplace. The proposed amendments of legal redress will not be kept just on shelf, but will be brought to the attention of relevant institutions to implement this mechanism.

1.6 Literature Review

1.6.1 Introduction

The aim of this section is to review previous literature, in the current area of research that pertain to deviant behavior in the workplace. The structure of the literature review is informed by the research questions that have been stated earlier in this study. This chapter reviews the existing literatures with respect to deviant behaviour against persons in the workplace. The workplace deviance considered here would include wrongdoings of both employees and employers which would contribute to the development of new findings in this research. In order to support the work further, the research has considered the definitions and meaning of deviant behavior, bullying, harassment and assault to analyse whether these can be part of “deviant behavior in the workplace”.

1.6.2 Definitions

a) Deviant Behaviour

The Oxford dictionary defines deviant behaviour as “*departing from usual or accepted standards, especially in social or sexual behaviour*”. There are two viewpoints advanced to deviant behaviour namely normative perspective and situational perspective. The normative perspective sees deviance as human behaviour that violates existing and generally accepted social norms. Not only is such behaviour typically a violation of shared and generally agreed behavioural standards, which somehow seems inherently “wrong” and even disgusting. The situational perspective shifts the focus away from the individual and to the social situation surrounding the behaviour in question. Certain behaviours do not adhere to normative structure of society and are almost always condemned.⁵⁵

Less prevalent, yet still harmful, are aggressive behaviours such as lying, spreading rumours⁵⁶ withholding effort⁵⁷ and absenteeism. These attitudes violate workplace norms and therefore are considered to be an antisocial type

⁵⁵ Humphrey JA, Schmullager F (2011), *Deviant Behaviour* 2nd Ed. Jones and Barlett Publishing.

⁵⁶ Skarlicki, D. P., and Folger, R. (1997). Retaliation in the workplace: The roles of distributive, procedural, and interactional justice. *Journal of Applied Psychology*, 82, 434–443.

⁵⁷ Roland E. Kidwell, Christopher L. Martin (2005), *Managing Organisational Deviance*, Sage Publications.

of behavior.⁵⁸ It is therefore not surprising that organizational scholars have focused, with vigour, on various forms of negative behaviours in the workplace in the year 2004.⁵⁹ Notable examples of these behaviours include deviance, aggression, antisocial behaviour and violence. More specifically, the negative behaviours include employee theft, fraud and sabotage, as well as playing mean pranks, acting rudely and arguing have been suspected to be the fastest growing deviance workplace behaviours.⁶⁰

(i) Bullying and Harassment

Literature suggests that behaviour can be any form of offending, harassing, negatively affecting someone's work or social exclusion at the workplace.⁶¹ Repeated and regular misdoings over period of time such as on weekly basis for some months, in most cases escalate the situation and the victim develops inferiority or anxiety.⁶² The workplace bullying is "a combination of tactics in which numerous types of hostile communication and behaviour are used."⁶³ Bullying is a crippling and devastating problem with the potential to damage targets' self-esteem, physical health, cognitive functioning, and emotional health. Abused employees are at increased risk of depression, prolonged duress stress disorder, alcohol abuse, post-traumatic stress disorder, and even suicide".⁶⁴ As per Gary workplace bullying is "repeated, health-harming mistreatment, verbal abuse, or conduct which is threatening, humiliating, intimidating, or sabotage that interferes with work or some combination of the three. Bullying is nearly invisible, it is non-physical, and nearly always sub-lethal workplace violence. It is psychological violence, mostly covert and sometimes overt, both in its nature and impact. Regardless of how bullying is manifested, either verbal assaults or strategic moves to render the target unproductive and unsuccessful, it is the aggressor's desire to control the target that motivates the action. The major risk is psychological damage, but counseling is not offered by employers to complainants who report bullying."⁶⁵

Sexual harassment is unwelcome, and can take both verbal and physical forms and this includes sexual innuendos, comments and remarks, suggestive, obscene or insulting sounds, implied sexual threats, leering, oogling, displaying offensive pictures and making obscene gestures. These overtures all share similar traits, in that they have "the air of seediness" and

⁵⁸ Robinson, S.L. and Bennett, R.J. (1995), "A typology of deviant workplace behaviors: a multidimensional scaling study", *Academy of Management Journal*, Vol. 38 No. 2, pp. 555-72.

⁵⁹ Griffin et. al 1998.

⁶⁰ Akinbode A. Gabriel (2011), *Organizational Determinants of Workplace Deviant Behaviours: An Empirical Analysis in Nigeria*, *International Journal of Business and Management* Vol. 7, No. 5.

⁶¹ Einarsen, S., Hoel, H., Zapf, D., & Cooper, C. L. (2003): *Bullying and emotional abuse in the workplace. International perspectives in research and practice*, 1.

⁶² *Ibid* (n 47)

⁶³ Lutgen-Sandvik, Pamela, Sarah J. Tracy, and Jess K. Alberts.(2007), "Burned by bullying in the American workplace: Prevalence, perception, degree and impact." *Journal of Management Studies* 44, no. 6 837-862.

⁶⁴ Einarsen (n 470 page 30)

⁶⁵ Namie, G. (2003), "Workplace bullying: Escalated incivility." *Ivey Business Journal* 68, no. 2.

cause disturbance or annoyance to the victim. The Federal Court in ***Mohd Ridzwan Abdul Razak v Asmah Hj Mohd Nor***⁶⁶ made a landmark decision in introducing the tort of sexual harassment into our legal and judicial system.

In this case an employee of Lembaga Tabung Haji lodged a complaint to the CEO of the company, alleging sexual harassment by her supervisor. Among other things, she claimed that her supervisor uttered profanity, made inappropriate jokes and unsolicited proposals for marriage, and even used a vulgar word as his laptop password. The superior commenced legal action against the employee, claiming that her complaint of sexual harassment was defamatory. The employee filed a counter-claim against him, seeking general and aggravated damages for sexual harassment.

In 2012, the High Court dismissed the supervisor's claim, but allowed the employee's counterclaim. The High Court found that sexual harassment had been established and awarded the employee general damages of RM100,000.00 and aggravated damages of RM20,000.00. On appeal, this finding was upheld by the Court of Appeal although they did so on the basis that the supervisor had committed the tort of "intentionally causing nervous shock" rather than "sexual harassment". Finally, the supervisor appealed to the Federal Court, which dismissed his appeal, holding that it was timely to import the tort of sexual harassment into Malaysia's legal system.

In making this decision, the Federal Court has sent a very strong message about dealing with sexual harassment in the workplace:

"Sexual harassment is a very serious misconduct and in whatever form it takes, cannot be tolerated by anyone. In whatever form it comes, it lowers the dignity and respect of the person who is harassed, let alone affecting his or her mental or emotional well-being. Perpetrators who go unpunished, will continue intimidating, humiliating and traumatising the victims thus resulting, at least, in an unhealthy working environment."

(ii) Occupational Injury, Illness and Assault

The following study has evaluated association between workplace psychological stressors with occupational injury, illness and assault (OIIA). By interviewing around 2151 respondents, the study found characteristics of (OIIA) in respondents who were exposed to workplace abuse such as general

⁶⁶ [2016] CLJ JT 10

harassment, sexual harassment, pressure and job threats.⁶⁷ There existed strong association between psychologically stressed environment and OIIA). The researcher pointed, “hostile” psychosocial environments that include aggressive and disruptive acts cause emotional and mental stress. Job pressure and threat tends to be based on the worker’s perception (i.e., would you say your job was under control, nerve-wracking, smooth running) and could be subject to day-to-day influences at work and away from work. In addition, workers who perceive their jobs to be hectic, high-pressure, nerve-wracking, and a hassle were at increased risk of OIIA.”⁶⁸

There may be social consequences for others besides the injured or abused worker, including the worker's family, friends and coworkers. Individuals and groups can be affected in a variety of ways, according to their domestic, vocational, and other societal role.⁶⁹ The influences of a job-related injury or abuse can extend into diverse settings including homes, workplaces, medical clinics and community institutions. Multifarious impacts are possible including vocational, psychological, behavioral, social, economic, and functional effects. In theory, a wide assortment of social consequences is possible through combining each items. For example, one consequence of a workplace injury could involve the inability of a worker's child to engage in recreational activities at school because of diminished family income resulting from the injured worker's reduced wages. Here again, the effects are not necessarily independent. For instance, an injured worker's psychological stress can affect the performance of a spouse's domestic tasks. Similarly, retaliatory reactions by employer management to a worker's injury might stimulate anger, drug abuse, or other behavioral reactions among the injured person's coworkers.”

1.6.3 Deviant Behaviour at the Workplace

Workplace deviant behaviour is pervasive and brings harmful implications to individuals, groups and organisations. As stated by Hastings and Finegan⁷⁰ given the enormous implication of resources and outputs lost due to deviant behaviours, determining predictors of workplace deviant behaviours is imperative for research and practices. Shim highlighted that workplace deviant behaviours have been largely overlooked by researchers in the Human Resources field, which contributes to the lack of understanding of workplace

⁶⁷ Thorsteinsson, E. B., Brown, R. F., & Richards, C. (2014). The relationship between work-stress, psychological stress and staff health and work outcomes in office workers. *Psychology*, 5(10), 1301-1311.

⁶⁸ Brown, Lezah P., Kathleen M. Rospenda, Rosemary K. Sokas, Lorraine Conroy, Sally Freels, and Naomi G. Swanson, (2011) "Evaluating the association of workplace psychosocial stressors with occupational injury, illness, and assault." *Journal of occupational and environmental hygiene* 8, no. 1. 31-37.

