

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- Vicarious Liability – Concept, Origin and Relations governed by it

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Introduction

Vicarious liability is a theme of “Law of Torts” before proceeding to this topic it’s equally salient to know about the law of torts. Imitative from the Latin term “tortum”, meaning twisted that was used to denote ‘twisted, incorrect conduct’. Described as a class of actions that was distinct from breach of contract, hence a separate category of civil action. Legally introduced in England after the Norman invasion through the courts of Normandy and Angevin Kings of England.

Origin

Prevailed in the epoch of a pre-British era in Hindu and Muslim jurisprudence for dealing with ‘crooked or fraudulent conduct’. But the scope was slender. The System was retributive and not restitutive. British Empire brought Common Law and formal Tort law to India through the **3 Presidency Courts** through **efforts of Sir Henry Maine and Sir James Stephens**. Attempt at **codification in 1886 by Sir Frederick Pollock** but Indian Civil Wrongs Bill was never legislated upon. Mostly dependant on selective application of English laws and modified Acts of Indian legislature – Principle of justice, equity and good conscience.

Meaning

Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person.

Constituents of vicarious liability

- (1) There must be a relationship of a certain kind.
- (2) The wrongful act must be related to the relationship in a certain way.

(3) The wrong has been done in the course of employment.

Relationship Governed by Vicarious Liability

- A. Master-Servant Relationship
- B. Principal-Agent Relationship
- C. Partners Relationship

A. Master-Servant Relationship

Master and servant are terms used to explain a legal relationship among an organization (the master) and employee (the servant). In most instances, a master-servant agreement is a settlement for a service wherein the employer has direct manage the actions of the servant.

The master-servant courting best arises when the duties are carried out through the servant under the route and manipulate of the master and it's a problem to the master's information and consent. In contrast, an independent contractor is a character entering into an agreement to perform a carrier without the use of his or her personal methods. consequently, he or she isn't always subject to the control of the person by way of whom they were employed.

If a master chooses to give orders to his servant, no one can fail to understand why he should be held liable for the consequences of their commission.

Master-Servant Act

The master and Servant Act was created in the 18th and nineteenth centuries. To regulate the relationship among a worker and an organization. Initially, as the name may recommend, those legal files had been biased towards employers. These days, employee and organization contracts are usually fairer and greater unique.

In addition, those preparations are not called master/servant agreements, even though technically and legally the connection is described as master-servant. 21st-century employers commonly do not use this terminology. nowadays, you could listen to this courting expressed as a business enterprise/employee courting.

Test to determine the master-servant relation

- **“Contract of service”** represents the **master-servant relationship**. **“Contract for service”** defines the contractual obligation between two businesses or a business and a self-employed individual (an entity or **independent contractor**).
- **“Control Test”**-Control over the servant. Master has a command based nature towards his servant. Lord Brougham in the **Duncan vs. Findlater**[2] case tried to outline what

has been called the control test—“ *that an employer has control over his employees thereby he must be held liable if they commit any wrong action*”. ” master is liable for what is done by servant and under his orders master may turn him off from that employ whenever he pleases; and the reason that master is liable is this, that by employing him he set the whole thing in motion, and what he does, being done for my benefit and under my direction, I am responsible for the consequences of doing it.

Criticism

Foremost, *the controlling rationale presumes that an employer failed in his control*, which makes liability based on the fault of the employer, thereby rendering it as a personal liability which *cannot be imposed on employee's fault*.

- “**Hire and fire**” rule under this rule the master is in a position to hire and fire the servant according to his comfortability.

Masters liability under express authority

- Master may knowingly employ a clearly incompetent person. **Martin vs. Richards**[3] in this master has deliberately employed a servant who was suffering from many ailments like most of the time servant is unconscious then amnesia is observed. Hence if any fault is committed then the master will be responsible.
- He may consciously fail to provide proper means for the performance of the allotted work. **Mitchell vs. Boston & Maine R. R. Co** [4] in this case the master told the servant to light a fire and the servant did in such a manner due to which neighbor had inconvenience hence master will be liable.
- He may fail to give his servant information which he knew to be essential to the right completion of his task. **Fletcher vs. Baltimore**[5] in this the company workers after coming returning from their work they used to throw timber near to their homes from train one day while doing so it injured the pedestrian he sought damages from the master and he is liable because even after knowing such thing he failed to give proper information.
- He may fail to take adequate precautions against the commission of a tort in his presence. **M'Laughlin vs. Pryor** [8] in this the negligent act of the master was plainly visible and still didn't took proper precaution.

In cases such as these, where the master is directly involved, it is essential to any scheme of law that he should be held liable for such damage as his servant may cause.

Justification Masters liability under unauthorized acts of the servant

- The so-known as “**Deep pocket**” is one of the current justifications which **relies on the economic and financial premise** that a company is in a monetary position wherein he pays a repayment; this saves the plaintiff from the unwanted impact of being left without fixing the harm due to his worker’s insolvency.

Criticism

Nevertheless, it’s been argued that it’s far an injustice to pressure a corporation to pay compensation solely due to his economic capability, which is also relevant to others like the government, as the claimant needs to repair his harm or harm regardless of the source which the repayment comes from.

- An employer can **spread his loss** to his customers **by adding it to the costs of his products**.

Criticism

This theory does not explain why this liability is imposed in cases where the spread of the loss is not possible.

For example, **it is inconceivable how non-profit entities can spread their loss**.

- Another justification is “Rough Justice”] which has been called “Rough justice”. Lord Pearce stated, “The master having (presumably for his own benefit) employed the servant, and being (presumably) better able to make good any damage which may occasionally result from the arrangement, is answerable to the world at large for all the torts committed by his servant within the scope of it”.

