Dr. Vaishali V.Jadhav[1]

Principle of Vicarious Liability- Nature, Scope and Justification

1. State and explain the principles governing Vicarious Liability with the help of recent judgments.
2. Discuss briefly vicarious liability of master liable for the tort committed by his servant.

Generally, a person is liable for his own wrongful acts and one does not incur any liability for the acts done by others. Thus, he who commits a wrong is said to be liable or responsible for it. Liability or responsibility is the bond of necessity that exists between the wrong doer and the remedy of the wrong

In certain cases, however, one person may be held vicariously liable (A), for the act of another person (B) in certain situations. Thus, there are exceptional cases in which the law imposes vicarious liability on one person for the acts of other.

Meaning and Definition:

The doctrine of 'vicarious liability' is generally termed as 'liability for the acts of others'.

Vicarious' is derived from Latin term 'vice' i.e., in the place of. By this phrase we mean the liability of a person for the tort of another in which he had no part. It may arise under the common law or under the statute.

The term is claimed to be invented by the English jurist Frederick Pollock in the 1880s.

Vicarious can be defined as 'a concept used to impose strict liability on a person who does not have primary liability, that is, not at fault'. Vicarious liability is not a tort. Literally, it means that one person is liable for the torts of another. The employer is liable for the torts of his employee.

[1] Associate Professor, Yashwantrao Chavan Law College, Pune. (Email Id. vaishalims.jadhav@gmail.com)

"Liability based not on a person's own wrongdoing, but rather on that person's relationship to the wrongdoer".

This liability arises only when the employee is acting in the course of his or her employment.

Vicarious liability/ Liability for another's wrongful acts or omissions may arise in following three ways:

A. Liability by ratification, i.e., where the defendant has authorized or ratified subsequently the particular wrongful act or omission having full knowledge of its tortuous character whether it be to his detriment or advantage.

Such an act becomes the act of the principal in the same way as if it were done with his previous authority.

It is explained through maxim *"Omnis ratihabitio retrotrahitur, et mandato priori aequiparatur"* which means that - every consent given to what has already been done, has a retrospective effect and equals a command.

Thus ratification of an act relates back and thereupon becomes equivalent to previous request.

B. Liability arising out of a special relationship, i.e., where the defendant stands to the wrongdoer in a relationship which makes him answerable for wrongs committed by the latter, though not specially authorized, e.g., master-servant relationship.

So the constituents of vicarious liability in special relationship are:

(1) There must be a relationship of a certain kind.

(2) The wrongful act must be related to the relationship in a certain way.

(3) The wrong has been done within the course of employment.

C. Liability by abetment, i.e., where the defendant has induced another to commit a wrong.

A person who procures the act of another is legally responsible for its consequences-

(1) if he knowingly & for his own ends induces another person and

(2) when the act complained of is within the right of the immediate actor i.e. the person actually doing it but is detrimental to a third party & the inducer procures his object by the use of illegal means directed against that third party.

Basis/Principles of Vicarious liability:

1. ***Qui facit per alium facit per se***

   Any person who authorizes or procures a tort to be committed by another is responsible for that tort as if he had committed it himself. The maxim underlying the doctrine is '*Qui facit per alium facit per se*' i.e., he who does an act through another, does it himself. In such case, the person authorizing is liable, not only for the tort actual authorized, but also for its direct consequences.

2. ***Respondeat Superior***

   The master is answerable for every such wrong of the servant or agent as is committed in the course of the service, though no express command or privity of the master is proved.

   The maxim means let the superior/principal be liable/responsible. The rule has its origin in the legal presumption that all acts done by the servant in and about his master's business is done by his master's express or implied authority, and is in truth the acts of the master.

   In an era of commerce and industry, the injured party/the innocent victim has been conferred a right to take an action against a financially responsible defendant. Thus, by imposing a liability on a superior person, the injured party would get a appropriate remedy.

3. **Social Policy Considerations/ Social Expediency Rule**

   The principle of loss distribution is perhaps the most acceptable justification of vicarious liability discussed today.