⁶⁹ Dembe AE, Erickson JB, Delbos RG, Banks SM.(2005), The impact of overtime and long work hours on the occupational injuries and illnesses: *Occupation Environ Med.* 62(9):588-97.

⁷⁰ Hastings, S.E. and Finegan, J.E. (2011), “The role of ethical ideology in reactions to injustice”, *Journal of Business Ethics*, Vol. 110 No. 4, pp. 689-743.

deviant issues and their relationships with employers and employees.⁷¹ Consequently, this leads to the incapability of recognizing the right solutions to eradicate deviant behaviours in organisations.

Workplace deviant behaviour can be categorised into two groups; namely positive and negative deviances. According to Appelbaum, constructive or positive deviance includes behaviours that employers do not consent to, but assist in reaching the organisation's objectives and help employees to accomplish their job expectations.⁷² According to Sims, positive deviant behaviours as the intentional behaviours that depart from the norms of a referent group in an honourable way. They believed that employees who display positive deviant behaviour contribute to long-term of individual and organisational effectiveness and high quality interaction with the organisation.⁷³ In a similar vein, Sims also stipulated that such behaviour is supported by organisations but violated society's expectations. In contrast, destructive deviant behaviour involves harassing, sabotage of equipment and other types of negative behaviours that bear adverse consequences to the organisations and its affiliates. Thus, the human resource professionals are encouraged to assist organisations in preventing and discouraging such destructive behaviours within the organisation.

Indeed, the impetus for the growing interest in workplace deviance behaviours are obvious considering the increasing prevalence of this type of behaviour in the workplace and the enormous economic and social costs associated with such behaviours.⁷⁴ In the current era, workplace deviant behaviour has become an important concern for organization and a topic of increasing research attention.⁷⁵ Since deviant behaviour in the workplace is associated with enormous economic and psychological costs to the organizations and its employees, managers are not only interested in identifying the factors that lead to deviant behaviour, but they are also interested in identifying solutions to prevent and reduce such negative behaviour. Hence, it is important to propose recommendations on how to prevent deviant workplace behavior.⁷⁶ Thus far these literatures have only identified the factors and/or reasons that contributes to deviant behavior in the context of behavioural studies, however,

⁷¹ Shim, J. (2008), "Concept exploration of workplace incivility: its implication to human resourcedevelopment", available at: www.midwestacademy.org/Proceedings/2008/papers/ShimandPark_49.pdf (accessed 10 Aug 2014)

⁷² Appelbaum (n 4) page 591

⁷³ Sims, L.R. (2010), "A study of deviance as a retaliatory response to organisational power", *Journal of Business Ethics*, Vol. 92 No. 4, pp. 553-63.

⁷⁴ Appelbaum (n 4) page 588

⁷⁵ Bennett, R.J., & Robinson, S.L. (2003). The past, present and future of workplace deviance research, In J. Greenberg (Ed.) *Organisational behaviour: The state of the science*, (2nd Ed.) Lawrence Erlbaum. <http://dx.doi.org/10.1037/0021-9010.85.3.349>.

⁷⁶ Punia B.K. and Rana H. (2014), Management Mechanisms and Implications of Workplace Deviance for Green Organisational Behaviour, *International Journal of Advance Research in Computer Science and Management Studies*, Vol. 2 Issue 8, www.ijarcsms.com.

no study has proposed on the compensation that could be made for the victims of deviant behavior in the workplace.

Workplace deviance refers to voluntary behaviors by employees that violate significant organizational norms, policies, or rules and in so doing threaten the well-being of the organization and/or its members or both.⁷⁷ Workplace deviance also can be described as the deliberate or intentional desire to cause harm to an organization.⁷⁸ Omar investigated the relationship between workplace deviant behaviour and other work-related stress and job satisfaction. In this study, data were collected from 162 participants who were working as civil servants in different sectors. The results showed that both job stress and satisfaction predicted workplace deviant behaviour. A significant positive relationship between stress and workplace deviant behavior was established. However, the study could not establish any compensation for the victims of the workplace deviant behaviour.

Faridahwati conducted a research on Investigating the Influence of Human Resource Practices (HRP) on Deviant Behaviour at Work. The study revealed four distinct dimensions of HRP i.e. job description; employment security, internal career opportunities and result-oriented appraisal are significant predictors of workplace deviance.⁷⁹ The findings of this study suggest that managers need to make sure that HRP are implemented in such a way that they would not result in unintended, undesirable behavioural consequences at work. Therefore, the weakness of this study is that it could be used to gauge to what extent the HRP are perceived to be fair and favourable, but it does not seem to address the remedies that could be made available for such deviance for the employer and/or employee.

The employer-employee relationship is best described by the agency theory. Agency theory holds that both employee (agents) and employer (principal) are utility maximisers.⁸⁰ Both employer and employee are therefore prone to opportunism.⁸¹ Employees (agents) will behave opportunistically (deviance) if given the chance. Nonetheless, employers (principals) can reduce deviant behaviours if proper monitoring and controlling mechanisms are installed.⁸²

⁷⁷ Robinson, S. L., & Bennett, R. J. (1995). A typology of deviant workplace behaviors: A multidimensional scaling study. *Academy of Management Journal*, 38(2), 555–572. <http://dx.doi.org/10.2307/256693>

Shapiro, S. P. (2005). Agency Theory. *Annual Review of Sociology*, 31(1).

⁷⁸ Omar, Halim, Zainah, Farhadi, Nasir & Kairudin. (2011). Stress and job satisfaction as antecedents of Workplace deviant behavior. *World Applied Sciences Journal*, 12, 45-51.

⁷⁹ Faridahwati Mohd. Shamsudin, Chandrakantam Subramaniam, and Hadziroh Ibrahim (2011), Investigating the Influence of Human Resource Practices on Deviant Behaviour at Work, *International Journal of Trade, Economics and Finance*, Vol. 2, No. 6, December.

⁸⁰ Godfrey, J., Hodgson, A., & Holmes, S. (2000). *Accounting Theory*. John Wiley & Sons, Inc, Singapore.

⁸¹ Shapiro, S. P. (2005). Agency Theory. *Annual Review of Sociology*, 31(1), 263-284.

<http://dx.doi.org/10.1146/annurev.soc.31.041304.122159>.

⁸² Kidwell, R. E., & Martin, C. L. (2004). Managing the ambiguity of workplace deviance: Lessons from the Study of conflict. Paper presented at the meeting of the Academy of Management, New Orleans.

Therefore, in the event employees exercise deviance, they could be made subject to being liable for their misdemeanor and compensate the employer for their wrongdoings. Further, by virtue of Section 178 Contracts Act 1950, the principal must make compensation to his agent in respect of injury caused to the agent by the principal's neglect or want of skill, therefore, any negligent act in the agency relationship, the principal may be liable to compensate the agent. However, the issue is whether the principal (employer) could be made liable towards deviance committed against the agent (employee) in this context.

Tobin examined the effects of organisational structure on aggression and violence in the workplace. For organisational aggression and violence, result of the study revealed that organisational factors interact with other behavioural determinants, such as personality and individual affectivity.⁸³ Through a literature review, it was submitted that structural characteristics can lead to deviant behaviour when there is an incongruence of needs/expectations and environment between the individual and the organization. According to the findings, individuals are frustrated with workplace violence until intervening action is taken by the individual or the organization to overcome obstacles to goals or expectations.

In a separate study, Vardi examined the ethical climate that was prevalent in a metal-products company that employed 138 individuals and submitted there was a strong negative relationship between the ethical climate of the organization and the "organizational misbehaviour" that was observed. Organizational misbehaviour was defined as "any intentional action by members of organizations that defies and violates shared organizational norms and core societal values".⁸⁴ However, formal processes such as policies and procedures, labour contracts, written evaluations and job descriptions tend to reduce autonomy and thereby reduce the opportunities for deviant behavior, there again this study does not address any form of legal redress for the victims.

Maureen, examined the relationship between injustice and workplace sabotage. Drawing on the organizational justice and workplace deviance literatures, they hypothesize that injustice will be the most common cause of sabotage, and that the source of injustice will influence the goal, target, and severity of sabotage behavior.⁸⁵ The results generally support their hypotheses. First, injustice was the most common cause of sabotage. Second, when the source of injustice was interactional, individuals were more likely to

⁸³ Tobin, T.J. (2000). Organisational determinants of violence in the workplace. *Aggression and Violent Behaviour*, 6(1), 91-102. [http://dx.doi.org/10.1016/S1359-1789\(00\)00011-2](http://dx.doi.org/10.1016/S1359-1789(00)00011-2).

⁸⁴ Vardi, Y. (2001). The effects of organizational and ethical climates on misconduct at work. *Journal of Business Ethics*, 29(4), 325-337.

⁸⁵ Maureen, Ambros, Mark, Seabright & Schminke (2002). Sabotage in the workplace. The role of Organizational injustice. *Organisational Behaviour & Human Decision Processes*, 89(1), 949-965.

engage in retaliation, and when the source of injustice was distributive, individuals were more likely to engage in equity restoration. Third, the source of injustice and the target of sabotage were generally the same, although this relationship was stronger for organizational targets than for individual targets. They concluded that there was an additive effect of distributive, procedural, and interactional justice on the severity of sabotage. Therefore, this study acknowledged that workplace deviance causes injustice however, it does not propose any mechanism to resolve the unfairness.

