



Question

2

Law 087

Vicarious Liability in Tort

Question:

Describe the concept of vicarious liability and explain the rationale for this concept. Illustrate your answer with 2 decided cases.

Circumstances

➤ Consider the **circumstances** in which **one person** will be **liable for** the **torts of another**, even though he (the person liable) is **not a party** to the tort or did not himself commit the tort in question.

➤ **Example;**

A is liable to C for damage or injury suffered by C due to the tort committed by B



Relationship

- The relationship between A and B can be between;
- ▶ **Master** and servant,
- ▶ **Employer** and employee,
- ▶ **Principal** and **agent**, OR
- ▶ **Parents** and child



Who Is A Servant?





Independent Contractor





Requirements

- ▶ **Wrongful/Tortious Act**;
- ▶ **Special relationship** between **person alleged** to be vicariously liable and **the tortfeasor** that is **recognized by law**;
- ▶ **Tort committed** within the **course employment**



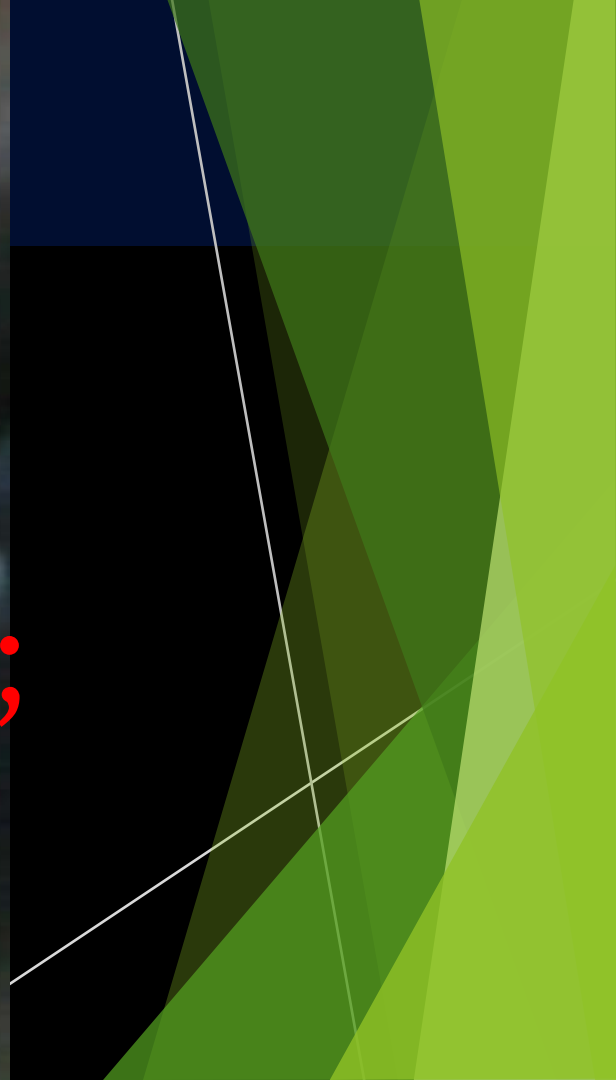
During the course of employment

Liability lies in respect of;

- ▶ It is whether **expressly** or **impliedly allowed** by **employer**
- ▶ **Employee** does something **authorized** in **unauthorized manner**
- ▶ Employee does something **closely related** to what he is **employed to do** in the **course** of doing **the job**.



For Example;



Justification/Rationale of this concept

The rationale are;

- The **master** must have been **negligent in**;
 - a) **Employing** negligent servant
 - b) Failing to **control** his servant
- **Master benefits** from employee's work, so he should **bear the responsibility** for tortious act by employee
- Master have **greater fund** to compensate third party
- The employer usually not individual but **enterprise** so they can spread the loss, plus, they have **insurance coverage**

Cases

Century Insurance Co. v. Northern Ireland Road Transport Board (1942)

The driver of a petrol lorry was engaged in **transferring petrol into an underground storage tank**. The driver struck a match to light a cigarette and this caused an explosion resulting in great damage.

Held:

That the **driver was negligent** in carrying out his **authorized work**, and his employer was therefore liable.

Cases

Limpus v. London General Omnibus Co. (1862)

A bus driver racing to a stop to collect passengers deliberately obstructed the driver of a bus of a rival company, overturning the latter's vehicle. The bus driver had been given strict instruction against obstructing other buses.

Held:

That defendants (LGOC) were liable. The driver was acting within the course of his employment at that time. It was immaterial whether his act is forbidden.

Cases

Beard v. London General Omnibus Co. (1900)

A **bus conductor** drove a bus in London and **negligently collided** with plaintiff. The **conductor** was not authorized to drive the bus.

Held:

That the **servant** was **not acting** within the **scope** of **employment**. Accordingly the claim against the employer **failed**.



So what is joint
tortfeasor?

Cases

Lister v. Ramford Ice and Cold Storage Co. Ltd. (1957)

Lister, a **lorry driver** employed by the company reversed his lorry negligently and **knocked down** his **father** who was also employed by the company. The **father** recovered **damages** from the company which was held for vicariously liable for the **torts of** its servant, **Lister**. The insurers for the company **paid** the amount and thereupon **sued Lister**, in the name of the company, for an **indemnity**

Held; *inter alia*:

That **Lister** had **broken his obligation** to the company to take reasonable care in the performance of his **duties** and the **company** could **recover** on an indemnity