   The principle has found a succinct exposition by **P.S.Atiyah**. He explains: "In the great majority of cases an employer who has to pay damages for the torts of his servants does not in fact have to meet these liabilities out of his own pocket. The cost of the liabilities is distributed over a large section of the community, and spread over some time. This occurs partly because of the practice of insurance, and partly because most employers are anyhow not individuals but corporations. Where the employer insures against his legal liabilities he will charge the cost of insurance to the goods or services he produces. In general this cost will be passed on by the employer in the form of higher prices to the consumer. The consumer himself may also be able to play his part in spreading the cost in his turn, because not all consumers are themselves individuals.... In this way the cost of

tort liabilities is spread very thinly over a substantial part of the public. It is, moreover, spread over a period of time".

Liability arising out of a special relationship:

Vicarious liability may arise where the doer of the act and the person sought to be held liable therefore are related to each other as:

I. Master and Servant
II. Master/Owner/Employer and Independent Contractor
III. Principal and Agent
IV. Company and Directors
V. Firm and Partners
VI. Guardian and Ward
VII. The above six relations are the exceptions to the general rule that aman is liable only for his own acts.

I. Master and Servant

If a servant does a wrongful act in the course of his employment, the master is liable for it. The servant is also liable.

Several reasons have been advanced as a justification for the imposition of vicarious liability:

(1) The master has the 'deepest pockets'. The wealth of a defendant, or the fact that he has access to resources via insurance, has in some cases had an unconscious influence on the development of legal principles.

(2) Vicarious liability encourages accident prevention by giving an employer a financial interest in encouraging his employees to take care for the safety of others.

(3) As the employer makes a profit from the activities of his employees, he should also bear any losses that those activities cause.

In the words of **Lord Chelmsford**: "It has long been established by law that a master is liable to third persons for any injury or damage done through the negligence or unskilfulness of a servant acting in his master's employ. The reason of this is, that every act which is done by servant in the course of his duty is regarded as done by his master's order, and, consequently it is the same as if it were master's own act".

Who is a master?

"A master is the person who is legally entitled to give such orders and to have them obeyed."

"Master literally means one who employs another subject to certain terms and conditions to work under his lawful orders and supervision."

The relation of master and servant exists where the employer can not only direct what work the servant is to do, but also control the manner of doing such work. A son, for example is not te servant of his father.

Hewitt *v*. Bonvin [1940] 1 K.B. 188, C.A.

The son was permitted by mother who had authority to grant it, the permission to use the car. The son wanted the car for his own purpose, in order to drive his two girl friends to their home. Neither the father nor the mother knew the girls. On the way back, due to the negligent driving of the son, the car met with an accident & a friend who had accompanied the party was killed. In an action against the father it was held that the father was not responsible for the son's negligence driving as the son was not his servant or agent at the time, or for his father's purposes

For the liability of the master to arise, for the torts committed by his servant the following two essentials are to be present:

1. The tort is committed by the servant.
2. The servant committed the tort in the **'course of his employment'**.

1. The tort is committed by the 'Servant'

Who is a servant?

"A servant is a person employed by another to do work under the directions and control of his master."

"A servant is one who voluntarily agrees whether for wages or not, to subject himself during the period of service to the lawful orders and directions of another, in respect of work to be done by him."

Master/Owner/Employer and Independent Contractor

As a general rule, master is liable for the tort of his servant but he is not liable for the tort of an independent contractor.

Difference between Servant and Independent Contractor:

A servant and independent contractor are both employed to do some work of the employer but there is a difference in the legal relationship which the employer has with them.

1. A servant is engaged under a contract of services whereas an independent contractor is engaged under a contract for services.

   "An independent contractor is one who undertakes to produce a given result without being, in any way, controlled as to the method by which he attains that result".

   The liability of the master/employer for the wrongs committed by his servant/employee is more onerous than his liability in respect of wrongs committed by an independent contractor. If a servant does a wrongful act in the course of his employment, the master is liable for it. The servant, of course, is also liable. The wrongful act of the servant is deemed to be the act of the master as well.

