

## Respondeat Superior and Diligentissimi Paterfamilias — A Comparative Study

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(Note: The first part of the abstract of this Article appears in the abstracts of 55-1.)

What follows is an illustration of the dual aspect of an employer's vicarious liability: civil liability on the basis of quasi-delict or breach of contract and civil liability based on criminal negligence. The Author posits that despite the different theories for the basis of vicarious liability, the true basis should still be that of fault, taking into consideration that it is the employer's own fault which makes him liable for the quasi-delict and determines the extent of damages due and that his liability and the corresponding action against the master or employer is principal.

The defense of *diligentissimi paterfamilias* (i.e., exercising the "diligence of a good father of the family") is available to such persons responsible, although the Civil Code does not specify to what extent such diligence should be exercised. Drawing from jurisprudence, the Author shows that the amount of diligence required so as to exempt oneself from responsibility depends on the facts and circumstances of each case. Such defense, however, is not available in cases of liability based on criminal negligence and breach of contract.

Finally, the liabilities of the different parties involved, including that of the servant or employee, are enumerated and contrasted. The Author concludes by discussing the further application and possible improvements with regard to the doctrine of *respondeat superior* in the common law and the doctrine of *diligentissimi paterfamilias* in Philippine Law. He proposes the principle of divided responsibility, as exemplified by the modern French theory of *solidarite social* and the Chinese Civil Code, as a compromise between the harshness of the common law provisions and the liberality of Philippine law provisions with regard to vicarious liability.