Cases

In **ICI vs. Shatwell** [*In this case, there were two brothers who were employed by the defendant. These brothers were carrying out an experiment for the defendant and there was a shortage of the wire. The other worker went to bring more wire but these brothers went ahead and did the experiment with the short wire later claimed damage from the defendant on the basis of rough justice but defendant was held not liable because it was voluntary not fit injuria.* The **enterprise makes a benefit** from the sports of his personnel, he **ought to also bear any losses** that those activities cause.

In **Broom vs. Morgan** in this case, Ms. Broom was employed as the helper of a beer and wine house, of which her husband, Mr. Broom, was employed as the manager. Ms. Broom fell down through a trap that her husband was responsible for keeping closed, sustaining injuries as a result. Ms. Broom sued for injuries due to the negligence of her husband, but the courts held

that, under the statute, a husband cannot be held liable in tort against his wife. She then sued the employer as vicariously responsible for the negligence of her husband. Even if the employee is immune from suit, the employer is not absolved from vicarious liability for the injury. Accordingly, the employer was held vicariously liable for the negligence of Mr. Broom in causing the injuries of Mrs. Broom. **Lord Denning** stated: “*the person who takes the benefit of the work when it is carefully done must take the liability for it when it is negligently done*”.

Legal Maxim (traditional rationale)

Respondent Superior—**The literal meaning of the doctrine is “let the master answer”. Master is answerable to the wrongs committed by his servant. Master is superior thus he ought to take care hence he would be questioned if something wrong happens.**

Criticism

‘Respondeat superior’ is the maxim which has really done the mischief. If a master has a chance to prove the absence of his supervision in the wrongdoing committed by his servant. There would be no room to apply these doctrines as they rely on the premise of the supervision of an employer. Hence logically there is no liability when there is no supervision.

Case Law – State of Rajasthan vs. Mst Vidhyawati

In this case, an employee on a temporary basis was employed to drive a motor vehicle which was register under the collector of Udaipur. One day after the repair work he was driving back and knocked a random guy walking on the footpath.

The Supreme Court upheld the same and observed that for acts done in the course of employment but not in connection with sovereign powers of the State, State like any other employer is vicariously liable under the doctrine of respondent superior.

- **Qui facit per alium facit per se**—meaning of this doctrine is “*he who acts through another does the act himself*”. Basically, it throws light on the notion that whatever the acts are done by the servant would have been the act done by the master himself. If he had not employed a person specifically for that work. “Qui facit per alium facit per se” is a simple untruth, except so far as it expresses the truism that one who deliberately carries out a design through the instrumentality of another is the active agent throughout. It certainly is not true that what your agents do, you do yourself.

B. Principal Agent Relationship

Meaning

The principal-agent relationship is an association in which one entity legally appoints somebody to behave on its behalf. In a principal-agent courting, the agent acts on behalf of the principal and need to not have a warfare of interest in carrying out the act. The connection between the principal and the agent is known as the “agency,” and the law of agency establishes pointers for one of these courting.

Elements of the principal-agent relationship

There are two most significant elements of the relation to be so-called a principal-agent relation which is as follows:-

- **Derivative Authority-** The principal needs to give his authority to his agent when an agent works on behalf of him.
- **Representative Character**—the agent working on behalf of the principal must have the authority of representing the principal.

Case law

Lakshminarayan Ram Gopal and Son ... vs. The Government Of Hyderabad[9]

Krishna vs. Ganapathi[10]

Principal Agent Duties

- Principal-agent relationship is considered to be legally binding when they have a written agreement between them.
- There is a feeling of trust or fiduciary type of relationship exists when agents start working under principal.
- This designates the agent appearing on behalf of the foremost should carry out the assigned obligations with the principal’s satisfactory interest as a priority.
- The agent is liable for completing obligations given through the predominant so long as the principal presents reasonable instruction.
- Moreover, the agent has a responsibility to perform responsibilities with a positive stage of skill and care and might not intentionally or negligently complete the assignment in a mistaken manner.
- A duty of loyalty is also implied within the principal-agent relationship, which calls for the agent to chorus from placing himself in a function that creates or encourages a warfare among his interest and the interest of the principal.

Principal vicarious liability of agents

Underlying causes because of which there is an imposition of liability on a principal for the tortious acts of his or her agent.

- The principal selects the agent and has better means of ascertaining the fine, strengths and weaknesses of the person.
- The principal has delegated the performance of a pure class of acts to the agent, it isn't always unjust that the principal, who will derive the gain of the agent's efforts, should bear the danger of the agent exceeding his or her authority.
- The predominant has given the agent widespread authority to commit the wrongs.

C. Partners Relationship

The relationship which the partners have with each other is same as in between principal and agent. For the tort committed by any partner of the company, all other partners are liable. The liability of each partner is joint and several.

Under the Partnership Act 1932 the most important

Sec 4 deals with the “**Definition of partner**”

Sec 6– Mode of determining the existence of partnership.

Sec 13– Mutual right and liabilities.

Section 25 –LIABILITY OF A PARTNER FOR ACTS OF THE FIRM.

“Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner”

In a partnership firm each partners act on behalf of other partner or on behalf of the partnership. Thus, a partnership can be held vicariously liable for negligence committed by a partner. Consequently, the partnership may be held vicariously liable for the client's injury.

Case Laws

The Northampton Regional Livestock Centre Company Ltd v Cowling is a reminder of the potential liability of partners of a general partnership. In this case, a partner (partner A) was held jointly and severally liable for his partner's (partner B) breach of fiduciary duty pursuant to s.10 of the Partnership Act 1890 (Section 10). The Court of Appeal, overturning the first instance decision, was clear that although partner A's conduct was reasonable and he had neither acted negligently nor authorized partner B's breach of duty, the principle of joint and severally liabilities applied.