   Baxi Amrik Singh *v.* The Union of India, (1973)

   The wrongful act of servant is deemed to be the act of the master as well.

   "The doctrine of liability of the master for act of his servant is based on the maxim *respondent superior,* which means 'let the principal be liable ' and puts the master in same position as if he had done the act himself. It also derives validity from the maxim *qui facit per alium facit per se*, which means 'he who does an act through another is deemed in law to do it himself'." Since for the wrong done by the servant, the master can also be made liable vicariously, the plaintiff has a choice to bring an action against either or both of them. Their liability is joint and several as they are considered to be joint tortfeasors. The reason for the maxim '*respondeat superior'* seems to be the better position of the master to meet the claim because of his larger pocket and also ability to pass on the burden of liability through insurance. The liability arises even though the servant acted against the express instruction, and for no benefit of his master."

2. A servant is an **agent** who **is subject to the control and supervision of his employer** regarding the manner in which the work is to be done.

An independent contractor **is not subject to any such control**. He undertakes to do certain work and regarding the manner in which the work is to be done. He is his own master and exercises his own **discretion**. Thus an independent contractor is one "who undertakes to produce a given result, but so that in the actual exclusion of the work, he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand."

Example: My car driver is my servant. If he negligently knocks down X, I will be liable for that. But if a servant hires a taxi for going to railway station and a taxi driver negligently hits X, I will not be liable towards X because the driver is not my servant but only an independent contractor. The taxi driver alone will be liable for that.

In **Morgan *v.* Incorporated Central Council 1936 1 ALL ER 404,** it was held that defendant was not liable when plaintiff got injured in his premises by falling down from an open lift because that work was under control of the independent contractor & it was his duty to keep lift safe.

B. Govindarajulu *v.* G. Madaliar, AIR 1966 Mad. 332

In this case a motor lorry was entrusted by its owner for repairs, while an employee of the repair workshop drove it and met with an accident. The Madras H.C. held that the owner of the lorry was not liable vicariously, as the owner of the workshop was an independent contractor and not the servant of the lorry owner.

Devinder Singh *v.* Mangal Singh, AIR 1981 P & H 53

Cyclist got injured by an employee of the repair workshop.

Sr. No.	Servant	Independent Contractor
1.	Servants acts under the control and supervision of the master	Independent Contractor acts independently
2.	Contract of services	Contract for services
3.	Employer–Employee relationship exists between the Master and Servant	Contractual relationship exists between the Employer (Master) and Independent Contractor
4.	Master is liable for the torts committed by his servant	Independent Contractor is liable for the torts committed by his servants.

5.	Servant can be suspended or terminated by his master	Independent Contractor cannot be suspended or terminated by the Employer. However, the employer can repudiate the contract in case of violation of the terms of contract by the Independent Contractor

Exception to rule of non-liability:

Employers are responsible for acts of independent contractors in case of "non-delegable duties."

But there are some important exceptions to this rule in which independent contractor will not be held liable:-

i. Where the thing contracted to be done is itself **unlawful/illegal act**.

If the thing contracted to be done is itself unlawful, the employer is liable for the wrog-doing authorized by him.

Ellis *v.* Shieffield Gas Consumers Co. (1853)

A Gas Co. was held liable for the negligence or its contractor employed to lay down pepes in the streets, because the Gas Co. was not authorized to interfere with the street.

ii. Where employer **retains his control** over the contractor & personally interferes in his work.

Burgess *v.* Grey (1845) –Gravel case

iii. Where there is an **implied warranty** by the employer, which he'll be liable for the work done by independent contractor.

iv. Where employer knows the facts that **independent contractor is incompetent** to do that work.

v. Where **legal or statutory duty** is imposed on the employer, he is liable for any injury that arises to others in consequence of its having been negligently performed by the contractor.

vi. Where the work contracted to be done is form its nature likely to cause **danger to others**, in such cases there is a duty on the part of the employer to take all reasonable precautions against such danger, and if the contractor does not take these precautions.

vii. **Strict Liability**

Traditional View: Test of Control

A master is one who not only prescribes to the workmen the end of his work but directs or at any moments may direct the means also; retains the power of controlling the work.

