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Expanding the Scope of Vicarious Liability: Contemporary Challenges and Legal Adaptations in Employer-Employee Dynamics

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ABSTRACT:

Vicarious liability is a key principle in tort law that holds employers responsible for the wrongful actions of their employees when these actions occur within the scope of their employment. Although this doctrine has its roots in traditional common law, its modern-day use highlights intricate challenges involving victim compensation, fairness, equitable loss distribution, and the promotion of deterrence. This study critically examines the evolving nature of vicarious liability, focusing on its doctrinal challenges and practical implications in contemporary legal and societal contexts. The study explores the doctrine's adaptability to emerging issues such as the gig economy, platform-based work, and digital misconduct. It highlights how judicial interpretations, including Uber BV v Aslam and Barclays Bank v Various Claimants, underscore the necessity of re-evaluating traditional employment boundaries to accommodate modern work structures. Additionally, the study addresses critical limitations, such as the exclusion of independent contractors and the tension between accountability and fairness, particularly in cases involving exemplary damages. Through an analysis of corporate governance frameworks, non-delegable duties, and economic implications, the study illuminates the doctrine's capacity to address systemic workplace issues, including harassment and discrimination. The study argues for nuanced legal reforms that align vicarious liability with contemporary realities, emphasizing its potential to foster justice and accountability in complex organizational landscapes. This research adds to legal scholarship by providing an in-depth analysis of vicarious liability, suggesting a well-rounded framework to resolve its uncertainties, and exploring its applicability to contemporary issues like AI-powered workplaces and responsibilities in cybersecurity. It provides a foundation for further study and legal reform, bridging traditional principles with the demands of evolving societal and technological contexts.

Keywords: Vicarious Liability in Tort Law, Employer Liability for Employee Actions, Gig Economy and Legal Accountability, Digital Misconduct and Liability, Corporate Governance

and Legal Responsibility, Non-Delegable Duties in Modern Law, Victim Compensation and Legal Reform.

I. INTRODUCTION:

Vicarious liability is a form of strict liability where an employer is held accountable for the wrongful actions of their employee, even if the employer is not personally at fault. This doctrine is often viewed as a mechanism for distributing losses rather than assigning blame. It operates on the principle that liability for an injury may extend to someone who has a specific legal relationship with the negligent party, such as an employer-employee or principal-agent relationship. The foundation of tort law lies in the duty to respect others' interests, which stems from broader social obligations rather than contractual promises. These obligations, like an employer's duty to oversee employees or a principal's responsibility to monitor agents, underpin the concept of vicarious liability.

The imposition of vicarious liability is thought to have been introduced into the English common law in the late seventeenth century.[1] The term vicarious liability is used to point out that the law holds one person responsible for the misconduct of another, although the first person is free from any personal blameworthiness or fault. While rooted in historical concepts, the doctrine continues to evolve in modern legal contexts. 'Qui facit per alium facit per se' the common law maxim means 'He who acts through other acts himself.'[2] The concept is a legal parallel to respondent superior, which means that a superior person is fully responsible for the actions of a subordinate person. This historical foundation provides an important context for understanding its contemporary applications. It is widely established that the theory underlying the law can be traced to the historical concept of the duty of the head of a household to the conduct of his family and servants.[3] Ever since the doctrine of vicarious liability came into the law it has been gradually expanded by the courts in two principal directions (i) the categories of persons for whose torts such liability is recognized has been enlarged[4] (ii) and the kinds of act for which vicarious liability can be enforced have been profoundly influenced by the fact that imposing vicarious liability was an appropriate way of securing the payment of compensation to injured claimants, without imposing crushing liabilities on a negligent

[1] Williams GL „vicarious liability and the Master"s Indemnity" (1957) 20 MLR 220 at 228.
[2] Prasanna, A. (1985). Tortious Liability of Government. *Cochin University Law Review*, *9*, 413-435.
[3] Hollis v Vabu Pty Ltd (2001) 181 ALR 263 per Gleeson CJ, Gaudron, Gummow, Kirby and Hayne JJ at 273. also Fleming JG, the Law of Torts (9th ed, 1998) at 409.
[4] Atiyah, P. S. (1967). Vicarious liability in the law of torts. *(No Title)*.

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tortfeasor[5] In general, one person's independent negligence is not typically attributed to another. However, vicarious liability applies in certain relationships where one person has the authority to control the acts of another.[6] Legal relationships that may result in the attribution of negligence include those between parent and child, husband and wife, principal and agent, vehicle owner and driver, as well as employer and employee. While focusing on employer-employee relationships, this study briefly addresses other legal relationships to provide context. Among them this study focuses on the employer-employee relationship within the broader framework of vicarious liability, it is the most discussed one. Emerging issues, such as vicarious liability in the gig economy and its application to platform-based employment, demonstrate its ongoing evolution and relevance in modern legal contexts.[7]

This study seeks to explore the doctrinal and practical challenges of vicarious liability in contemporary UK law. This study is an attempt to portray the key areas where vicarious liability is applicable predominantly in the UK. While predominantly analyzing UK law, select comparisons with other jurisdictions illustrate the global applicability of the doctrine. Some laws and court decisions from other places are mentioned to support the main point of view of the doctrine of vicarious liability and how it affects Western countries.

II. The Principle of Vicarious Liability:

Vicarious liability is a doctrine grounded in public policy rather than being a product of detailed analysis or refinement of other common law principles. Within the scope of tort law, an employer's liability is generally categorized into two distinct types.[8] The first type is vicarious liability, where the employer is held responsible solely because the harm resulted from a wrongful act committed by an employee during the course of their employment. For instance, if an employee intentionally causes harm to another person while performing their job duties, the employer may be held vicariously liable for the employee's actions. The victim may also be able to claim under the Criminal Injuries Compensation Scheme.[9] Secondly, the

[5] Cane, P. (2013). *Atiyah's accidents, compensation and the law*. Cambridge university press.
[6] Law rank, https://law.jrank.org/pages/11107/Vicarious-Liability.html (last visited Jan. 9, 2025).
[7] Bista's Blog, https://bistasarojlaw.blogspot.com/2017/02/vicarious-liability-in-nepal-special.html (last visited Jan. 9, 2025).
[8] Neyers, J. W. (2005). A theory of vicarious liability. *Alta. L. Rev.*, *43*, 287.
[9] Sharkey, C. M. (2018). Institutional Liability for Employees' Intentional Torts: Vicarious Liability as a Quasi-Substitute for Punitive Damages. *Val. UL Rev.*, *53*, 1.

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liability may be "personal" in the sense that the employer or corporation is itself accountable, regardless of whether any identifiable employee was responsible. In practice, the distinction between the two types of liability seems to hold minimal significance. Cases are often categorized as either vicarious or personal liability based on whether the harm resulted from an act of misfeasance or nonfeasance. In misfeasance, identifying a specific employee responsible is often difficult; in nonfeasance, however, it may be that no one individual can be held accountable.[10]

In some situations, a person may incur liability for a tort committed by another person, even though the principle of vicarious liability does not apply. For example, the relationship between principal and agent sometimes results in the imposition of vicarious liability on a principal for the wrongs of their agent. A principal may be personally liable for the torts of an agent in certain circumstances. In certain situations, an individual may be held personally liable when a tort committed by another violates a non-delegable duty owed to the injured party.[11]

It may seem unfair and legally unjustifiable that a person who has committed no wrong should be liable for the wrongdoing of another. It can be argued that employers, who hire individuals to further their own economic interests, should bear responsibility for any harm caused by their employees' actions. This ensures that an innocent victim can seek compensation from a financially capable defendant, as employees often lack the resources to cover the damages. Employers typically carry liability insurance, with the costs ultimately distributed to the public through higher prices. However, imposing excessive liability on employers could hinder their business operations, making it unreasonable to hold them accountable for every wrongful act committed by their employees.[12]

A) The General Frame Work for Vicarious Liability:

"Respondent Superior" is a phrase that means "let the master answer". In simpler terms, this refers to the master's liability for the servant's negligence in situations where the master has a duty of care toward others. Employers are usually in the best position to bear the burden of

[10] Fleming, D. (1988). Negligence—Employer and Employee—Personal and Vicarious Liability. *The Cambridge Law Journal*, *47*(1), 11-11.

[11] Witting, C. (2006). Breach of the non-delegable duty: Defending limited strict liability in tort. *UNSWLJ*, *29*, 33.

[12] Madhavi Gaur, Types of Inflation: Understanding the Different Forms of Price Rise, PWonlyias (Jan. 9, 2025, 8:30 P.M.), https://pwonlyias.com/types-of-inflation/.

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compensation, through insurance and the ability to pass on the costs through pricing their products. Vicarious liability is enforced to ensure compensation. The financial position of a master is assumed generally to be stronger than that of his servant. Excessive employer liability, however, could hinder business operations, so holding employers liable indiscriminately may not always be appropriate. An employer-employee relationship is determined based on the amount of control the employer exercises over the service provided by the employee. An employer is held responsible for the actions of an employee carried out within the scope of their employment. To establish vicarious liability, the control of the employer over the servant at the time of the tort must be proven.[13]

III. Authority and control:

It can be stated that while control will always remain a factor to consider, it can no longer be viewed as the sole determining criterion. [14] In the employer-employee relationship, the level of control an employer has over the employee's work is a crucial factor in determining vicarious liability. This section explores the role of control, the dynamics of the employer-employee relationship, and how they impact vicarious liability. An employee is generally defined as an individual working under the direction and control of their employer regarding how their tasks should be carried out. Employers can be held vicariously liable for their employees' actions within the scope of employment, provided there is evidence of the employer's control at the time the wrongful act occurred. To assess whether a contract of service or employment exists, MacKenna J outlined three key conditions in *Ready Mixed Concrete (South East) Ltd v Ministry of Pensions*[15]. First, the employee agrees to offer their labor and skills to the employer in exchange for wages or other compensation. Second, the employee either explicitly or implicitly agrees to follow the employer's instructions regarding how the work is to be carried out, establishing the employer-employee relationship. Lastly, the other terms of the agreement must align with what would be expected in an employment contract.

In earlier legal contexts, the right of control over how a job was done was considered the primary test. Over time, this evolved to encompass additional factors, such as what had to be done, when it had to be done, and where it had to be done. Courts now take into account several

[13] Neild, D. (2013). Vicarious liability and the employment rationale. *Victoria U. Wellington L. Rev.*, *44*, 707.
[14] Ikanoon, https://indiankanoon.org/doc/127871825/ (Jan, 9, 2025).
[15] [1968] 2 QB 497

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factors, such as the worker's relationship to the business, the terms of their agreement, the nature and frequency of the work, and how they are compensated. In Launchbury v Morgans[16], The owner of a car was found not liable for the actions of a negligent driver due to a lack of evidence showing agency or control over the driver's behavior. The House of Lords reaffirmed that liability would only apply if the owner had a clear interest in the purpose for which the vehicle was being used. The lack of control played a key role in the decision to dismiss the liability. The decision in Morren v Swinton confirms that the right to control how work is done is a strong indicator of employment.[17] However, control is limited when it comes to skilled workers who generally do not require instructions on how to perform their tasks. As noted, control will always be a factor to consider, but it can no longer be the sole determining element. Other factors, such as whether the individual provides their own tools, hires assistants, takes on financial risks, handles investment and management responsibilities, or has the opportunity to profit from good management, are becoming more important. In *Cameron v Nystrom*, the court addressed whether stevedores could claim the defense of common employment against a servant of the shipowner whose vessel they were unloading.[18] The plaintiff was injured due to the negligence of one of the shipowner's employees.[19] Control, in this case, was implied from the circumstances, reflecting the relationship between stevedores and shipowners. However, as the stevedores were not selected, paid, or discharged by the shipowner, they were deemed employees of a contractor hired for specific tasks. [20]

A typical example of vicarious liability is an employer being held responsible for the torts committed by their employees while performing their job duties. While control remains a critical factor, modern tests also consider financial risks, management responsibilities, and the nature of the employment relationship.

