

THE CONCEPT OF VICARIOUS LIABILITY AND THE ROLE OF INDEPENDENT CONTRACTOR

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Introduction

Tort is a civil wrong involving violations of individual legal rights and where the remedy is in terms of unliquidated damages¹ that is not fixed to times substances (where the value is not fixed, it has changed in connection with the facts of the case and in accordance with the jurisdiction of the court) General Torts include: negligence, battery, attack, etc. ²Every time someone does or eliminate any action and if this action or negligence causes an injury to others, the first person will be responsible for the injury made in the second person. That's because there are legal tasks everyone to protect the legal rights of others. This is known as a lawsuit. Thus, Tortfeasor is the person who has a lawsuit. Employers happen to be responsible for the lawsuit carried out by their employees on their journey, therefore the obligation of representatives is the imposition of the obligation to the main employer for the negligence of employees or people entrusted or delegated by the principal authority to carry out certain tasks. Then we have know about independent contractor However, they are the peoples who trade independent, business, or professions wherthey offer their services to the public. People who are contracted or hired them for their services must have the right to control or direct the results of work, not the way and the method of gettingthe results.

Hypotheses

Vicarious liability is disputable: a standard of exacting liability in a space overwhelmed by shortcoming based liability. By making an honest gathering pay for the misdeeds of another, it can likewise seem crooked. However it is a guideline found in all Western overall sets of laws, be they common law or precedent-based law. Notwithstanding vulnerability with regards to its defenses, it is acknowledged as vital. In our cutting edge worldwide economy, we are probably not going to comprehend its importance and reasoning through investigation of one overall set of laws alone.

Research objectives

This research paper is undertaken to the study of some important points or subjects.

- To study about the meaning and important of vicarious liability and what is vicarious liability.
- To study the difference between employees and independent contractor.
- To study the liability of principal employer and how to determine the contractor is independent.
- To study some necessary suggestions and recommendations to understand the vicarious liability and in case of independent contractor.

Literature Review

1st Book Vicarious Liability in Tort: A Comparative Perspective.

Author- Paula Giliker

In this book he discussed about the Vicarious liability is disputable: a guideline of exacting

liability in a space overwhelmed by shortcoming based liability. By making a blameless gathering pay for the misdeeds of another, it can likewise seem unjustifiable. However it is a guideline found in all Western general sets of laws, and pay principle in the case of independent contractor.

2nd Book A Practical Guide to Vicarious Liability in Case of Employees and Independent contractor.

Author- Mariel Irvine

Vicarious liability is an emotive issue when it concerns the inconvenience of liability on a faultless gathering, in conditions where another person is off base. It is an adaptable precept which relies upon public arrangement. And important constituent of independent contractor.

3rd Book- The Basis of Vicarious Liability for employees and for independence contractor.

Author- Harold Laski

This book has been considered by academicians and researchers of incredible importance and worth to writing. And discussed the structures of a piece of the information base for people in the future. With the goal that the book is rarely neglected. And discussed between relations between employees and independent contractors.

4th Book- Independent contractor and the agreements.

Author- By Stephen Fishman

Both the two the independent contractors and servants or employee they enlist realize that an oral arrangement is practically inane when it comes time to settle the bill or face. And discussed the difference between servants, employees and independent contractor.

5th Book- Working With Independent Contractors

Author- Lisa Guerin and Stephen Fishman.

How to hire independent contractor and the criteria of the contractor and if some ordered

was given to him then the liability or principal are discussed.

6th Author- Krishnendra Joshi

In his research paper (Vicarious Liability in case of Owner-Independent Contractors in Law of Torts) he discussed about the relations between employees and principal employer the relation of wrongful act and about the course of employment.

7th Author- Allison Silink and Desmond Ryan.

In this research paper the author discussed about the damages committed by independent contractor. How to pay and how will them liable to pay.

What is vicarious liability

Doctrine of responsibilities of representatives lies in the heart of all common legal systems. This represents not a lawsuit,³ but the rules of responsibility that make the defendant be responsible for the lawsuit done by others. The classic example is the employer and employees: employers are strictly given to their employees, provided they are committed to tortfeasor work. In such situations, the employer is not responsible for his own fault, but for the relationship with the injured party. Therefore, the appellant is presented with two possible definitions. All whistleblowers and third parties are likely to be insured in some way and can usually be clearly identified under conditions that can make it difficult to determine the real culprit. Therefore, an investigation into the responsibilities of the delegates is inevitable to consider the role that ultimately determines who is responsible for compensation.

The principle of pervarious obligations is based on the relationship of master-servants or major agents. The basic idea of the obligation of representatives is that the master will be the person responsible for the actions of His servants carried out under servant employment. The relationship of the main obligations - the agent is based on the "Superior Responsible" Maxim translated into "let the school principal be responsible" and therefore.

According to this statement, the master/supervisor should be held responsible for all actions taken by his servants on the voyage. The servant's work does not always mean that the servant will not be responsible at all and will be held accountable⁴, but especially the opposite. The owner/principal is responsible for the actions of the servant or agent as if they had acted alone is "qui facit perium warp se" which means, "He who does acting through the other, take action through herself". In such cases, the victim or the person who oppose the Tort has committed or the Plaintiff can demand one of them, he can demand a master or agent / servant, their responsibilities are joints and some who make them joints under the law of Torts.