The traditional mode of stating the distinction is that in case of servant, the employer in addition to directing what work the servant is to do, can also give directions to control the manner of doing the work; but in case of an independent contractor, the employer can only direct what work is to be done but he cannot control the manner of doing work.

In Short V.J. & W. Henderson Ltd. LORD THANKERTON pointed out four indicia of a contract of service:

(1) Master's power of selection of his servant;

(2) Payment of wages or other remunerations;

(3) Master's right to control the method of doing the work, and

(4) Master's right of suspension or dismissal.

The important characteristic according to this analysis is the **master's power of control** for other indicia may also be found in a contract for services.

Modern View: Control Test Not Exclusive

A. The Control Test

The test of control as traditionally formulated was based upon the social conditions of an earlier age and "was well suited to govern relationship like those between a farmer and an agricultural labourer (prior to agriculture mechanization), a householder and a domestic servant and even a factory owner and an unskilled hand".

The control test bricks down when applied to skill and particularly professional work and, therefore, in recent years it has not been treated as an and, therefore, in recent years it has not been treated as an exclusive test.

The Supreme Court in **Dharangadhara Chemical Works Ltd. *v.* State of Saurashtra, AIR 1957 SC 264** laid down that the existence of the right in the master to supervise and control the execution of the work done by the servant is a prima facie test, that the nature of control may vary from business to business and is by its nature incapable of any precise definition, that it is not necessary that the employer should be proved to have exercised control over the work of the employee, that the test of control is not of universal application and that there are many contracts in which the master could not control the manner in which work was done. The English Courts have also recognized that the control test is no longer decisive.

B. The nature of the employment test

One accepted view is that people who have a contract of service (an employment contract) are employees, but people who have a contract for services (a service contract) are independent contractors.

In **Ready Mixed Concrete *v.* Minister of Pensions and National Insurance**, **[1968] 2 QB 497** MACKEMA J., said that three conditions are to be fulfilled for contract of service:

(1) Servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some service for his master;

(2) He agrees expressly or impliedly that in the performance of that service he will be subject to others control in a sufficient degree to make that other master;

(3) The other provisions of the contract are consistent with its being a contract of service.

C. The 'Integral Part of the Business' Test

LORD DENNING, as LORD JUSTICE, in **Stevenson Jordan and Harrison Ltd. *v.* Macdonald and Evens**, **[1952]** referred to the distinction between a **contract of service and a contract for services** as a "troublesome question" and observed: "it is almost impossible to give a precise definition of the distinction. It is often easy to recognize a contract of service when you see it, but difficult to say wherein the difference lies. A ship's master, a chauffeur, and a reporter on the staff of a newspaper are all employed under a contract of service; but a ship's pilot, a taxi-man, and a newspaper contributor are employed under a contract for services. One feature which seems to run through the instances is that, under a contract of service, a man is employed as a part of the business; and his work is done as an **integral part of the business**; whereas under a contract for services, his work, although done for the business, is not integrated into it but it is only accessory to it."

D. Allocation of Financial Risk/ The Economic Reality Test/ Multiple Test

In **Montreal *v.* Montreal Locomotive Works Ltd. [1944]** LORD WRIGHT said that in the more complex condition of modern industry, more complicated test have often to be applied. According to him, it would be more appropriate to apply a complex test involving

(1) Control;

(2) Ownership of the tools;

(3) Chance of profit;

(4) Risk of loss; and Control in itself is not always conclusive.

The control will no doubt will always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors which may be of importance are:

(1) Whether the man performing the services provides his own equipment;

(2) Whether the person hires his own helpers;

(3) What degree of financial risk he takes;

(4) What degree of responsibility for investment and management he has; and

(5) Whether and how far he has an opportunity of profiting from sound management in the performance of his task.

