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DECODING VICARIOUS LIABILITY IN TORTS

~ *Roshni Kumari*

ABSTRACT

Vicarious liability stands as a cornerstone doctrine in law of torts. It embodies the principle that an employer bears legal responsibility for wrongful acts committed by employees within the scope of employment. This paper examines the doctrine through its theoretical foundations grounded in the maxim respondeat superior. The practical implication of this is spread across three distinct heads of liability: wrongful acts, ratification, and legal relationships. It operates on the premise that those who benefit from another's work must equally bear the associated risks. This paper elucidates the essential conditions for imposing vicarious liability and analyses the recognised exceptions pertaining to independent contractors. This paper demonstrates how vicarious liability reconciles the competing tensions between personal culpability and organisational responsibility.

INTRODUCTION

In law of torts, liability depends on the defendant, who by act or omission, has breached a *legal duty* incumbent on him and violated a recognised *legal right* vested in the plaintiff and thereby caused the plaintiff *injury* of a foreseeable kind.¹ Generally, a person is liable for his own wrongful acts and one does not incur liability for the acts done by others.² This has been negated by the concept of vicarious liability. In simple terms, when one person authorised by another, commits an act or omits performance of an act in the course of performance of his duty, the liability of the person, who has authorised, arises from the wrongful act.³ This concept is a cornerstone of the law of torts. It arises most commonly in situations involving employer and

¹ R.K. Bangia, Law of Torts 49 (26th ed., Allahabad Law Agency 2021). (hereinafter as Bangia)

² *Id.* at 77.

³ *Id.*

employee. The doctrine of vicarious liability depends on the Latin maxim *respondeat superior* which means ‘let the master answer’. It means let the employer be liable for the wrongful act of the employee. It puts the employee in the same position as if he had done the act himself.⁴

WHY SHOULD SOMEONE BE RESPONSIBLE FOR ANOTHER’S WRONG?

The answer is based upon the maxim *respondeat superior* (let the master answer) as:

Firstly, when an employer hires an employee and assigns them tasks, they are, in a sense, using that person as an extension of themselves. **Secondly**, the employee acts on behalf of the employer, generates profits for them, and operates under their direction and control. **Thirdly**, it would be deeply unjust if the employer could enjoy all the benefits of the employee’s work while escaping liability for the harms caused during that work. **Lastly**, it considers that the employer is at the better position to meet the claim because of his larger pocket and also the ability to pass the burden of liability through insurance.⁵

Therefore, the law steps in and ensures that the person who benefits from the work also bears the risk that comes with it.

ESSENTIAL CONDITIONS FOR VICARIOUS LIABILITY

There are clear conditions which are to be satisfied before vicarious liability can be imposed:

Firstly, there must be existence of a *recognised legal relationship* between employer and employee.⁶ **Secondly**, the wrongful act must have been committed in the *course of employment* or *within the scope of authority*.⁷ If an employee goes on a “*frolic of his own*”, outside the scope of his duties, the employer cannot be held liable.⁸

If the wrongful act committed by employee occurs within the course of performance of his duty, then it would cause:

Firstly, the employee liable for performing the wrongful act.⁹ **Secondly**, the employer vicariously liable because of the recognised legal relationship between employer and employee.¹⁰ **Thirdly**, both the employer and employee to be considered as joint tortfeasors.¹¹ **Lastly**, their liability to be joint and several.¹²

⁴ *Id.* at 79.

⁵ *Id.*

⁶ *Id.* at 77.

⁷ *Id.*

⁸ Lexology, <https://www.lexology.com/library/detail.aspx?g=c24dbff1-5d9c-46d0-b070-b82444070c2f> (last visited on 30th May , 2026).

⁹ Bangia, *supra* note 1 , at 77.

¹⁰ *Id.* at 77.

¹¹ *Id.*

¹² *Id.*

In such a case, the plaintiff has the choice to either sue the employer, or the employee, or both of them.¹³

THE THREE HEADS OF VICARIOUS LIABILITY

Head I – Liability for Wrongful Act

An employer is liable for a wrongful act committed by his employee, provided the act was done within the course of employment.¹⁴ The authority to do an act may be express or implied. In the case of *Limpus v. London General Omnibus Co.*¹⁵, a bus driver, against express company orders raced a rival bus and caused an accident, a wrongful act in the course of employment, the court held the employer vicariously liable.

Head II – Liability by Ratification

It is based on the maxim *Omnis Ratihabitio Retrotrahitur et Mandato Priori Aequiparatur* which means every ratification relates back and is equivalent to a prior authority. When an employee commits a wrongful act without prior authority, the employer may with full knowledge, expressly or impliedly, subsequently ratify that act. After ratification, the act is deemed to have been authorised from the outset. This retrospective adoption of wrongful act done within the course of employment by ratification, makes the employer liable. It is important to note that ratification requires full knowledge of the wrongful act.¹⁶In the case *Bolton Partners v. Lamhert*¹⁷, an agent of Bolton Partners accepted an offer made by Lamhert, but without any authority from the company. Lamhert changed his mind and tried to withdraw his offer before the company officially approved it. Bolton Partners later approved the agent's acceptance. The court held that once the employer ratified, it made the contract binding from the start.