Further, Appelbaum, also examined the impact of negative workplace deviant behaviours (those that violate organisational norms, policies or internal rules and positive workplace deviant behaviours (those that honorably violate them) on organization. The results showed that regardless of whether negative deviance is overt or implicit, it has negative consequences for the entity and its affiliates.⁸⁶ Muafi examined the causes and consequence of deviant workplace behavior. Using a sample of 101 operational staff, the results showed that: (a) intent to quit, dissatisfaction and company contempt have positive effect on deviant workplace behavior, (b) dissatisfaction had positive effect on intent to quit, and (c) deviant workplace behavior had negative effect on individual performance⁸⁷. Further, the results suggest that deviant workplace behaviour has high implications for organization even in manufacturing firms.

Employee deviance or negligence in the workplace can be described as the failure to provide the expected and established duty of care towards the organization, co-workers as well as customers which can result in various types of harm. For example, a manager would have the responsibility towards ascertaining health and safety situations for all the employees.⁸⁸ However, if an employee reports a defective chair and the manager does not act and the chair breaks injuring the employee, the manager would be held liable in negligence. Similarly, employers can also sue employees for negligent or deviant behavior under the law of torts, this applies to customers who have been harmed by an employee's negligence.

The allowance for the releasing of an employee with misconduct has been created by the EA and it is broadly imprudent in nature considering that it does not specify the ways in which the organisation is able to stop the violence practices. It has been observed that many deviant behaviors are brought to the court and also followed by the punishment actions. The economic and psychological costs to the organisation and its employees are linked with the deviant behavior. Managers are not only concerned in recognizing the factors that guide to the deviant behavior in the workplace, but they are also interested

⁸⁶ Appelbaum (n 4) page 594 <http://dx.doi.org/10.1108/14720700710827176>.

⁸⁷ Muafi, J. (2011). Causes and Consequences of deviant workplace behavior. *International Journal of Innovation, Management and Technology*, 2(2), 123-126.

⁸⁸Cardi, W. Jonathan, Randall D. Penfield, et al. (2012). Does Tort Law Deter Individuals? A Behavioral Science Study. *Journal of Empirical Legal Studies*, 9.

in identifying the way out to reduce and prevent the deviant behavior at the workplace. It is required to have expertise in managing and reducing the deviant behaviors. This step would probably be a step towards integrating and identifying the possible solution sets for preventing the deviant behavior. The effective personnel selection, ethical organizational culture, maintaining psychological contract and integrity tests might be the step towards the possible solutions. This act might guarantee that the employees are contented with the organisation and contribute to the sustainability of the environment.⁸⁹

Malaysia is heavily dependent on the employment legislations like the EA and OSHA to address the problems on the workplace safety. It has been documented by Zoharah,⁹⁰ that the EA has regulated the relationship between the employees and the employers. In Malaysia, the right of employees to enjoy a safe and healthy work environment is stipulated in the OSHA. However, the Act does not clearly outline protections against harassment at work such as bullying.

The power to terminate the contracts has been provided by the Act without the compensation in any case where there is determined violation of other part of the contract. There are different sanctions available for the deviant behavior at workplace against the employees however, the law is silent if the deviant is committed towards the employer and it also failed to address any relevant civil claims or compensation available for the parties concerned.

Awanis and Abdul Rahman suggested that more systematic studies on this subject are required to understand the determinants of workplace deviance especially in the Malaysian context.⁹¹ Although many organisations have improved in many respective areas due to innovation, creativity, and transformation in the governance, the existence of workplace deviance in the organisations may create difficulties for the organisations to improve their services.⁹² Malaysia's key goal is to be a developed country by the year 2020 but the existence of workplace deviance contributes significant key challenges to reach this goal. Hence, due to the impact of workplace deviance in the service organisations, understanding on the determinants of workplace deviance is essential.

⁸⁹ Muafi (n73) page 123

⁹⁰ Zoharah Omar, Mazlina Mokhtar & Siti Raba'ah Hamzah, (2015), Prevalence of Workplace Bully in Selected Public Service Agency in Malaysia: Do Destructive Leadership Behaviour Matters? *International Journal of Education and Training (Inj ET)*.

⁹¹ Awanis Ku Ishak (2008). *The relationship between deviance behavior among Mara employees in Northern Malaysia and its predictors*. Unpublished Master Thesis. Universiti Sains Malaysia; Abdul Rahman Abdul Rahim & Aizat Mohd Nasurdin (2008). Trust in Organisational and Workplace Deviant Behavior. The Moderating Effect of Locus of Control. *International Journal of Business*, 10(2), 211 - 235.

⁹² Siddiquee, N.A. (2006). Public management reform in Malaysia. *International Journal of Public Sector Management Journal*, 19(4), 339-358.

In Malaysia, the government took several measures in improving existing policies on employee's behavior and strengthens information and service delivery through enhancing the capacity of district administration in the public sector. Realizing that values and ethics are critical for the provision of "quality" service, the Malaysian government launched several programmes to inculcate desirable values, such as honesty, discipline, integrity, dedication, accountability, trustworthiness and efficiency among the public personnel. The administrative reforms were guided by the underlying philosophy of quality with emphasis on administrative improvements, enhancement of information technology, improvement of information and service delivery.

To support the above contention, an exploratory study was conducted on deviant behaviour among service encounter front-line employees.⁹³ The findings of the study indicated that the customer's attitude and behaviour are key factors that influence front-line employees to engage in acts of deviance. The causes and consequence of deviant behavior in the workplace was examined.⁹⁴ Using a sample of 101 operational staff, the results showed that: (a) intent to quit, dissatisfaction and company contempt have positive effect on deviant workplace behaviour, (b) dissatisfaction had positive effect on intent to quit and (c) deviant workplace behaviour had negative effect on individual performance. Further, the results suggest that deviant behaviour has high implications for organization even in manufacturing firms.

A study investigated by Anwar⁹⁵ on gender differences in workplace deviant behaviour among fifty lecturers of post graduate level were selected randomly for the sample, of these respondents 26 were male and 24 were female. The results of this study reveal that the ratio of organization deviance in the university's workplace is more dominant as compared to interpersonal deviance and the male teaching staff is more deviant at workplace as compared to female teaching staff. Another study investigated the relationship between workplace deviant behaviour and other work-related stress and job satisfaction. Data were collected from 162 participants who were working as civil servants in different sectors. The results showed that both job stress and satisfaction predicted workplace deviant behaviour. A significant positive relationship between stress and workplace deviant behaviour was established. However, the study could not find significant relationship between gender, marital status and workplace deviant behaviour. In view of the wide scope coverage of workplace deviant behaviour, the current study investigated the relationship between reactions of workers to existing organizational climate.⁹⁶

⁹³ Brown, R.B.(2008): Emotions and Behaviour. Exercises in emotional intelligence. Journal of Management Education, 27 (1): 122-134.

⁹⁴ Muafi n(73) page 123

⁹⁵ Anwar, M.N., Sarwar, M., Awan, R.N., and Arif, M.I. (2011). Gender differences in workplace deviant Behaviour of university teachers and modification techniques. International Education Studies, 4(1). Published by Canadian Center for Science Education.

⁹⁶ Omar (n64) page 48

A study conducted by Chirasha, on the impact and causes of deviant behaviour in the workplace with respect to secretaries in state universities were conducted and the author mentioned that, most of the managements have no interest in managing the deviant behaviour and author added that, minor deviant behaviours may have ability to extend the high profile scandals which may provide negative impact on the organizations. The author considered two universities in Zimbabwe for the study and 60 respondents were participated in this study from that eight respondents were top management employees and rest were the secretaries. Findings of the study revealed that, workplace deviance are occurred in those universities in various forms. The author concluded that, workplace deviance is not a concept which is to be underestimated and it can have capacity to negatively impact on the entire functions of the organization. The author also suggests that, it is essential to improve the conduct of employees in the workplace in order to avoid workplace deviance.⁹⁷

Another study by Shamsudin on the relationship between formal control and the workplace deviance were conducted. Various studies in the field of criminology, management, sociology and organizational psychology have stated that workplace deviance is strongly related to the organization/work variables such as perceived organizational support, organizational justice, job stress and job satisfaction are among others. Very few studies related that, influence of formal control in the workplace deviance. The research proposes a model which means moderating role of self-control is the factors that lie in the relationship between the formal control and workplace deviance.⁹⁸ The author concludes that, self-control will have capacity to moderate the relationship between formal controls in organization and workplace deviance.

A study by Faridahwati⁹⁹ adopted a systematic review is for selection and synthesis of results of relevant evaluation and research studies, focusing on the Asian context whereby it establishes that workplace violence is treated with great importance in other parts of the world such as United States and Europe, however, it appears to be a new concept in the context of Malaysia. This is in light of 150,000 cases of reported workplace violence each year, characterized by victims of deviance towards persons, assault and robberies. The study acknowledges that the milestones have been achieved, as evidenced by the number of cases related to workplace violence that have been tried in Malaysian courts. The study also endorses the use of OSHA to complement tort practice. Deviance is associated with cultural diversity

⁹⁷ Chirasha (n32) page 416

⁹⁸ Shamsudin, F. M., Chauhan, A., and Kura, K. M., (2012). Self-control as a moderator of the relationship between formal control and workplace deviance: A proposed framework. *Australian Journal of Business and Management Research*, 2(6), 32-39.

⁹⁹ Faridahwati, M. (2004). Are you listening, studying and understanding organizational Misbehavior in Malaysia.

problem and the concept of diversity management is increasingly gaining popularity in the work environment.