2. The servant committed the tort <u>'in the course of his employment'</u>

A master/employer is not responsible for all of the acts one of their servants/employees carries out. Instead, for vicarious liability to be possible, the tortuous act must occur in the course of employment.

The liability of a master is not limited only to the acts which he expressly authorizes to be done but he is liable for such torts also which are committed by the servant in the course of employment.

Roberts *v*. Shanks, (1924)

Defendant on alighting from his car ordered his chauffeur to take the car directly to the garage. The chauffeur, however drove the car to his own residence, took his meal, and whilst driving the car to the garage, negligently drove it into the plaintiff's car, and caused damage to it. The Court held the defendant liable in damages, for, at the time of the accident, the chauffeur was acting in the course of his employment.

According to **Winfield**, a tort falls within the course of employment under the following circumstances:

a. Authorized acts and their natural consequences
b. Unauthorized modes of doing authorized acts and
c. Incidental acts

a. Authorized acts and their natural consequences:

When the master authorizes the servant to do an act and the servant performs it accordingly i.e., in an authorized manner and if a tort is committed, the master is liable.

Gregory *v.* Piper (1829) - Rubbish Case

Facts: Gregory (G) owned a pub called the Rising Sun with a stable-yard in the back which could be accessed by a back gate through Old King's Yard. Piper (P) owned the property surrounding Old King's Yard and disputed G's right to pass through the yard to his stable. P –master, employed a labourer (S) - servant, to lay down a quantity of rubbish, consisting of bricks, mortar, stones, and dirt, near G's stable-yard, in order to obstruct the way. (P) instructed his servant that the rubbish should not touch the wall of the plaintiff. The servant did accordingly. However, the part of the rubbish rolled against G's wall and gates, and P refused to remove it. G raised an action of trespass against P

Held: A master is liable in trespass for any act done by his servant in the course of executing his orders with ordinary care. P was therefore liable for trespass as it was a probable and foreseeable result of the S‟s act which P had instructed S to do. The trespass was a necessary or natural consequence of the act ordered to be done by P, therefore making P as the employer liable.

b. Unauthorized modes of doing authorized acts

Situations will often arise in which the servant/employee has undertaking an authorized act, but does so in an unauthorized manner, still the master/employer is liable.

Instances coming under the unauthorized mode of doing:

i. Carelessness of servant:

If the servant acts carelessly in performing the work and commits a tort thereby, the master is liable.

Century Insurance *v.* NI Road Transport Board [1942] AC 509

A transport undertaking had a contract with a petroleum company for the carriage and delivery of their petrol in lorries, agreeing to insure the lorries against any spillage or fire of the petroleum. The lorries were insured by an insurance company against liability to third parties. While one of the lorries was delivering petrol at a gas station, the undertaking's driver lit a cigarette, causing an explosion and consequent damages.

The defendant was held liable for careless performance of work by servant.

ii. Mistake of Servant/ negligence in carrying out the work or business:

If the servant commits a tort, while performing the work, by mistake, the master is liable as the mistake of fact is no defence.

Bayley *v.* Manchester, Sheffield & Lincolnshire Railway Co. (1872)

Facts: The plaintiff was a passenger on defendant's train. One of the porters of the defendants pulled him out of the carriage due to mistaken belief that the plaintiff was traveling on a wrong train. The plaintiff suffered severe injuries.

The defendant Railway Co. was held liable.

Here the porter didn't do anything unlawful and master will be liable even if the servant acts on the belief that he is doing some lawful act which he is authorized to.

Radley *v.* London Passenger Board (1942) - Infant's passenger splinter case

A splinter of glass penetrated the infant plaintiff's eye, a passenger on the upper deck of an omnibus. The accident occurred at mid-day, and the tree was clearly visible along the road. It was held that I was the duty of the driver to keep a lookout for obstructions and he had failed to perform that duty and hence the defendant' i.e., the bus company was held liable.

iii. Wilful wrong of servant:

Sometimes, master gives certain instructions to the servant to be observed while performing the work and in spite of such instructions if the servant willfully disobeys such instructions and commits a tort, a master is liable.

