

**SCOTT V DAVIS [2000] HCA 52**

High Court of Australia - 5 October 2000

**FACTS**

Davis was a licensed pilot and owned several light aircrafts which he kept at his property.

During a private function held by Davis, Scott's parents asked if Scott could go on a joy-ride in one of the aircrafts owned by Davis. Davis agreed and asked one of his guests Bradford, a licensed pilot, to take Scott on a joy ride. Bradford was neither Davis' employee nor an independent contractor working for Davis.

The aircraft crashed killing Bradford and seriously injuring Scott. Scott's parents suffered nervous shock and claimed that Davis as the owner of the aircraft was vicariously liable for the negligence of the pilot. Scott and his parents sued Davis for negligence.

**ISSUE**

Was Davis vicariously liable for the negligent act of Bradford given the circumstances that Bradford was neither his employee nor his agent?

**FINDING**

Majority: Gleeson CJ, Gummow J, Hayne J, Callinan J, McHugh (Dissenting) There was no finding of a master-servant relationship between Davis and Bradford because Bradford was not Davis' employee acting in the course of his employment.

Bradford was not an agent of Davis because at the time of his negligent act Davis was not in the position to assert any power of control or direction over the manner in which Bradford was flying the aircraft. Davis did not have any radio or other means of communicating with Bradford whilst he was flying nor was he able to take control of the aircraft himself.

The fact that Bradford was using the aircraft at Davis' request and for his purpose does not make him a representative or delegate of Davis and therefore vicariously liable because Bradford merely rendered a voluntary service in a social function at the request of the Davis.

**QUOTE**

Gleeson CJ said:

*“The principle by which the existence of vicarious liability is to be determined is to be distinguished from evidentiary consideration concerning the facts relevant to the application of the principle.*

*The nature of the chattel or motor vehicle in question, or the nature of the occasion of its use may be significant for the purpose of drawing inferences as to the relationship between an owner or bailee and a person for whose negligence the owner or bailee is claimed to be responsible.”*

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## **IMPACT**

The court suggested that vicarious liability should be imposed when the principal benefits from the actions of the agent but indicated that it was reluctant to extend this principle beyond the idea that an owner of a motor vehicle could in certain circumstances be vicariously liable.

In this case there was no reason for the owner of the aircraft to be liable for the actions of the volunteer who flew the aircraft.

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