Diversity management can be defined as a process that aims at creating and maintaining a harmonious working environment, wherein individual differences, as well as similarities, are considered valuable to enable individuals' potential to be tapped, and their contributions towards organizations maximized. In organizations, the existence of staff employees with varying cultures, upbringing, as well as nationalities is expected. It is therefore important that organization device proper ways of diversity management for employees to comply.¹⁰⁰

Another study by Baron¹⁰¹ established that workplace violence in Malaysia, about 1.6%, further, the study noted that these statistical figures are small because many cases are not reported. There are limited formal statistics. This study adopted an experimental design approach, but entailed the use of only a few samples. Interviews were conducted with the judges. Another study by Keim¹⁰² observes that workplace violence is rampant in Malaysia, and has far-reaching implications. This study notes that as far as the context of Malaysia is concerned, the cases of workplace violence has been on the increase. For instance, as significant as 934 cases were reported in 2000, compared to 421 reported in 1995. In 2010, over a thousand cases were reported. The Industrial Law Reports also recorded an increasing number of cases reported. The nature of the study is observational and it involved surveys materials on evidences pertaining to the tort of workplace deviance and related implications. The study is largely descriptive and it includes qualitative interviews with people delivering legal services pertaining torts of deviant behaviors at workplaces.¹⁰³

Further, another study which investigates the nature of workplace relationships and workplace violence in the context of Hotel workplaces. This study finds that workplace violence is particularly high, characterized by insults, often directed towards female gender. Qualitative and quantitative data of incidences of workplace deviance, involving the use of telephone surveys were gathered for analysis and some interviews were conducted with organizational workplaces.¹⁰⁴ This study observes that, whereas there are still many cases of workplace violence, many of which go unreported. Organizations are acknowledging the seriousness of the cases of workplace violence and even materialize with organizational initiatives to define the

¹⁰⁰ Badrie A. (2010). Safety at Work. A handbook to the Occupational Safety and Health Act 1994. Kuala Lumpur: Afiran Pusak Sdn.Bhd.

¹⁰¹ Baron, R. and Neuman, H. (2009). Workplace Violence and Aggression: Evidence of relative Frequency and Potential causes. *Aggressive Behavior*, 22: 161 – 173.

¹⁰² Keim, C. (2009) Workplace Trauma and Violence: The 21-Century Rehabilitation Issue. *Journal of Rehabilitation* 65: 16- 20.

¹⁰³ Brazier, M. (2011). *The Law of Torts*. London: Butterworths and Company.

¹⁰⁴ Mohd, F. (2003). Workplace Deviance among Hotel Employees— An exploratory Survey. *Malaysian Management*.

culture that would discourage cases of workplace violence. In addition, there are documents reported statistics, surveys and perspectives concerning workplace deviance torts.¹⁰⁵

The above study acknowledges that the milestones have been achieved, as evidenced by the number of cases related to workplace violence that have been tried in the Malaysian courts. However, employers are not doing enough to address the cases of violence in their areas of work. The nature of the study is descriptive and included qualitative interviews with people works and legal experts and administrations.¹⁰⁶ The related study concludes that whereas there a number of approaches that have been adopted to address workplace violence, these are limited in one common way whereby they only focus on punishing wrongdoers, instead of stipulating how such conflicts could be avoided. Due to this, members of the organizations are helpless in preventing cases in which violence is predicted to occur. This adopted an experimental design approach and the samples used were workers. The study tested the views of workers concerning the workplace deviance tort's effectiveness.¹⁰⁷

The EA creates the allowance for dismissal of employees with misconduct, but it is largely reactive in nature considering that it does not stipulate ways in which organizations could prevent violence from occurring. This study adopted a systematic review for selection and synthesis of results of relevant evaluation and research studies, focusing on the workplace in Malaysia.¹⁰⁸ This study observes increasing cases of workplace violence. The research further notes that while the society is now acknowledging the need for addressing violence, Malaysia has been relying on only the EA and the Penal Code, which are not sufficient. Further, the EIS which came into force in January 2018, provides financial assistance for eligible employees who have lost their employment. These employees are awarded with financial assistance from the pool of funds which comes from the contribution of the employees and employers, which is administered by SOCSO. Since, this implementation is totally new, thus far, there are no academic literature available for analysis.

Further, the study by Muafi is descriptive, based on informed opinions that come in the form of correspondence between organizations and reviewers of people who have contacted the practice of torts.¹⁰⁹ They also proclaim that, while it is widely contended workplace violence is both a risk and a hazard that need to be addressed effectively, in Malaysia existent statutory legislations are

¹⁰⁵ Lord, B (2007) Characteristics of Violence within the state governments. *Interpersonal Violence* 13: 489 – 505.

¹⁰⁶ Workers Compensation Monitor (2004). Majority of Employees remain concerned fail to Address workplace violence.

¹⁰⁷ National Institute of Occupational Safety and Health (2009). *Violence in the workplace: Risk and Prevention Strategies*.

¹⁰⁸ Rohana, R and Shamsudin, F. (2010). *Violence at workplace in Malaysia. The Role of Occupational Safety and Health. Annual National Conference, Bangi Malaysia.*

¹⁰⁹ *Ibid* (n94)

limited. The above study by Muafi, proposes an Occupation Health and Safety Framework, as a way of complimenting the existent legislations. Section 14 of the Minor Offences Act 1955 (Act 336) provides that any person who uses any indecent, threatening, abusive or insulting words, or behaves in a threatening or insulting manner, or posts up or affixes or exhibits any indecent, threatening, abusive or insulting written paper or drawing with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned, shall be liable to a fine not exceeding one hundred ringgit.¹¹⁰

Henceforth, can deviance be considered as an action arising under tortious liability? In **Fowler v Lanning**,¹¹¹ the court held that a trespass required either intention or carelessness on the part of the defendant. However, in **Letang v Cooper**,¹¹² it was held that in the tort of trespass there must exist intention at the same time the defendant does his act. If the defendant was careless in acting as he did, the cause of action would lie in negligence and not in trespass. Therefore, in trespass it is important to establish that the defendant have acted intentionally.¹¹³ Although, there are several statutory and common law provisions which are available in the form of punishment and/or penalty towards the wrongdoer, there is potential to develop further civil remedies for the victims.

1.6.4 Ways to Overcome Deviant Behaviour at the Workplace

A safe working environment is essential to achieve strong and productive organizational relations. To create such working environment, it is essential for organizations to ensure that workplace is free from misconduct and misbehaviour. Any employees at the workplace may be subject to various forms of harassment including bullying and misconduct. Each and every form of harassment in the workplace will provide disadvantage to all the parties of organization. For employees, it may result in the poor performance, which subsequently reduces productivity and affects the welfare of employees and their families. Organizations may need to conduct formal training in order to ensure that all the employees of organizations are aware about the organizations' policy with respect to harassment (International Labour Organization, 2011).

It is conspicuous that workplaces are identified as the key settings for men's violence against the women.¹¹⁴ By changing the practices, culture, and policies of the organization, it is possible to avoid the violence in the workplace.

¹¹⁰ Minor Offences Act 1955 (Act 336).

¹¹¹ [1959] 1 All ER 290, [1959] 1 QB 426.

¹¹² [1964] 2 All ER 929, [1960] 1 QB 232 CA.

¹¹³ See Street, 17th Edn at pp 234-5 for a slightly different view. Murphy asserts that it is not necessarily conclusive that trespass has no relevance when negligence conduct is in issue.

¹¹⁴ VicHealth. (2007). Preventing Violence Before It Occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria. Melbourne: Victorian Health Promotion Foundation.

Workplaces are increasingly prominent for gender harassment and deviant behaviour of employees. Organizations are continuously facing difficulties in developing policies that battle against the deviant behavior in the workplace and this is because of the various reasons that lead to deviant behavior which has been discussed and elaborated in the earlier part of the study.

It is a fact that deviant behaviour is related with enormous psychological and economic costs to the organizations, as well as to its employees. It has been established that managers are intensely trying to identify and recognize effective measures, in order to control deviant behaviour at workplace. In this regard, different solutions can be adopted by the organizations, including integrity tests, maintaining and developing psychological contract, ensuring adequate organizational justice, effective selection of the personnel, and promoting ethical organizational culture. Some of the effective approaches of controlling deviant behaviour at workplace are illustrated as follows.

a) Integrity Tests

Integrity tests are found to be highly effective, in terms of controlling and managing deviant behaviours at workplace. It has been established that the integrity tests are characteristically utilized as a pre-employment screening instrument for those who are submitting an application for the job. In this account, two different types of tests can be conducted, including personality oriented measures and overt tests. As stated by Dilchert,¹¹⁵ the first thing organizations should do to help manage deviance is to necessitate the human resource department or hiring managers to screen applicants by having them complete a personality, cognitive ability, or integrity test because lower levels of cognitive ability.

Overt integrity tests incorporate two sections; one which specifically asks about deviant behaviour, like theft and other estimates the attitude of a person towards theft. However, personality oriented measures incorporates theft as well as other broader things, like the level of conscientiousness etc. These practices significantly help in assessing and controlling the deviant behaviour at workplace.

b) Psychological Contract

Psychological contract is a contract comprising of a set of reciprocal expectations not necessarily agreed upon by the parties but in the mind of observer as per Scholarios.¹¹⁶ As these expectations may not be written and

¹¹⁵ Dilchert S. Ones, D.S.Davies, R.D. Rostow, C.D. (2007), Cognitive Ability Predicts Objectively Measured Counterproductive Workplace Behaviour, *Journal of Applied Psychology* 92, 616-627.

