

Vicarious Liability or Liability for the Acts of Others in Tort a Comparative Perspective

Pratik Shukla

Student, D.Y. Patil School of Law

Abstract:

Vicarious liability is a rudimentary concept in Law of Torts, It is a legal principle that holds an individual or business accountable for the deeds of their agents or employees. This research paper would explore vicarious liability in a comparative view, analyzing how different legal systems around the world approach this doctrine and its implications. This paper explores the historical development of vicarious liability and how it has changed across different jurisdictions.

The study also examines current topics including the gig economy, the expansion of remote employment, and developing technology while examining recent advances and trends in vicarious liability. It assesses the adaptability of conventional vicarious liability rules to the changing nature of contemporary work relationships.

This research paper seeks to advance knowledge of this significant area of Law of Torts by offering a thorough comparative examination of vicarious liability. It provides insightful information.

Objective:

The Objectives of the research paper are Introduction to the topic, research scope, Key Comparative elements, practical implications and overall contribution.

Research Questions

Putting forward the research questions that I have developed in the study paper are:

1. What are the major turning points in the history of the principles of vicarious liability in different legal systems?
2. What basic ideas underpin vicarious responsibility, and how do these ideas take diverse forms in various legal systems?
3. How has the implementation of vicarious responsibility in various legal systems been influenced by recent advances in Jurisprudence, such as those connected to the gig economy, and developing technologies?

Research Methodology

The research methodology I have adopted is doctrinal in nature, as it addresses the topic 'Vicarious Liability'.

Introduction:

Vicarious liability is a rudimentary concept in Law of Torts, it holds a keen importance in the legal system. An individual or a company organization can be held accountable for the deeds and misbehavior of their

agents or employees, according to this principle, which is based on ideas of accountability and responsibility. This legal theory serves as a key mechanism to secure justice and compensation for wrongs done, creating a connection between people's behavior and the institutions that control it.

However, vicarious liability's complicated structure goes well beyond its foundation. It crosses borders of countries and jurisdictions, talking on various forms and interpretations in various legal systems throughout the world. This study sets out on an enlightening trip, a comparative investigation that explores the complex realm of vicarious responsibility. Our goal is to understand how different legal systems throughout the world apply this idea, examining their distinctive strategies and the ramifications they have.

We must first trace the historical evolution of vicarious responsibility in order to properly understand the perspectives that exist now. This study reveals the development of vicarious responsibility through a thorough analysis, highlighting how it changed as it traveled through the various legal systems of various nations. The historical setting serves as a crucial foreground, allowing us to comprehend the origins of contemporary views.

Literature Review:

A. Origin and Development of the Tort of Vicarious Liability - December 2019 - by Law Corner development of Vicarious liability under English Law:

A significant amount of ancient law is predicated on arbitrary retribution. However, the Mosaic Code makes it clear that a man should only be executed for his own transgression, not for the sins of his father or son. The vast majority of individual defendants in Law of Torts cases are poor, so the vicarious liability principle was developed to give plaintiffs the ability to place blame on someone other than the actual tortfeasor and ensure that they actually receive the compensation to which they are entitled.¹

Early Anglo-Norman society gradually moved away from the belief that masters bore full responsibility for the wrongs committed by their employees and towards the view that masters were only liable in cases where they had given orders or given their assent to the wrong. From 1300 forward, the transformation continues until the early sixteenth century, when the command idea has taken hold. After then, up until the 17th century, the master's culpability was only applicable in situations where he had specifically commanded the act in question.²

The principle that the master was accountable for both acts done at his direct order and those done under his inferred command was established by Sir John Holt, who served as Chief Justice from 1688 to 1710.³ He spoke on an employer's responsibility for an employee's actions and stated in *Herne v. Nicholas*⁴. Sir John Holt held that "*seeing somebody must be a loser by this deceit, it is more reasonable that he that employs and puts a trust and confidence in the deceiver should be a loser, than a stranger*".⁵

¹https://lawcorner.in/origin-and-development-of-the-tort-of-vicarious-liability/#The_Development_of_Vicarious_Liability_under_English_Law_4

² *ibid*

³ https://www.abingdon.gov.uk/abingdon_people/sir-john-holt

⁴ <https://swarb.co.uk/hern-v-nichols-1700/>

⁵ *ibid*

Yet under English Law, the government cannot be obligated for the deeds that its servant has carried out. The notion was founded on the *Rex non-potest peccare*⁶ which states that *the King can do no wrong*.

Development Of Vicarious Liability Under Indian Law:

Although the vicarious responsibility theory normally only applies to civil law, it can occasionally also be used in criminal proceedings. According to Section 149⁷ of the Indian Penal Code, if one member of an unlawful assembly commits a crime to achieve a common goal, all members of that unlawful assembly are responsible for that crime.

