

The Vicarious Liability and Defenses Against It

Rohit Kenge

Ph.D. in Management Studies, PUMBA, Pune University, Nasik.

ABSTRACT

We tried to understand in this study, one of the important to be worthy of attention words in the law field, legal duty for acts of someone or something that has been left out or excluded that is the liability. When a firm or a person fails to achieve that duty, it accounts it/her/him liable to a legal action for all losses/damages caused or law actions to follow as in an act of breaking or failing to observe a law or code of conduct.

Further, we studied tort law can be briefly described as a real law of self-harm/injury. The tort common example, maybe, is carelessness that is, negligently generating harm/ injury to a man or destruction to belongings.

Common exceptions to liability are the directive of exemption which bound the order of liability in a wrongful act. These exemptions are different situations that result in wrongful actions that are not mentioned in a common liability of law.

Vicarious liability also famous as joint responsibility liability is a configuration of an uncompromising, subordinate to a replying senior. It is a liability that emerges below the usual law of doctrine of agency. There are mainly three types of vicarious liability namely the Negligence Act, the Unauthorized Act, and the Criminal Act. We discussed these vicarious liabilities in detail with probable defenses and solutions to them.

We also studied Sovereign functions and they are not accountable/liable activity of the state/country in front of the Law.

Keywords: Liability, tort law, vicarious liability, Sovereign functions, defense/exceptions to

liability.

1. INTRODUCTION

1.1 Background and Definition of Liability

One of the important to be worthy of attention words in the law field, Legal duty for acts of someone or something that has been left out or excluded is the liability. When a firm or individual person fails to achieve that duty accounts it/her/him liable to legal action for all losses/damages caused or a law action to follow (as in an act of breaking or failing to observe a law or code of conduct). A legal case can be winning by the appealing party (plaintiff) if they demonstrate the liability of the accused legally and if the plaintiff's claim or assertion that someone has done something illegal or wrong is proved to be correct. This makes necessary proof of the obligation to act, the non-fulfillment of that responsibility, and the probable cause of that non-fulfillment to particular harm or injury to the plaintiff. Liability is also applicable to without proof criminal actions in which the individual, company, or institution sued shall be in charge of their actions which form a crime, hence considering them guilty of a criminal offense to punishment.

Let's have an example of this topic-

- Pankaj starts his car by a sudden release or jump whiles his car shown a stop sign and strikes the way crossing Priyanka in the cross-walk. Pankaj should take responsibility for Priyanka's care because he had broken or failed to observe the law by his carelessness/negligence, and hence responsible for Priyanka's harm/injury, which also allows her to initiate legal action against Pankaj. Also, Pankaj's father is the owner of the vehicle and this makes him liable for Priyanka's injury based on an enactment defined by state RTO which considers an owner of the vehicle responsible for any injury/harm resulted from his vehicle. Here, the father has not broken any rules but his duty is based on "None following of rule's liability".
- A cheque signer possesses liability for the written amount of money if it will fail to pay and the guarantor co-signer is also liable for the same.
- A builder who has committed to construct a building within decided time has the liability of it to the buyer if he does not construct on time (Gerald and Kathleen).

1.2 Objectives

- To study the defenses to vicarious liabilities.

2. LITERATURE REVIEW

2.1 Tort Law

Tort law can be briefly described as a real law of self-harm/injury. The tort common example, maybe, is carelessness (that is, negligently generating harm/ injury to a man or destruction to belongings.) A person is lawfully liable to the affected party if he performs a tort. The resentful person may file a legal case for his property destruction against the person who performed the tort. A similar rule is considered in the case of an individual human. Simply, the person is liable for actions practiced by her/him, whether she/he is working or not. Sadly, many people wrongly consider that if they perform a tort while working as a media for someone else (for example, when employees are working for their employers); they possess no liability against any wrong act. This wrong consideration may result in mainly two reasons: indemnity and the reality that the employer is also responsible for this condition. The principle, or more precisely the indemnity regulations driven by the principle, will pay off the amount on the liability considered. The reality that the employer has duty does not mitigate the employee from their duty. This statement is important to the knowledge because insurance policy will not always coat each incident or possess a full-face amount to full fill the amount for all of the destruction. Small scale entity owner must understand that they are an agent/employee of their own business. In this case, the business person is vulnerable doubly to liability when performing a tort; here the firm and the owner of a firm are liable personally. This will result in a very destructive to the owner's efforts of binding the liability (*Quill Eoin, 2014*).