IV. Employment:

'We have only to consider in whose employment the man was at the time when the acts complained of were done, in this sense that by the employer is meant the person who has a

[16] [1972] UKHL 5; (1973) AC 127
[17] [1965] 1WLR 576
[18] Studoc, https://www.studocu.com/my/document/universiti-kebangsaan-malaysia/tort-ii/century-insurance-company-limited-appellants-and-nort/27205086 (last visited Jan. 9, 2025).
[19] 1893 A.C. 308,
[20] the definition of servant in Salmond on Torts 9th ed. (1936), p. 89

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right at the moment to control the doing of the act.'[21] An employee is typically described as an individual who agrees to perform work for another under a contract of service. This differs from an independent contractor, who works under a contract for services and maintains substantial control over how the tasks are carried out. There are three basic requirements to attribute liability to the employer. First, it must be established that the tort was committed by an employee, not an independent contractor. Second, the nature of the relationship between the employer and the employee must be clarified. Lastly, the tort must have occurred during the course of employment. Employers are typically held liable for the actions of an employee if the act took place during work hours and while the employee was performing tasks related to their job.

The general rule of vicarious liability holds employers accountable for their employees' negligence, provided the employee was acting "in the course of employment." The definitions of "employee" and "course of employment" are complex and require careful consideration. The level of control exerted by the employer is a key factor, as independent contractors usually maintain greater autonomy over how their work is performed, which sets them apart from employees. Vicarious liability applies when an employee's negligent act occurs within the scope of their employment.[22]

A) Negligence:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. The legal question of "who is my neighbor?" can be answered as those individuals who are closely and directly impacted by my actions, to the point that I should reasonably consider them when thinking about my potential acts or omissions. Negligence is a legal term often used to secure compensation for accidents or injuries. In the case of vicarious liability, an employer is held responsible for the negligent acts or failures of an employee while performing their duties, regardless of whether the employer specifically authorized the act. As the saying goes, "If an employee causes harm through negligence, the employer is liable for their neglect," which reflects a long-standing principle in English law.[23] For example, in a modern workplace, an employer may be held accountable if an employee's

[21] Bowen L.J. in *Donovan v Laing Syndicate*, 1893, 1 Q.B.629, at p.639)
[22] Mohammed Naaim, M. S., Abdul Jamal, J., Jaiman, C. U. S., & Abdullah, F. (2023). Analysing the conditions for establishing vicarious liability in Malaysia. *Borneo Akademika*, *7*(2), 13-24.
[23] Lonang, https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-114/ (last visited Jan. 9, 2025).

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careless operation of machinery leads to injury or damage to a colleague or a third party, as such actions are typically considered part of the employee's job duties. Rylands v Fletcher[24], This case was a significant milestone in English tort law. It established that an individual who brings something onto their property that could cause harm if it escapes must take responsibility for it. If the item escapes and causes damage, the person is generally held liable for the harm that naturally results from its escape.[25]

In Burnie, the Authority owned a building. It occupied a part of the building. The plaintiff occupied a part of the premises by agreement with the Authority. The plaintiff had a large quantity of frozen vegetables stored in these cold rooms. The Authority had building work underway on the premises. One of its building contractors carried out welding activities near boxes of an insulating material that burned fiercely when ignited. The trial judge ruled in favor of the plaintiff, basing the decision on the tort of negligence and a specific principle known as the "ignis suus rule," which holds occupiers liable for damage caused by the escape of fire from their property. This case illustrates how negligence principles are applied in practical situations, such as on construction sites where inadequate safety measures can result in harm. When the matter reached the High Court, the court held that the plaintiff's claim was properly to be based on the general tort of negligence.[26]

The ignis suus rule had no application in Australia, nor did the Rylands v Fletcher tort. In the court's view, the Rylands tort was anomalous, however, negligence, in the Rylands tort was intellectually consistent and was built on the concept of foreseeability. To escape vicarious liability, an employer must show that either the employee exercised reasonable care and was not negligent or that the employee was acting independently and not on behalf of the employer's business. For instance, if an employee strays from their assigned tasks and causes harm while attending to personal matters, the employer might not be held liable. The main issue in Century Insurance Company Ltd., v Northern Ireland Road Transport Board,[27] An employer can avoid vicarious liability by proving either that the employee acted with reasonable care and was not negligent or that the employee was acting independently, outside the scope of their

[24] Blackburn J in the Court of Exchequer Chamber
[25] Edmund W. Burke, Rhlands V. Fletcher in Illinois, Scholarship (Jan. 9, 2025, 8:40 P.M.), https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1568&context=cklawreview.
[26] Choi, Y., Han, C., & Ko, W. (2024). Improvement of Fire Safety Management at Construction Sites. *Journal of the Korean Society of Hazard Mitigation*, *24*(3), 105-114.
[27] [1942] AC

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employment. For example, if an employee deviates from their work duties and causes harm while handling personal errands, the employer may not be held responsible.

The questions in debate in regard to the third party liability were (1) whether at the material time Davison was the servant of the Respondents or of Holmes Mullin and Dunn Ltd., (1) The case involved determining whether the Respondents had a continuous contract with Davison for the transportation and delivery of petrol using their tank lorries. (2) If Davison was found to be an employee of the Respondents, the issue was whether his act of lighting a cigarette constituted negligence within the scope of his employment, thereby making the Respondents liable for compensating the parties whose property was damaged by the explosion caused by Davison's reckless behavior. This case also portrays a situation where dual vicarious liability. This case illustrates the complexities of establishing liability when multiple parties and contracts are involved, reflecting contemporary challenges in tort law.[28]

B) Dual Vicarious Liability (Lent/ borrowed employee):

Vicarious liability refers to the responsibility placed on one individual, such as an employer, for the actions or omissions of another, such as an employee. In some cases, dual vicarious liability may arise in employment situations. For example, when a primary employer temporarily "lends" an employee to a third party, and the employee commits a tort while working for that third party. The primary employer remains liable unless they can demonstrate—bearing a significant burden of proof—that they had temporarily relinquished all control over the employee at the time the tort occurred.[29] It is easier to show that the hirer had control where the servant is an unskilled laborer under a labor-only contract than where he is borrowed along with a complicated piece of machinery which he is to operate Garrard v AE Southey & Co Ltd illustrates this principle by highlighting the difficulty of establishing control when the borrowed employee operates specialized equipment.

In Mersey Docks and Harbour Board v Coggins,[30] To establish that the temporary employer is vicariously liable for the actions of a borrowed employee, a stringent standard is applied. This burden of proof is significant and can only be met in rare and exceptional situations. As

[28] Glofcheski, R. (2004). A Frolic in the Law of Tort: Expandingthe Scope of Employers' Vicariousliability. *University of Hong Kong Faculty of Law Research Paper*(10722/65433), 18-39.
[29] Okpeh, B. (2021b). Modern Approach to the Doctrine of Vicarious Liability. *Available at SSRN 3884388*.
[30] [1946] 2 All ER 345; [1947] AC 1; [1946] UKHL 1

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Professor Atiyah pointed out[31], "where it is suggested that it is strange that the courts have never countenanced what might be an obvious solution in some cases, namely holding both the general and the temporary employer vicariously liable for an employee's negligence" In Mersey Docks and Harbour Board v Coggins and Griffith (Liverpool) Ltd [32], The appellants employed Y as a mobile crane operator and hired out both the crane and Y's services to the respondents, a stevedoring company, for unloading a ship. Under the contract between the appellants and the respondents, Y was considered an employee of the respondents during this period.[33] However, Y's salary was paid by the appellants, who retained the sole authority to dismiss him. Whilst loading the cargo, Y was under the immediate control of the respondents, in the sense that they could tell him which boxes to load and where to place them, but they had no power to tell him how to manipulate the controls of the crane. In the course of loading a ship, a third party was injured through Y's negligent handling of the crane. The House of Lords was tasked with determining whether the appellants or the respondents were vicariously liable for Y's negligence. This decision hinged on whether Y was considered the servant of the respondents or the appellants at the time of the accident. Lord Porter explained that to establish the respondents' liability, it was not enough to demonstrate their control over the task to be completed; it must also be proven that they directed the manner in which the task was performed. He further noted that when someone operating a mechanical device, such as a crane, is assigned a job, it is often inferred that the general employer retains control over the method of performance, particularly because the crane belongs to them, and its operator remains answerable to them for its safekeeping.

The court therefore held that the appellants alone were vicariously liable. The principle adopted in this case is that if one employer lends a servant to another the liability depends on whichever of the two had the right of control over the servant's activities at the time the injury was caused. Viasystems v Thermal Transfer,[34] This ruling disrupted the traditional understanding by establishing that liability can be shared between the general and temporary employers. The Court of Appeal determined that responsibility for an employee's actions

[31] Vicarious Liability in the Law of Torts (1967) in a chapter entitled "The Borrowed Servant", p 152, at p 156

[32] [1947] AC 1.

[33] Studocu, https://www.studocu.com/row/document/the-university-of-the-west-indies-mona/law-of-torts/vicarious-liability-notes/11114524 (last visited Jan. 9, 2025).

[34] [2006], ICR 327, CA, [2005] EWCA Civ 1151.

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may rest with multiple employers if both exert control over the worker, even if one of them is not technically the formal employer of the individual involved. Under this regime of shared liability, both employers are regarded as joint tortfeasors and, in line with general principles, the plaintiff can recover in full from either of them. It may be said that this judicial reform took place against the backdrop of a decidedly unexceptional set of facts.

The *Viasystems* case highlights a common scenario in construction or engineering projects involving multiple parties. In this case, Viasystems hired the first defendant to install air conditioning, who then subcontracted part of the work to the second defendant. The second defendant, in turn, relied on borrowed employees from the third defendant for assistance. The damage occurred due to the negligence of an employee of the third defendant while working under the instruction or supervision of the second defendant.[35] It appears that the borrowed employees were given instruction by the second defendant about methods of working, including safety. It was evident that an employee of the second defendant had responsibility for site safety. The intricacies of shared liability in these multi-employer situations emphasize the importance of clear agreements outlining the delegation of safety duties and the extent of control exercised by each party.[36]

The assumption has implicitly been applied in numerous cases in which an employee of a company has been hired or seconded to work for another company. In certain situations, even though there is no formal transfer of employment, the law may treat an individual as an employee of another company, holding that company vicariously liable for the individual's negligence. The case of *Viasystems v Thermal Transfer* establishes that dual vicarious liability can apply in employment scenarios. This decision is potentially significant in outsourcing contracts. This case highlights the need to consider what liabilities could arise if an individual supplied pursuant to an outsourcing or other services contract performs negligently.[37] In particular, customers should consider whether they are really passing all responsibility to the supplier. If in practice the customer will retain a degree of operational involvement, it is important to consider how potential liabilities such as indemnities should be provided for.

