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Vicarious Liability, Defined!

Vicarious liability is liability based not on a person's own wrongdoing, but rather on that person's relationship to the wrongdoer. Ren foll imp

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SO, WHAT RELATIONSHIPS ARE WE TALKING ABOUT?

--Parent may be responsible for acts of children.

--Employers may be responsible for acts of employees.

--Employers are responsible for acts of independent contractors in case of "non-delegable duties."

--Principals may be responsible for acts of agents.

--One partner may be responsible for acts of another partner.

--One person engaged in a joint enterprise may be responsible for the acts of another.

--The owner of a car may be responsible for the acts of the driver.

NOTE: ALL OF THESE INDIVIDUALS ARE RESPONSIBLE FOR THEIR OWN NEGLIGENT ACTIONS, BUT THAT IS NOT THE SUBJECT OF THIS HANDOUT. IN THESE CASES, WE'RE DISCUSSING HOLDING A PERSON LIABLE FOR ANOTHER'S INJURY, EVEN THOUGH THE PERSON HAS NOT BEHAVED NEGLIGENTLY OR OTHERWISE DONE ANYTHING WRONG.

PARENT MAY BE RESPONSIBLE FOR ACTS OF CHILDREN.

Essential Elements:

1. Defendant's child was under 18.
2. Child maliciously or willfully injured plaintiff or destroyed plaintiff's property.
3. Amount of actual damages.

Limitations: 1. Total recovery may not exceed $2,000.
2. Fact that parent no longer has custody and control (whether by court order or agreement) is complete defense.

EMPLOYER MAY BE RESPONSIBLE FOR ACTS OF EMPLOYEES.

Essential Elements:

1. Negligent person was employed by defendant.
2. Negligent person was acting within scope of employment, *or*
   employer authorized the employee to act tortiously *or*
   employer later ratified employee's tortious acts.
3. Amount of actual damages.

Limitations:

1. Distinguish between employee and independent contractor: An employer is NOT responsible for the acts of an independent contractor. Test is whether defendant maintained the right to control and direct the manner in which the details of the work were to be done. A worker is an independent contractor if that person contracts to perform work based on his own methods and judgment, retained the right to determine how and in what manner the work shall be done, reporting to defendant only in terms of result of work.

2. The courts have said that an employee acts within the scope of his employment if his actions were for the purpose of in some way furthering the business of the employer. The courts have applied this standard in a somewhat mechanical fashion, focusing on WHAT the employee was doing—assigned duties (albeit in a tortious fashion) or something else?

EMPLOYERS ARE RESPONSIBLE FOR ACTS OF INDEPENDENT CONTRACTORS IN CASE OF "NON-DELEGABLE DUTIES."

The courts have identified the following as "inherently dangerous" activities or "non-delegable" duties. This means that these areas are so important that we will hold an employer responsible even for the acts of an independent contractor.

1. Mechanic negligently repaired brakes—owner held responsible.
2. Plumber negligently repairs water heater in inn—innkeeper held responsible based on duty to guests of inn.
3. Operator of ride at fair negligently failed to close safety bar—fair owner held responsible.

ONE PERSON ENGAGED IN A JOINT ENTERPRISE MAY BE RESPONSIBLE FOR THE ACTS OF ANOTHER.

A joint enterprise exists when two or more people join together in pursuit of a common purpose, having an equal right to direct each other's actions. Persons engaged in a joint enterprise are jointly and severally liable for the negligent actions of each other.

A passenger in a vehicle may be responsible for the negligence of the driver if the two are engaged in a joint enterprise.

THE OWNER OF A CAR MAY BE RESPONSIBLE FOR THE ACTS OF THE DRIVER.

An owner of a car who is a passenger is vicariously liable for the negligence of the driver, based on the owner's legal right to control the operation of the vehicle.

Even when the owner of a car is not a passenger at the time of the negligent action, the owner is responsible if

(1) The driver is a member of the owner's family or household and lives in the owner's home;

(2) The vehicle is one used for the general "use, pleasure, and convenience of the family," and
(3) The vehicle was being so used at the time of the accident with the owner's express or implied consent.

This rule applies to motor vehicles of any type (including motorcycles and boats), whether accidents occur on or off a public highway.

This rule does NOT apply to hold one spouse responsible for the negligent acts of the other in a case in which the spouses are co-owners.

Rule of Evidence:

G.S. 20-71.1 (paraphrased): In all actions for injury to person or property by motor vehicle, proof of ownership is prima facie evidence that owner authorized driver's actions. Proof of registration is prima facie evidence of ownership as well as that operator was acting as agent (or legal equivalent) of owner.