Owners or occupiers of the land are discussed in Section 154⁸ of the Indian Penal Code. If the occupier, owner or any other person with an interest in the property fails to notify the appropriate public authority about an unlawful assembly taking place there or fails to take the necessary action, they will also be held responsible for those actions. The notion that the person will be able to handle the activities taking place on their property as the owner or occupier of the land has led to the establishment of an obligation. If any activity occurs on the property and the agent or manager failed to stop unlawful activities from occurring there, Section 155⁹ also holds the person vicariously accountable for the owner or occupier's negligence. If there is criminal behavior on the specific property, Section 156¹⁰ places the agent or manager under personal accountability.

Public nuisance is covered under Section 268 and 269¹¹ of the Indian Penal Code, which holds the master personally accountable if the servant is causing a public disturbance. If the servant defames someone, the master is also held personally accountable under Section 499¹² of the Indian Penal Code (if the defamation complies with the definition of defamation stated under this section).

Moreover India was the same as it was in England upto 1967, and the State could not be held liable for the actions of its employees. However, the Court decided in the case of Superintendent and Remembrancer Legal Affairs, West Bengal vs. Corporation of Calcutta¹³, it was held that *“The principle that the State isn't bound by any statute is not the law of the land after the Constitution has come into force. Civil and criminal statutes now apply to citizens and stake alike.”*

B. Oxford Journal of Legal Studies 2007 - Oxford University Press

Principle of justice, prevention, and making sure victims are entitled to compensation for harm resulting from someone else's conduct, regardless of whether the person liable might not have the ability to provide such compensation, are the basic concepts that underpin vicarious responsibility. The notion has different definitions and applications in different legal systems across the world. Here are some essential concepts and examples of how they appear in various legal systems:

⁶ Legal Services -

⁷ Section 149 of the Indian Penal Code

⁸ Section 154 of the Indian Penal Code

⁹ Section 155 of the Indian Penal Code

¹⁰ Section 156 of the Indian Penal Code

¹¹ Section 268 and 269 of the Indian Penal Code

¹² Section 499 of the Indian Penal Code

¹³ <https://www.the-laws.com/>

- Employer - Employee Relationship
- Agency Relationships
- Government and Public Authorities
- Nonprofit and Volunteer organizations
- Independent Contractors
- Statutory and Case Law Variations
- Policy Considerations

The House of Lords introduced the “close connection” test in *Lister and Others (AP) v. Hesley Hall Limited*¹⁴ to modify the rules on vicarious responsibility in the context of a claim originating from the deliberate infliction of damage. The goal to make it easier for victims of child abuse to collect damages served as the initial motivator. Several Canadian Supreme Court cases, *Bazley v. Curry*¹⁵ and *Jacobi v Griffiths*¹⁶ served as the basis for the precise form and the basis for the precise form that the modification adopted. The law of vicarious responsibility is supported by a careful analysis of policy elements in Canadian Jurisprudence, which express the opinion that “enterprise liability” is the most important of them.

However, because of the distinct cultural, historical and legal factors that apply to each jurisdiction, the precise forms and implementations of this idea might range significantly across various legal systems.

C. Amy SEOW, LL.M (Columbia University) and Alina Chia (National University of Singapore) - [2020] SAL Prac 16

vicarious liability and the gig economy - at present

This area of law seems to be developing. The lack of major jurisprudence on gig economy employment and vicarious responsibility may be due in part to the efforts made by gig economy businesses to settle such claims before a definitive ruling is made by the courts. Unfortunately for it, Uber is mentioned in all of the noteworthy case reports.

There are legal railings on both sides of the issue in the US. Uber’s first legal argument that it could not be held accountable for sexual assault because those who drove were independent contractors rather than employees¹⁷, further it was rejected by a federal judge in 2016. In other words, even if this was ultimately resolved out of court, the charges against Uber for sexual assault pretrated, its drivers would have been accepted to proceed. A California judge, however, came to the opposite legal result in 2019, denying a plaintiff’s claim that Uber was liable for a sexual assault committed by a driver on the grounds that the attack was not typical of the industry or inherent in the driver’s working environment. However, legislation that took effect in California in 2020 established legal standards for classifying individuals in a gig economy as employees and shifted the burden of proof for classifying such workers as independent contractors on the hiring company. A California Court upheld this law in August 2020 and issued a preliminary injunction prohibiting Uber and rival ride-sharing company LYFT from designating its drivers