¹¹⁶ Scholarios, D., Van der Heijden, B. I., Schoot, E. V., Bozionelos, N., Epitropaki, O., Jedrzejowicz, P., et al. (2008). Employability and the psychological contract in European ICT sector SMEs. *The International*

may not be shared and also not an obligation for other party, so there is a chance that these expectations might not be fulfilled. Another optimum method of preventing and controlling employee deviant behaviour at workplace is to develop and maintain psychological contract with the workers. It has been established that psychological contract can be understood as the implicit agreements that workers develop with their employers. Psychological contracts may vary from being transactional that are temporary, no trust, minimal expectation, to relational. It is important to notice that relational psychological contracts incorporate enduring, trust based and personal commitment amid employers and employees. According to Sebastian,¹¹⁷ the psychological contract is give-and-take responsibilities for both employer and employee in terms of employment. As per the discussion of Agarwal,¹¹⁸ the psychological contract denotes the employee and employer opportunities from each other which are indebted to each other. These psychological contracts play an inevitable and indispensable role in influencing and altering the behaviour of the employees, at workplace.

1.7 Research Methodology

1.7.1 Introduction

The term 'research' has received a number of varied meanings and explanations. In its ordinary sense, the term refers to a search for knowledge. According to the Webster's International Dictionary¹¹⁹ 'research' is 'a careful, critical inquiry or explanation in seeking facts or principles; diligent investigation in order to ascertain something'. A combined reading of all the above-mentioned 'explanations' of the term 'research' reveals that 'research' is the 'careful, diligent and exhaustive investigation of a specific subject matter' with a view to knowing the truth and making original contribution in the existing stock of knowledge.

It is, in short, 'systematic search' in 'pursuit of knowledge' of the researcher. The research method is a strategy of enquiry which moves from the underlying assumptions to research design and data collection¹²⁰. It is evident that there are many distinctions in the research modes. The most common classification of research methods are the qualitative and quantitative. In this chapter the

Journal of Human Resource Management, 19(6), 1035-1055.

¹¹⁷ Sebastian, M. S., & George A. P, D. (2015). Psychological Contract in the Indian Aviation. *Indian Journal of Research*, 8, 78-94.

¹¹⁸ Agarwal, P. (2014). Relationship between psychological contract & organizational commitment in Indian IT industry. *Indian Journal of Industrial Relations*, 47(2), 290-305.

¹¹⁹ Webster's Third New International Dictionary by Philip Babcock Gove (Editor).

¹²⁰ Michael D. Myers (2009), *Qualitative Research in Business and Management*, Sage Publications.

research methodology takes into account the geographical area where the proposed study will be conducted, the study design, and the literature search.

The study adopted a systematic review, described as a methodology for selection and synthesis of results of relevant evaluation and research studies with the aim of offering the practitioners with practical information, which is derived from reliable research that addresses specified questions. It is established that workplace deviance in the Malaysian workplace is rampant. It also seems that uniqueness is lacking in the elements that characterize workplace deviance in the Malaysian context. It is also established that torts are not adequately effective. Thus, it can be inferred that there could be a causal relationship between rampant nature of workplace deviance and law of torts.

The scope of this thesis encompasses qualitative research of a doctrinal, grounded theory and descriptive in nature. Qualitative research is defined as, 'the interpretative study of a specified issue or problem in which the researcher is central to the sense that is made.'¹²¹ This research begins with a 'doctrinal' or 'black letter law' methodology, which means that some of the research is based on analyzing the legal rules under the EA and OSHA and the compensation mechanism adopted in the EIS, also considering their logical connections or disjunctions via examination of the cases, as well as existing literature. This approach enables the researcher to critically analyze the meanings and implications of these rules and the principles which underpin them. This study also describes the different forms of deviant behaviour, its frequency and the type of legal treatment certain recognized forms of deviant behaviour received. This study does not employ comparative study but consideration to few selected common law jurisdictions is inevitable in order to build up a sound reasoning for the analysis of the area of law in question, especially where Malaysia shares common legal principles in the law of torts with countries like Australia, India, Canada and UK. This exercise works, to measure their existing protections available to address deviant behavior against persons in the Malaysian context.¹²²

1.7.2 Research Methods and Methodology

The term 'research methods' refers to all those methods and techniques that are used by a researcher in conducting his research. The term, thus, refers to the methods, techniques or tools employed by a researcher for collecting and processing of data, establishing the relationship between the data and unknown facts, and evaluating the accuracy of the results obtained. Sometimes, it is used to designate the concepts and procedures employed in the analysis of data, howsoever collected, to arrive at conclusion. In other

¹²¹ Ian Parker, 'Qualitative Research' in Peter Banister, Erica Burman, Ian Parker, Maye Taylor, Carol Tindall (eds), *Qualitative Methods in Psychology: A Research Guide* (OU 1994) 2.

¹²² Civil Law Act 1956

words, 'research methods' are the 'tools and techniques' in a 'tool box' that can be used for collection of data (or for gathering evidence) and analysis thereof. 'Research methods' therefore, can be put into the following three groups:

1. The methods which are concerned with the collection of data (when the data already available are not sufficient to arrive at the required solution).
2. The statistical techniques (which are used for establishing relationships between the data and the unknowns).
3. The methods which are used to evaluate the accuracy of the results obtained.

The applied research or action research aims at finding a solution for an immediate problem and in this context, the research is seen in a practical context. While in fundamental research or pure research or basic research, the researcher is mainly concerned with generalization and with the formulation of a theory. The research only undertakes to derive some increased knowledge in a field of this inquiry. The researcher is least bothered about its practical context or utility. Research studies concerning human behaviour, carried on with a view to make generalizations about human behaviour fall in the category of fundamental or pure research. But if the research (about human behaviour) is carried out with a view to solve a problem (related to human behaviour), it falls in the domain of applied or action research.¹²³

The central aim of applied research is to discover a solution for some pressing practical problem, while that of fundamental research is to find additional information about a phenomenon and thereby to add to the existing body of scientific knowledge. A literature search was selected because it provides an accurate portrayal or account of the current situation of cases of deviant behaviour and/or trespass to persons.

The term 'research methodology', on the other hand, refers to a 'way to systematically solve' the research problem. It may be understood as a 'science of studying how research is done scientifically'. It involves a study of various steps and methods that a researcher needs generally to adopt in the investigation of a research problem along with the logic behind them. It is a study of not only of methods but also of explanation and justification for using certain research methods. It includes the philosophy and practice of the whole research process. In other words, research methodology is a set of rules of procedures about the way of conducting research and various research

¹²³ Kannan, V. *Handbook of stochastic analysis and applications*. (New York: M. Dekker, 2002), PP 341.

methods but also the rules for their application (in a given situation) and validity (for the research problem at hand).

A researcher, therefore, is required to know not only the research methods or techniques but also the methodology, as there is a need to decide as well as to understand the relevancy and efficacy of the research methods in pursuing the research problem at hand. A researcher may be confronted with equally relevant and efficacious alternative research methods and techniques at each stage of the research study. The present study adopts an inductive reasoning, which is a characteristic of qualitative approach.

The grounded theory approach is unique in the sense that it involves conducting a constantly comparative analytic procedure.¹²⁴ In addition, the analytic procedure can be implemented in various ways, but the differentiation from other qualitative techniques lies in the fact that texts are divided into units to be analyzed. The meanings sought from data interpretations are also represented in diverse categories.¹²⁵ Thus, the initial stage of grounded theory encompasses a constant comparison of data. An increase in the demography of categories results in further comparisons that are complex, eventually leading to the formation of more categories that are abstract. Notably, the abstracting exercise may proceed to the point at which a conceptualization of core or central categories is realized.¹²⁶

Grounded theory studies involve the development and generation of theories as to analyzing data that are collected by the researchers. In this present study this approach is adopted to discover the different avenues adopted in Malaysia, Australia, Canada, India and UK to address deviant behavior against persons in the workplace. Constitutional principles, which began to evolve in the earliest years of Britain's colonial expansion, made English law the foundation of the Australian legal system.¹²⁷ The operation of these principles provided for the transfer of a vast body of English law to each of the Australian States and ensured that the heritage of English law would be shared in Australia. Up to the time of their settlement each of the Australian States has the same legal history as UK. The basic sources of law in both countries are the same.¹²⁸ Australia, Canada, India and UK are identified to analyse the

¹²⁴ Lincoln E. *Think and Explain with Statistics*, (Addison-Wesley, 2010), pp 251.

¹²⁵ Schervish, M. *Theory of statistics*. (New York: Springer, 2001), pp 231.

¹²⁶ Kannan (n109) page 341

¹²⁷ It is one of the strange quirks of English constitutional development that the first major case on the application of English law overseas was *Calvin's Case*, 7 Coke 2a; 77 E.R. 377, decided in 1608. The case was not directly related to overseas territories, but concerned the right of a Scot to sue in English courts.

