AILET

Introduction to Vicarious Liability for CLAT With Mock Questions

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Meaning and Concept of Vicarious Liability for CLAT

Generally, a person is responsible only for his own actions and not for anyone else's but there are many circumstances where a person may be liable for the actions of another. Such circumstances are characterised by the term, 'Vicarious Liability'. It is a unique position of law where the law holds one person liable for the acts (the term 'acts' used here, includes omissions as well) of another person, even though the person who is being held liable is not at fault himself. Here is a look at the concept of vicarious liability for CLAT.

Vicarious liability will be better understood through the following Latin maxims which prove to be the underlying principle behind the concept of Vicarious Liability for CLAT:

1. Qui Facit per alium facit per se: This Latin maxim means that 'he who does an act through another is deemed to have it done himself.' If one person entrusts another person to carry out certain types of activities on his behalf, then that person must be liable for the acts done by the entrusted person, provided that the acts done by the entrusted person are related to the type of activities he was entrusted for.
2. Respondeat Superior: This maxim means that the superior must answer for the act of his subordinates. Accordingly, both the superior and the subordinate become equally answerable/liable for the act. This puts the superior in the same position as the subordinate, in the same way as if he had done the act himself.

Practicability

Practically as well, this position of law fares well. There are many reasons why the superior should be made responsible for the acts of his subordinate. Here are some of them:

- Superior is advancing his own interest.
- Superior has control over the subordinate.

- Superior will benefit from the subordinate’s action.
- Superior generally has more financial strength, and would be a more viable source for compensation.

Modes of Vicarious Liability for CLAT

Vicarious Liability may arise in the following ways:

1. By Abetment: Those who abet a tortious act are equally responsible with those who commit the act. A person is to abet an act when he (i) knowingly for his own benefits induces another to commit a wrong or (ii) by use of illegal means directed against a third party, induces a person to do an act which is detrimental to that third party although the person induced may be entitled to do that act.
2. By Ratification: Ratification is when the person for whom an act is performed approves it after it has been completed. As a result, the right to act on his behalf is granted after the act has been completed. In tort law, ratification is viewed as though the act was done with authority from the start. Conditions for Ratification a. A person will be vicariously liable for only those acts which are done for him on his behalf by another person: It indicates that if a person performs an act for the advantage of another person, the person for whose benefit the act was performed can be held accountable for any wrongful act that results from the act. However, even if another person ratifies the act, no other person can be held accountable if the act is done for his or her interests or advantage and not for the benefit of another person. b. Ratification should be done at such a time at which the person who is ratifying could have done that act himself: Under Vicarious liability, it is assumed that the individual committed the act himself. Therefore, it is important that the person who is ratifying an act was himself capable of committing the said act at the time of commission. For eg., a firm can not ratify the acts of a person who committed the tortious act at a time when the firm did not exist at all. c. Ratification should be done with the complete knowledge of the tortious nature of the act: If the person who is ratifying another person’s act is unaware that some wrongful act is being committed, he cannot be held liable for that ratification since he has not accepted the unlawful act, and thus ratification without a full understanding of the situation is not valid to hold him guilty. In this approach, a person can be shielded from unwittingly approving a wrongdoing, and in such circumstances, the person who committed the wrongdoing is solely accountable, even though he did so on behalf of another person without his permission. However, this

condition can be set aside if it is shown that the person who is ratifying meant to take upon the risk of any irregularity which might have been committed. d. Illegal and void acts can not be ratified.

3. By special relationships: This refers to the situations where a person and the wrongdoer are in a relationship which makes the former answerable to wrongs committed by the wrong-doer, even though they may not be specifically authorised.a. Principal and Agent: A principal is vicariously liable for all the wrongful acts of an agent in the course of performance of his duty as the agent. b. Partners: The partners of a firm are joint and severally liable for the acts of each other done in the ordinary course of business of the partnership firm. c. Master and Servant: A master is vicariously liable for the acts done by his servant in the course of his employment.