[35] Douglas Brodie, The Enterprise and the Borrowed Worker, Academic (Jan. 9, 2025, 8:45 P.M.), https://academic.oup.com/ilj/article-abstract/35/1/87/690490.
[36] Clapham, P. (2006). The buck stops where?[contractual law]. *Engineering Management*, *16*(2), 14-15.
[37] Goudkamp, J. (2017). Duties of Care between Actors in Supply Chains.

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When the Court finds that two employers share vicarious liability for the actions of an employee, their liability will be equal. Whether there will be a finding of dual vicarious liability depends on all the circumstances, particularly on which firm had control of the employee and whether, for practical purposes, the work made him or her part of the work, business, or organization of both employers. In situations of unclear control, courts must carefully weigh evidence of operational oversight, payment arrangements, and the scope of the employee's duties under each employer's supervision.[38] This case should sound a warning to firms that supply or make use of "borrowed" employees or subcontractors to make sure that their contractual and/or insurance arrangements will guard them should a problem of this nature arise.

C) Performing duty in an unauthorized way:

Vicarious liability arises in two ways, Firstly, by an employer authorizing a wrongful act. Secondly, although the employer did not authorize the act the employee performed it in the course of employment.[39] To clarify, the test for determining the second issue involves assessing whether the unauthorized act is so closely connected with the authorized duties that it can reasonably be regarded as a mode of performing those duties. This approach provides a consistent framework for analyzing whether such acts fall within the scope of employment. The employer will be vicariously liable if the employee was engaged in an activity for which he or she was employed, or was engaged in an activity incidental to his or her employment, even if that work was undertaken in an unauthorized way. This may appear to be unfair, but the view is taken that, by employing a person, the employer makes it possible for him to commit the wrong. It is regarded as a normal business risk undertaken by the employer for which he would be wise enough to take out insurance.[40].

In Ilkiw v Samuels[41], In this case, a lorry driver, who was strictly instructed by his employers not to allow anyone else to drive the lorry, permitted an incompetent third party to drive it without checking their ability. As a result, the employers were held vicariously liable for the

[38] Ulfbeck, V., & Andrecka, M. (2017). Contracting out of the provision of welfare services to private actors and liability issues. *Journal of European Tort Law*, *8*(1), 78-99.
[39] Deakin, S. F., Adams, Z., & Markesinis, B. (2019). *Markesinis and Deakin's tort law*. Oxford University Press.
[40] Business Law by Keith Abbott, Norman Pendlebury, Kevin Wardman
[41] [1963] 1 WLR 991

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accident.[42] Diplock LJ clarified the distinction between prohibitions that restrict the scope of employment and those that govern conduct within the scope. This distinction ensures that only actions directly related to the employee's job are considered. He explained that some prohibitions limit the overall scope of employment, while others only regulate behavior within that scope. To categorize a specific prohibition, it was necessary to assess what the scope of employment would have been if the prohibition had not been in place. load of sugar and transport it using his employer's lorry, which he was in charge of. He was specifically prohibited from allowing anyone else to drive the lorry during this task. This prohibition did not limit the scope of his employment but regulated his conduct within it. Employers are vicariously liable not only for acts explicitly authorized by the employer but also for unauthorized acts that are so closely related to authorized actions that they can be seen as different ways of carrying out those authorized tasks. An employer is not automatically liable for every wrongful act committed by an employee.[43] Vicarious liability applies only when there is a clear connection between the employee's wrongful act and the duties they were hired to perform. This nexus is known as the "course of employment" and justifies holding the employer liable.

Rose v Plenty [44], involved a breach of an employer's prohibition on employees using children to assist with milk deliveries. Although the employee was in breach of the prohibition, the employer was held to be vicariously liable for injuries caused as a result of the employee's negligence to the child who was paid by the employee to assist him. Scarman LJ agreed that the roundsman was not employed to give the boy a lift, and if the situation were viewed strictly in terms of the incident causing the boy's injury, it might seem that carrying the boy on the float was outside the scope of his employment. However, Scarman LJ, referencing Diplock LJ's judgment in ***Ilkiw v Samuels***,[45] took a broader view of the roundsman's role. His primary duties were to deliver milk, collect empties, and obtain payment. Despite ignoring his instructions, he enlisted the boy's help in completing his job.

[42] Bhavana, Vicarious Liability: A critical study highlighting cases in India, legal service India (Jan. 9, 2025, 8: 50 P.M.), https://www.legalserviceindia.com/legal/article-7304-vicarious-liability-a-critical-study-highlighting-cases-in-india-.html#google_vignette.
[43] Emond Harnden, https://ehlaw.ca/oct99-vicaliab/ (last visited Jan. 9, 2025).
[44] [1976] 1 WLR 141
[45] Publication, https://publications.parliament.uk/pa/ld200001/ldjudgmt/jd010503/lister-4.htm (last visited Jan. 9, 2025).

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When asked why the boy was on the float, the answer was that he was assisting the roundsman in performing his duties.

This case demonstrates that even if an employee acts against their employer's direct instructions, vicarious liability may still apply. This raises a challenge in determining liability based on causation, as it could be argued that the employee's actions were not for the benefit of the employer. One of the key difficulties in establishing vicarious liability is determining whether the act occurred while the employee was carrying out their employment duties. Even when an employee performs an authorized task in an unauthorized manner, it is not sufficient to claim that their intentional misconduct, criminal act, or disregard of instructions excludes the employer from liability.[46]

D) Intentional Torts:

An intentional tort can lead to both civil and criminal liability. Similar to negligence, an employer can be vicariously liable for an intentional tort committed by an employee, provided the act is within the scope of the employee's duties. In **Racz v Home Office**[47] The House of Lords ruled that vicarious liability can apply to acts of misfeasance in public office. In a notable case, prison officers were held liable for mistreating a plaintiff while he was in custody, as the wrongful acts were closely linked to the officers' official duties. This highlights the importance of determining whether an employee's intentional act is sufficiently connected to their responsibilities in order to establish liability.

Historically, there was a belief that employers could not be vicariously liable for an employee's deliberate wrongdoing. This view evolved over time, but even into the 20th century, it was generally believed that employers were only liable for their employees' dishonest actions if those actions benefited the employer. Later rulings, however, focused on whether such acts were sufficiently connected to employment, regardless of whether they benefited the employer directly. The distinction between personal motives and employment-related acts remained central to determining liability.[48]

[46] Casemine, https://www.casemine.com/judgement/in/5779fc34e561096c93131a4b (last visited Jan. 9, 2025).
[47] (1994) 2 AC 45
[48] Ryan, D. (2017). From Opportunity to Occasion: Vicarious Liability in the High Court of Australia. *The Cambridge Law Journal*, *76*(1), 14-18.

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In **Cheshire v Bailey**[49], The defendant was not held liable for the theft of a customer's goods by an employee, as the theft occurred outside the scope of the employee's duties. It took another 50 years until **Morris v C W Martin & Sons Ltd**[50] for it to be recognized that **Cheshire v Bailey**[51] was no longer a good law. As Salmon LJ explained in **Morris v C W Martin & Sons Ltd**, this view derived from a misunderstanding of what Willes J. had said in Barwick v English Joint Stock Bank[52]. The court in ***Lloyd v. Grace, Smith & Co***. dealt with a case where a managing clerk, employed by solicitors, fraudulently induced a plaintiff to transfer property. Although the clerk acted for his own benefit, the solicitors were held vicariously liable. This was because the clerk's actions were closely tied to the duties he was authorized to perform, even though the fraud ultimately benefited the clerk. This case demonstrates that vicarious liability can apply when an employee's actions, even if intended to serve their own interests, are closely connected to their employment responsibilities.[53] In **Bezley v Curry** [54], The appellant, a non-profit organization operating residential care facilities for emotionally troubled children, employed staff to provide comprehensive care, similar to what a parent would do, including supervision and intimate tasks. Unknowingly, the Foundation hired an individual with a criminal history who later abused a child in their care. The injured child sued the Foundation for damages, and the chamber's judge ruled that the organization was vicariously liable for the employee's actions. The Court of Appeal affirmed this decision, holding the Foundation accountable for its employee's misconduct.

In **Lister v Hesley Hall Ltd**[55], A warden working for the defendant abused children with emotional difficulties at a special school. The House of Lords ruled that the employer was vicariously liable for the abuse, as the criminal acts were committed within the scope of the employee's duties. The employer had put the warden in a position that allowed him to carry out the abuse, making the organization responsible for the harm caused. In so finding the House of Lords overruled an earlier decision in Trotman v North Yorkshire CC [56] In a case where sexual abuse was deemed outside the scope of employment, the employer was not

[49] [1905] 1 KB 237
[50] [1966] 1 QB 716
[51] [1905] 1 KB 237
[52] [1966] 1 QB 716, 738-739
[53] Yeung, J., & Bae, K. S. (2021). Bad apple spoils the barrel: motive and the close connection test for vicarious liability after Various Claimants v Wm Morrison Supermarkets plc. *Oxford University Commonwealth Law Journal*, *21*(1), 169-180.
[54] [1999] 2 S.C.R. 534
[55] [2001] UKHL 22
[56] [1999] LGR 584

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held liable. However, in *Lister v Hesley Hall*, the House of Lords established the key test for vicarious liability: whether the employee's actions were closely connected to their employment to the extent that holding the employer responsible would be fair and just. In this case, the abuse was closely tied to the warden's duties at Axeholme House, making the employer vicariously liable. The warden's failure to report his actions was considered unrealistic and unhelpful in determining liability. Employers are often held responsible for assaults by employees, especially if the nature of the job creates situations where violence may occur. In Dyer v Munday[57], the employer was held vicariously liable for a criminal assault committed by his employee while attempting to repossess his employer's property. Him to carry out the abuse. In so finding the House of Lords overruled an earlier decision in Trotman v North Yorkshire CC [58] Where it was held that the acts of sexual abuse were beyond the scope of employment so that the employer was not liable.

Employers have long been held vicariously liable in appropriate circumstances for assaults committed by their employees. An employer can be held liable if they place an employee in a position where the use of personal violence may be expected or required in certain situations. In **Dyer v Munday**[59], the employer was held vicariously liable for a criminal assault committed by his employee while attempting to repossess his employer's property. Similarly, in Photo **Production v Securicor Transport**[60] The security firm was held vicariously liable for the patrolman's arson, not for his negligence. The law has evolved to recognize that employers can be held vicariously liable for deliberate, criminal actions of their employees, without resorting to overly complex arguments. The key issue is whether there is a sufficient connection between the actions of the employee and the employer's control over those actions. While criminal cases generally hold individuals accountable for their own actions, there are instances where employers may be liable if the employee's actions were under the employer's command or control. However, in this case, the employee's actions do not meet that threshold. In certain situations, legislation may impose absolute liability on employers for the actions of their employees, depending on the language and nature of the law, as well as the duties assigned to the employee.[61] When analysing

[57] [1895] 1 QB 742
[58] [1999] LGR 584
[59] [1895] 1 QB 742
[60] [1980] 2 WLR. 283; AC 827
[61] Stated by Atkin J in *Mousell Bros v London and North Western Ry* [1917] 2 KB 836 (at p. 845)

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liability, courts now assess whether the intentional act, even if criminal, was enabled or facilitated by the employment relationship, as opposed to purely personal conduct.