¹²⁸ *Blankard v. Galdy* (1692) 4 Mod. Rep. 215; 2 Salk 411; *Case 15.-Anonymous* 2 Peere Williams 75; *Campbell v. Hull* (1744) 1 Cowp. 204. For later references to the distinction see: *Fabrigas v. Mostyn* (1773) 20 St. Tr. 181; *R. v. Picton* (1802) 30 St. Tr. 225; *Sammtrt v. Strickland* [1938] 1 A.C. 678.

best practices applied in these Commonwealth countries and to adopt the ideation of its practices into this study.¹²⁹

The existing Indian legal system can be said to have a contemporaneous existence i.e. with the advent of the English colonisation in India. During the 1600s when the enterprising English East India Company forayed into India on the backdrop of trading interests little did the Indian masses or even their future rulers know that they would shape the very foundation of the modern Indian society.¹³⁰ After the company won the battle of Plassey (1757), the Mughal legal system was slowly replaced by the English legal system. In the seventeenth-century admiralty courts were set up in the three presidency towns of the British i.e. Bombay, Madras, Calcutta. These courts derived jurisdiction directly from the company and not the crown to decide civil and criminal matters. In the eighteenth century through a royal charter Mayors were established, they derived authority from the crown. This was the first step in the establishment of a uniform legal system in India. A system of appeals to the Privy Council (a body of advisors to the crown) from such courts was also initiated. In the late eighteenth century, the mayor's court was replaced with a supreme court in the presidency towns. "This was the first attempt to create a separate and independent judicial organ in India, under the direct authority of the King."¹³¹ A theory would be developed for such a study, that could eventually be developed would be expected to address the emerging issues for deviant behavior; such a theory formulation would constitute the grounded theory technique and the proposed study is expected to utilize all these approaches.

a) **Doctrinal Methodology**

Doctrinal research has been defined as, 'a detailed and highly technical commentary upon, and systematic exposition of, the context of legal doctrine'.¹³² This approach is acceptable as the current study encompasses areas of employment and law of tort which is based on interpretation of statutes and cases. However, it is important to note that although this study of law, is based on logical conclusions; these conclusions are not an exact science. Instead they are formed judgment, which can be influenced by other economic and social factors.

The approach of the proposed study is influenced by the nature and availability of information. The methodology of the current study is oriented towards

¹²⁹ Alex C. Castles, The Reception and Status of English Law in Australia, *Adelaide Law Review*, <https://www.austlii.edu.au/au/journals/AdellawRw/1963/1.pdf> visited on 22nd November 2018

¹³⁰ Jain, M.P. (2006). *Outlines of Indian Legal and Constitutional History* (6th ed.). Nagpur: Wadhwa & Co. ISBN 978-81-8038-264-2.

¹³¹ Shukla, V.N. (2013). *VN Shukla's Constitution of India* (12th ed.). Lucknow: Eastern Book Company. ISBN 978-93-5028-982-2.

¹³² Salter M and Mason J, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 31.

ensuring a thorough systematic search for information adopting a search criterion that is replicable and transparent. In the present study, attention is directed towards reliability and credibility of claims contained in the sources. Furthermore, the information found in the included sources is synthesized to find research evidence that could inform the decisions of policy makers.

This study aims to provide a thorough examination of the current laws governing deviant behavior, which is adopted by the Australia, Canada, India and UK each with its own legal traditions, which will inevitably lead the researcher to look beyond several aspects of these prevailing laws. However, that is not to say that the thesis is interdisciplinary, it is not seeking to answer the research questions from a socio-legal perspective, instead the researcher is using a set of interpretative methods to bring order and to assess a particular area of the law,¹³³ therefore, the relevant rules of statutory interpretation are applied. Once there is a clear and comprehensive analysis in place, the researcher will provide recommendations based on the findings.¹³⁴ This study is firmly doctrinal in its methodology as it entails a critical, qualitative analysis of legal materials and this approach involves identifying certain legal rules.¹³⁵

b) Normative Approach

The present study was conducted by using method of normative survey. The following are the main purposes and uses of this method of research: Descriptive surveys or normative surveys are often carried out as preliminary step to be followed by researcher employing more vigorous control and more objective methods. Normative survey or studies also serve as direct source of valuable knowledge concerning human behaviour. Therefore, pertinent information of how workplace deviant affects the organisation and the employees and its overall implications on the society are gathered by studying and analyzing important aspects of present situation. The information of what we want, is obtained by clarifying the research objectives and possible through a study of the similar conditions existing in other countries.

Normative or descriptive research is connected with the present and attempts to determine the status of the phenomenon under investigation. One of the aims of the study is to analyse the current employment related laws to assess whether the victims of deviant behavior at the workplace receives the same remedy and/or compensation and whether other jurisdiction could provide a more efficient solution to the same set of problems.

¹³³ Douglas Vick, 'Interdisciplinary and the Discipline of Law' (1897) 10:8 *Havr L Rev* 457.

¹³⁴ Hutchinson, T; Duncan, N;, "Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17:1 *Deakin LR* 83, 84.

¹³⁵ Vijay M Gawas, (2017), Doctrinal legal research method a guiding principle in reforming the law and= legal system towards the research development, *International Law Journal*, Vol. 3, Issue 5.

This normative method is advantageous because it provides the level of convenience during the process of data searching. This creates the allowance for ensuring that the data obtained from survey is organized and analyzed in the most appropriate manner. Primary sources in legal research, therefore, are the Constitution, and the National Gazette, which publish Acts/Proclamations passed by Parliament (and by State Legislature),¹³⁶ Rules, Regulations, Statutory Orders and Directives of Administrative Agencies, and case reports that publish judicial pronouncements of different higher courts. All these sources contain rich original information/observations about the identified research problem. They are indeed indispensable for any legal researcher.

1.7.3 Data Collection

The methodology of the present study is divided into four stages. Stage one entails defining the scope and the criteria of inclusion. This pertains to defining research questions, the inclusion criterion, delineating the inclusion criterion and devising the search strategy at the beginning of the process. The second stage is literature search. This depends on terms that have been drawn from predefined inclusion criterion to serve as a framework for guiding literature searches, as well as selecting studies of relevance. The third stage would include analysis of the results, in what is referred to as appraisal. The last stage would entail making inference from the finding of the study. The findings would be categorized and synthesized in a manner that is applicable to practice.

The criterion that the study uses are based on the stated objectives and research questions. The documents included in this literature search will be interventional or legal assistance information, documents detailing legal advice, including not-for-profit legal services contributions and pro bono advices from private solicitors.

Types of studies and documents that need to be included will consider a number of documents. This include

- Published, as well as unpublished studies that are aimed at evaluating or include the nature of tort of deviant behaviors at the workplace
- Research methodologies that also includes qualitative and descriptive research

¹³⁶ Sometimes, a researcher may find subject-wise compilations of Statutes/Proclamations. Before he scans National Gazette, he should make an effort to find publications compiling Statutes/ Proclamations in his library. These publications save his time and energy in locating the required statutes. However, before he relies upon them, he has to check for legislative instruments amending/supplementing/repealing, if any, entered into force subsequent to the publication of the compilation.

- Materials published within 10 years, starting from 2009 to 2018, and
- Informed opinions in the form of correspondence between organizations and reviewers of people who have contacted the practice of torts on deviant behaviors at the workplace.

This study also considers literature search of other Commonwealth countries namely Australia, Canada, India and UK as a form of analyzing its best practices for ideas to be incorporated into this study. While analyzing the Australian legislation this study also incorporates the provisions of the New Zealand laws as Australian cases inevitably adopts the English common law principles as applicable in New Zealand, by virtue of the Commonwealth of the Australian Constitution Act 1900.¹³⁷ The sources that contain original information and observations are known as primary sources of information. Such data is collected by:

- i) Primary data which are case laws and statutes which are accessed from the Taylor's University library, online websites i.e. Westlaw, CLJ and MLJ.
- ii) Secondary data which are found in research papers published in legal periodicals/ journals, reports, theses, and conference papers. Legal periodicals and journals are indispensable sources of information for a legal researcher as they contain wealth of the first hand and in-depth information and reports which are published by governmental or non-governmental agencies which are accessed via google scholar and internet sources.

a) Literature Search

A meta search conducted on the legal context to identify the gaps and loopholes in the knowledge regarding workplace deviance. The legal primary data that is case laws and secondary data including reviews, journal articles, corporate internal tribunal or reports etc. All the documents that included relevant information on the tort of deviant behavior against persons in the workplace which entail primary information. A supplementary search for sources and evaluation reports, detailing the use, nature and applicability of

¹³⁷ WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen: Article 6 provides **The States** shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called **a State**.

deviant behavior against persons in the workplace, which entail primary information, as well as ruling the courts.

The first search of literature was conducted as a component of broad review of the law of Malaysia touching on the applicability and nature of law regarding torts that guide the conduct of persons at the workplace settings. A supplementary study was further conducted as a way of ensuring that the material touching the subject was not misplaced. In order to locate additional unpublished information besides those traced from the web pages, the study research entailed conducting a number of parties. One of the parties is public and community legal services in Malaysia and across the world who have knowledge on deviant workplace conduct. Another party is key organizations and academics that have funded research on deviant behaviour, which include those cited from other documents.

A series of studies were conducted based on the results from the database. The research was interested in relevant articles that were written between January 2009 and August 2018. The keywords used in searching for the articles include Malaysia, torts, workplace violence; weaknesses, workplace torts and deviant behaviour.

A review of published and unpublished secondary data for addressing deviant behaviour was conducted using Google Scholar Advanced Search, in conjunction with the Taylor's University catalogue search. The literature was limited to the English language and included published literature from 2006 to 2018. A total of 46,000 articles were located. The same search was conducted for the prevention of workers' compensation claims, where a total of 12,900 articles were located. A further search was conducted to include the prevention of injuries, ill-health and workers' compensation claims identifying a total of 16,400 articles. Keywords were typed into the search engines Google Advanced Scholar to access articles from peer reviewed international and educational journals, occupational safety bulletins, conferences and unpublished theses: The keywords and the total of the articles located are listed below:

- i) A search of "deviant behaviour" located a total of 583 articles.
- ii) A search of "occupational health and safety" located a total of 287 articles.
- iii) A search of "employment conditions" located a total of 38 articles.
- iv) A search of "workplace violence" located a total of 384 articles.
- v) A search of "sexual harassment" located a total of 465 articles.
- vi) A search of "workers compensation" located a total of 187 articles
- vii) A search of "workplace bullying" located a total of 132 articles

- viii) A search of “discrimination at workplace” located a total of 78 articles
- ix) A search of “trespass to persons” located a total of 76 articles.
- x) A search of “tortious liability” located a total of 346 articles.

