

Vicarious Liability

Vicarious means acting on another's behalf. Vicarious liability means the liability of a person for the acts done by another. The general rule of tort liability is that the person causes damage must pay compensation. In certain cases, however, liability can arise on third parties also.

Basis of vicarious liability

1. **Respondeat superior**- means '*let the superior be liable*'. The Doctrine puts the master of the superior on the position as if he had done the act himself. This is based on the legal presumption that all acts done by a servant/ agent in the course of business are the acts of Master/ principal
2. **Qui fact per alium facit per se**, which means '*he who does an act through another is deemed in law to do it himself*'. Therefore a person is responsible for the wrongs of the person in whom he has entrusted the work.

- **Essential for vicarious liability**

- A. There must exist a relationship
- B. Wrong must be done in course of employment

A. **There must exist a relationship:** - The major relations in which vicarious liability of a person arises

1. **Principal and Agent relationship**, where principal is liable for the tort of his agents
2. **Master and servant relationship**, where master is held liable for torts of his servant.

3. **Partners in a Partnership Firm relationship**, where one partner could be held liable for default of other partner
-

Principal and Agent Relationship

- In order to make the principal responsible for the wrongful act of his agent to conditions are required
 1. The Act was committed by the agent in course of employment, although the principal did not authorize, or justify or participate in the act or even if he disapproves of it.
 2. that if the Act was beyond the scope of agency, it must have been expressly authorized by the principal or ratified by him
 - Therefore when the principal authorizes agent to do a certain work, the principal is liable for the wrongs of his agent while doing search work. The authorization to do the work may be expressed or implied
 - **In Lloyd vs. Grace Smith And Company**-The plaintiff went to the solicited firm to invest in the property. The clerk of the solicitor firm advised her to sell the house and invest the money. The clerk gave her the documents [which were indeed the gift deed] alleging it to be a sale deed and got transferred the property in his own name. the court observed that firm was held liable because the agent was acting in the course of Apparent authority of principal
-

Master servant relationship

- If the servant does any wrongful act in the course of employment the master is also liable for it apart from the servant himself. the wrongful act of the servant is Deemed to be that of master's also
- following are the two Essentials to attract master-servant liability
 1. act must be done by the servant
 2. Such act must be done in the course of employment

Servant/ independent contractor

- servant is a person who is employed by another to do certain work under the direction and control of his master
- Servant is under employment contract, independent contractor is under a contract for a service. If a servant does a wrongful act in the course of his employment, the master is liable for it but the master is not liable for the tort of independent contractor.
- Servant is under Direction and control of the master. The master directs the servant what is to be done and how it is to be done. An independent contractor is not subject to any such control. Regarding the manner of the work he is not subject to anyone's control.
- For example your car driver is your servant and if it drives negligently and hits someone you are also liable for it. While if you hire a taxi, then the taxi driver is not your servant. If he injured someone you will not be responsible for it.
- **B. Govindarajulu v. M.L.A. GovindarajaMudaliar** Gave car to mechanic for repairs, mechanic after repairs took it for a test drive and met with an accident. Mechanic tried to share blame of accident on the owner by extending liability to him as the relationship between him and the owner is master servant relationship. Court held that the relationship of the mechanic was not of a servant but of an independent so liability is his own.

B. The wrong must be done in course of employment

- **State Bank of India versus Shyama Devi 1978** an employee of the bank received cash and cheque in personal capacity from his friend on pretext of depositing it in the bank. He misappropriated the funds. the court held that Bank cannot be made liable because the employee misappropriated the points in personal capacity

- **Beard v. London Omnibus Co.** While driver was having dinner, conductor drove the bus to turn it around and while driving it caused an accident. In this case the master was not held liable because the act the conductor was doing was not under his course of employment as he was not authorized to drive the bus.
- **Limpus vs. London Omnibus Co.** In this case the drivers had specific instructions in written to not race or obstruct the path of other buses, but the driver did that anyways and caused an accident, the employer was liable for the ensuing accident despite written instruction to the driver to exercise care. The employer was liable because the injury resulted from an act done by the driver in the course of his service and for master's purposes; It was not done by the servant for his own purposes, but for his master's purposes.

The Doctrine of Common Employment (An Exception to the Rule of Vicarious Liability)

- The doctrine of common employment was introduced in the English law probably as a defence to the principle of vicarious liability. This doctrine stated that an employer/master cannot be held liable for the injuries of his/her servant caused by the negligence of a fellow servant.
- This doctrine was first used in the case of **Priestley vs. Fowler, 1837** the plaintiff was the defendant's servant and was injured due to breaking down of an overloaded carriage in the charge of another servant of the defendant. Both the wrongdoer and injured persons were servants of the same master, the doctrine of common employment was applicable and the master was not held liable
- The chief reason behind this judgment was to limit the liability of a master for the actions of his servants only during the course of their employment.
- However the Doctrine was criticized, Limited in scope by legislation and judicial decisions and the defence of common employment was abolished by the **Law Reform (Personal Injuries) Act, 1948.**