Limpus *v.* London General Omnibus Co. (1862)

The defendants Co. instructed their servants not to race the car or overtake or obstruct other omnibuses. Contrary to such instructions, the defendant's servant didn't follow master's order and committed an accident.

The defendant was held liable. Thought servant didn't follow master's instruction as a manner of doing a work even then the master was held liable.

iv. Fraud of Servant:

When a servant, while in the course of the performance of his duties as such commits a fraud, the master would be liable for the same.

Lloyds *v.* Grace Smith & Co. (1912)

The plaintiff, a widow wanted to sell some of her property. She approached the defendants, a firm of solicitors, for preparing necessary documents. The defendant's manager prepared the documents in such a manner as to get the property transferred in his own name.

The defendants were held liable for the fraudulent act of their servant, though the servant-agent was acting for his personal benefit and the defendants had no knowledge of the fraud,

as the fraud was committed by the agent while acting in the course of his apparent or ostensible authority.

State Bank of India *v.* Shyama Devi, AIR, 1978 SC 1263

Facts: The respondents, in this case, opened a savings account in the plaintiff bank (formerly known as 'Imperial bank of India') having introduced by one of their friends and employee of the bank, Kapil Deo Shukla. There was an arrangement between KD Shukla and respondent that former will deposit money in the bank given by the respondent. KD Shukla duly deposited some amount but embezzled other amounts. The respondent sued the bank in the trial court contending that they are responsible for acts committed by one of their employees. The trial court partly agreed to the amounts.

Held: In an appeal to Supreme Court, it was held that bank cannot be made liable because the act of the servant in this case has been done outside the course of employment. The employee when he committed the fraud was not acting within the scope of bank's employment but in his private capacity as the depositor's friend.

Maganbhai *v.* Ishwarbhai, A.I.R. 1984 Guj. 69

Facts: In this case, the trustee of the temple called an electric contractor, to divert illegally the supply of electricity which was given to the villagers for agricultural work, for a period of 1 month. The work was accordingly done in a hazardous way and without informing the electricity board. In one of the fortnight, the lines collapsed, as a result of which one of the villagers who was working on the field got injured.

Held: It was held that the trustee, who got the hazardous job, as well as the owner of the field from whose matter and with whose knowledge such connection was taken, were liable.

v. Theft by Servant:

Earlier, theft by the servant was regarded outside the course of employment and the master was held not liable as decided in **Cheshire *v.* Bailey (1905).**

However in **Morris *v.* CW Martin & Sons Ltd [1966] 1 QB 716,** the above decision was overruled and the master was held liable.

This case considered the issue of vicarious liability and whether or not a master/employer was liable for the loss of a customer's fur coat that was stolen by one of its employees. The defendant was held liable.

vi. Negligent delegation of Authority by Servant:

Sometimes, the servant may negligently delegate his work to another, thereby causing a tort, then the master is liable. If a servant has been authorized by the master to do a certain act and the servant in performing that either solicits help of another or completely gives charge to somebody else, the master can be held liable if any damage is caused by this delegation. The rationale over here is the work if completed successfully would have ultimately benefitted the master.

Ricketts *v*. Thomas Tilling Ltd., (1915)

The driver who had been authorized to drive the bus, feels tired and asks the conductor to drive the bus for some time. The conductor while driving the bus, does so quite negligently and hurts a pedestrian. It was held that the master was liable for negligence on the part of the driver in allowing the conductor to drive negligently.

Beharilal *v*. Surinder Singh, AIR 1965 P H 376

The driver of lorry handed over the steering wheel to the cleaner and himself sat next to him. Due to rash and negligent driving by the cleaner accident happened. The defendant was held liable due to the default of his servant in delegating his duty to another person.

vii. Lending of servant or Borrowed Servant:

When a servant is lent out to another person then the master who still controls the activities of the servant and not just merely directs his actions will be the one who is liable. Mostly it is the actual master who is held liable and not the person to whom the servant has been lent temporarily. This rule applies unless the permanent master can prove that the servant was completely in the control of the temporary master and he could not have controlled the servants' action.

