

Principal's Tort and Criminal Liability

by Sophia



WHAT'S COVERED

In this lesson, you will learn how a principal can be held liable for torts or crimes committed by an agent. Specifically, this lesson will cover:

1. Direct Liability

When is the principal liable for injuries that the agent causes another to suffer? There is a distinction between torts prompted by the principal himself and torts of which the principal was innocent.

If the principal directed the agent to commit a tort or knew that the consequences of the agent's carrying out his instructions would bring harm to someone, the result would be **direct liability** for the principal. This is an application of the general common-law principle that one cannot escape liability by delegating an unlawful act to another.

➞ **EXAMPLE** The syndicate that hires a hitman is as culpable of murder as the man who pulls the trigger.

Similarly, a principal who is negligent in his use of agents will be held liable for their negligence. This rule comes into play when the principal fails to supervise employees adequately, gives faulty directions, or hires incompetent or unsuitable people for a particular job.

Imposing liability on the principal in these cases is readily justifiable since it is the principal's own conduct that is the underlying fault; the principal here is directly liable.



TERM TO KNOW

Direct Liability

Liability that attaches to a person directly (as opposed to vicariously or indirectly) as the result of actions he or she performed directly and purposefully, even if such actions were delegated to another. Example: Negligent hiring of an employee with a known tendency to steal.

2. Vicarious Liability

The principle of liability for one's agent is much broader than mere direct liability, however, extending to acts of which the principal had no knowledge, that he had no intention to commit, that he had no involvement in, and that he may in fact have expressly prohibited the agent from engaging in.

This is the principle of **respondeat superior** (“let the master answer”) or the master-servant doctrine, which imposes on the principal **vicarious liability** (vicarious means “indirectly, as, by, or through a substitute”) under which the principal is responsible for acts committed by the agent within the **scope of employment**.

The modern basis for vicarious liability is sometimes termed the **deep pocket theory**: The principal (usually a corporation) has deeper pockets than the agent, meaning that it has the wherewithal to pay for the injuries traceable one way or another to events it set in motion.

➔ **EXAMPLE** A million-dollar industrial accident is within the means of a company or its insurer; it is usually not within the means of the agent (employee) who caused it.

The “deep pocket” of the defendant-company is not always very deep, however. For many small businesses, in fact, the principle of *respondeat superior* is one of life or death.

IN CONTEXT

One example was the closing in San Francisco of the much-beloved Larraburu Brothers Bakery— at the time, the world’s second largest sourdough bread maker. The bakery was held liable for \$2 million in damages after one of its delivery trucks injured a six-year-old boy. The bakery’s insurance policy had a limit of \$1.25 million, and the bakery could not absorb the excess. The Larraburus had no choice but to cease operations.

Respondeat superior raises three difficult questions:

1. What type of agents can create tort liability for the principal?
2. Is the principal liable for the agent’s intentional torts?
3. Was the agent acting within the scope of his employment?

We will consider each of these questions in turn.



TERMS TO KNOW

Respondeat Superior

A doctrine stating that liability of an employee for negligence or intentional torts can be attributed to the employer.

Vicarious Liability

Indirect legal liability, as in the liability of an employer for the acts of an employee.

Scope of Employment

In determining vicarious liability of an employer for an employee’s actions, a test that looks at whether or not the employee was carrying out the employer’s orders.

Deep Pocket Theory

The idea that plaintiffs pursue an employer for liability of its employees based on respondeat superior or vicarious liability with the motivation of going after the party with the money to pay a large verdict rather than suing the employee, who is likely unable to pay a large verdict.

3. Agents for Whom Principals Are Vicariously Liable

In general, the broadest liability is imposed on the employer in the case of tortious physical conduct by an employee, as discussed previously.

If the employee acted within the scope of his employment - that is, if the employee's wrongful conduct occurred while performing his job - the employer will be liable to the victim for damages unless the victim was another employee, in which event the workers' compensation system will be invoked because workers' compensation laws require special treatment of injuries that occur on the job.

Under these laws, an employee may not sue the employer for on-the-job injuries, but is covered solely by the employer's worker's compensation insurance under state statutes.

Ordinarily, an individual or a company is vicariously liable for the tortious acts of employees, but not of independent contractors.

➔ **EXAMPLE** The plumber who rushes to a client's house to repair a leak and causes a traffic accident does not subject the homeowner to liability.

Unsurprisingly, there are exceptions to this rule. Generally, these exceptions fall into a category of duties that the law deems non-delegable. In some situations, one person is obligated to provide protection to or care for another. The failure to do so results in liability whether or not the harm befell the other because of an independent contractor's wrongdoing.

➔ **EXAMPLE** A homeowner has a duty to ensure that physical conditions in and around the home are not unreasonably dangerous. If the owner hires an independent contracting firm to dig a sewer line and the contractor negligently fails to guard passersby against the danger of falling into an open trench, the homeowner is liable because the duty of care in this instance cannot be delegated. The contractor is, of course, liable to the homeowner for any damages paid to an injured passerby.

4. Liability for Agent's Intentional Torts

In the nineteenth century, a principal was rarely held liable for intentional wrongdoing by the agent if the principal did not command the act complained of. The thought was that one could never infer authority to commit a willfully wrongful act.