Let's have an example of this topic-

Sachin Mehta, a purchasing small business owner for ABC Materials, Inc., carelessly strikes a walker while lifting an ABC's material in the truck. Here, Sachin performed a tort hence he is individually liable. As Sachin was working as its employee/agent when he performed the tort, hence ABC is also responsible.

2.2 Exceptions to Liabilities

Common exceptions are the directive of exemption which bound the order of liability in a wrongful act. These exemptions are different situations that result in wrongful actions that are not mentioned in a common liability of law.

Let's have an example of this topic-

- If a person is vulnerable to a chance of harm/injury with prior knowledge and of his own will then he cannot complain.
- God’s actions: Actions caused by natural exigency and do not have any relation with any man or group of people.
- Unavoidable events: An incident/event which is unavoidable in the general case by a regular skill, efforts of any person or community.
- Countries’ actions: These are the sovereign actions as a standard set of rules of the country. These actions are not for ordinary people living in the country. These actions come for self-defense of the country or between two countries while war situation.
- Personal Protection: Against wrong/against law harm a man has a fair right to save his property.
- Other extensive defenses are a person, who brings a case against another in a court of law that is plaintiff, legal authority, common errors, and destruction accident to authorized actions, the practice of universal rights, prerequisite, and negligence by contribution (Gktoday, 2017, November).

Even if one drive as a business, he can be vulnerable to self, boundless responsibility if he is an origin for harm to the third person. One also has the potential for having limitless self-liability if he carelessly appoints or superintends his employees and a third man who got harmed. Each entity owner must work to bound liability for agreement and a wrongful act like torts.

2.3 Vicarious liability

Vicarious liability also famous as joint responsibility liability is a configuration of an uncompromising, subordinate to a replying senior. It is a liability that emerges below the usual law of doctrine of agency. It is also the duty of the senior for the actions of their junior or, in a big sight, the duty of any other third person/entity who possesses the "authority, capability or responsibility to drive/control" for the actions of persons who fail to follow the rules (Religious Tech., 2017, September).

Let’s have an example of this topic-

- In a practical world, the law has assumed some considerations that some dependent relations like employee and employer by their nature require the employers to take the

employee responsibility of wrongdoing actions like negligence at the work.

2.3.1 Defenses to Vicarious Liability-

There are mainly three types of vicarious liability as follows-

- a. Negligence
- b. Unauthorized Act
- c. Criminal Act

Let's see defenses to these vicarious liabilities one by one.

2.3.2 What is Negligence?

An entity owner is individually responsible when the employee of the business performs a tort. Most probably, this individual tort is due to negligent recruitment or administration of an employee of the business. Here, individual liability is found on the basis that the entity owner has performed a tort that is, the negligent recruitment or administration of the employee.

2.3.3 Defense to negligence-

To Defence against negligence liability case the defendant launch proof that they did not responsible for liability to the plaintiff; they will further practice great care; did not result in the plaintiff's property destructions; and so on. Further, a defendant will take the support of one of a few beliefs that may reduce or bound liability build on claimed negligence. Three of these beliefs are-

- a. Contributory negligence
- b. Comparative fault, and
- c. Assumption of risk.

These defenses to negligence claims are briefed one by one as below.

a. Contributory Negligence-

A negligence claim is defenced commonly by showing contributory negligence on the plaintiff's account. It happens when a plaintiff's behavior drops below a set standard required for the

protection of the plaintiff's and this comportment collaborate with the negligence of the defendant's resulting injury/harm to the plaintiff. In simple English, it means the plaintiff may remain away from injuries if they did not also behave negligently.