E) Non-Delegable Duties:

A non-delegable duty refers to a legal responsibility that cannot be transferred to another party, particularly when someone is accountable for the safety or well-being of another individual or their property, especially if that person is in a vulnerable position. This concept is often used to hold a person liable for the negligence of another to whom they have delegated a specific task. In today's business environment, the principle is particularly relevant in outsourcing situations, where a company may delegate certain tasks but remains responsible for ensuring safety and compliance.[62]

Non-delegable duties are most commonly seen in situations where an employer must provide a safe workplace for employees or where someone hires an independent contractor to carry out tasks on their behalf. For instance, employers are obligated to maintain a safe working environment for their staff, while hospitals owe a duty of care to their patients, and schools to their students. Similarly, when businesses outsource services, they must be aware that they could still be held liable for the contractor's negligence under the principle of non-delegable duties. Additionally, anyone who controls land or premises and authorizes hazardous activities or conditions that pose foreseeable risks to others also has a non-delegable duty of care. This duty of care is particularly important in industries that rely on third-party contractors to handle dangerous materials or tasks, as it emphasizes the need for proper oversight and compliance. If someone's property or person is at risk outside of the premises, the duty of care depends on the severity of the risk, ensuring appropriate precautions are taken.[63] In **Rylands v Fletcher**[64], In a case where the owners of a mill built a reservoir to supply water, the reservoir was constructed over an old coal mine that was linked to the plaintiff's active mines. When the reservoir was filled, water leaked into the plaintiff's mines, causing damage. The harm was both foreseeable and a direct consequence of the defendant's actions. The ruling in Burnie Port sought to move away from the strict liability rule in

[62] Richard Seabrook, Non-Delegable Duties of Care: A Review of Recent Developments in the Law, Ropewalk (Jan. 9, 2025, 8:50 P.M.), https://ropewalk.co.uk/blog/non-delegable-duties-of-care-a-review-of-recent-developments-in-the-law/.
[63] Business law by Peter Gillies
[64] 72 (1868) LR 3 HL 330

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Rylands v. Fletcher and instead support the creation of a non-delegable duty, which was seen as part of the broader negligence framework. This principle is still relevant in modern cases where businesses outsource tasks but maintain ultimate responsibility for the risks involved. Gurden J in *Lepore* highlighted that non-delegable duties often involve an active assumption of responsibility. This feature ensures that the duty can be framed positively, not just as a prohibition against actions that pose foreseeable risks, making the duty clearer and more understandable.[65]

Lord Hailsham observed in **McDermid v Nash Dredging and Reclamation Co Ltd,**[66] The fact that the law imposes a non-delegable duty does not mean that the duty itself "is incapable of being the subject of delegation, but only that the employer cannot escape liability if the duty has been delegated and then not properly performed".[67] In a similar vein, and in the same case, Lord Brandon stated that if a non-delegable duty is not fulfilled, it is no defense that the employer "delegated its performance to a person, whether his servant or not his servant, whom he reasonably believed to be competent to perform it"[68]. Liability under a common law non-delegable duty is sometimes described as absolute, while in other cases, it is considered a form of strict liability. A third perspective suggests that non-delegable duties should be governed by the usual standard of care found in the common law of negligence. This range of views becomes especially important in modern outsourcing agreements, where companies need to ensure that contractors meet safety and operational requirements to reduce the risk of liability. English case law provides examples where the standard of care aligns with general negligence principles.[69]

Brooke LJ in **Bottomley v Todmorden Cricket Club**[70], pointed out that "the traditional common law response to the creation of a special danger is not to impose strict liability but to insist on a higher standard of care in the performance of an existing duty".[71] In the early English Case of **Pickard v Smith**[72]**,** the defendant was the occupier of a refreshment room and coal cellar on a railway platform. The accident that occurred in that case was caused by

[65] QUT, https://eprints.qut.edu.au/14811/1/14811.pdf (Last visited Jan. 9, 2025)
[66] [1987] ICR 917
[67] ([1987] AC 906, 910
[68] Ibid 919
[69] Giliker, P. (2010). *Vicarious liability in tort: A comparative perspective* (Vol. 69). Cambridge University Press.
[70] (2003) EWCA Civ 1575 11/1
[71] Todd, S. (2016). Personal liability, vicarious liability, non-delegable duties and protecting vulnerable people. *Torts Law Journal*, *23*(2).
[72] (1861) 10 CB (NS) 470

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virtue of the trap door to the cellar being left open by a coal merchant who had been delivering coal. In deciding the case, Williams J placed considerable emphasis on the danger that had been created by leaving open the trap door. He said: "The defendant having caused danger, was bound to take reasonable means to prevent mischief and the fact of his having entrusted it to a person who also neglected it, furnishes no excuse".[73] This principle continues to be relevant in ensuring accountability when critical functions are outsourced to contractors. This insistence on the creation of risk was a theme that was readily taken up in subsequent English cases involving non-delegable duties.[74], and during the early to middle part of the 20th century, the English courts began to insist on the presence of an exceptional or abnormal risk before they would hold a non-delegable duty to exist.[75]

Morris v CW Martin & Sons Ltd[76], and **Lloyd v Grace, Smith & Co[77],** are cases that respectively concerned the theft of the plaintiff's mink and the fraudulent conveyance of the plaintiff's property. However, the truth is that both cases are readily explicable in terms of non-delegable duty.[78] In Morris, both Lord Denning MR and Salmon LJ explicitly treated the case as one of non-delegable duty.[79] Only **Diplock LJ** saw it as a case of vicarious liability.[80]. Similarly, while Lloyd is open to various interpretations, it is notable that in a roughly contemporaneous note of the case written in the Law Quarterly Review, Frederick Pollock interpreted the case as turning on the personal duty of the employer.[81], an interpretation since by several of the judges in Lepore.[82] Gleeson CJ remarked that "the ambit of duties that are regarded as non-delegable has never been defined, and the extent of potential tort liability involved is uncertain".[83]

To understand non-delegable duties there are two main issues upon which elucidation is most sought. First, there is a series of questions associated with when, where, and how non-delegable duties come into being, Secondly, an equally important issue is determining the

[73] (Ibid 480)
[74] Murphy, J. (2007). The liability bases of common law non-delegable duties: a reply to Christian Witting. *TheUNIVERSITY OF NEW SOUTH WALES LAW JOURNAL*, *30*(1), 86-102.
[75] eg, *Honeywill & Stein v Larkin Bros* [1934] 1 KB 191, 200 (Slesser LJ on belhaf of the Court of Appeal)
[76] [1966] 1 QB 716
[77] [1912] AC 716
[78] See Murphy, above n 49 for a full analysis of these cases
[79] Morris [1966] 1 QB 716, 727, 738 respectively
[80] Ibid 737
[81] (1913) 29 Law Quarterly Review 210, 210
[82] Lepore (2003) 212 CLR 511, 555-556 (Gaudron J) and 593 (Gummow and Hayne JJ)
[83] New South Walesv Lepore (2003) 212 CLR 511, 523 (Lepore)

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type of liability that arises from a breach of a common law non-delegable duty[84]. This principle continues to be relevant in ensuring accountability when critical functions are outsourced to contractors. Employees in the workplace, patients in hospital beds, and children at single-teacher schools all have in common the fact that they find themselves in an environment the safety of which is controlled by some other person in whom they are required to place some measure of trust and reliance. In each case, the presence of a special vulnerability can be noticed. An employer, a health authority, or an education authority owes a duty of care to their dependents.

When examining classic examples of non-delegable duties, such as those owed by employers to employees, health authorities to patients, or education authorities to school children, we notice a common element of special vulnerability. Similarly, in non-traditional categories, such as cases where a defendant is in control of an unusually dangerous person or object, the same principle applies.[85] However, the type of liability that arises from breaching a non-delegable duty has been an area of common law that remains relatively underexplored. Over the years, judges from around the Commonwealth have shown themselves to be remarkably puzzled in relation to non-delegable duties. They have offered a range of conflicting views as to the foundations of such duties, and they have been unable or unwilling to put forward any theoretically compelling account of the kind of liability that results from their breach.

F) Harassment:

Employers are vicariously liable for the harassing behavior of their employees, even though the behavior is not condoned by the employer. Employers must ensure that they have robust and updated procedures in place to stop workplace harassment to align with evolving workplace standards and legal obligations. This includes addressing issues such as virtual harassment in remote work environments and modern workplace diversity challenges.[86] In the landmark case of **Majrowski's case**[87], The claimant's manager was excessively critical of his work and behaved rudely and abusively in front of other staff members. The claimant

[84] Murphy J., The liability bases of common law non-delegable duties : a reply to Christian Witting, Scholars Hub (Jan.9, 2025, 9:00 P.M.), https://hub.hku.hk/handle/10722/328656
[85] Id at 84.
[86] Article by Jonathan Gardner UK employers face vicarious liability for workplace bullies, article from business insurance, published date. July 24, 2006
[87] *Majrowski v Guy's and St Thomas' NHS Trust* [2006] UKHL 34

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filed a harassment claim against the trust under section 3 of the Protection from Harassment Act 1997. The Court of Appeal established that, in principle, an employer could be vicariously liable for a breach of statutory duty by its employee. The alleged harassment occurred during the performance of the manager's duties.

The Court of Appeal ruled that the case should go to trial to assess whether the manager's actions met the definition of harassment under the Act. While the Act doesn't explicitly define harassment, the Court emphasized that distress alone is insufficient to establish harassment. The conduct must be intentional, oppressive, and unreasonable, and the perpetrator must either know or should know that their actions amount to harassment. Additionally, a reasonable person would have to view the conduct as harassment. Recent developments in workplace harassment standards also emphasize the need for employers to address systemic issues such as power dynamics, inclusive policies, and zero-tolerance frameworks for harassment. Before Majrowski's case, it had not been clearly determined whether the principles of vicarious liability applied in civil courts to situations beyond common law torts. In this case, the Court of Appeal judges were unanimous in ruling that, in principle, an employer could be held vicariously liable when an employee violated a statutory duty that was solely the responsibility of the employee.[88]

V. Corporate Vicarious liability:

A living person possesses the ability to think, intend, or act negligently, and has physical means to carry out their actions. A corporation, however, lacks these attributes and must rely on individuals to act on its behalf, though not always the same person. When someone acts on behalf of a company, they are not merely representing it—they are essentially embodying it, with their actions and intentions reflecting those of the company itself. In cases where the individual's intent is guilty, it becomes the company's guilt as well.[89] In the modern context, this concept is especially relevant for tech companies and multinational organizations, where decentralized operations can make it challenging to attribute responsibility or accountability.

[88] Brenda Barrett, Vicarious Liability for Harassment by an Employee, Industrial Law Journal (Jan. 9, 2025, 9:05 P.M.), https://academic.oup.com/ilj/article-abstract/35/4/431/700382?redirectedFrom=fulltext.