Head III – Liability by Relationship

One of the essentials for imposing vicarious liability is the presence of a recognised legal relationship. There are three kinds of relationship:

Firstly, the principal-agent relationship. In this, when an agent commits a tort in the course of employment as an agent, the liability of the principal arises for such a wrongful act. The

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Limpus v London General Omnibus Co* (1862) 1 H. & C. 526; (1862) 158 E.R. 993.

¹⁶ Adarsh Singh Thakur, Vicarious Liability by Authorisation and Ratification ,iPleaders (May 30 , 2026 , 20:33 PM), <https://blog.iplayers.in/ratification-of-vicarious-liability-under-tort-law/> .

¹⁷ *Bolton Partners v. Lamhert.*, [L.R.] 41 Ch. D. 295.

principal is vicariously liable because of the principal-agent relationship. The agent is liable because he has done a wrongful act. Both are joint tortfeasors and their liability is joint and several. It is based on the general principle “*Qui facit per alium facit per se*” which means that an act of the agent is the act of the principal.¹⁸ In *State Bank of India v. Shyama Devi*¹⁹, the husband of plaintiff gave some amount and cheques to a friend, who was employee in the defendant’s bank, for being deposited in the plaintiff’s account. No proper receipt for the deposits was obtained. The bank employee of the defendant’s bank had misappropriated the amount. The Supreme Court held that, employee when he committed fraud, was not acting within the scope of bank’s employment. Therefore, the defendant was not held liable. **Secondly**, the master-servant relationship. In this, when a servant commits a tort in the course of employment as a servant, the liability of the master arises for such a wrongful act. The master is vicariously liable because of the master-servant relationship. The servant is liable because he has done a wrongful act. Both are joint tortfeasors and their liability is joint and several.²⁰ **Lastly**, the partners in a firm. The relationship is similar to principal-agent relationship. The tort committed by any partner in the course of business of the firm, all the other partners would be liable for the act done by guilty partner.²¹ In section 26 of the Indian Partnership Act, 1932, it has been specified that firm and partners are liable for the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party or any penalty is incurred.²² In *Hamlyn v. Houston & Co.*,²³ one of the two partners of the defendant’s firm, acting within the course of employment as a partner, bribed the plaintiff’s clerk and induced him to make a breach of contract with his employer (plaintiff). It was held by the court that both the partners of the firm were held liable for the wrongful act committed by one of the partners.

EXCEPTIONS TO VICARIOUS LIABILITY

An employer is not liable for torts committed by an independent contractor. An independent contractor is engaged to produce a result, but the employer does not control the manner of performance.²⁴ The lack of control breaks the chain of vicarious liability. This is subject to some exceptions:

¹⁸ Bangia, supra note 1, at 78.

¹⁹ *State Bank of India v. Shyama Devi*, (1978) 3 SCC 399.

²⁰ Bangia, supra note 1, at 79.

²¹ *Id.*

²² Indian Partnership Act, 1932, § 26, No. 26, Acts of Parliament, 1932 (India).

²³ *Hamlyn v. Houston & Co.*, (1903) 1 K.B. 81.

²⁴ Bangia, supra note 1, at 82.

Firstly, if an employer authorises the doing of an illegal act or subsequently ratifies it, he can be made liable for such an act.²⁵ **Secondly**, an employer is liable for the wrongful act committed by the independent contractors in cases of strict liability.²⁶ **Thirdly**, when a tort results in the breach of a master's Common Law duties to his servant, he would be liable for the same and it is no defence that the master was acting through an independent contractor.²⁷ **Fourthly**, if the employer was negligent in selecting or supervising an independent contractor, the employer would be directly liable for the wrongful act of employee. **Lastly**, if negligence is in the wrongful act which has been contracted for, the employer is held liable.

CONCLUSION

Vicarious liability is a way to ensure that responsibility follows benefit. It rests on the principle's foundation: those who profit from another's work must equally bear the risks that accompany it. What makes vicarious liability compelling is the tension it holds together. On one hand, it imposes liability on a person who may not have personally committed any wrong. On the other, it refuses to let employers hide behind the veil of delegation. The law draws a careful line, liability attaches when the wrongful act falls within the course of employment, but retreats when an employee ventures on a "frolic of his own." This balance reflects a considered judgment about where the risk of harm truly belongs.

The three heads of liability, wrongful act, ratification, and relationship, offer a comprehensive framework that adapts to the varied textures of modern working arrangements. Whether it is the principal directing an agent, the master instructing a servant, or partners sharing the fortunes of a firm, the law ensures that no party can quietly benefit from a relationship while disavowing its consequences.

Even the exception for independent contractors, upon closer examination, is riddled with its own exceptions, a reminder that rigid rules seldom serve justice in a world defined by complexity.

Ultimately, vicarious liability endures because fairness demands it. So long as one person acts in the name of another, the law will ensure that accountability does not disappear in the space between them.

²⁵ *Maganbhai v. Ishwarbhai*, A.I.R. 1948 Guj. 69.

²⁶ *Ryland v. Fletcher*, (1868) L.R. 3 H.L. 330.

²⁷ *Wilsons & Clyde Coal Co. v. English*, (1938) A.C. 57.