Today, liability for intentional torts is imputed to the principal if the agent is acting to further the principal's business.

4a. The Scope of Employment Problem

The general rule is that a principal is liable for torts only if the employee committed them "in the scope of employment." But determining what this means is not easy.

It may be clear that the person causing an injury is the agent of another. But a principal cannot be responsible for every act of an agent. If an employee is following the letter of his instructions, it will be easy to determine liability. But suppose an agent deviates in some way from his job.

CASE STUDY: *Joel v. Morrison*

The classic test of liability was set forth in an 1833 English case. The plaintiff was run over on a highway by a speeding cart and horse. The driver was the employee of another, and inside was a fellow employee. There was no question that the driver had acted carelessly, but what he and his fellow employee were doing on the road where the plaintiff was injured was disputed. For weeks before and after the accident, the cart had never been driven in the vicinity in which the plaintiff was walking, nor did it have any business there. The suggestion was that the employees might have gone out of their way for their own purposes.

As the great English jurist Baron Parke put it, “If the servants, being on their master’s business, took a detour to call upon a friend, the master will be responsible....But if he was going on a frolic of his own, without being at all on his master’s business, the master will not be liable.” In applying this test, the court held the employer liable.

Joel v. Morrison, 6 Carrington & Payne 501.

The test is thus one of degree, and it is not always easy to decide when a detour has become so great as to be transformed into a frolic. For a time, a rather mechanical rule was invoked to aid in making the decision. The courts looked to the employee's purposes in “detouring.”

If the employee's mind was fixed on accomplishing his own purposes, then the detour was held to be outside the scope of employment; hence the tort was not imputed to the employer. But if the employee also intended to accomplish his employer’s purposes during his departure from the letter of his assignment, or if he committed the wrong while returning to his employer’s task after the completion of his frolic, then the tort was held to be within the scope of employment.

Again, this test is not always easy to apply.



THINK ABOUT IT

If a hungry deliveryman stops at a restaurant outside the normal lunch hour, intending to continue to his next delivery after eating, he is within the scope of employment. But suppose he decides to take the truck home that evening, in violation of rules, in order to get an early start the next morning. Now suppose he decides to stop by the beach, which is far away from his route. Does it make a difference if the employer knows that his deliverymen do this?

4b. The Zone of Risk Test

Court decisions in the last 40 years have moved toward a different standard, one that looks to the foreseeability of the agent’s conduct. By this standard, an employer may be held liable for his employee’s conduct even when devoted entirely to the employee’s own purposes, as long as it was foreseeable that the agent might act as he did.

This is the **zone of risk test**. The employer will be within the zone of risk for vicarious liability if the employee is where he is supposed to be, doing - more or less - what he is supposed to be doing, and the incident arose from the employee’s pursuit of the employer’s interest (again, more or less).

In other words, the employer is within the zone of risk if the employee is in the place within which - if the

employer were to send out a search party to find a missing employee - it would be reasonable to look.



TERM TO KNOW

Zone of Risk Test

In determining vicarious liability of an employer for an employee's actions, a test that looks at whether or not the employee's actions were foreseeable in carrying out the orders of the employer.

5. Principal's Criminal Liability

As a general proposition, a principal will not be held liable for an agent's unauthorized criminal acts if the crimes are those requiring specific intent.

➔ **EXAMPLE** A department store proprietor who tells his chief buyer to get the "best deal possible" on next Fall's fashions is not liable if the buyer steals clothes from the manufacturer.

A principal will, however, be liable if the principal directed, approved, or participated in the crime. Cases here involve, for instance, a corporate principal's liability for agents' activity in antitrust violations— price-fixing is one such violation.

There is a narrow exception to the broad policy of immunity. Courts have ruled that under certain regulatory statutes and rules, an agent's criminality may be imputed to the principal. These include pure food and drug acts, speeding ordinances, building regulations, child labor rules, and minimum wage and maximum hour legislation.

Misdemeanor criminal liability may be imposed upon corporations and individual employees for the sale or shipment of adulterated food in interstate commerce, notwithstanding the fact that the defendant may have had no actual knowledge that the food was adulterated at the time the sale or shipment was made.

In addition, legislation related to corporate accounting, such as the Sarbanes-Oxley Act of 2002, have created criminal liability for corporate officers by removing the defense of "Who? Me?" from the picture. Corporate officers are now required to establish internal controls and sign off on financial reports at the risk of being held criminally liable for fraudulent reporting.



SUMMARY

In this lesson, you learned that a principal holds **direct liability** for an agent's torts if the principal was directly responsible for the tort, as in hiring a person the principal knew or should have known was incompetent or dangerous, or instructing the agent to commit the tort. The principle of *respondeat superior* also imposes **vicarious liability** on a principal for acts committed by an agent within the scope of employment. **Agents for whom principals are vicariously liable** exclude employees injured on the job (for whom the workers' compensation system is invoked) and independent contractors.

Determining **liability for an agent's intentional torts** is difficult because of the **scope of employment problem**. The **zone of risk test** seeks to provide a standard by which an employer may be held liable for an employee's conduct. A principal generally holds no **criminal liability** for unauthorized acts committed by an agent.

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