Bank Liability for Online Scams in Malaysia: The Evolving Duty to Detect and Intervene

INTRODUCTION

As online scams become increasingly sophisticated, Malaysian courts and regulators are paying closer attention to the role banks play in detecting and responding to suspicious transactions. Recent decisions suggest that customers remain responsible for protecting their banking credentials. Banks may, depending on the circumstances, face liability where objectively suspicious or unusual transactions ought reasonably to have triggered appropriate fraud detection or intervention measures

Traditionally, banking services centered on deposits, payments and lending. Today, the banker-customer relationship operates within a significantly more complex digital environment involving online banking platforms, payment cards, instant electronic transfers and other digital payment systems.

BANK-CUSTOMER RELATIONSHIP AND DUTY

The bank-customer relationship is fundamentally contractual. In Malaysia, the Court of Appeal in **Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor [2014] 4 MLJ 619** affirmed that the relationship is contractual rather than fiduciary. The duties owed by a bank therefore depend principally on the contractual terms governing the relationship, applicable banking practices and, where established on the facts, duties arising in negligence:

> *"…the nature of the banker-customer relationship was entirely contractual and there was nothing fiduciary about it. The claim for breach of fiduciary duties accordingly failed..."*

This contractual duty was reinforced in **Clearpath Marketing Sdn Bhd v Malayan Banking Bhd [2019] CLJU 111**, where Mary Lim HMR (as her Ladyship then was) affirmed:

> *"... It is inherent in the nature of the banker-customer relationship of the parties, the respondent owes a duty of care to the appellant to take reasonable care and exercise reasonable skill when acting in accordance with the appellant's instructions…"*

The Federal Court in ***Abdul Rahim Abdul Hamid & Ors v Perdana Merchant Bankers Bhd & Ors [2006] 3 CLJ 1; [2006] 5 MLJ 1*** recognised that it is an implied term of the banker-customer relationship that a bank will exercise reasonable skill and care in executing its customer's orders. In reaching that conclusion, the

Federal Court referred to the English decision in ***Barclays Bank plc v Quincecare Ltd [1992] 4 All ER 363***, particularly in relation to circumstances where a bank is put on notice of apparent dishonesty in a payment instruction.

The principle derived from Quincecare subsequently became known as the "Quincecare duty". Traditionally, it applies where a person acting as an agent for the customer gives payment instructions and the bank has reasonable grounds to suspect that the agent may be defrauding the customer. However, the scope of the doctrine should not be overstated. In ***Philipp v Barclays Bank UK PLC [2023] UKSC 25***, the UK Supreme Court clarified that the Quincecare duty does not generally require a bank to stop or delay a payment that has been personally authorised by the customer merely because the customer may have been deceived by a fraudster.

DEVELOPMENT OF BANK DUTY IN SCAM/FRAUD

To address this landscape, BNM issued the Policy Document on Ensuring Fair Treatment for Victims of Unauthorised e-Banking Transactions (**SEFT**), which took effect in October 2024. SEFT establishes a shared-accountability approach under which financial institutions must investigate the circumstances of an unauthorised e-banking transaction, including the effectiveness of their relevant security controls and whether the customer's conduct contributed to fraud.

Compensation is not automatic and will depend on the circumstances and the respective obligations of the financial institution and customer. Importantly, SEFT presently focuses on unauthorised e-banking transactions and should not be treated as a blanket compensation scheme for all types of scam losses. Against this regulatory background, Malaysian case law also illustrates how courts have approached disputes involving allegedly fraudulent or unauthorised transactions:

a) **Lee Cheong Chee v HSBC Bank Malaysia Bhd [2021] MLJU 574** -

   The High Court ruled that where a customer personally authorizes transfers for what later proves to be a fraudulent investment, the bank was not under a general obligation, on the facts of that case, to investigate or verify the legitimacy of the investment scheme, provided the payment instructions were genuinely authorised by the account holder.

b) **Alliance Bank Malaysia Bhd v Wong Toon Kai [2025] MLJU 715 -**

   This case illustrates the evidential importance of authentication records and customer conduct in disputes concerning electronic banking transactions. While the presence of valid authentication credentials may be relevant evidence when determining whether a transaction was authorised and whether the bank acted negligently, such evidence does not necessarily exclude a claim based on negligence, system failure or other circumstances established on the facts.

THE EMERGING MALAYSIAN APPROACH TO FRAUD DETECTION AND INTERVENTION

Recent Malaysian decisions indicate an emerging willingness to scrutinise whether banks have adequately responded to objectively unusual transaction patterns.

In a decision by the Kuala Lumpur Sessions Court, ***Chan Yan Li v Malayan Banking Bhd*** **[2026] MLJU 1706**, the court held the bank liable for RM166,000.00 in unauthorised digital transfers. The court considered the plaintiff's limited history of online banking activity together with the sudden surge and unusual pattern of transactions, as well as discrepancies between the bank's TAC records and telecommunications records.

We also refer to ***Ng Choon Luk @ Ng Choon Lak (deceased) (suing through the administrator of estate, Ng Yok Kwang) v CIMB Bank Bhd*** **[2026] 9 MLJ 575,** where the High Court's decision illustrates circumstances in which a bank's failure to respond to an unusual and sustained transaction pattern may amount to a breach of its duty of care:

> *"... the defendant cannot escape liability by arguing that it did not know of the fraud. The defendant had systems capable of detecting the unusual pattern. The defendant had contractual powers to intervene. The defendant chose not to exercise those powers despite a 14-day pattern that deviated dramatically from a long-established customer profile"*
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> …
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> *"This court finds that the defendant breached its duty of care by failing to exercise its fraud detection capabilities and contractual power…"*

Significantly, the High Court did not treat the bank as solely liable. The court found the customer contributorily negligent, apportioning liability **60% against the bank and 40% against the customer**. This demonstrates that liability in scam-related banking disputes need not be treated as a binary question of total bank liability or total customer fault. Depending on the facts, liability may be apportioned according to the parties' respective fault and conduct.

CONCLUSION

Recent Malaysian decisions indicate an emerging judicial willingness to examine whether banks have taken reasonable steps to detect and respond to objectively unusual or suspicious transactions. However, bank liability is not automatic. The outcome of any claim will depend on the particular facts, including whether the transaction was authorised, the customer's conduct, the contractual obligations of the bank, the operation of its security and fraud-detection systems, causation and any contributory negligence.

The regulatory framework under SEFT should also be distinguished from a civil claim in negligence or contract, which will ultimately depend on the applicable legal duties and the evidence in the case.

Seeking Legal Advice?

For legal representation or advice regarding banking disputes, unauthorised electronic transactions, or recovery of defrauded funds, please contact our legal team at **Y S Ling & Co.**

Disclaimer: *This article is intended for general information only and does not constitute legal advice. The law and regulatory framework concerning electronic banking transactions and scam-related losses may develop over time. Specific legal advice should be obtained based on the facts and circumstances of each case.*