AILET

Know All About Vicarious Liability for CLAT

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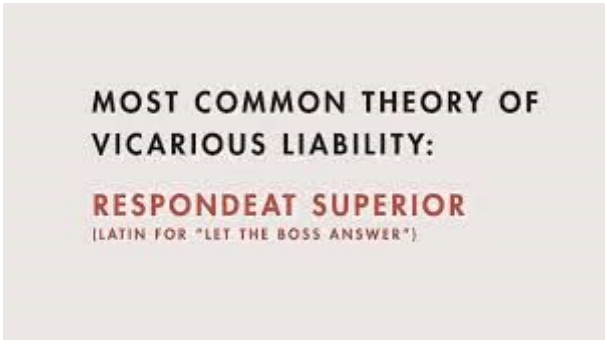
Read this article to know all about the Vicarious Liability for CLAT (Common Law Admission Test) and other law entrance examinations.

Generally, a person is not liable for the acts of another person.

However, a person can be held liable for the acts of another person under the Law of Torts. For a person to be held liable for the act of another person, a certain relationship must exist between those persons and the wrongful act which is complained of must be connected to that relationship.

This liability is based on the concept of "**Respondeat Superior**" which means "Let the Superior be Liable".

Examples of these relationships where vicarious liability may arise are master-servant, principal-agent, guardian- ward and partners.



Principal and agent

A principal is a person who authorises another to act on his behalf while the person who does the act so authorised is called the agent.

A principal is held liable for the acts of his agent. The liability is based on the Latin maxim **'Qui Facit Per Alium Facit Per Se'** which means 'He who acts through another act for himself'.

In simple words, this means that the principal is liable for the acts authorised by him and done by his agent.

For the principal to be held liable, it is necessary that the act should have been authorised by the principal. The authority can be express or implied.

For example, A authorises B to find him a buyer for his house. Thus, A has expressly authorised B to find a buyer. Take another example where A authorises B to go abroad to sell fruits. In this case, B has an implied authority to take proper and reasonable care of the fruits so that they do not get spoiled. This is his implied authority.



Master and Servant

The general rule in case of master-servant relationship is that a master is liable for the acts authorised by him and done by the servant during the course of employment.

Thus, for the liability of the master to arise, it is necessary that the following conditions are satisfied:

1. The tort was committed by the servant
2. The servant committed the tort during the course of employment.

What is the difference between a Servant and an Independent Contractor?

A servant is a person employed by another to do work under the directions and control of the master. An independent contractor is a person who is employed to do a certain task but the master cannot determine how the job is to be done.

The master is not liable for the acts done by the independent contractor.

For example, your driver is your servant as you can give directions to him as to how to drive the car but a taxi driver is an independent contractor as he has been told to drive till a certain place. You cannot order him as to how to drive his taxi.

There are two tests in distinguishing between a servant and an independent contractor:

Hire and Fire Test: To apply this rule, check whether the person employed can be fired from his job or not. Does he receive the salary as his remuneration for his job? If yes, then this test is fulfilled.

However, this test alone does not make a person a servant.

Direction and Control test: Check whether the person who has to do a job receives directions from the master as to how to do the job. If yes, then he is a servant. If no, he is an independent contractor.

So, for a person to be called a servant, both the tests have to be satisfied, while in the case of an independent contractor, only the first test needs to be satisfied.



Vicarious Liability for CLAT

Course of Employment

A master can be held liable for the act of his servant only if the act is done under the course of employment.

An act falls under the course of employment if

a) it is authorised by the master; or

b) it is a wrongful mode of doing an authorised act.

This means that the master can be held liable even for those acts which he has not authorised as long as the act was done is in furtherance of the activities authorised by the master.

Now, how do we check whether an act falls under the above-mentioned categories?

Checking (a) is usually simple.

The problem arises in the second part in which one has to determine whether the act was done is a wrongful mode of doing the authorised act.

One method is to see whether the servant was doing the act in question along with the authorised act or not? If yes then it falls under (b) as he is not supposed to do any other act while performing a master's job.

For example, if a driver smokes while driving, his act falls under (b), but if he gets out of the car and then smokes, his act does not fall under (b).

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