

VICARIOUS LIABILITY

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Vicarious Liability : Origin and Meaning

- This concept makes one man liable for the acts of another because of certain relationships like Master and Servant, Parent and children etc. Originally it came from "**Qui facit per alium facit per se**" (He who does an act through the instrumentality of another does it himself). This rule was inadequate to explain the reason. Later the "General command theory" was put forward and then "particular command theory". None of these was satisfactory and the modern theory is that the master is liable because he is a substantial fellow or authority. As Winfield points out this theory is based on "Social convenience and rough justice".

Servant' and independent contractor distinguished

- Servant is a person who works according to the instructions of the master. The master can, not only order him to do an act but can also control how it should be done. The servant works under the thumb of the master. The master has full powers to control the acts of the servant. He has the powers of removal also. He is different from an independent contractor who undertakes to do a piece of job according to the requirements of the employer. The independent contractor is not under the control of employer. Hence, the employer is not liable for the acts of the independent contractor.

Liability of the Master

- The master is liable for the acts of the servant, if the acts are done within the course of his employment otherwise, he will not be liable.
 - "Within the course of employment" means :
 - i) Doing an authorised act
 - (ii) Doing an authorised act in an unauthorised manner and
 - (iii) Doing acts which are incidental thereto.
- The act of the servant must fall into any one of the above, then only the master becomes liable. Broadly speaking the master is liable for carelessness, mistake and willful wrong doing of the servant. Sometimes he is liable for the criminal acts of the servant.

1. Carelessness of the Servant

- This is the most common kind of wrong which is generally due to the negligence of the servant. The intention of the servant is not material. If the servant is acting in the course of his employment, then the master becomes liable, but if the servant is on a frolic of his own then the master is not liable.
- **Century Insurance Co. V. Northern Ireland Road Transport**
 - In this case, the driver of a petrol lorry was transferring petrol from the lorry to the tank. He negligently struck a match to light a cigarette and threw it on the floor. This caused a conflagration and an explosion. The property of P was damaged. The defendant master was held liable for the careless act of the driver, as the act had been done in the course of his employment. "Lighting a cigarette was an act of the servant for his comfort and convenience". The act was innocent, but was a negligent act of the servant, and hence the master was liable.

2. Mistake of the Servant

Here the servant is a mis-guided enthusiast. The leading case is **Bayley V. Manchester Railway**. The porter of the defendant Railway Co. violently pulled out from a train P who had a ticket to go to some destination. In fact, the porter had mistakenly taken P to be going in a wrong train. P sued and the Railway authority (master) was held liable.

3. Wilful wrong of the servant 1

Wilful wrong of the servant: Here there are two rules.

i) The act of servant is still in the course of employment even if it is forbidden by the master.

ii) It is not outside his employment if he intends to benefit himself, though not his master.

3. Wilful wrong of the servant 2

**Limpus V. London
General Omni -Bus
Company :**

- The driver, had printed instructions not to race with or obstruct other buses. The driver did not observe this and caused a collision. His master was held liable because this was an unauthorised manner of doing an authorised act.

**The Beard V. London
Omni-Bus.**

- the driver brought the bus to a terminus and went out for breakfast. In the meanwhile the conductor drove the bus for the next journey. In so doing he dashed against and caused injury to P. P sued. It was held that the master was not liable as the conductor was not in the course of employment when he was driving the bus.