# Vicarious Liability

Vicarious liability imposes liability upon a party for a wrong committed by another, despite the fact that the party who is vicariously liable may not have been at fault.

The most common relationship to give rise to vicarious liability is employer and employee: *Scott v Davis*.

Vicarious liability is a strict liability.

Three elements must be established:

1. Employer and employee
   1. Control test: *Zuijis v Wirth Brothers Pty Ltd* (traditional)
   2. Organisation test: *Albrighton v Royal Prince Albert Hospital* (traditional)
   3. Multi-facet test: *Stevens v Brodribb Sawmilling Co Pty Ltd*  (modern)
      1. Degree of control
      2. Payment
      3. Holidays
      4. Tax
      5. Equipment
      6. Delegation of work
2. Tort committed
   1. Negligence
   2. Trespass
   3. Defamation
   4. Nuisance
3. Done in the course of employment
   1. Question of fact (wrongful mode): *Bugge v Brown*
   2. Frolic doctrine: *Storey v Ashton*
   3. Express prohibition: *Koorang Investments v Richardson and Wrench*
   4. Not in the employer’s interest: *Rose v Plenty*
   5. Intentional: *Lepore*

# Non-delegable Duties

A non-delegable duty is imposed on a defendant who has undertaken to control people or the property of another who is vulnerable. Non-delegable refers to the inability of the defendant to delegate liability, not the actual task.

There is not a strict liability for non-delegable duty of care, it is based on reasonable care: *Lepore*

Non-delegable duty of care applies only to negligence actions: *Lepore.*

## Categories with Non-delegable Duties

**Employers to employees**: *Kondis v State Transport Authority*.

**School authorities to students**: *Commonwealth v Introvigne*

**Hospitals to patients**: *Samios v Repatriation Commission*

**Owner to occupiers of premises**: *Burnie Port Authority v General Jones Pty Ltd*

**Not:**

Road authorities to road users: *Leichhardt*

Landlord to tenant:  *Northern Sandblasting Pty Ltd v Harris*

**Categories are not closed, but there is a reluctance to extend categories: *Leichhardt***

General test from *Kondis*:

* Control
* Vulnerability

# VL & NDD Answer Template

1. Parties
2. Jurisdiction
3. Time limitation on actions
4. Has there been a breach of a personal duty of care?
5. Is vicarious liability relevant?
   1. Employer / employee
   2. Tort committed
   3. In the course of employment
6. Is there a non-delegable duty?
   1. Recognised category?
   2. If not, will it be recognised? (general test from *Kondis*)
7. If there is a non-delegable duty, was it (test from *Lepore*):
   1. Duty to ensure reasonable care taken
   2. Can’t be delegated
8. Has there been a breach of duty?
9. Damages
10. Defences
11. Remedies

# Novel Duties of Care Answer Template

1. Parties
2. Jurisdiction
3. Time limitation on actions
4. Onus of proof
5. Identify damage suffered by each party and classify it:
   1. Pure psychiatric injury
   2. Consequential psychiatric injury
   3. Grief
6. Is the harm actionable?
7. Work through each person’s claim to determine if there is a duty of care owed?
   1. Pure psychiatric injury
      1. Reasonable foreseeability
         1. Direct perception
         2. Normal fortitude
         3. Sudden shock
      2. Recognisable psychiatric injury
      3. Balance factors
         1. Nature of relationships
         2. Control and vulnerability
         3. Coherency of the law
         4. Indeterminacy
   2. Consequential psychiatric injury
      1. Duty of care for personal injury
8. Breach
9. Damage
10. Defences
11. Remedies

# Duty of Care owed by Public Authorities

# Negligent/Fraudulent Misrepresentation Pure Economic Loss

# Other Negligently Inflicted Pure Economic Loss

# Breach of Statutory Duty