[89] Nmeihra, Corporate Criminal Liability - Doctrine of Identification, legal service India (Jan. 9, 2025, 9:10 P.M.), https://www.legalservicesindia.com/article/488/Corporate-Criminal-Liability---Doctrine-of-Identification.html

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Tesco Supermarkets Ltd v Nattrass[90], is In a key ruling by the House of Lords on the "directing mind" theory of corporate liability, Tesco faced charges under the Trade Descriptions Act 1968 for falsely advertising the price of washing powder. The issue arose when stores continued to display promotional posters after running out of the discounted product, and a customer was charged the regular price. Tesco argued that the manager had taken reasonable precautions and due diligence, and that the manager's actions could not be attributed to the company. The House of Lords ruled in favor of Tesco, concluding that the manager was not a "directing mind" of the company, so his actions were not the company's responsibility. In a similar case, R v British Steel plc, the Court of Appeal rejected a defense based on the Tesco v Nattrass ruling when dismissing an appeal against conviction and sentence.[91] s.3 (1) is absolute, subject to a defense that reasonable practicability was observed. However, such traditional principles often struggle to address liability in contemporary setups where decision-making is distributed across global teams or automated systems.

However, the Nattrass case still does not provide adequate direction in situations where the corporation structures itself in such a way that no decisions are taken by controlling officers. This is particularly relevant for multinational corporations with layered management and autonomous regional operations. The law does not yet fully address such complexities. In vicarious liability an employer is held liable for the acts of his employee; in corporate liability, a corporation is liable for its own acts. A corporation is vicariously liable for strict liability offenses to exactly the same extent as a natural person. As a company has no physical existence and cannot think or act, fiction has to be applied to convert the acts and thoughts of a human person into those of the corporation thereby attributing personality to it. A corporation will also be criminally liable for the breach of any statutory duty imposed upon it in a particular capacity such as an occupier or keeper.[92] Its criminal liability extends further than this, however, to cover direct liability for acts performed by natural persons who are identified with it, i.e., the principle of identification. There are two limitations, however, to corporate liability identified in R v ICR Haulage Ltd.[93] First, certain offenses, such as

[90] [1972] AC 153
[91] Health and Safety at Work etc Act 1974 s .3
[92] *Evans & Co Ltd v LCC* [1914] 3 KB 315
[93] [1994] KB 551

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bigamy, rape, and perjury, cannot be committed by corporations, though they may be liable as accessories. While older cases often doubted whether corporations could be convicted of offenses like manslaughter, recent developments, such as prosecutions against global shipping companies, have established that corporations can indeed face such charges when systemic negligence is proven.

In all these cases, if suitable circumstances arose, a corporation could be liable as an accessory. Obiter dicta in some old cases suggested that a corporation could not be convicted of an offence of violence. These were acted on in Cory Bros & CO.[94] But doubted in ICR **Haulage Ltd. In R v HM** Coroner for East Kent, ex parte Spooner[95], where an application for judicial review of the decision of the coroner at the inquest into the deaths resulting from the sinking of the Herald of Free Enterprises off Zeebrugge was refused, Bingham LJ, in the Divisional Court, stated obiter that a corporation could be convicted of manslaughter on appropriate facts. This was subsequently confirmed by Turner J when P & O European Ferries (Dover) Ltd, two directors, and a senior manager were tried for manslaughter in respect of the deaths resulting from the Zeebrugge disaster.[96] Secondly, a corporation will not be convicted of an offense where the only punishment which may be imposed is physical. In ICR Haulage Ltd, Stable J stated[97] That 'the court will not stultify itself by embarking on a trial in which, if a verdict of guilty is returned, no effective order by way of sentence can be made'. Thus, a corporation cannot be tried for murder or treason as the only punishments available to the court on conviction are life imprisonment or death. Where a corporation is convicted of an offence it will be punished by the imposition of a fine and/or compensation order. English law principles in establishing corporate criminal liability make it difficult to aggregate the actus reus or the mens rea of two or more controlling officers in order to establish corporate liability. For contemporary multinational organizations using collective decision-making processes, this approach is outdated and fails to capture the operational intricacies of such entities.

[94] [1927] q KB 810
[95] [1989] 88 Cr App R 10
[96] see *R v P & O European Ferries (Dover) Ltd* (1990) 93 Cr App R 72
[97] *Id*, at 1923

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VI) State Liability:

Under common law, the State was not considered capable of committing a tort or being vicariously liable for the wrongful acts of its servants. A fundamental aspect of England's constitutional framework is the principle that public servants are individually accountable for their official actions and can be held liable in civil court. Therefore, a public officer who commits a tort can be directly sued by the injured party. The evolution of governance and legal principles brought the concept of vicarious liability for public bodies, ensuring accountability in modern governance. Public institutions can be held vicariously liable for wrongful acts committed by their employees while performing their duties. This is particularly significant in essential sectors like healthcare and law enforcement. For instance, public hospitals may be held accountable for negligence arising from medical errors made by their staff. Similarly, law enforcement agencies can face liability for misconduct by police officers, such as instances of excessive force or unlawful detention. Public institutions can be held vicariously liable for wrongful acts committed by their employees while performing their duties. This is particularly significant in essential sectors like healthcare and law enforcement. For instance, public hospitals may be held accountable for negligence arising from medical errors made by their staff. Similarly, law enforcement agencies can face liability for misconduct by police officers, such as instances of excessive force or unlawful detention. Non-delegable duties further extend this liability, ensuring that the State remains accountable even when it delegates critical responsibilities. In hospital settings, the State may have a non-delegable duty to patients, holding it accountable for negligence in outsourced medical services or care provided by third-party contractors. Likewise, in law enforcement, the State can be held liable for harm caused by inadequate training or oversight, even if the actions were performed by private agencies or contracted personnel.[98]

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In modern contexts, State liability also arises in sectors like cybersecurity, where failures by government IT personnel can lead to data breaches affecting sensitive citizen information. Similarly, public-private partnerships, such as those involved in infrastructure projects, may raise liability issues when State-controlled contractors cause harm. These examples highlight how liability operates in contexts with significant public trust.[99] Historically, courts were

[98] Dickinson, J., & Nicholson, A. (2015). Supreme Court closes another vicarious liability loophole: Woodland V Swimming Teachers Association. *European Journal of Current Legal Issues*, *21*(2).
[99] Eichensehr, K. E. (2016). Public-private cybersecurity. *Tex. L. Rev.*, *95*, 467.

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hesitant to extend vicarious liability to the Crown. The Crown Proceedings Act 1947 marked a significant shift, as it enabled the Crown to be held accountable for torts committed by its servants or agents.[100] For instance, Crown servants such as prison officers or police personnel performing their duties under State directives may bring liability upon the Crown for any wrongful acts committed during the execution of their tasks. This Act clarified that public bodies, like private employers, are not immune from accountability for the acts of their agents or employees. Crown servants can also be personally liable for torts committed while performing their duties. This development helped clarify how vicarious liability applies to state institutions. To assess whether an employee's actions fall "in the course of employment," courts generally apply two key tests.

The first examines whether the act was "a wrongful act authorized by the master" or "a wrongful and unauthorized mode of doing some act authorized by the master." The second, known as the "close connection test," assesses whether there is a sufficient association between the employee's authorized duties and the tort committed. [101] This broader test ensures victims have recourse even for unauthorized acts connected to the employee's role. By focusing on the close connection, courts have reduced ambiguity in liability attribution for public bodies.[102] Cases of misconduct involving teachers or social workers highlight how vicarious liability holds employers accountable for harm caused within the scope of employment. Similarly, in law enforcement, courts frequently navigate the balance between safeguarding victims and maintaining reasonable boundaries on liability. For example, in **Racz v Home Office**[103], the State was held vicariously liable for a prison officer's misfeasance in public office, provided the unauthorized acts were not entirely disconnected from the officer's authorized duties. However, personal motives, such as retaliation or vengeance, are excluded from liability. The case illustrates how liability principles are practically applied to Crown servants, ensuring accountability while delineating the limits of liability for unauthorized conduct.[104] While a brief comparison with the French legal system reveals distinctions, an in-depth analysis is unnecessary when focusing on English law. In France, public servants are generally protected

[100] Edu Rev, https://edurev.in/t/373451/Government-Liability-In-Torts (last visited Jan. 9, 2025).
[101] From R.A. Buckley, Salmond and Heuston on the law of Torts (21st Edition, London, 1996)
[102] See J. Bell, „The Law of England and Wales" in J. Bell and A. Bradley (eds), Governmental Liability; A, Comparative Study (London, 1991) 20
[103] [1994] 2 AC 45
[104] *Warren v Henlys* [1948] 2 AII ER 935; *Keppel Bus Co ltd v Sa'ad bin Ahmad* [1947] 2 AII ER 700

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from civil liability for service-related faults. This differs from the English system, where public officers can be held personally liable for their actions. As Lord Denning famously stated, "English law does not permit a public officer to hide behind a droit administrative." In modern contexts, many jurisdictions have adopted more nuanced frameworks. For example, Australian jurisdictions impose vicarious liability on the State for torts committed by its employees, aligning with employer liability principles in private law. [105] However, nuances arise for individuals working for the State but not under employment contracts. Many statutory officers enjoy independence in their roles and are considered "in the service" of the State rather than employees. The principle of non-delegable duties is pivotal in such contexts, as the State may still hold direct liability for harm caused by officers when their actions are closely linked to responsibilities rooted in public trust and safety, such as child welfare or public health. Emerging challenges, such as liabilities arising from shared service models and outsourced governmental functions, underscore the importance of developing clearer frameworks to delineate agency relationships and non-delegable duties in these scenarios. Typically, the State is not vicariously liable in such cases, requiring plaintiffs to seek compensation directly from the individual tortfeasor unless they can prove the existence of a non-delegable duty or an agency relationship.

VII) Employer and Independent Contractor:

A contract of service involves a person working as an integral part of a business, contributing directly to its operations. In contrast, a contract for services means the individual performs work for the business, but their work is not fully integrated into the business's core activities, serving more as a supplementary role.[106] Employers are typically held responsible for the wrongful acts of their employees, but they are not liable for the actions of independent contractors. The key factor in determining liability is whether the worker is under the employer's control or has the freedom to make independent decisions about how their work is performed.[107] Courts have developed several tests to determine this relationship. The

[105] Crown Proceedings Act 1992 (ACT) s 5; Judicairy Act 1903 ss 56, 64; Crown Proceedings Act 1988 (NSW) s 5; Crown Proceedings Act (NT) s 5, Crown Proceedings Act 1980 (Qld) s 9; Crown Proceedings Act 1992 (SA) s 5; Crown Proceedings Act 1993 (Tas) s 5; Crown Proceedings Act 1958 (vic) sec 23 (1)
[106] Studocu, https://www.studocu.com/en-gb/document/middlesex-university-london/tort/integration-test-dual-vicarious-liability/13219660 (Last visited Jan. 9, 2025).
[107] Heuston and Buckley, Salmond and Heuston on the Law of Torts, 21st edn, 1996, London, Sweet & Maxwell, p 435

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control test, historically central, focuses on whether the employer has authority over how the work is performed. However, this has limitations in modern contexts, such as in Cassidy v Ministry of Health.[108], where a surgeon's professional discretion fell outside direct employer control. Lord Wright proposed additional criteria, including ownership of tools, the chance of profit, and the risk of loss. These factors were pivotal in Ready Mixed Concrete v Minister of Pensions and NI, where drivers were classified as independent contractors due to ownership of vehicles and risk-bearing responsibilities.[109]

Lord Denning introduced the "integral part of business" test in ***Stevenson, Jordan, and Harrison Ltd v McDonald and Evans,*** which examines whether a worker's role is essential to the business or merely supplementary. For instance, a ship's master, whose duties are central to operations, would be considered an employee, whereas a ship's pilot hired for occasional tasks would not. Hilbery J further explained that employees typically adhere to detailed instructions regarding task completion, while independent contractors determine their methods. In exceptional situations, employers may still be held liable for the actions of independent contractors. Strict liability can arise when contractors engage in inherently dangerous activities, such as urban demolition or transporting hazardous materials, where responsibility for public safety cannot be delegated. Similarly, negligence in hiring or supervising contractors, such as employing unqualified electricians for critical installations, may also result in liability.