¹⁴ *Lister and Others (AP) v. Hesley Hall Limited* [2001] UKHL 22

¹⁵ *Bazley v. Curry* [1999] 2 SCR 534

¹⁶ *Jacobi v Griffiths* [1999] 2 SCR 570

¹⁷ <https://www.law.com/therecorder/2019/11/22/uber-cant-completely-shake-jane-doe-assault-case/?slreturn=20230907042134>

as independent contractors. The bill has been signed new state legislation¹⁸ These imply that the future will be more in favor of classifying gig economy workers as employees, with the application of vicarious responsibility to their activities perhaps following suit.

vicarious liability and the Artificial Intelligence

Artificial intelligence (AI)-related vicarious liability is a complicated and developing legal issue. Questions about accountability for AI Acts and judgements are becoming increasingly prevalent as AI technology advances and is implemented into more sectors.

An outline of how vicarious responsibility relates to AI is provided below:

- **Definition of AI with vicarious liability**

The legal responsibility of an entity (usually an employer or the owner of AI systems) for the acts or choices taken by AI systems under its control is known as vicarious liability in the field of artificial intelligence. The legal issue is whether the organization that owns the AI should be held liable when AI systems cause injury or engage in wrongdoing.

- **Employer-Employee Relationship**

The conventional vicarious responsibility rules may be employed in situations when enterprises or organizations deploy AI technologies. If an employer has authority over an AI and the AI behaves in accordance with its employment obligations or the duties for which it was built, the employer may be accountable for the AI's activities.

- **AI Autonomy**

The level of autonomy that AI systems possess is a key factor. It could be difficult to prove vicarious culpability if AI acts independently and does actions that its owner is unable to control. Liability may be more likely, though, if humans maintain control or have the power to influence AI judgements.

- **Negligence in AI Development**

Instances of carelessness or poor creation and monitoring of AI systems may potentially give rise to vicarious responsibility. Vicarious responsibility may be applicable if an organisation doesn't conduct adequate testing, safeguards, or quality control throughout the creation of AI and these errors cause injury.

- **Product Liability**

In certain cases, AI systems are viewed as goods, and any harm caused by flaws or faults in AI hardware and software may subject its creators or procedures to strict liability.

- **Legislative and Regulatory Framework**

It may have an impact on how vicarious responsibility is decided because certain countries are contemplating or have already adopted particular legislation or rules addressing AI liability. Liability may be divided among AI system creators, operators, and users under these regulations.

VII. Conclusion

The comparative examination of vicarious responsibility, taking into account diverse legal systems and its junction with current situations, demonstrates the complexity and development of this important idea in

¹⁸ Harvard Law review

the Law of Torts. This research article has examined a number of significant topics, providing insightful analysis and reaching critical conclusions.

Historical Evolution: awareness of vicarious liability's contemporary use requires an awareness of the concept's historical development, from its beginnings in conception of accountability and responsibility through its multiple interpretations in various legal systems.

Comparative Analysis; The examination of vicarious responsibility in various legal frameworks has revealed both similarities and differences. It emphasizes how the concept changes to take into account the particular cultural, historical, and legal aspects of each country.

Examining current issues, such as those brought on by the gig economy, remote labour, and developing technology, shows how flexible vicarious liability is in managing changing employment dynamics and technological improvements.

Legal Frameworks ; The research emphasizes the significance of legislation, case law, and legal frameworks in forming the vicarious responsibility principles. It emphasizes how important it is for legislators and judges to define who is responsible for what.

The study recognises the importance of policy issues in the development of vicarious liability. It considers the harmony between justice, prevention, and making sure that victims are compensated for harm brought on by other people's acts.

Vicarious Liability and AI: The newly-emerging problem of vicarious liability in AI development presents difficult considerations concerning responsibility, autonomy, and carelessness. In order to overcome these problems, the study acknowledges the necessity for continual legal and regulatory changes.

Upcoming trends: The evolving vicarious liability environment, particularly in light of the gig economy and AI, points to an increasing propensity for identifying workers as employees and imputing vicarious liability to their actions. This environment may change in the future due to changes in legal precedents and norms.

These results make it clear that vicarious responsibility is still a flexible and evolving notion in the Law of Tort. In addition to adapting to the changing dynamics of contemporary society and technology, it acts as an essential mechanism for assuring responsibility and recompense in a variety of situations.

It is crucial to follow advances in vicarious liability jurisprudence and to think about the larger ramifications for people, companies, and society at large as legal systems continue to change and adapt. The paper comes to the conclusion by acknowledging that determining vicarious responsibility in the context of AI and other modern concerns is a continuing process, and that legal systems must stay adaptable and sensitive to new problems in the constantly involving field of tort Law.