To determine the liability in such cases the following matters are taken into consideration:

a. Who pays the servant?
b. Who has an opportunity to supervise the work of servant?
c. Who has the power to punish or dismiss the servant?
d. What machinery is used?

If the original master withdraws the control and supervision over his servant at the time of lending, the new master is liable for the tort committed by the servant.

Mersey Docks & Harbour board *v*. Coggins & Griffith, (Liverpool) Ltd., (1947)

Company 'G' had hired a crane from company 'I' along with the crane driver. While transferring goods the crane driver lost control and the goods fell on a passer-by Q who was seriously injured. In this case the defendant, the original mater was held liable.

Niranjanlal Ramachandra *v*. Ramaswany Bhagwan Singh (1952)

It was held that the hirer of a motor vehicle was liable on the ground that the principal master had completely withdrawn his control over the master.

viii. Express Prohibition:

If a servant acts in defiance of express prohibition of a certain act by the master, then the master cannot be held liable. A simple warning by the master to the servant or general guidelines cannot be construed as being express prohibition. The master should have gone out of the ordinary way to prohibit the servant from doing that wrongful act.

Limpus *v*. London General Omnibus Co. (1862)

Twine *v*. Bean Expresses Ltd.,

In this case the driver was expressly prohibited to give lift and the notice was being affixed to the crab. Still the driver allowed a person to travel who was killed in consequence of the driver's negligence. It was held that the act of giving lift by a driver to an unauthorized person fell outside the course of employment and the master was not held liable.

c. Incidental acts

The servant, in performing the work authorized, may come across certain incidental acts, resulting in tort. In such cases the master is vicariously liable.

Canada Pacific Railway Co. *v*. Lockhart, (1942)

In this case the defendant company instructed its servants, not to use uninsured vehicles on company's business. On one occasion, the defendant servant had o use an uninsured vehicle incidentally to attend some repair on company's business and an accident occurred. The defendant was held liable since the use of uninsured vehicle was incidental thereto.

Exceptions/ When Master is not vicariously liable:

1. **Outside the course of employment**
2. **Lending of servant**
3. **Employment under compulsion**

4. **The doctrine of 'Common Employment'**

   According to this doctrine, the master was not liable for the negligent harm done by one servant to another fellow acting in the course of their common employment. The doctrine was first applied in **Priestley *v.* Fowler, (1837).**

   However, the doctrine was severely criticized and a series of Acts providing injury benefit, death benefit, death and disablement benefits etc. were passed and finally abolished by the Law Reform (Personal Injuries) Act, 1948.

   In India the same issue came for discussion in number of cases and the above doctrine is only of historical importance.

II. Master/Owner/Employer and Independent Contractor

As a general rule, master is liable for the tort of his servant but he is not liable for the tort of an independent contractor.

Discussed above at pg. 5 & 6

Conclusion

Vicarious liability is a legal concept which refers the liability of one person for the tort of another in which he had no part. The intention behind vicarious liability is to provide compensation to victim by the proper partywho is accountable for the harm.

The most important basis for imposing vicarious liability is that the wrong doer be acting as a servant & connecting with the employer, & if it is proved that wrong doer doing work "in the course of employment" then only vicarious liability can be imposed on the defendant.

So, it is clear that vicarious liability will continue to operate significant role for the rights of employees.

References:

1. Mr. Ratanlal and Dhirajlal, The Law of Torts, Akshay Sapre ed., 27th ed., 2016, Lexis Nexis
2. Salmond and Heuston on the Law of Torts, R F V Heuston and R A Buckley Eds, 21st ed, Sweet and Maxwell
3. Dr. Avtar Singh, Introduction to the Law of Torts, 3rd ed., Delhi Law House