

Hello Friends, we are discussing Module Vicarious Liability: Master - Servant, Principal - Agent and Partners. This is Module Number 7. Outline of this Module - Nature and Basis of Vicarious Liability, Master Servant, Principal and Agent and Partners in a firm. At the end of this Module, the student will be able to explain the concept of Vicarious Liability, Identify the three relationships that depicts Vicarious Liability and determine the extent of Vicarious Liability.

Introduction to Vicarious Liability. Vicarious liability is one of the general principles of Law of Torts. It has its roots in early years of Common Law. This particular doctrine got recognized by the middle of the 19th century. The term 'vicarious' is derived from the word 'vicar', which means one who performs the functions of another or a substitute. Hence, Vicarious Liability means liability for the act of another or for the act of a substitute.

Let's look at this through an example of A, B, C. Generally, a person is held responsible for his own wrongs. Say suppose A performs a tort as against C, then A is liable for this tort as against C. But what happens if B performs a tort against C? Can in any instance A be made liable for the tort of B? and the answer is Yes, provided there exists a relationship between A and B and the tort that has been committed is in connection to this particular relationship. In such a case, C has a right to file an action against B, or he can file an action against A or he can file a joint action against A or B. This type of liability is referred to as joint and several liability.

Let's move onto the basis of Vicarious Liability. There are two Latin maxims which discuss the Basis of Vicarious Liability. "Qui Facit Per Alium Facit Per Se". It means he who does an act through another is deemed in law to do it by himself and the next Maxim, "Respondeat Superior", which means let the principal be made liable. These two maxims determine an underlying principle that one who sets an act in motion should take the responsibility for the consequences that follow, good or bad, even though the act has been done through the another person. Vicarious liability can be depicted in three different relationships, One that of principal and agent, Second, that of a master and servant, and the Third is that of our partners in a firm.

Let's take up the relationship between Master and Servant, which is also referred to as a relationship between an Employer and an Employee. In order to make a master liable for the wrong committed by servant, there are two essentials that need to be fulfilled. One relationship exists between Master and Servant and Secondly, the wrong is committed within scope or course of employment. Let's discuss each essential one by one.

First the relationship between master and servant. Let's determine who is a servant? A servant is a person who is employed by another, and secondly he acts under the control and direction of the master. So there are two things to determine a servant, one that's the employment and the second that he is subject to control and direction of the master. So when we have to determine a servant, we need to see to it that every action of the servant is controlled by the master. There exist an employment by the master and there exists a control by the master. However, the question that arises here is merely by a person being appointed by another, can he become a servant? and the answer is No. An independent contractor

is an exception to this particular rule. An independent contractor is definitely employed by a Principal. However, he acts on his own discretion. Let's compare Servant and an Independent Contractor. Servant is employed by the Master, Independent contractor is employed by the principal. The nature of work that is done by the servant is decided by the master. However, the nature of work done by the independent contractor is decided by the principal. The relationship between master and servant is governed by contract of service and the relationship between independent contractor and the principal is governed by contract for services. The execution is controlled by the master. In cases of independent contractor, the execution is by his own. An example of a servant is that if I employ a car driver and due to his negligence he knocks down a passerby. In that case, as I am the master for this car driver, I will be made accountable for the wrong committed by the servant. However, in cases of an independent contractor, an example of it is a cabman. If I hire a cab, and while I am commuting through this cab, if the cab driver meets with an accident, then in that case I will not be responsible for the negligence that is performed by the cab driver.

The next question that we need to ask in a relationship between Master and Servant is that "Is control by the master a conclusive test to determine the position of servant?" because there are instances in which master cannot control the actions of the servant, say for example a captain of a ship or a surgeon in a hospital. These are professionally trained persons and the master really does not have these skills or is not trained to dictate and direct them with respect to the performance of these duties. That's where the Control test fails and a composite approach of Hire and Fire test is made applicable. The questions such as, who is an employer or who employs? who is the pay master? or who has the authority to dismiss? are asked and if answers to all this diverges to only one person, then that person is termed as the master. So we have the two tests - the Control test and the Hire and Fire test to determine the relationship between the master and the servant.

Next thing essential that needs to be proved is whether the wrong is committed within the scope or course of employment. Scope of employment and course of employment are two interchangeably used words. It means anything and everything that's done by the servant during the hours of work. Now, if a servant performs an act negligently which he is supposed to perform carefully, if a servant commits an act fraudulently which is actually supposed to do honestly, or if a servant commits a mistake wherein he has to act carefully or correctly then in all these cases of acts of negligence, fraud and mistake, the master, if it is within the course of employment, the master is held liable for the same. However, if these acts are outside the course of employment, then in that case the master would not be liable for the same.

Moving onto the case laws for within the scope of employment or course of employment. We have a case of *Story versus Aston*. In this case, A car driver took a different route to his office on the instructions of his co-employee to buy something else. While they were on a different route, they met with an accident and the damage was caused to the third party. Court in this case said that the different route is a deviation from the course of employment and hence the master would not be liable for the wrong committed by the servant. The next case is *Lloyd versus Great Smith and Company*. In this case, an old lady had two cottages. However, was not getting enough proceeds from these cottages. Hence, she wanted to sell out these cottages. So, she approaches a firm of solicitors for advice. The Managing clerk advised her to go for sale of cottages and asks her to sign on certain documents. Later on it is figured out that she signed

not on the sale deeds, but she signed on the gift deeds that were made in the favor of the Managing clerk. So the question before the court was whether the company would be liable for the wrong or the fraud that is played by the managing clerk. Court in this case held that as these actions were within the scope and the course of employment, the company would be liable to pay damages to the old lady.

The next relationship is that of a Principal and Agent. In order to make a Principal liable for the actions of the agent, it is essential that two requirements are fulfilled. One relationship exists of principal and agent and Secondly, wrong is committed while performing the authorized act. More or less, the essentials are same as that of a master and servant and it can be understood through the help of our case law that is State Bank of India versus Shyama Devi. In this case Shyama Devi had a bank account and wanted to deposit some cheques and money in the bank. A friend of her husband was a bank employee, so the husband gave money and the cheques to this bank employee to deposit in the bank. However, the bank employee did not deposit the money, rather misappropriated the money. When the case was filed against the State Bank of India, the bank said that the bank employee was not acting in the capacity of the servant of the bank but was acting in the capacity of the agent of the husband of Shyama Devi and hence State Bank of India was not held liable in this scenario and

the last one is the partners in a firm. Again in case we have to make one partner liable for the wrong committed by the other partner, two essentials have to be fulfilled. One there exists a relationship of partners in a firm and Secondly the wrong is committed in the course of business of the partnership firm. Again let's analyze this with the help of our case law. Hamlyn versus Houston and Company. In this case, one of the partners bribed the clerk of another businessman to divulge their business secrets. For this act of bribery, both the partners were held vicariously liable under law.

So this is about the different relationships in which the Vicarious Liability exists, that of a Master and Servant, Principal and Agent and Partners in a firm.

References.

Thank you.