Let's have an example of this topic-

- a. A company welding operator got a major burn injury to his hand after his welding machine breakdown. However, he has not applied safety hand gloves over his hand which could have reduced the harm/injury. Practically, the negligence of the plaintiffs for his safety by failing to wear required safety protection equipment is the main reason-in-fact and main reason for the injury.
- b. A deviation to the defense of contributory negligence is popular as "last clear chance," when the ordinary care avoids the injury to the defendant. A walker is crossing the "don't walk" street area even the sign is distinctly visible. Motormen who are passing and have a right-of-way but are diverted by his mobile phone bang and harm the walker. Since the motormen avoided banging the walker had he practiced simple care, he is still liable (Heather Huston).

b. Comparative Negligence-

Contributory negligence ends in harsh outcomes in most of the cases, and the countries have changed the doctrine by a substitute named comparative. The belief of comparative negligence lessens a plaintiff's recuperation by the pro-rata base in which the plaintiff is at mistake for their destructions. The three main types of comparative negligence are-

- a. Pure: Plaintiff will receive a percentage of the destruction for which the accused is liable.
- b. Modified: Plaintiff will receive destruction cost only if the accused negligence is equal to or greater than plaintiff negligence.
- c. Slight-Gross: Plaintiff will receive destruction cost only if the accused negligence is "gross" and their negligence are "slight".

Let's have an example of this topic-

A walker got seriously strike by a drunken driver who unable to use a nearby crosswalk. Here, due to the walker's own negligence of not using the crosswalk accused liability reduces.

c. Assumption of Risk-

A plaintiff may not get awarded the damages for harm he got if they take for granted the risk engaged in a hazardous activity but carry on the same activity. The plaintiff should understand the risk identified in the activity to apply this clause of negligence. The plaintiff should have confirmed that he/she understands the potential risk engaged in the activity.

Let's have an example of this topic-

Consumers in an up-down flip ride in the amusement park who personally saw the ride and understand what risk may happen on the ride if the riding car gets dislocated by a single loosen the nut-bolt joint.

2.3.4 How to reduce negligence?

One can reduce this potential problem by acting perfectly in the recruitment and administration of the employees. This includes many plans of actions like costing, time, and psychological tests belong to employees. All these parameters must be compared against the possibility that the employee will perform a tort resulting in harm/injury or company property destruction. Some common considerations while recruiting employee are-

- **Background checks-** This includes earlier employment check, copy of academic, bank history, and police station history
- **Drug check-** Mandatory checks for all employees to eliminate safety risks at work.

A check of offender background is required in recruiting employees where they may need to handle big sums of money. Drug checks required in recruiting drivers of vehicles or where machine operation works are involved, such as manufacturing presses.

For the administrative purpose recruitments, the business owner may think of:

- Process of mentoring to junior by senior for a set period.
- Prior check sign process before actual work allocation.
- Regular status checks meetings.
- Training allocation in a periodic way.

Let's have an example of this topic-

Aditya law, a law office, recruited a new lawyer, Mahesh, as an employee. Aditya does earlier all the recruitments of the entity. Aditya interviewed Mahesh twice before recruiting him. Ten months passed, Mahesh performed an error, resulted in a customer's \$400,000 money loss. It is found in the analysis that Mahesh had failed and a year drops out of Law College in his first-course year. This data was not earlier verified by Aditya's entity, as he got convinced by him as knowledgeable in his field of the law while the two interviews were taken and not carried a background checking. Aditya will pay a big for customer loss of money due to careless hiring. If Aditya could have carried a background checking of academics, Aditya would have saved resulted liability (Find Law's, 2018, November).

2.3.5 What is the unauthorized act?

If an employee at the fuel pump is feeding fuel and giving wrong bills in the unauthorized way same in the hotels or restaurant to the customer who further reimburses it from their employer is a typical example of an unauthorized act by fuel feeder.

2.3.6 Defense to the unauthorized act-

Let's have an example of this topic-

In the WM Morrison Supermarkets plc verses Mohamud case an employee of Morrisons worked as a petrol station attendant named Mr. K. Mr. Mohamud a customer asked Mr. K to print some documents from a memory stick, Mr. K had seriously disrespected and abused Mr. Mohamud on the open area in front of all. The case that happened here was whether Mr. K's act of ferocity towards guilt less Mr. Mohamud was mainly connected with his employment relationship with Morrison supermarket.

