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# DOCTRINE OF VICARIOUS LIABILITY



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## **EVOLUTION:**

During the early period of the Anglo-Norman period, when the act is done with the consent or command of the master the liability of the wrongs of the servant is changed to the liability of the master. It is generally applicable to civil cases and exceptionally it is applicable to criminal cases. Under English law, the state cannot be liable to the wrong committed by its servant. It is based on the principle of Rex nonpotest-peccare which means the king cannot do any wrong.

## **DOCTRINE OF VICARIOUS LIABILITY:**

A person is generally liable for his own acts and one cannot be held liable for the act of other persons. Under this doctrine, the person is liable to the actions of other person when there is the existence of a relationship between the two. When the tort is committed by the person on command or consent of the other person during the course of employment and there should be the existence of the relationship between the two. In such a case, the person is vicariously liable for the act of the other person. It is based on the general principle "Qui facit per alium facit per se" which means the act of the agent is the act of the principal.

## **ESSENTIALS:**

- The act must be committed by the consent or command of the other person.
- The act must be committed during the course of employment.
- There must be the existence of a relationship between the two.



## RELATIONSHIPS WHERE VICARIOUS LIABILITY ARISES:

- **Principal And Agent**

When the principal authorizes the agent to commit a tort, the principal is vicariously liable for the act committed by the agent. All parties are jointly and severally liable.

- **Partners**

The relationship between the partners is similar to the principal and agent relationship. If the tort is committed by the partner during the ordinary course of business of the firm, all the partners of the firm are liable for the act.

- **Company And Its Directors**

When the director acts bonafide, the company is liable for the act of the directors. A company is held vicariously liable for the tortious act of the directors.

- **Master And Servant**

If the tort is committed by the servant in the course of his employment the master is liable for the act committed by its servant. the doctrine respondent superior arises which means let the principal be liable and it puts the master as he has done the act personally.

- **Owner And Independent Contractor**

Though there is no direct relationship between the two parties and the principal employer has no direct control over the employee employed by the independent labors, the principal employer is strictly liable to the employee if the tort is committed by the servant and committed at the course of employment.

## VICARIOUS LIABILITY OF THE STATE:

The vicarious liability of the state is dealt in Article 300(1) of the Constitution of India which states that the Government of India may sue and sued by the name of Union of India and the Government of a State may sue and sued by the name of the State



and may subject be made by Act of Parliament or of the Legislature of such State enacted by virtue the of the power conferred by this constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provisions or the corresponding Indian States might have sued or been sued conferred by this constitution.

The liability of the tort is governed by the principle of public law inherited from British Common Law and the Constitution. The vicarious liability of the state is governed by let the principal be liable when the act is done by the person authorized by him and socialization of compensation.

## CASE LAWS

### **Case 1.**

#### ***Rylands V. Fletcher, (1868) L.R3 H.L.330.***

Held - The employer could not escape the liability for the damage caused to the plaintiff, when the escape of water from a reservoir for which was constructed by the defendant from an independent contractor, flooded the plaintiff's coalmine.

### **Case 2.**

#### ***State Bank of India V. Shyama Devi, A.I.R. 1978 S.C 1263.***

Held - If the customer of the bank gives some amount or cheque to the bank employee in his capacity as a friend for being deposited in the account, without obtaining any receipt for the same, the bank employee is not deemed to be acting within the scope of his employment. If such an employee misappropriates the amount or proceeds of the cheque for his personal gain, the bank cannot be made liable for the same, because of the act of the servant. In this case, the act has been done outside the course of employment.



### **Case 3.**

#### ***Neha Himatsingka V. State Of Assam, 2020 SCC Online Gau 3285 Section 141***

Held - The NI Act has envisaged vicarious liability on the part of the Directors or other persons, mentioned therein, of the company who was in charge of and responsible for the conduct of the affairs of the company at the time the commission of the offence. A person is vicariously liable for commission of the offence under Section 138 of the NI Act by the company only in the event when the conditions laid down in Sec.141 of the NI Act is satisfied.

### **Case 4.**

#### ***Vinubhai Ranchhodhbhai Patel V. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743***

Held - The responsibility of the prosecution and/or of the Court (in a case like the one at hand where large numbers of people (5 or more) are collectively accused to have committed various offences and subjected to trial) in examining whether some of the members of such group are vicariously liable for some offence committed by some of the other members of such group requires an analysis. Such analysis has two components. They are amplitude and the vicarious liability created under Sec.149, and the facts which are required to be proved to hold an accused vicariously liable for an offence.

### **Case 5.**

#### ***Sushil Sethi V. The State Of Arunachal Pradesh, (2020) 3 SCC 240.***

Held - The absence of a company being arrayed as a party, no proceedings can be initiated against such a Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.



#### **Case 6.**

##### ***Indofil Chemical Company V. State Of U.P., 2019 SCC ONLINE ALL 4548.***

Held - Company was indulged in the manufacturing of sub-standard insecticide and has committed an offence under Section 29(1)(a) of Act, 1968. Complainant has not impleaded 'Company' at all and only Managing Director has been implicated though the manufacturer is the Company and if no offence is said to have been committed by Company, vicarious liability cannot be fastened upon Managing Director of the Company, hence, prosecution of only Managing Director of Company is not maintainable.

#### **Case 7.**

##### ***Mr. Om Prakash Bhatt V. State of Maharashtra, 2019 SCC OnLine Bom 3711.***

Held - A person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company. But, even in a case falling under Section 406 of the IPC vicarious liability has not been extendable to the directors or officers of the company.

#### **Case 8.**

##### ***Mohan Dai Oswal Cancer Treatment and Research Foundation V. Prashant Sareen, 2019 SCC OnLine NCDRC 75.***

Held - A doctor is vicariously liable for the negligence committed by the members of his team which was assisting in the treatment, held the Consumer dispute Redressal Commission while dismissing an appeal.

#### **Case 9.**

##### ***Harshad Manubhai Malavaiya V. State of Gujarat, 2017 SCC OnLine Guj 372.***

Held - The normal rule in the cases involving criminal liability is against vicarious liability. No one is to be held criminally liable for an act of another and the same is subject to certain exceptions on account of specific provision being made in statutes extending



liability to others. The liability under Sec.141 of the NI Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself.

### **Case 10.**

#### ***Shanthi Papli V. Bala Sing Samuel, 2017 SCC ONLINE MAD 24447.***

Held - Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. Therefore, not sufficient to make a bald cursory statement in a complaint that the Director is in charge of and responsible to the company for the conduct of the business of the company beyond the role of the Director. But the complaint should contain how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is the strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

#### **DISCLAIMER**

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