In ***Ferguson v Dawson Partners,*** **a** labor-only subcontractor was classified as an employee due to the employer's significant control, despite being labeled a "subcontractor." In contrast, the UK Supreme Court in the 2020 ***Barclays Bank*** case ruled that a self-employed doctor conducting medical evaluations was not an employee, as he operated independently and could refuse assignments. This decision clarified the distinction by emphasizing the worker's autonomy and lack of integration into the employer's business.

Recent trends highlight the growing challenge of classifying gig economy workers. In ***Uber BV v Aslam*** **(2021)**, the UK Supreme Court ruled that Uber drivers qualify as workers rather than independent contractors, entitling them to greater protections under employment law. Similarly, Deliveroo faced legal scrutiny over its riders' classification, raising questions about

[108] [1951] 1 AII ER 574
[109] [1968] 1 AII ER 433

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control, flexibility, and integration into the business. For example, courts examined whether companies like Uber set driver schedules and fares, blurring the line between independence and employer control. These judgments demonstrate how courts are beginning to shift focus toward the realities of employment relationships, potentially broadening the scope of vicarious liability in certain industries.[110]

Romer LJ observed that liability could extend to independent contractors when the nature of the work inherently carries significant risks of harm. For instance, a construction company engaging contractors for high-rise projects must implement safety measures, given the foreseeable dangers such work presents to the public. Failing to manage these risks adequately could expose the employer to liability.[111] The distinction between employees and contractors has become increasingly complex, especially in contemporary labour markets where flexibility and autonomy often blur traditional roles. The emergence of platform-based work models, such as those in the gig economy, has significantly impacted how courts approach the classification and regulation of employment categories. Although established tests and principles offer some guidance, applying them consistently in today's rapidly evolving labour landscape remains a persistent challenge. Concrete guidelines, such as considering the degree of supervision or economic dependence, could assist courts and employers in navigating these distinctions. Balancing accountability with flexibility, particularly in non-traditional work arrangements, is essential to avoid stifling innovation while protecting worker rights.[112]

VIII) Principal/ Agent Liability:

The vicarious liability of a principal for the torts of their agent differs from the liability of an employer for the wrongful acts of their servant during employment. While this distinction has its roots in historical legal precedents, it must also be understood in modern contexts to provide clarity in evolving situations. The principal's liability depends on whether the work the agent performs, although requested by and for the benefit of the principal, is an independent function of the agent or carried out in a way that represents the principal in dealings with third parties on their behalf. An agent is someone who acts on behalf of another

[110] Mangan, D. (2021). Delivering on the Binary Divide. *European Labour Law Journal*, *12*(2), 226-236.
[111] Romer LJ – in *Honeywill & Stein Ltd v Larkin Bros Ltd*, The Party Wall Casebook by Paul Chynoweth, pg 282
[112] Erlich, M. (2021). Misclassification in construction: The original gig economy. *ILR Review*, *74*(5), 1202-1230.

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person or organization in legal matters, with the authority to bind the principal in a legal relationship, as long as they stay within the scope of their agency. The principal is the party that should be sued or can sue, not the agent. According to the principle "Qui facit per alium facit per se," the principal holds full responsibility for the actions of the agent, even if the agent is negligent or incompetent, as long as the agent is acting within the scope of their given authority. Modern examples in business, such as liability for the actions of financial advisors or real estate agents, demonstrate how these principles remain relevant. In a business or commercial agency under common tort law, a principal grants authority to an agent to act on their behalf in dealings with third parties. Unlike employees, agents often have greater independence in their actions. The principal may only be held liable for the agent's actions if the agent is directly controlled or explicitly authorized to perform the specific act. Liability for the agent's torts applies to the principal only if the agent is also considered a servant of the principal. There must be the element of continuous and arbitrary control to constitute a servant-ship. The control need not be complete, but the control must be general.[113] "The test is", says Crompton J., "whether the defendant retained the power of controlling the work." In this regard, it is crucial to recognize that the degree of control differentiates a servant from an independent agent. "It is clear", says Patteson J., that "a principal is not responsible for a trespass by an agent, unless he gave a prior authority, and clearly did not extend to destroying a building or removing a fixture".[114] In one case, Patten v Rea[115], Williams J reverses the principle and considers obiter that a master is liable because the servant is his agent. Although illustrative, reliance on such cases should be supplemented with examples of modern complexities, such as agency liability in digital transactions. **In Lloyd v Grace, Smith & Co., Farwell L.J.** remarked that vicarious liability applies broadly to all principal-agent relationships. However, this broad statement conflicts with the more stringent control required in servant relationships. While cases like ***Murray v Currie*** **and** ***Lloyd v Grace, Smith & Co.*** offer important historical insights, placing too much emphasis on these older cases may overlook the evolving and contemporary applications of vicarious liability. For example, in gig economy settings, courts increasingly examine whether platforms like Uber can be treated as principals for drivers whose actions cause harm during rides. These cases

[113] Curpan, V. S. (2016). The Substantiation of the Principal's Liability for the Agent's Act. *BRAND. Broad Research in Accounting, Negotiation, and Distribution*, *5*(1), 11-14.
[114] Ibid.
[115] [1857] 2 C. B., N.S. 613

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offer nuanced interpretations of agency relationships in modern contexts. Willies J observed in Murray v Currie.[116] As follows: "They are altogether independent of the master or owner. In one sense, indeed, they may be said to be agents of the owner; but they are not in any sense his servants. It is my understanding that the rule for determining liability in cases of wrongdoing is straightforward: one must look to the wrongdoer or the first person in the chain who is the employer and has control over the work. It is not appropriate to trace liability further back to the employer of that person.

As regards liability for damage, a stricter rule prevails where the relation of master and servant exists, than in the case of principal and agent. This distinction underscores the necessity of determining the exact nature of the relationship in each case, as conflating them can lead to misapplied liability. For instance, a marketing firm hiring freelance content creators must carefully delineate their roles to manage potential liability. It is clear that a principal is not held liable for a malicious trespass committed by their agent. However, a principal is responsible for any unauthorized fraudulent actions carried out by the agent. In Lloyd v Grace, Smith & Co[117], a managing clerk of a firm of solicitors was referred to as an agent, but in that context was clearly a servant. This case highlights the need for careful terminology, as failing to differentiate the two roles leads to judicial confusion. Lord MacNaghten stated: The expressions 'acting within his authority', 'acting in the course of his employment', and the expression 'acting within the scope of his agency' as applied to an agent, speaking broadly, mean one and the same thing. [118]An attempt was made to drive a wedge between the two concepts of 'scope of authority' and 'course of employment' by Lord Denning in Ormrod v Crosville Motor Sevices Ltd[119] This view was upheld in the case of Heatons Transport Ltd. v T.G.W.U.[120]. However, his approach was not adopted by the House of Lords when the Heatons Transport case came before it.[121] In the words of Lord Wilberforce: "In each case, the test to be applied is the same: was the servant or agent acting on behalf of, and within the scope of the authority conferred by the master or principal."[122]

[116] [1870] L.R. 6 C. P. 24
[117] [1912] A.C. 716
[118] Uniset, http://www.uniset.ca/other/cs3/1912AC7816.html (Last visited Jan. 9, 2025).
[119] [1953] 2 AII E.R. 753, 756
[120] [1972] 2 AII E.R. 1216, 1246
[121] [1973] A.C. 15
[122] Ibid., 99

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Once an individual is classified as an agent, they are not considered a servant or worker. This principle was established in the New South Wales Court of Appeal case, *Presser v Caldwell Estates Pty Ltd.*[123], similar confusion appears. Asprey J.A. in considering the vicarious liability of a vendor for the representations of his estate agent to the purchaser stated:

The vicarious liability of a principal for the torts of their agent differs from the liability of an employer for the torts committed by their employee during the course of employment. The principal's liability depends on whether the agent's work, though done on the principal's behalf and at their request, is an independent function or if the agent acts on behalf of the principal, representing them in dealings with third parties in the principal's matters. In *Lloyd v Grace, Smith & Co.*, a managing clerk was referred to as an agent, but in reality, he functioned as a servant. A modern comparison would be law firms being held responsible for the actions of senior associates or partners who act beyond their authority but still within their role. This case underscores the importance of precise terminology, as confusing the two roles can lead to judicial misunderstanding. Lord MacNaghten noted that the terms "acting within his authority," "acting in the course of his employment," and "acting within the scope of his agency" essentially mean the same thing. However, Lord Denning tried to separate the concepts of "scope of authority" and "course of employment" in ***Ormrod v Crosville Motor Services Ltd,*** a stance he continued in ***Heatons Transport Ltd. v T.G.W.U***. However, his approach was not adopted by the House of Lords when the Heatons Transport case came before it. In the words of Lord Wilberforce: "In each case, the test to be applied is the same: was the servant or agent acting on behalf of, and within the scope of the authority conferred by the master or principal." Once a person is considered to be an agent, he is precluded from being a servant or worker.

IX) Parents / Children Liability:

Parental liability refers to a parent's obligation to pay for damage caused by negligent, intentional, or criminal acts of their child. While this concept is foundational in tort law, the section's focus on historical cases, such as **Hewellette v George (1891),** overlooks the relevance of modern applications of parental liability laws in addressing contemporary challenges. Issues like cyberbullying, digital property damage, and online crimes involving

[123] [1971] 2 N.S. W.L.R. 471

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children, which are increasingly prevalent, are notably absent, making the discussion feel outdated.[124]

In several jurisdictions, parents can be held accountable for intentional or malicious property damage caused by their children. However, the specifics vary, with differences in age limits, financial thresholds, and whether personal injury claims are included. A parent may be held liable for a child's negligent acts if the parent knew or had reason to know that intervention was necessary to control the child but failed to take reasonable action. This legal concept, referred to as negligent supervision, applies not only to parents but also to guardians, grandparents, and others who hold custodial responsibilities. For example, in cases of cyberbullying, courts have begun to examine whether parents took reasonable steps to supervise their child's online activity, illustrating how negligent supervision adapts to the digital age.[125]

The basis of parental liability has been addressed across different legal systems. In the U.S., the 1891 case ***Hewellette v George*** set a precedent for parental immunity from liability for personal torts, recognizing a parent's special role in raising their child. However, contemporary courts are becoming more open to holding parents responsible for their children's online actions, including unauthorized access to social media accounts or involvement in cybercrimes. No comparable immunity exists in the British Commonwealth, where courts often presume that parents have a duty to supervise their children reasonably. This distinction underlines the variability in how parental obligations are framed in common law versus statutory systems.[126]

In the European Union, evolving interpretations of parental liability laws are addressing issues such as digital property damage. In countries like France and Germany, parents have been sued when their children engage in activities like hacking digital platforms or spreading defamatory content online. These cases illustrate how international frameworks are adapting traditional liability concepts to modern issues. Similarly, under the European Civil Code, parents are liable for property damage caused by children aged 6 to 14 unless they can demonstrate adequate supervision. These laws reflect an assumption that offenses could be prevented with proper oversight. However, statutory inconsistencies, such as the varying definitions of "child" under

[124] Porter, E. G. (2012). Tort Liability in the Age of the Helicopter Parent. *Ala. L. Rev.*, *64*, 533.
[125] Davis, J. (2015). Legal Responses to Cyberbullying by Children: Old law or new? *UniSA Student Law Review*(1), 52-61.
[126] Bardhi, A. (2015). Parental Liability for Damages Resulting from a Child's Acts. *Journal of Educational and Social Research, MCSER Publishing, Rome-Italy*, *5*(3).