General example:

The responsibility of the main employer for the lawsuit carried out by his agent, Partner responsibilities of a company for their respective difficulties,

Master's responsibility for the lawsuit carried out by His servant.

- **The principal and agent⁵**- It is assumed that the actions taken by the agent are the actions of the principal. Authority for actions can be implied or expressed. It is assumed that the principle has provided ratification after having full knowledge of the actions he agrees. The principal did not ratify his agent to take the wrong action but when the agent did it at work, he became responsible for it.
- **Partners**- The relationship between partners is the same as the principal and agent. For Torts conducted by partners wherever the company, all other partners are responsible. The responsibility of each partner together and some.
- **Teacher and servant**- When a waiter takes the wrong action in the Master's employment journey responsible for it. Whether there are people employed by others to do work on condition, can be controlled and the direction of the employer in connection with and the

work method must be done. The master is who legally has the right to give orders and ask them obediently.

Three important constituents are needed for the vicarious liability

- There must be a kind of relationship between employees or the main contractor and employer
 - Most importantly, there is a relationship between the main employer and the employee or contractor.
 - The relationship between them must relate to any work performed by the independent worker or the main employer of the contractor.
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 - The wrong action was carried out by an employee must be carried out on the work trip of the employee or while employees performed the task given to him by the main employer.
 - In the case of independent contractors, the assignments provided must have a kind of involvement of "dangerous malicious activities".
- Wrong should be done with in the course of an employment.
 - The wrong done by employees must be carried out under his work. If it comes out of the employment, the employer cannot be proven to be accounted for employees.

Independent contractor

Independent contractors are people employed by corporations. He needs to complete a particular job or project rather than assigning the work to an employee⁶. Means an

independent contractor is an individual who does or works for other individuals (principals) under the agreement expressed or implied and the business assigned the task for an independent contractor, i.e. Not a business that determines whether the project or work must be done. It includes products used, expertise, and strategies that have been introduced and extra labor that employs independent contractors.

An independent contractor is a person who supervises and compensates an employee for his or her work and, except in some cases, does not report to anyone and is independently responsible for himself and his actions. He can apply his assessment of how and how the work is done. In addition, independent contractors are responsible for this regardless of the outcome of the project.

Employee

Employee who are defined as that they are the persons who works for an employer on the regularly basis, in the return for fixed remuneration (Monthly salary). Job terms and conditions are explained based on contracts known as employment contracts. Contracts should be oral and should be in written form, like express or implied. This organization has full control over employee work, eg. What, how, when to do all depends on their own choice.

Difference and relations between an employer and between an independent contractor.

- A person hired by an employer to work regularly to earn wages was called an employee. Contractor who provide services to other organizations for a fee are still called independent contractor.⁷
- Salary is the employee's salary. On the other hand, independent contractors receive income from all projects.
- Employees work only for employers, and some clients work for independent contractors.
- Inputs such as tools, materials, tools, or other resources to perform the tasks assigned to

the employee by the employer. On the other hand, independent contractor use their own resources.

- Employers decide when and where to work. To respond to this, independent contractors decide when and where the project will be completed.
- The employer is responsible for any costs incurred during the transfer. Unlike independent contractors who are responsible for the maintenance burden.
- An employer or an employee who works under the supervision and guidance of the employer. Instead, independent contractor have no control, so they work with their own free will.
- Employees cannot delegate work to others, and independent contractors have the right to delegate work and responsibilities to subordinates.
- In order to perform tasks and tasks in a certain way, employees are properly trained. Instead, independent contractors are not trained in the provision of services.
- Employees maintain a stable relationship with their employer. However, independent contractors maintain short-term customer relationships.

There is no direct connection between the two parties, and the state employer does not control the employees employed by the independent contractor, but the state employer can communicate with the independent contractor about the services that the independent contractor wants to provide to them. The contractor ultimately decides which method to use to perform the activity or task undertaken by the person who is the primary employer.

Reasons for vicarious liability.

A servant is only an agent controlled and supervised by his employer. So, the servants works according to the master which means he works the way the master wants a job to do. So, responsibility for the action of the servant must

be from his mastet.

The master or owner always enjoys profits from the servant's efforts, so he also has to bear the losses that occur by servant activities but only on work trips or in employment course.

The master is financially stable than a servant. So, the master is more suitable to pay compensation caused by servant's tortious acts. Because the advantage of employers from the actions of his employees, he must also bear all the losses that might arise because of the activity. So the Masters have to allow to pay attention and preventive measures that make sense to prevent themselves from the issues or from the problems.

How do we determine the contractor is independent or not?

Economic reality test

- These tests relate to individual economic practice^{8s}. If an individual is primarily responsible for the contract's profit or loss, this test indicates an entrepreneurial position.