The researcher reviewed and assessed all the articles, above over the abstracts and citations to determine relevancy of the literature to the scope of this thesis, thus leading to the selection of 261 articles. In addition, since this is a law reform thesis suggesting a compensatory scheme, other related employment laws and regulations within the Commonwealth countries were analysed and the findings were applied to propose an amendment to the existing Malaysian employment law. Where required, these articles and case laws were obtained from the Taylor’s University Library, Current Law Journal, Lexis Nexis and UPM Library collection and journals.

Research planning requires the necessary sub-skills for: fact collection, legal analysis, legal knowledge, problem identification, legal analysis, fact analysis, further fact collection, identification of avenues of research, and generation of key (search) words. Research implementation, as the second-stage processes, involves the skills pertaining to: identification of problems for resolution, identification of relevant research source materials, location of the source materials, effective use of the source materials, analysis of research findings, application of the findings to the identified problems and the identification of further problems. While the third-stage process, i.e. presentation of research findings, requires the skills necessary for: identification of the (research) recipients’ needs, selection of appropriate format or framework, use of clear and succinct language, and use of appropriate language-style (informatory, advisory, recommendatory, or demanding)¹³⁸.

The three categories include:

- Supported: This is the finding that indicate direct logic which is convincing and aligns to the evidence.
- Credible: Findings had strong concrete evidence that cannot be doubted. The explanation that followed these findings were clear in highlighting the points of the study.
- Not supported: Lacking evidence to support the findings. Additionally, the findings did not include an assertion.

Furthermore, another category was identified in addition to this that was known as observation and opinions. Under this category, the observation made in the studies provided credible evidence concerning the working condition of the

¹³⁸ David Scott, Legal Research (Lawman, India, 2nd Ed, 1999).

intervention. However, this category did not define research findings. Moreover, it was vital in making informed opinion based on the experience and observation of individuals who have contacted workplace violence and remedy using tort.

b) Classical Content Analysis

Classical content analysis is used to examine text or images, either documents that have been developed for other purposes (newspaper articles, case reports etc.) or research-generated texts such as interview transcripts. Content analysis has wide application. It can be used to examine the nature and the frequency of particular types of legal phenomena within the press reports or legal cases, or to consider the content of interviews or policy documents. Content analysis can be descriptive, delineating the codes and the relationships between them, but it may also be used to explain or develop a theory or theories. This study adopts classical content analysis rather than more qualitative forms of content analysis.

Workplace deviance is one of the many areas that nations across the globe are relentlessly trying to address. While everyone expects to live in a safe workplace, it is thought that this cannot be achieved without proficient Occupational Health and Safety approaches. One of the current dominant approaches to fostering Occupational Health and Safety approaches has been to look to large organizations in fostering standards of health safety and occupation. The trending forms of globalization has been transformed the world into two ways. In one way, globalization has resulted in the convergence of firms; while on the other hand, it has resulted in product differentiations. Furthermore, it has been expected that the differentiation in the demand would be facilitated by the need to uphold workplace safety.

1.7.4 Data Analysis

Qualitative data analysis can be described as the process of making sense from research participants' views and opinions of situations, corresponding patterns, themes, categories and regular similarities.¹³⁹ Nieuwenhuis¹⁴⁰ captures the essence of data analysis well, when he provides the following definition of qualitative data analysis that serves as a good working definition: ".qualitative data analysis tends to be an ongoing and iterative process, implying that data collection, processing, analysis and reporting are intertwined, and not necessarily a successive process".

¹³⁹ Cohen L, Manion L, and Keith Morrison, (2007), *Research Methods in Education*, Sixth edition

¹⁴⁰ Nieuwenhuis, J. (2007). Introducing qualitative research. In Creswell, J.W., Ebersohn, L., Eloff, I., Ferreira, R., Ivankova, N.V., Jansen, J.D., Nieuwenhuis, J., Pietersen, V.L., Plano Clark, V.L. & van der Westhuizen. *First Steps in research*. Van Schaik: Pretoria, RSA

In short, as Gibbs¹⁴¹ so aptly points out, qualitative data analysis is a process of transformation of collected qualitative data, done by means of analytic procedures, into a clear, understandable, insightful, trustworthy and even original analysis. The primary source in this study are form of statutes and case laws on the proposed areas from Malaysia, Australia, Canada, India and UK. The case laws analysis involving the principles of statutory interpretation within the framework of doctrine of judicial precedent and ratio decidendi. Data analysis is actually a dynamic process weaving together recognition of emerging themes, identification of key ideas of meaning and materials acquired from the literature. In this study an intensive data analysis was done when all the social science literature from journals in order to identify the nature and criteria of deviant behaviours against persons in the workplace. The findings from these study was analysed to find out how deviant behaviour was addressed in the workplace and the remedies available for such victims. Further, the case laws and statutes have been analysed to identify the extent of protection rendered to such victims. Each material collected was read thoroughly in its entirety to examine the differences and similarities between misconduct, negligence, trespass to persons and deviant behaviour. The current weaknesses in the compensation system in addressing deviant behaviour in the workplace were also analysed. Therefore, the aim at this stage was to use the data to emerge with a proposed compensation scheme for victims of deviant behaviour.

1.7.5 The Rule of Statutory Interpretation

Countries which have inherited the common law system have seen a major shift from judge-made laws emanating from the courts to statutory laws being enacted by the bulk in the legislative chambers. Malaysia is one of those countries. The function of Parliament is to enact laws, and the judiciary have to interpret the law as it stands, and not as it fancies it to be.¹⁴² The three common law rules are; the "mischief rule", the "literal rule", and the "golden rule. The common thread shared by the rules is that they all set out to ascertain the "intention of the legislature"¹⁴³. There are several statutes¹⁴⁴ providing for statutory interpretation in Malaysia which set out general guidelines, for example, as to the definition of common terms and phrases across legislation.

¹⁴¹ Gibbs, G. (2007) *Analysing Qualitative Data*. SAGE Publications Ltd., New York, USA. <http://dx.doi.org/10.4135/9781849208574>.

¹⁴² *Lim Kit Siang v Dato Seri Dr Mahathir Mohamed* [1986] 1 MLJ 469, pg383, 385.

¹⁴³ The Interpretation Act 1948 and 1967 (Act 388) (Consolidated and Revised 1989) which came into force on 19 October 1989, the Interpretation and General Enactment Clauses of Sabah (No 34 of 1963) which is stated to be applicable to all Sabah Enactments in force at its commencement and to all subsequent enactments, the Interpretation Ordinance of Sarawak 1953 being applicable to all ordinances in force at its commencement and all subsequent ordinances, unless otherwise indicated.

¹⁴⁴ *Ibid* (n130)

a) The Literal Rule

The literal rule says that the intention of Parliament is best found in the ordinary and natural meaning of the words used. As the legislative democratic part of the state, Parliament must be taken to want to effect exactly what it says in its laws. The literal approach was adopted in the case of **Wong Pot Heng**.¹⁴⁵ The provision in dispute, reg.13 of the Emergency Essential (Protection of Depositors Regulations 1986), provides; “All proper costs, charges and expenses, including remuneration, of receivers and other persons appointed under these Regulations shall be payable out of the assets of the deposit taker in priority to all other claims”. The question that arose was whether, in the face of an unambiguous provision, the courts could extend the intention of the legislature as expressed in that regulation so as to give priority to the depositors immediately after the receivers. Mohamed Azmi SCJ who delivered the judgment of the court said;

“.....the legislature has made its intention very clear in reg.13 of the Emergency Regulations. There can be no doubt that the legislature intends to give priority only to the receivers and certain other persons and to no one else. In the absence of uncertainty in the terms employed, the legislative will must prevail, and as such we hold that the learned judge erred in law in giving priority of payments to the depositors in preference to the appellants”.

In the face of a precise and unambiguous provision, the text must be prima facie be given a literal construction, even if it may appear to produce an unpopular result.

b) The Mischief Rule

This rule requires the courts to discover the status quo prior to the legislation and to compare it with the objectives of the new law. It was explicitly adopted in **Hong Leong Equipment –v- Liew Fook Chuan and Another Appeal**¹⁴⁶ where Gopal Sri Ram JCA alluded to the position at common law and the legislative history behind s.20 of the Industrial Relations Act: 1967 and in delivering the judgement, said that:

“The purpose for which Parliament passed the Act may not be properly discovered unless one bears in mind the general background against which the legislature acted. In this way, one may gather the true spirit and

¹⁴⁵ [1990] 2 MLJ 410.

¹⁴⁶ [1996] 1 MLJ 481.

intendment of the provision that has fallen for construction in these appeals.”