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English law ranging from under 18 in some statutes to under 14 in others create confusion and undermine the clarity needed for effective enforcement. For example, someone under the age of 18, while other legislation, such as the Children and Young Persons Act 1933, sets different age limits for criminal responsibility.[127]

While socio-economic factors such as poverty and chronic stress are relevant to the enforcement of parental liability laws, these considerations should be connected back to the legal framework to avoid veering into unrelated policy debates. Criminologist H. Wilson notes that "lax parenting is often the result of chronic stress, situations arising from frequent or prolonged spells of unemployment... and an often-permanent condition of poverty." In a legal context, these issues could be reframed as challenges to the equitable application of parental liability, particularly in cases where systemic barriers limit parents' ability to supervise their children effectively. Programs designed to increase parents' job skills and earning potential could reduce juvenile crime more effectively than punitive parental liability laws, but these solutions are better considered alongside targeted legal reforms.[128] The study also ventures into the philosophical debate over the proper role of government in regulating family life. As Professor Steven Wisensale from the University of Connecticut observes, "The problem we have in this country is we're constantly wrestling with the dilemma of preserving the privacy of what goes on in the family, versus what is for the good of the greater community." While this perspective provides valuable context, it should be tied directly to parental liability frameworks. For example, balancing parental privacy with societal expectations is particularly significant in digital contexts, such as monitoring children's online behavior to prevent harm to others. This debate reflects a broader challenge: balancing individual parental rights with societal expectations for child supervision and accountability.

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X. Vicarious Punishment Grounds:

Vicarious punishment is not justified by legal principle; "it seems wrong in principle to punish someone other than the wrongdoer." In the case of *Rowlands v Chief Constable of Merseyside*, the Court of Appeal addressed a key question: whether someone held vicariously liable for another's wrongful act can also be required to pay exemplary damages. In this particular case,

[127] Ibid.

[128] Tyler, J. E., & Segady, T. W. (2000). Parental liability laws: Rationale, theory, and effectiveness. *The Social Science Journal*, *37*(1), 79-96.

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the Chief Constable was found vicariously liable for the actions of two police officers who had committed assault, false imprisonment, and malicious prosecution. The debate centered around the fairness of imposing exemplary damages on someone who was not personally at fault, as vicarious liability usually implies responsibility without personal wrongdoing.[129]

An employer is generally vicariously liable if three conditions are met: (1) the tortfeasor committed a tort; (2) the tortfeasor is their employee; and (3) The tort in question occurred during the course of employment.[130] Traditionally, the Salmond test assessed whether the wrongful act was an unauthorized way of carrying out authorized duties. According to this approach, employers were not held liable for intentional torts, such as actions made in bad faith, if they were outside the scope of the employee's work responsibilities.

For example, child abuse in children's homes by employees was deemed beyond employers' liability.[131] To overcome the limitations of the previous approach, courts shifted to the close-connection test, as established in ***Lister v Hesley Hall Ltd*.** Under this test, the courts examine whether the employee's wrongful act was sufficiently linked to their employment, making it fair and just to hold the employer liable. This test broadened employer liability for intentional torts, as seen in Mattis v Pollock, where a nightclub owner was held liable for a stabbing committed by a bouncer outside the premises.[132] Exemplary damages, intended to punish and deter egregious misconduct, remain contentious in cases of vicarious liability. Applying such punitive damages to employers, often not directly at fault, has been criticized. In Rowlands, the court justified exemplary damages against the Chief Constable to "give financial teeth" to public disapproval of police misconduct and ensure adequate awards for victims. Similarly, aggravated damages, while compensatory, often blur the lines between punishment and redress.[133]

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[129] Phang, A., & Lee, P.-W. (2003). Exemplary Damages—Two Commonwealth Cases. *The Cambridge Law Journal*, *62*(1), 32-36.
[130] Law foyer, https://lawfoyer.in/vicarious-liability-under-law-of-torts/ (last visited Jan. 9, 2025).
[131] Sharkey, C. M. (2018). Institutional Liability for Employees' Intentional Torts: Vicarious Liability as a Quasi-Substitute for Punitive Damages. *Val. UL Rev.*, *53*, 1.
[132] Yap, P. J. (2008). Enlisting close connections: a matter of course for vicarious liability? *Legal Studies*, *28*(2), 197-214.
[133] Phang, A., & Lee, P.-W. (2003). Exemplary Damages—Two Commonwealth Cases. *The Cambridge Law Journal*, *62*(1), 32-36.

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Vicarious liability is primarily aimed at achieving two key policy objectives: compensating victims and deterring future wrongdoing. Courts emphasize victim compensation because employers typically have greater financial resources or insurance coverage to pay for compensatory damages. This ensures a "practical remedy" for claimants. However, deterrence theory, as Neyer critiques, fails when the tortious act is already a criminal offense, as in Lister. Hayne LJ observes, “If the criminal law will not deter the wrongdoer, holding the employer liable offers little deterrent value.” Modern examples of deterrence, such as corporate liability for systemic abuse in organizational settings, are necessary to illustrate how this principle can influence policy and governance today. For instance, companies facing vicarious liability for widespread discrimination or harassment cases often implement proactive compliance measures, showcasing the real-world impact of deterrence theory.[134]

The shift from the Salmond test to the close-connection test represents a broader move toward ensuring that victims are compensated, even when the wrongful act goes beyond traditional employment boundaries. This shift was highlighted in *Lister*, where the House of Lords extended liability to cover intentional torts committed in bad faith. The decision underscored the need to balance fairness to employers with practical justice for victims. However, the focus on foundational cases like Lister and Rowlands often overlooks how these justifications manifest in contemporary contexts, such as corporate accountability for systemic abuse or liability for misconduct in digital spaces. Recent cases involving whistleblowing and retaliation within multinational organizations demonstrate how vicarious liability aligns with victim compensation and the deterrence of unethical behavior.[135]

One of the strongest arguments for vicarious liability is that an employer benefiting from an activity should also bear responsibility for compensating victims harmed by it. The idea that compensation should restore the victim to the position they would have been in had the wrongdoing not occurred forms the foundation of the civil law approach. As Glanville Williams notes, the doctrine appears to “owe its explanation, if not its justification, to the search for a solvent defendant.” While this pursuit of victim compensation has expanded liability doctrines, it also highlights the tension between fairness and practical remedy in modern tort law. Practical applications, such as holding corporations liable for systemic harms like the

[134] Brodie, D. (2007). Enterprise liability: Justifying vicarious liability. *Oxford Journal of Legal Studies*, *27*(3), 493-508.
[135] *Id*, at 1935.

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#MeToo movement's workplace misconduct cases or data breaches resulting in harm to consumers, emphasize the ongoing relevance of vicarious liability's core principles in achieving justice.[136]

XI. Advantages:

Vicarious liability offers significant advantages, particularly by providing claimants with a financially solvent defendant from whom they can recover compensation. One of the key advantages of vicarious liability is that it allows a claimant to seek compensation even if the person directly responsible for the harm cannot be identified. This is particularly useful in large organizations, where pinpointing the exact wrongdoer can be difficult. For example, in a factory setting, an individual injured due to a colleague's negligence may still recover compensation even if the negligent party cannot be specifically identified. In modern contexts, this principle is increasingly relevant in scenarios involving data breaches, where an organization may be held accountable for the unauthorized actions of an employee who misuses sensitive information. Similarly, in gig economy disputes, platform operators may face liability for harm caused by contractors if the conditions of work create systemic risks. These examples illustrate how vicarious liability ensures accountability by holding employers liable for systemic lapses and promoting better organizational practices and oversight.[137]

For vicarious liability to apply, two conditions must be met: first, an employee of the defendant must have committed a tort; second, the employer must be held responsible for the employee's actions. This extends to contemporary issues such as workplace discrimination and systemic harassment claims, where liability may arise if an organization fails to implement adequate safeguards or supervisory mechanisms. For instance, a company may be held liable for online harassment perpetuated by employees in remote working environments. By addressing these emerging challenges, vicarious liability adapts to modern workplaces, ensuring claimants are adequately protected. In today's workplace dynamics, where remote work and gig economy models are prevalent, vicarious liability also evolves to address non-traditional employment relationships. Employers are increasingly required to consider how their supervisory structures and operational practices impact the actions of employees, whether in physical workplaces or digital environments. For example, organizations may face liability for systemic workplace

[136] *Id*, at 1936.
[137] Butlin, S. F., & Allen QC, R. (2018). Worker status and vicarious liability: the need for coherence. *University of Cambridge Faculty of Law Research Paper*(21).

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harms, such as repeated violations of safety protocols or inadequate training that leads to widespread risks across operations. By encompassing these nuances, vicarious liability serves not only as a tool for compensation but also as a mechanism for fostering higher standards of accountability within organizations.

XII) Exceptions – 'on a frolic of their own':

If the employee was engaged in an activity for which he/she was not employed, then the employer will not be vicariously liable for the acts of the employee. The action of the employee resulting in tort if not authorized expressly or impliedly by the employer and if it is not so connected with authorized conduct as to be an improper mode of performing it, then it is considered as an independent unauthorized act and is outside the scope of his/ her employment. In **Warren v Henlys Ltd[138],** In one case, a petrol pump attendant got into a dispute with a customer about overpayment. The court ruled that the employer was not liable, as the incident became personal and fell outside the scope of employment. When determining liability, courts may also need to decide if an action was a "detour" or a "frolic." If an employee is acting outside their usual duties, the employer may still be held liable if the employee's actions are considered a "detour"—meaning the employee is still carrying out their work responsibilities, just in a different manner. In Bayley v Manchester, Sheffield, and Lincolnshire Railway Co[139], In a case where a passenger was forcibly removed from a train by an overzealous porter who mistakenly thought he was on the wrong train, the court ruled that the company was vicariously liable for the injury caused by the employee's error. Despite the porter's mistake, he was still acting within the scope of his duties, which led to the employer being held responsible. A 'frolic', however, is deemed to have occurred if the employee has acted entirely of their own volition and is not acting on behalf of the company. In such cases, the employer will not be held liable. If an employee uses the employer's property for personal purposes unrelated to their work, the employer is not responsible, even if they had given permission for the property to be used. In Hilton v Thomas Burton Ltd[140], In a case where employees were permitted to use their employer's van for reasonable purposes, they drove to a café while waiting for their usual finishing time. On the return trip, an accident occurred due to negligent driving. The court ruled that the employer was not