The Court said that there was not an adequate relationship between the work that Mr. K had employed to perform and his unauthorized acts. It judged at Mr. K's allotted work and wind up that they did not require a probability 'where an outcome of disrespect was bound to be' and those only talks with Mr. Mohamud had not been a sufficient connection to charge vicarious liability on the employer. Hence, The Supreme Court reached the decision that in Mr. Mohamud's case, it analyzed the '*field of activities*' that Mr. K was allocated with by employer and in performing so tensed that a detailed view should be practiced. The customer's starting demand was well within the boundary of talks that Mr. K was supposed to do. The Supreme Court judged that the disrespect and abuse that resulted were a consecutive and 'unbroken chain of incidents. Mr. K had utilized his position at work as an employee as a place to perform the

unauthorized act and therefore, his Morrison should be considered liable vicariously. At first sight, it seems that the Supreme Court has given the judgment tending towards an applicant friendly when analyzing the tests for applying vicarious liability. Also, the judgment for customers tells us that place where an employee performs an unauthorized act at his work that is not considered within bounds of the acceptable limit of behavior; still, the employer will be liable. The Supreme Court guided that it could not consider Mr. K in the customer case as having ‘removed his uniform the point he walked from the backside of the cash counter’. This is considered as grating from an employer’s point of view. Mr. Mohamud was an incident of an extreme situation and maybe not one that Morrison could have anticipated. However, there are some measures that an employer needs to take to prevent the chance of vicarious liability generating from unauthorized behavior that not comes under an employee’s duties (*Kratika Singhal, 2016, May 3*).

2.3.7 How to reduce unauthorized act?

Prevention of unauthorized acts can include a focussed staffing and screening process before the actual award of employment, training to staff, defined rules and procedures for acceptable limits of conduct.

2.3.8 What is the Criminal act?

An individual shall be liable for criminal actions of the third party if they are the ones who had been present there while the crime was performed. For example, the rented car driver is culpable of the burglary of arms in a store even though he had been in the car, and the complete burglary was performed by others. In criminal cases, the soul of vicarious liability is that an individual may be considered responsible as the main criminal that is the person who carries out a harmful, illegal, or immoral act of a crime whose actions are in person performed by the third person. It is considered that only doing the actions in the directions of the third person is not guiltless and thus is also made responsible for the crime. The court concentrates upon the association between the accused and the committer of the actual actions and by the morality of that association; it assigns the actions of both (*Hariharan, 2014, November 8*).

2.3.9 Indian Perspective of a criminal act-

Section 149 includes vicarious liability, it says that if a crime is performed by an associate of an illegal group in a court of a regular object or such as the associate of that group knew that the crime to be performed in the court of that object, every individual who at the time of performing that crime was associated would be culpable of the crime performed. Section 154 considers land

occupiers or owners, or individual having or affirms interest in the property, lawfully offended for the conscious failure of their employees or admin in providing information to the government authorities, or in performing complete measures to control the happening of an offensive assembly or a violent disturbance of the peace by a crowd on their property of land. Section 156 imposes individual responsibility on the admin or the employee of such landowners or occupiers on whose land a criminal action of riot is performed.

2.3.10 Liability and defense of business entity for Criminal acts-

A business entity should be considered culpable of any offense if its associates who perform it so work that their actions are within the scope of their employment as checked by the applied standards to liability in tort. In deciding whether this dispute is agreed upon, the issue first comes whether current concepts in the law allow the application of such end level liability. Second, considering offensive duty can be applied, under what conditions is it marked correct? A business entity can work or act only through its associates. Also, when a business firm got convicted the shareholders get punishment as the criminal liability in business is vicarious. It has been confirmed many times that business firms by their state of art nature are not capable of performing such offense as marrying someone while already married to another person, wilfully telling an untruth, murder, and rape. But courts have now confirmed that business can be performing offensive intent.

Let's have an example of this topic-

Syndicate transport Co p Ltd versus Maharashtra state case- Under this case, there was a conformity that vehicle of a bus would be transferred in the Plaintiff name, and would be driven by the hiring firm on the purchase conformity till the receipt of the money advance. But as per the conformity, the vehicle was not transferred to Plaintiff. Hence, Plaintiff moved to the trial magistrate who registered the firm under sections 403[xv], 406, and 420, for deviating the conditions of conformity. The firm asked for an alteration in front of the Court to cancel the levy against the firm. The court Judge was of the consideration that since a business firms work only through its employees, such an employee can't be assigned to the firm, and he forwarded it to High Court for cancelling the claim. While allowing the reference and cancelling the claim, the High Court returned the case for perusal in consideration with law. The High court passed judgment that the range within which offensive cases can be conducted against a business entity that has turned so eminent a trait of daily news must be broadened to make business bodies liable for serious crime unconfined from the actions or eliminations of their employees (Lexisnexis).

