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LAW OF TORT

Vicarious Liability

Abstract

Vicarious liability is a situation in which one party is held partly responsible for the unlawful actions of a third party

Nizam udin jatoi

What do you mean by vicarious Liability, discuss in detail. (Group G)

What Is Vicarious Liability?

Vicarious liability is a situation in which one party is held partly responsible for the unlawful actions of a third party. The third party also carries his or her own share of the liability. Vicarious liability can arise in situations where one party is supposed to be responsible for (and have control over) a third party and is negligent in carrying out that responsibility and exercising that control.

The doctrine of vicarious liability lies at the heart of all common law systems of tort law. It represents not a tort, but a rule of responsibility which renders the defendant liable for the torts committed by another. The classic example is that of employer and employee: the employer is rendered strictly liable for the torts of his employees, provided that they are committed in the course of the tortfeasor's employment. In such circumstances, liability is imposed on the employer, not because of his own wrongful act, but due to his relationship with the tortfeasor. The claimant is thus presented with *two* potential defendants: the individual tortfeasor and a third party, likely to be with means and/or insured and usually clearly identifiable in circumstances where it may be difficult to identify the actual culprit in question. Any study of vicarious liability cannot therefore avoid consideration of its role in determining who ultimately bears the burden of paying compensation.

Nevertheless, it is a principle at odds with tort's traditional focus on general principles of individual responsibility. Traditionally described as 'the law of civil wrongs', a basic formulation of tort law may be summed up as rendering the tortfeasor liable for committing a wrong which has caused harm to another. A more sophisticated analysis may be stated in terms of corrective justice: 'Corrective justice is the idea that liability rectifies the injustice inflicted by one person on another.' Vicarious liability breaks this causal link.

Understanding Vicarious Liability

For example, an employer can be held liable for the unlawful actions of an employee, such as harassment or discrimination in the workplace.

An employer might also be held liable if an employee operates equipment or machinery in a negligent or inappropriate way that results in damages to property or personal injury.

Kinds of Liability:

- 1. *Strict Liability. (With certain exception)***
- 2. *Absolute Liability. (Without exception)***

Strict Liability

The principle of strict liability evolved in the case of Rylands v Fletcher[1]. In the year 1868, the principle of strict liability states that any person who keeps hazardous substances on his premises will be held responsible if such substances escape the premises and causes any damage. Going into the facts of the case, F had a mill on his land, and to power the mill, F built a reservoir on his land. Due to some accident, the water from the reservoir flooded the coal mines owned by R. Subsequently, R filed a suit against F. The Court held that the defendant built the reservoir at his risk, and in course of it, if any accident happens then the defendant will be liable for the accident and escape of the material.

Absolute Liability

The rule of absolute liability, in simple words, can be defined as the rule of strict liability minus the exceptions. In India, the rule of absolute liability evolved in the case of MC Mehta v Union of India. This is one of the most landmark judgment which relates to the concept of absolute liability.

According to the rule of absolute liability, if any person is engaged in an inherently dangerous or hazardous activity, and if any harm is caused to any person due to any accident which occurred during carrying out such inherently dangerous and hazardous activity, then the person who is carrying out such activity will be held absolutely liable. The exception to the strict liability rule also wouldn't be considered. The rule laid down in the case of MC Mehta v UOI was also followed by the Supreme Court while deciding the case of Bhopal Gas Tragedy case. To ensure that victims of such accidents get quick relief through insurance, the Indian Legislature passed the Public Liability Insurance Act in the year 1991.

There are THREE relationships, which leads to vicarious liability.

1. ***Principal and agent.***
2. ***Partners.***
3. ***Master and servant.***

Course of Employment/ during the working hours:

A wrong falls within the course of employment of the servant if it is necessarily incidental to something which servant is employed to do.

- ✓ Authorize a driver to drive and he drives negligently.
- ✓ Authorize a servant to deal with client and he deals frequently.
- ✓ Sends a servant for purchasing and he utters defamatory words.

Principal and agent.

The principal-agent problem, in political science, supply chain management and economics (also known as agency dilemma or the agency problem) occurs when one person or entity (the "agent"), is able to make decisions and/or take actions on behalf of, or that impact, another person or entity: the "principal"

- Master Hire a taxi (Master not liable)

Board v/s London General Omni Bus & Co (1900)

- Drive a bus takes his dinner.
- During his temporary absence, the contractor drove in order to turn.
- An accident happened.
- Master not liable.

Essentials of Vicarious liability in Master-Servant Relationship

These essential conditions have to be followed for the vicarious liability of master to arise: –

1. The servant has committed an act which amounts to a tort.
2. Such a tortious act is committed by the servant during the course of his employment under the master.