



# Unit 5: Aspects of Contracts and Negligence

A.C. 4.2

# What is Vicarious Liability?

- ▶ Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment.
- ▶ An employer of an employee who injures someone through negligence while in the scope of employment (doing work for the employer) is vicariously liable for damages to the injured person
- ▶ <http://www.lawteacher.net/lecture-notes/tort-law/vicarious-liability-lecture.php>

# Liability

- ▶ The key question of any case of vicarious liability is whether the employee was acting in a personal capacity, or in the course of their employment.
  1. Was a tort committed?
  2. Was the tortfeasor an employee?
  3. Was the employee acting in the course of employment when the tort was committed?

Employers/masters will only be liable for the torts of their employees/servants. They will not usually be liable for the torts of their independent contractors

# Nature of the employment

**How would you differentiate between an employee and an independent contractor?**

One accepted view is that people who have a 'contract of service' (an employment contract) are employees, but people who have a 'contract for services' (a service contract) are independent contractors.

One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of the business; whereas, under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it. (Lord Denning in Stevenson, Jordan and Harrison Ltd v McDonald and Evans [1952] 1 TLR 101)

- ▶ If an employer lends an employee to another employer on a temporary basis, as a general rule it will be difficult for the first employer to shift responsibility to the temporary employer.
- ▶ If an employer expressly authorises an unlawful act he or she will be primarily liable.
- ▶ <http://study.com/academy/lesson/what-is-vicarious-liability-definition-and-examples.html>

# What is the rationale behind Vicarious liability?

1. By hiring employees, the employer creates the risk of harm to third parties by its employees' negligence. Where it benefits from the use of employees, the employer should also accept all the risk that comes with those employees.
2. it provides an incentive for employers to exercise care in the selection, training and supervision of all employees. A business should see such "in the course of employment" liability as one of the many overall costs of doing business. An employer can insure against the risk of injury at lower cost than the victim. The rule also instills a sense of social responsibility

3. Most employers have “deeper pockets” than their employees, which means that if the employee does not have sufficient resources to pay for the injury, the employer’s superior economic position will help ensure the injured party will be properly compensated. We note, however, in some cases even the pockets of employers and their insurers may not be deep enough to satisfy all claims. Some large scale incidents will drain and bankrupt a company.

<https://www.lawgazette.co.uk/legal-updates/vicarious-liability--the-two-stage-test/5040258.article>