Practice Questions on Vicarious Liability for CLAT

Question 1. Principle: A master is liable to third persons for every such wrong of his servant as committed in the course of service. For acts beyond the scope of employment, a master is liable only if he has expressly authorised the act.

Facts: A owned a bus and he had B to drive it, and C to be the conductor. One day, when B had stepped out of the bus to have a cup of coffee, C decided to turn the bus around so that it was ready for its next trip. While doing so, C ran over D's leg, causing major injuries to him. D sued A for damages. Decide.

1. D will succeed since C was employed by A.
2. D will not succeed since A had not authorised C to drive the bus.
3. D will not succeed since the bus was not on an official trip.
4. D will succeed since turning the bus was in the course of employment. [AILET 2010]

Answer – (b) D will not succeed since C's job was of a conductor, and not of the driver. Therefore, he had acted outside the course of his service. Additionally, A had not expressly authorised C to drive the bus.

Question 2. Principle: A master is liable to third persons for every such wrong of his servant as committed in the course of service. For acts beyond the scope of employment, a master is liable only if he has expressly authorised the act.

Facts: A handed over Rs. 5000 to her neighbour B, who was an employee of a bank, and asked him to deposit the money in her account. Instead of doing so, B spent the money. A sues the bank for damages. Decide.

1. The bank will be liable since B was its employee.
2. The bank will not be liable since B was not authorised to collect money from A.
3. The bank will not be liable since A gave money to B in his capacity as a neighbour and not as an employee of the bank.
4. The bank will not be liable since this is a criminal act. [AILET 2010]

Answer – (b) Bank will not be liable because even though he was an employee of the bank, the transaction between A and B was outside the scope of B’s service and B had not been authorised to enter into such transactions.

Question 3. Principle 1. A master shall be liable for the fraudulent acts of his servants committed in the course of employment.

1. Whether an act is committed in the course of employment has to be judged in the context of the case.
2. Both master and third parties must exercise reasonable care in this regard.

Facts: Rama Bhai was an uneducated widow and she opened an S.B. account with Syndicate Bank with the help of her nephew by the name Keshav who was at that time working as a clerk in the Bank. Keshav used to deposit the money of Rama Bhai from time to time and get the entries done in the passbook. After a year or so, Keshav was dismissed from the service by the Bank. Being unaware of this fact, Rama Bhai continued to hand over her savings to him and Keshav misappropriated them. Rama Bhai realised this only when Keshav disappeared from the scene one day, and she sought compensation from the Bank.

Possible Decisions:

A. Syndicate Bank shall be liable to compensate Rama Bhai.

B. Syndicate Bank shall not be liable to compensate Rama Bhai.

C. Rama Bhai cannot blame others for her negligence.

Possible Reasons:

(i) Keshav was not an employee of the Bank when the fraud was committed.

(ii) The Bank was not aware of the special arrangement between Rama Bhai and Keshav

(iii) It is the bank's duty to take care of vulnerable customers.

(iv) Rama Bhai should have checked about Keshav in her own interest.

Your decision with the reason:

1. A. and (iii)
2. C and (iv)
3. B. and (ii)
4. B. and (i) [CLAT 2008]

Answer – (c) The arrangement between Keshav and Rama Bhai was unknown by the bank. The Bank had not authorised Keshav to deposit money, hence it was neither an authorised act nor in his course of employment.

Question 4. Principle: The master/principal is liable for all acts done by his duly appointed servant/agent for all acts done by him lawfully in the course of his employment.

Facts: A had an agency that used to lend carpenters to people on a need basis. A deputed B to do some repair work in C's shed. While doing so, B lit up a cigarette and threw it as soon as he saw someone coming there. The cigarette remaining lit caused a fire and the shed was reduced to ashes. C sued A and B. Decide.

1. A is liable as he should have chosen responsible people.
2. A is not liable as B's act was not an authorized act.
3. A is liable as B was his servant.
4. A is not liable but B is liable. [AILET 2014]

Answer – (c) A is liable because his acts were done when he was in the course of employment.

Want to know more about vicarious liability for CLAT? Click here.