In this case, the Act was intended to elevate the weak and subordinate position of a workman at common law to a stronger position and in order to give effect to this intent the due recognition of this higher status must therefore be accorded by the courts.

c) The Golden Rule

The "golden rule" is a relaxation of the "literal rule. It allows some degree of freedom where the application of the literal rule would lead to absurdity, or repugnance, or inconsistency with the rest of the instrument...", but only to the extent that it avoid(s) that absurdity and inconsistency....¹⁴⁷

An obvious example of the golden rule in operation to avoid absurdity is the case of **Leaw Mei Lee v. Attorney General & Ors**,¹⁴⁸ which centred on the interpretation of s.5(3) of the Advocates and Solicitors Ordinance 1947. The issue which arose was whether the University of Malaya post-final course must precede the requirement of local chambering, having regard to the word "previously" in paragraph (a), where the appellant had attended the course and chambered concurrently. The Federal Court avoided the absurd and unjust result that would have ensued from a rigid construction of the words "previously" and held that the appellant could qualify for admission to the bar as an advocate and solicitor.

d) The Purposive Approach

It embodies the general ethos of its precursor such that it emphasises the importance of reading a provision in the light of the purpose for which it had been made. Yet it differs in the sense that it does not locate the approach purely in the context of common law, nor does it confine objectives to their historical origin.¹⁴⁹ In Malaysia, this approach has received statutory recognition via s.17A of the Interpretation Acts 1948 and 1967¹⁵⁰ which directs the courts to use a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not....).

¹⁴⁷ Grey v Pearson [1857] 6 HL Cas 61, 106.

¹⁴⁸ [1967] 2 MLJ 62.

¹⁴⁹ Carl F. Stychin & Mulcahy L, Legal Methods & Systems 3rd Ed. Thomson Sweet & Maxwell.

¹⁵⁰ S.7 Interpretation (Amendment) Act 1997.

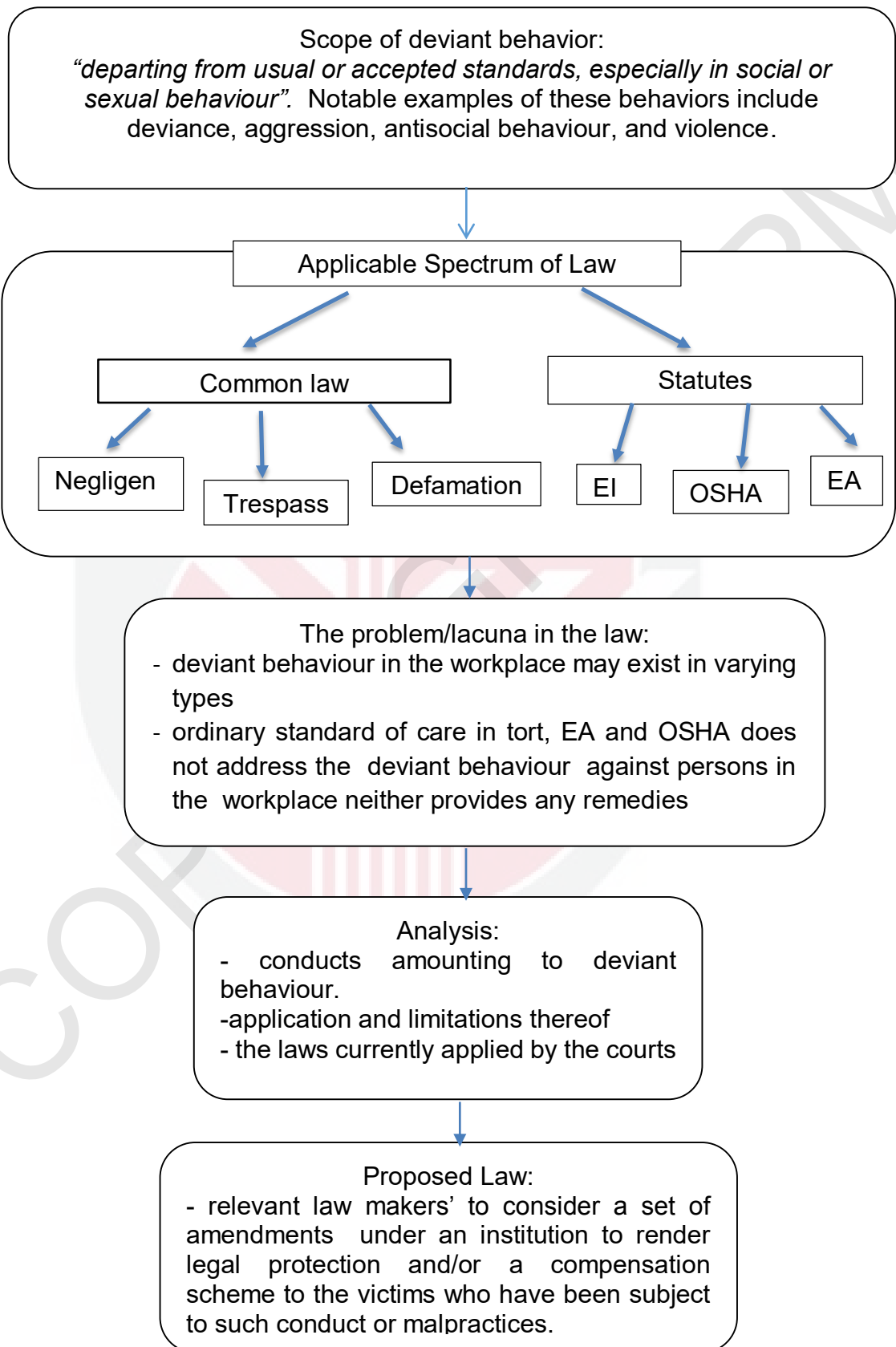
1.7.6 The Doctrine of Binding Precedent

Judicial precedent is a judgment of a court of law cited as an authority for deciding a similar set of facts; a case which serves as authority for the legal principle embodied in its decision. The common law has developed by broadening down from precedent to precedent.¹⁵¹ A judicial precedent is a decision of the court used as a source for future decision making. This practice of following precedent is also known as stare decisis and by which precedents are authoritative and binding and must be followed. Judicial precedent is an important source of English law as an original precedent is one which creates and applies a new rule. According to Holland and Webb,¹⁵² the cases have to be sufficiently similar to illustrate the same principle for the doctrine to apply. This can be achieved by comparison of facts and ascertaining if the reasoning (the ratio decidendi) in the earlier case can be applied to the new set of facts in latter cases). Therefore, it provides with the technique of identifying the relevant principles and relate them to the case concerned.

¹⁵¹ Wu Min Aun. (2005). *The Malaysian Legal System*. Third Edition. Kuala Lumpur: Pearson Malaysia Sdn. Bhd. p. 67.

¹⁵² JA Holland and JA Webb, (2016), *Learning Legal Rules*, Oxford University Press, 9th Ed

1.8 Research Framework



1.9 Organization of the thesis

There would be seven chapters proposed to answer all objectives and the proposed including:

Chapter 1 provides background of this study and the concepts related to the research. The chapter consists of the objectives, research framework, scope and significance of the study, also comprises the literature review and research methodology which explains in detail about the strategies for research design, and the interpretation techniques used in this study.

Chapter 2 explains in detail the theoretical framework and the legislative framework regulating deviant behaviour at workplace.

Chapter 3 analyses and discusses the development of behaviour construed as deviant in the workplace in Malaysia. This chapter also discussed the development of tort law and the application of law of negligence in dealing with deviant behaviour against persons in the workplace.

Chapter 4 discusses the laws with regards to trespass to persons and defamation in particular and how the law addresses this behavior and the weaknesses thereof.

Chapter 5 examines the inadequacy of the current legislations namely EA 1955 and OSHA 1994 in Malaysia and practices adopted in Australia, Canada, India and UK to address deviant behaviour in the workplace.

Chapter 6 engages in the discussion on developing a new set of amendments to the employment law to establish a claim under deviant behaviour. This final chapter will provide the key recommendations and overall conclusions of the study.

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BIODATA OF STUDENT

DR AMBIKAI popularly known as AMBI, graduated from University of London (UK), LL.M from UKM and holds a Certificate of Legal Practice from the Legal Qualifying Board and was admitted as an Advocate & Solicitor of the High Court of Malaya in January 2004. Prior pursuing a degree in law Dr Ambi had completed a professional qualification in Administrative Management (UK) and has been lecturing Management related subjects since 1994. She joined Taylor's in January 2011 upon leaving the law practice and has been lecturing Business Law and Company Law for the Taylor's Business School, University of the West of England (UWE) Programme. She has authored and published Business Law Made Easy in 2013.

She is currently with the Taylor's Law School and lectures in subjects such as Criminal Law, Medical Ethics, Informed Consent and Confidentiality (Postgraduate) and Business Law. She had taught several modules for the Undergraduate programme namely; Management in Business, International Human Resource Management, Professional Development, Personal Communication Skills, Business Environment, Managing Small Business, Managing People's Performance, Business Analysis, Company Law and Ethics & Corporate Governance.

She has completed Masters in Law (LL.M) at University Kebangsaan Malaysia. Currently she is writing a Criminal Law book for publication. She has also completed her PhD in Business Law with University Putra Malaysia.

She had also conducted training programmes for PETRONAS MALAYSIA mainly on Effective Communication Skills at Work and Legal Aspects in an Organisation. Apart from that she has also conducted training on Essential Selling Skills for Ceylan Bank in Sri Lanka and Insurance Act and you! Her expertise lies in the areas of Company Law, Insurance Law and Corporate Governance.

Ambi is endowed with intellectual teaching skills and style had also produced Prize Winners for the Corporate & Business Law paper of the Association of Chartered Certified Accountants (ACCA, UK).

Upon successfully obtaining a law qualification, she read in chambers of Messrs Allen & Gledhill where she had exposure to all aspects of litigation matters and she practiced law at Messrs K Mano & Associates and had undertaken civil litigation matters such as probate & administration, divorce, debt recovery, accident cases and other general litigation areas.

Both her exposure to the lecturing and practice of law has well-groomed her to contribute innumerably to the era of teaching and the legal profession.

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