2.4 Sovereign Functions

Sovereign functions are not accountable/liable activity of the state/country in front of the Law. Countries' defense mechanisms, adding and protecting the army, maintaining calm in a hold on areas, are departments that are serving as a sign of outer sovereignty and they do not come under the rules/law of the regular court of civil purpose. The sovereign functions are mainly absolute functions practiced by the country/state only. The sovereign function includes police, law administration, taxation, a grant of mercy, and legislative work in a country.

Let's have an example of this topic-

- Indian secretary of State versus Peninsular and Oriental Steam Navigation Company- The Calcutta Court says that the Indian secretary of state is responsible by law only for the scope of financial trade work and not for effort in sovereign control (Shodhganga, 2015).

3. CONCLUSION

As a common perception, an employer can be considered as responsible for their employee's offense, only where if there is a third-party contractor involved in them within the boundary of the rules. It is in general consideration that the application of vicarious liability is the duty of the civil courts. Law many times say, in definitions, that one human is to be responsible for the other party's offense. However, the courts also detect motives of crime in law. The defense generally taken into account by the judges for considering a person vicarious liable under is that the law would be melted to remove worthless points of claim and the claim of corporation/business entity thereby beaten if they were not made responsible. It is rather difficult for the judges to give the judgment to apply liability for the actions of the third-person on a basis of an advantage when the base of the criminal law is a person is considered guilty only for his crimes. But in many of the incidence, the employer/principle is also responsible for the wrong act of his employee to defense the wellbeing of both parties. Thus, it can be concluded that though the employer/principal of vicarious liability is an in general civil idea yet in a recent condition it achieved a major role under the criminal legal system. It is fair to a certain limit also but each case of vicarious liability taken under criminal law should be supported by basic reasonable logic and intelligible proofs to differentiate the test of equality and fair decisions.

REFERENCES

- [1]. Find Law's. (2018, November). Find laws team of legal writers and editors, defences-to-negligence-claims, < <https://injury.findlaw.com/accident-injury-law/defenses-to-negligence-claims.html>> accessed November, 2018.

- [2]. Gerald and Kathleen, The People's Law Dictionary, Hill Publisher Fine Communication, <https://dictionary.law.com/Default.aspx?selected=1151>
- [3]. Gktoday, (2017, November). what-are-the-general-defences-or-exceptions-to-liability-in-a-tort, <<https://www.gktoday.in/gk/what-are-the-general-defences-or-exceptions-to-liability-in-a-tort/>> accessed November, 2017.
- [4]. Hariharan, (2014, November 8). vicarious-liability-in-criminal-law, <<https://www.lawctopus.com/academike/vicarious-liability-in-criminal-law/>> accessed November 8, 2014.
- [5]. Heather Huston, running-your-business/asset-strategies/beware-of-tort-exceptions-to-limited-liability, BizFilings, <<https://www.bizfilings.com/toolkit/research-topics/running-your-business/asset-strategies/beware-of-tort-exceptions-to-limited-liability>>.
- [6]. *Kratika Singhal, (2016, May 3). vicarious-liability-supreme-court-clarifies-employer-labile-acts-wrongdoing-workplace*, *Christ University*, <<https://www.taylorvinters.com/article/vicarious-liability-supreme-court-clarifies-employer-labile-acts-wrongdoing-workplace>> accessed *May 3, 2016*.
- [7]. Lexisnexis, PI & Clinical Negligence Establishing legal liability, <https://www.lexisnexis.com/uk/lexispsl/personalinjury/synopsis/448:460/Establishing-legal-liability/Liability-defences?wa_origin=gnb.>.
- [8]. *Quill Eoin, (2014). Torts in Ireland. Dublin 12: Gill & Macmillan. p. 506.*
- [9]. Religious Tech. (September, 2017). Center v. Netcom On-Line Comm., 907 F. Supp. 1361 (N.D. Cal 1995)". *Google Scholar. Google*. Retrieved 6 September 2017. Citing 3 Nimmer on Copyright § 12.04(A) (1), at p. 12-70.
- [10]. Shodhganga, (2015). <https://shodhganga.inflibnet.ac.in/bitstream/10603/201573/10/10_chapter4.pdf>.