We conclude that taxpayers are independent entrepreneurs if they are responsible for financial risks, potential profit and loss opportunities, and costs. On the other hand, if these elements do not exist, the task will be removed. It also takes into account the extent to which the employer's premises (e.g. classrooms, educational materials, audiovisual equipment, equipment, etc.) are used on business trips under contract.

The nature of the work

- Independent contractors have their own equipment and everything they need to do their job, but for ordinary workers, all materials and machinery are provided directly by the state employer.

Job control

- The way a person works: if it is in the hands of the state employer, it is an employee, not an independent contractor, but if the way of work is controlled by himself, then he is

classified as an independent contractor.

Integration test

- This test relates to the individual level of the organization. This test is performed when the service provided by the individual is an integral part of the organization, their involvement is one of the employees. If the service can be seen as part of a separate business of individuals who provide services, individuals can then be seen as independent contractors. The court tends to underestimate this test, however, based on that business can depend on each other without the relationship between "servants".

Liabilities of a principal employer

The liability of the main employer based on the Labor Contract act is an example of a vicarious liability or obligation to the company owner. The labour contract act provides a break and the way to contract the workforce of the contractor does not, do not pay wages by granting access to the state employer.

The main employer decides to take action and includes all those responsible for overseeing and managing the organization. In the case of a factory, that person includes the owner or owner or manager of the factory under the Factory Act of 1948⁹. Each company employing more than 20 workers on the previous day's job carries 12 people a month. According to the contract. The employer must ensure that the contractor has an agent while paying wages under the contract of section 21 (2). The deed said nothing about the role of the agent and the department. 4th Part of 21 Prescriber, if the contractor does not pay wages for the work used, the state employer may have to intervene and pay, or there may be no problem. As a result, it is very important that representatives of the main employer understand the nature of their responsibilities and be able to take the necessary actions in case of failure. The relevant departments of the organization are obliged to file complaints and educate their representatives. The labour contract acts that

the contractor must provide certain facilities for the workforce used by it. Rules prescribe a period of time in which the facility can be provided. This facility includes:

1. Canteen provisions
2. Room rest
3. First aid Facility

If the contractor is unable to provide it, the state employer automatically bears the obligation. The law also states that the contractor can recover it.

The legal method of recovering the cost of the main employer is a great comfort, but it is wise to clarify and define mutual rights, goals and obligations by agreement with the entrepreneur within the legal limits. The contract may impose conditions on the contractor to apply the terms of employment under the contract. Employers must prescribe compensation that protects the state employer in case of failure.

For large corporations that employ a large number of people by law (regardless of housekeeping, security or other purposes), it is advisable to obtain a representative for the property below from a previous contractor:

- Contractors have compiled relevant provisions about the law
- Has a valid license / registration based on the law; and

Not a standard payment for other large employers. Some due diligence can also be done to determine whether the contractor has violated the business contract. Although the company has financial liabilities, additional liabilities are imposed on the directors of the company. In case of failure to comply with the terms of the employment contract when hiring an employee, the fine is imprisonment or fine of up to 3 months of imprisonment.

Course of employment

The legal definition of a work path is that it is a legal consideration of any situation that may arise during the performance of an individual's

work, especially the actions taken during the period in which the employer is obliged to perform a specific task assigned to him as employer.

Case study

Dharangadhara Chemical Works Ltd. v State of Saurashtra. It has been found that the right of the owner to control and monitor the performance of an employee's work is the main evidence that the nature of the control can vary from company to company and, in principle, the employee cannot make detailed decisions that do not need to be tested. The employer of the employee's work; There are many contracts that do not apply to everyone, and the master has no control over how the work is performed. The British court also realized that control testing was no longer important.

Suggestion

Explanation of prevention of representative obligations comes in two broad forms: one focus on employer; others focus on employees. Version that focuses on the employer theory believes that because the larger economic unit is in the best position to reduce accidents through organization and efficient staff discipline, the law is justified in making it equally responsible for the name of the accident reduction. This prevention version the argument is not really an explanation of the obligation of representatives, because it eliminates aspect of "representative" of the rules or it's too inclusive and can't explain why it's limited for employee and the employer relationships.

Conclusion

Vicarious of liabilities which means where one person is responsible for the actions of others. In the field of lawsuit¹⁰ or, if it is considered an exception to the general rule, someone is responsible for his or her actions. This means "anyone who does an action that the other person should behave legally is alone or alonely."

Employees and independent contractors have service contracts and related service contracts.

The traditional view of the difference between the two is just a control test. However, this modern scenario lacks testing because there are no unit tests. Significant results can only be achieved by balancing other factors with other testing tools who commits a tort relationship with the defendant was quite similar to work, it never suggested (and indeed rejected) the possibility that one independent company could become very responsible for intentional claims with them.

Means that the independent contractor is a person who works for the employer and for the principal in connection with the agreement revealed or implied, the things he did for this purpose was carried out by. He or other individual workers who are hired by him and it is not the main employer's responsibility for the actions or work he did while on a business trip, unless what he is doing is inherently unrelated to a harmful society.

However, if the employer takes all necessary precautions during the appointment of the contractor or during the term of the contract, we will not be held liable for the person who made a mistake.

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