
VICARIOUS LIABILITY

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- ❑ Liability for wrong committed by others
According to Jowitt, Dictionary of Law “A Vicar is one who performs the function of another. He is a substitute.”
- ❑ Salmond “All acts done by a servant in and about his master’s business are done by his master’s express or implied authority and are therefore in truth the acts of his master for which he may be justly held responsible”

BASIS AND REASONS

- ❑ It is based on two Latin maxim 1. Respondeat superior – A principal must answer for the acts of his subordinate.
- ❑ 2. Qui facit per alium facit per se.- He who employs another person to do something, does it himself. OR He who acts through another is deemed to act in person.

MODES OF VICARIOUS LIABILITY

- A person may be liable for the wrongful act or omission of another under the following modes...
 - 1) By ratification
 - 2) By abetment
 - 3) By special relationship

BY RELATIONSHIP

- ❑ Master and Servant
- ❑ Principal and Agent
- ❑ Firm and its Partner
- ❑ Company and its Directors
- ❑ Owner and Independent
- ❑ Contractor Guardian and his ward

BY ABETMENT

- ❑ Person who commit tort and one who abets such tort; both are equally liable for that. • Under the following circumstances, a person is said to have abetted.
 1. Knowingly for his own benefits induces another to commit a wrong.
 2. By use of illegal means directed against a third party, induces a person to do an act which is detrimental to that third party although the person induced may be entitled to do that act

BY RATIFICATION

- ❑ Where if servant commit tort without authorisation and principal subsequently ratifies such act and gives assent. Then principal is bound by the act of servant and liable for that. For a valid ratification following conditions must be fulfilled.
 1. The wrongful act must have been done on behalf of the principal.
 2. The principal ratifying the act must have full knowledge about the act committed. A void act cannot be ratified.

QUI FACIT PER ALIUM FACIT PER SE

- ❑ Qui facit per alium facit per se is a Latin legal term meaning, "He who acts through another does the act himself."
- ❑ It is a fundamental maxim of the law of agency. This is a maxim often stated in discussing the liability of employer for the act of employee."
- ❑ According to this maxim, if in the nature of things the master is obliged to perform the duties by employing servants, he is responsible for their act in the same way that he is responsible for his own acts.
- ❑ The maxim is a shortened form of the fuller 18th-century formulation: *qui facit per alium, est perinde ac si facit per se ipsum*, i.e. "whoever acts through another acts as if he were doing it himself."
- ❑ Indirectly the principle is in action or present in the duty that has been represented by the agent, so the duty performed will be seen as the performance of the agent himself.

Vicarious Liability deals with cases where one person is liable for the acts of others.

In the field of Torts it is considered to be an exception to the general rule that a person is liable for his own acts only.

It is based on the principle of qui facit per se per alium facit per se, which means, “He who does an act through another is deemed in law to do it himself” .

So in a case of vicarious liability both the person at whose behest the act is done as well as the person who does the act are liable.

Thus, Employers are vicariously liable for the torts of their employees that are committed during the course of employment.

Lord Chelmsford: “It has long been established by law that a master is liable to third persons for any injury or damage done through the negligence or unskillfulness of a servant acting in his master’s employ.

The reason of this is, that every act which is done by servant in the course of his duty is regarded as done by his master’s order, and, consequently it is the same as if it were master’s own act”.

JUSTIFICATION FOR THE IMPOSITION OF VICARIOUS LIABILITY

Justification for the imposition of vicarious liability:

- (1) The master has the 'deepest pockets'. The wealth of a defendant, or the fact that he has access to resources via insurance, has in some cases had an unconscious influence on the development of legal principles.
- (2) Vicarious liability encourages accident prevention by giving an employer a financial interest in encouraging his employees to take care for the safety of others.
- (3) As the employer makes a profit from the activities of his employees, he should also bear any losses that those activities cause.

HISTORIC REASON

- ❑ Historic liability for such an imposition was because of slavery system that existed before. As slave were considered to be the property of the master.
- ❑ So any tortious act committed by the slave was considered to be done on the direction of the master
- ❑ Therefore slave along with master was made liable.

RESPONDEAT SUPERIOR

- “let the principal be held responsible” or “let the superior make answer”. It is the principle in tort law holding an employer liable for the employee’s/ agent’s wrongful acts committed within the scope of employment of agency.

QUI FACET ALIUM FACET PERSE

- ❑ Every act which is done by a servant in the course of his duty is regarded as done by his masters order and consequently it is the same as if it was the masters own act.
- ❑ If A is doing act for X. It will be considered as X himself is doing the act himself and thus is also made liable for the act of A.

LIABILITY OF THE PRINCIPAL FOR THE ACT OF HIS AGENT

- When a principal authorizes his agent to perform any act, he becomes liable for the act of such agent provided the agent has conducted it in the course of performance of duties

LIABILITY OF THE PARTNERS

- ❑ For the tort committed by a partner of a firm, in the normal course of business of that partnership, other partners are responsible to the same extent as that of the partner who is in fault. The liability thus arising will be joint and several.

LIABILITY OF THE MASTER FOR THE ACT OF HIS SERVANT

- ❑ The liability of the master for the act of his servant is based on the principle of ‘respondeat superior’, which means ‘let the principal be liable’.
- ❑ In tort, the wrongful act of the servant is thus deemed to be the act of the master. However, such wrongful act should be within the course of his master’s business and any act, which is not in the course of such business, will not make the master liable.

COURSE OF EMPLOYMENT

- ❑ An act is deemed to be done in the course of employment if it is either
- ❑ (a) wrongful act authorized by the master e.g.. delegation of work by the authorized person to someone unauthorized
- ❑ (b) wrongful & unauthorized mode of doing some act authorized by master i.e. unauthorized in the way act is done by the servant.

INDEPENDENT CONTRACTOR

- ✘ An independent contractor is not subject to any control. He undertakes to do certain work and regarding the manner in which the work is to be done. He is his own master and exercises his own discretion. And independent contractor is one “who undertakes to produce a given result, but so that in the actual execution of the work, he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand.”
- ✘ My car driver is my servant. If he negligently knocks down X, I will be liable for that. But if he hire a taxi for going to railway station and a taxi driver negligently hits X, I will not be liable towards X because the driver is not my servant but only an independent contractor. The taxi driver alone will be liable for that.

Thank You