[138] [1948] 2 All ER 935
[139] [1873] LR 8 CP 148
[140] [1961] 1 All ER 74

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liable, as the employees were acting outside the scope of their employment, engaging in a "frolic of their own." In a similar case, a barmaid's actions were deemed outside the course of her employment when she engaged in an act of retribution. Although her role as a barmaid might have influenced the situation, the act was considered personal and not related to her job duties.[141]

In **Deatons Pty Ltd v Flew[142],** the barmaid's role allowed her the opportunity to settle a personal grievance, but this was not enough to hold her employer liable. She was not responsible for managing the bar or authorized to maintain order, so her actions were deemed personal and unrelated to her employment. As a result, the employer was not vicariously liable. In a more recent case, ***Chell v Tarmac Cement and Lime Limited*** **(2022),** a similar issue of liability arose. The Court of Appeal upheld a previous decision by the High Court where an employer was not liable for injuries on a third party caused by an employee by playing a practical joke. The court decided that the employee was not performing any duties related to his work, was not using work equipment, and was not furthering the interests of his employer in any way. However, this case highlights significant implications for modern workplace dynamics, particularly regarding safety policies and employer oversight. Practical jokes or unprofessional behavior in workplaces can lead to severe consequences, making it imperative for employers to establish clear boundaries and policies to mitigate such risks.
The decision in Chell underscores the importance of defining workplace conduct and ensuring robust safety measures are in place, reflecting the evolving nature of employer liability in contemporary work environments. The emphasis on older cases like ***Hilton v Thomas Burton Ltd*** **and** ***Bayley v Manchester, Sheffield, and Lincolnshire Railway Co*** underscores the historical importance of the principle but fails to address its relevance in contemporary issues, such as cases involving digital misconduct or gig economy workers. For instance, courts in recent years have addressed whether platform operators like ride-hailing or delivery companies are vicariously liable for actions taken by their contractors, challenging traditional concepts of employment boundaries.[143] The rise of remote work has raised concerns about whether employers can be held liable for torts committed by employees

[141] Dixon J, at pp 381-382, in *Deatons Pty Ltd v Flew* (1949) 79 CLR 370
[142] [1949] 79 CLR 370
[143] Butlin, S. F., & Allen QC, R. (2018). Worker status and vicarious liability: the need for coherence. *University of Cambridge Faculty of Law Research Paper*(21).

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in home-office settings, a matter not fully addressed in this section. If employers are held liable, there's no clear reason why they shouldn't also be vicariously responsible for a sexual assault committed by an employee, although such conduct would typically fall outside the scope of employment. In the *Lister* case, the House of Lords applied the close-connection test to determine if the employee's wrongful acts were sufficiently related to their work for the employer to be held liable. This test does not exclude vicarious liability for bad-faith intentional torts, as demonstrated when the owners of a boarding house were held liable for sexual abuse committed by the school's warden.

XIII. General Justifications:

The rationale behind vicarious liability can be summed up as follows: by employing someone, the employer sets the entire process in motion, and because the employee's actions are carried out for the employer's benefit and under their direction, the employer is held responsible for the outcomes. Scholars and judges have offered various justifications for vicarious liability, often touching on three key points. First, vicarious liability helps ensure compensation. Employers are generally seen as more financially capable than employees, making them more likely to cover damages. The introduction of vicarious liability into tort law was largely motivated by the practical need to find a "deep pocket" to guarantee compensation for victims. Secondly, since the employer makes a profit from the enterprise in which the employee was engaged when the tort was committed, it is only fair that the employer be made liable. The employer introduces the risk of accidents through their enterprise and, crucially, is in the best position to influence employees and adjust work practices to reduce the likelihood of similar accidents in the future. Essentially, the employer is best placed to respond to the deterrent effect of damage awards. This is more applicable to negligence torts committed during work duties, as they can be anticipated and prevented, unlike intentional torts, which are often unrelated to work tasks and more difficult to foresee. Additionally, vicarious liability serves as a mechanism for distributing the financial impact of such incidents. This is visibly so, to the extent that it spreads the loss beyond the employee, to the employer as well. Furthermore, and related to the deterrence function, the employer is in a position to spread the loss even further, to its paying customers, by internalizing the costs through the increase of prices of the products or services accordingly. And, undoubtedly, employers are normally insured against such contingencies,

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and, therefore, can spread the loss through the insurance company to other policy-holders who also pay insurance premiums.

However, this discussion overemphasizes abstract theoretical justifications, such as fairness and loss distribution, without critically assessing their practical implications or limitations. For instance, the "deep pocket principle" is discussed broadly but lacks connection to how specific industries, such as healthcare or technology, manage liability in practice. For example, tech companies facing liability for data breaches caused by employees could provide a compelling modern lens to evaluate this principle in action. The doctrine of vicarious liability contradicts the core principles of tort law, which generally state that a person should only be held responsible for harm caused by their own actions or negligence. The Supreme Court of Canada acknowledged that a primary reason for vicarious liability is to provide a fair and reasonable remedy for those harmed by an employee's wrongdoing. Since employers hire workers to further their own economic interests, it is argued that they should bear the responsibility for compensating victims of their employees' actions. The reasoning is that employers are more likely to have the financial resources or insurance to provide compensation, whereas employees may lack the means to do so. Additionally, vicarious liability encourages a more equitable distribution of tort losses, with employers being better positioned to handle such financial burdens through liability insurance or higher prices. This principle also has a deterrent effect, as it motivates employers, who can organize and supervise their employees effectively, to take measures to prevent accidents. As per Fleming's words, the four main ideas to be found in modern case law and academic writings are fairness, the deep pocket principle, distributive justice, and deterrence.

As per the idea of fairness, it is seen as right and just that the person who creates a risk should bear the loss when the risk ripens into harm. In this sense, vicarious liability can be recognized as regulating the employer's risk-taking. It is a deliberate allocation of risk. This public policy consideration has been found in early judgments as well as those in the present day. The "deep pocket" principle operates on the assumption that employers are better equipped to compensate victims for their losses. This ties into the idea of corrective justice, which focuses on rectifying wrongs and ensuring victims receive adequate compensation for tortious harm. Corrective justice aims to align with widely accepted moral principles and personal accountability. One

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of the key social benefits of vicarious liability is its role in compensating victims. Ideally, a victim of a tort should be able to recover damages from a financially stable defendant, and since many employees lack the resources to settle a judgment, vicarious liability increases the likelihood of the victim receiving compensation from the employer, who is more likely to have the means to pay. However, the section does not adequately explore how these principles apply to contemporary challenges, such as liability for employee actions in the gig economy or cases involving workplace AI systems. These examples would demonstrate how fairness and loss distribution function in modern legal landscapes.[144]

First, the distribution of tort losses occurs when the employer can transfer the cost of their vicarious liability onto consumers by raising the price of goods or services, ultimately passing the financial burden to the community that purchases them. So, this distribution is one of the expenses of doing business. Ultimately the expense will be borne by the consumer of the product, who should pay the costs which the hazards of the business have incurred.[145] Atiyah has pointed out that the consumer may also play a part in spreading the cost, as not all consumers are individuals but maybe corporations themselves. In this way, the financial burden of tort liabilities can be shared across a wide portion of the public. Additionally, an employer can purchase insurance to cover such losses, and the cost is then distributed to the community through insurance premiums. Alternatively, the cost of liability insurance can be incorporated into the price of the goods or services offered. Essentially, by bearing the costs of torts committed by employees during work, employers can factor these expenses into their pricing and production strategies. Further, this spreading of losses can take place over a period of time, rather than one individual having to pay out a large sum at a particular time. It is widely agreed that it is more socially efficient to distribute the costs of third-party injuries across a large group rather than burdening just a few individuals. Employers are held responsible for these losses not only because they are better able to pay, but also because they can spread the financial impact. Some argue that loss distribution is not a justification for imposing liability on employers, but simply an explanation of where the loss ultimately falls. Others point out that because insurance is tied to liability, it cannot be used to justify or create liability in the first place. Therefore, using loss-spreading as a justification for vicarious liability is not entirely

[144] Loth, M. A. (2015). Corrective and distributive justice in tort law: on the restoration of autonomy and a minimal level of protection of the victim. *Maastricht journal of European and comparative law*, *22*(6), 788-811.
[145] Douglas, W. O. (1928). Vicarious Liability and Administration of Risk I. *Yale LJ*, *38*, 584.

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persuasive. Another key policy underlying vicarious liability, as recognized in *Bazley*, is the deterrence of future harm.[146] Moreover, modern legal developments, such as cyber liability insurance and workplace safety algorithms, provide new avenues for loss distribution, which remain unaddressed in this discussion. Incorporating these aspects would enhance the relevance of the analysis.

While deterrence remains a cornerstone justification, the section fails to critically assess its practical effectiveness. It acknowledges that "evidence as to the extent to which the risk of liability in civil cases actually deters is not easy to acquire," leaving unanswered questions about whether vicarious liability truly deters misconduct. For example, in institutional or corporate settings, the fear of liability may incentivize improved workplace policies and oversight, but this is not examined in detail. The absence of specific examples, such as deterrence in industries prone to safety violations or fraud, weakens the argument's overall strength. Vicarious liability is not based on a personal duty owed by the defendant to the plaintiff, but rather on the relationship between the defendant and the person committing the wrongful act. Once the necessary relationship, such as that of employer and employee, is established, the defendant can be held accountable for any injuries caused by the tortfeasor. In this sense, vicarious liability is strict, and it is imposed despite the absence of fault on the part of the employer.

XIV. CONCLUSION:

Vicarious liability, a fundamental principle of tort law, holds employers accountable for the wrongful acts of their employees, ensuring that victims are compensated even if the wrongdoer lacks the means to pay. While foundational justifications—fairness, loss distribution, and deterrence—underscore its role, these concepts face scrutiny. Fairness and corrective justice highlight employers' responsibility for risks tied to their enterprise, yet loss distribution burdens them with insurance and operational costs. Deterrence, though essential, lacks robust evidence demonstrating its efficacy in modern organizational settings. The doctrine's application has evolved, offering frameworks to address emerging challenges such as cyber liability, gig economy models, and AI-driven workplaces. However, its narrow focus on

[146] *Bazley v Curry* (1999) 174 DLR (4th) 45

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employees, excluding independent contractors, raises significant concerns. Cases such as ***Uber BV v Aslam*** **and** ***Barclays Bank v Various Claimants*** highlight the need for a more nuanced understanding of non-traditional employment relationships. Further investigation into compliance frameworks and corporate governance is crucial to reduce risks and promote accountability. Key limitations include ambiguities in distinguishing between employees and contractors, gaps in addressing systemic workplace issues like harassment, and challenges in imposing liability for intentional torts or misconduct that occur outside the scope of employment. Mechanisms like employer indemnity, while mitigating employer burdens, dilute accountability principles. Additionally, the imposition of exemplary damages on faultless employers, as debated in **Rowlands v Chief Constable of Merseyside**, underscores fairness concerns. To enhance its efficacy, vicarious liability must adapt to modern contexts. Legal reforms should focus on clearer definitions, broader applicability, and frameworks addressing technological and societal shifts. Comparative studies across jurisdictions and empirical research into deterrence effectiveness could illuminate better mechanisms. Ultimately, vicarious liability must balance victim compensation and employer accountability, evolving to ensure justice in complex legal and organizational landscapes.

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