# VICARIOUS LIABILITY IN THE LAW OF TORT

The law of tort has two primary aims; to compensate the victim or to deter torts in general. A tort is defined as a civil breach committed against a person in which he or she can sue for damages.[[1]](#footnote-0) The injured party seeks to receive compensation as a result of damages caused by the civil breach. In such a situation, tort law comes in to decide whether any person can be held responsible for an injury caused by another individual and if yes, then it determines the nature of compensation that the victim will get at the end. Tort law exists in the form of four elements, which are a duty, injury, breach of duty and causation. For the injured person to claim damages, he or she must show an evidence that the defendant breached their duty to the plaintiff and that in the process, an injury occurs. A tort can be in the form of negligence, intentional and strict liability torts. One of the doctrines of tort that will be the basis of this paper is the doctrine of vicarious liability. In English law, vicarious liability is a code that imposes liability on employers as a result of mistakes done by their employees.[[2]](#footnote-1) In general, an employer will be responsible for a tort or injury on an employee if they are conducting their normal duties for the company. For the purposes of this paper, I seek to highlight the extent to which vicarious liability helps to achieve the claims that tort law seeks to either compensate the victim or deter torts generally. In addition, any policy issues that affect judicial reasoning, in this case, will be discussed.

The principle of vicarious liability takes an unusual position when it comes to the law of torts. In the UK, for example, vicarious liability seems to contradict the principle of tort in that tort law is premised on the fact that a person can only be held responsible for their wrongdoing. Vicarious liability defies from this, as a single individual is accountable for the wrongdoing of someone else. In such a case, the defendant is not involved in any tortious wrongdoing yet they end up paying compensation for their employees. Vicarious liability exists as a secondary liability in the law of tort. What this means is that the liability of the defendant is caused by the liability of another person or party.[[3]](#footnote-2) Vicarious liability does not differentiate the liability of employers and employees. The employer, who is vicariously liable and the employee are considered severally liable for a wrongdoing. Thus, a claimant can choose to use either the employer or the employee, but the doctrine of vicarious liability will definitely make the employer liable. In essence, this doctrine seeks to determine how will be held liable, and in his case the employer. In addition to this, it can determine whether to deter torts in general largely. Determining whether to deter torts is the work of the law of tort. Once the law of tort differentiates whether to compensate the plaintiff or not, vicarious liability will come in to seek the determined dues from the employer. Thus, the doctrine of vicarious liability does act much when it comes to the two principal aims of tort law.

Vicarious liability is a no-fault secondary liability, meaning that if a person has been proved an employee of an organization (employer), then cases of employer or employees conduct should not come into play. Once an employment-related relationship has been identified, the courts should not look for aspects of conduct or carelessness from both parties. Thus, the essence of vicarious liability is to make the employer compensate or pay for employee’s wrongdoing provided that the employee did the act while in employment. As it will be highlighted throughout this paper, the doctrine of vicarious liability seeks either to compensate the victim or to deter torts but in most cases, the former happens.

After it has been identified that the victim is to be compensated, the doctrine of vicarious liability comes in. At this point, it is important for the judge or lawyer in charge to identify whether a person is actually an employee to which the employer is to be held liable. In addition, there should be enough evidence that the tort was committed while the employee was still in employment and not during his or her personal activities. In addition, the injury caused has to be a tort and should be differentiated from a criminal act. A heavy criticism has been associated with this doctrine, as the person who is held liable by the law of tort has not committed any offense. The assumption that overrides is that employers should always be aware of what employees are doing and their actions and should be keen on who they hire. The employer should take control of the employees from the time of recruitment as well as throughout their stay in the organization.

Whenever it comes to identifying if a person is a real employee of an organization, problems tend to arise and this is believed to be caused by the fact that nowadays, working relationships are getting a complex from time to time. Because of this, courts are given an opportunity to carry out various tests to help identify this relationship. The first test is known as the control test, which can also be referred to as the master and servant. As the employer control the employee, everything the employee does makes the employer liable. However, this test is not commonly used as employment relationships are changing. This test was used in *Mersey Docks v Coggins*.[[4]](#footnote-3) In this particular case, the driver was involved in an accident and in the process, he damaged goods. A different organization had hired him from the company in which he was working, but the courts ruled that the driver was still an employee of the original company as he was under the direction of the employer and thus, they were held liable. In this case, the role of vicarious liability is basically to determine the real employer of the worker involved in the accident but not to compensate the victim or to deter torts. The ruling upheld the decision that the company was the driver’s real employer and that was to be held responsible for the driver’s negligence. The proper test, in this case, was on whether the hirer had powers to control the execution of the act. In the *Mersey Docks v Coggins* case, the company that had hired the driver has no responsibility and this caused the accident. [[5]](#footnote-4)

The second applicable test in determining the real employer of a worker is the integration test. For the purposes of this case, the employee will be tested based on whether his or her work is completely integrated into the company in which they work. This test was applicable in the case of *Harrison v Macdonald*.[[6]](#footnote-5) In this case, it was found out that if the work that you do form an integral part of the business, for example, the master of a ship, you are an employee but if the work you do is not integral, like a ship's pilot, then you are not an employee. Initially, this test had not been used. In the *Harrison v Macdonald* case, an engineer wrote a book applying the information he gathered whilst working for his company, first as an employee and later as an executive officer. The engineer did not publish the book as he succumbed to death.[[7]](#footnote-6)According to the Copyright Act 1911, section 5(1), an author is defined as the copyrights very first owner. Nevertheless, if the author happens to be employed and he or she writes the book while in employment, then the employer should own the copyright. Thus, for this case, the employer was claiming to own the copyright. According to the judgment, the engineer simply used his knowledge and had not betrayed the company in which he was working for. Thus, the employer was not supposed to claim the copyright[[8]](#footnote-7).

The final test that could be used is the multiple tests, which help to determine the nature of relationships in employment based on a number of factors. These factors include whether the employee receives an already-set salary and wage, whether he works for the employer, does he or she have to follow orders, how they are paid etc. This test was applied in the Ready Mixed Concrete case whereby lorry drivers formed the basis of discussion. The Lorries were acquired on hire purchase and they worked in uniforms and drove the Lorries in the company's livery, however, they could not sub-contract the work to any other person. The claimant in the case was a taxi driver whom the respondent worked with for the period between 1st of September and 14th of October 2008.[[9]](#footnote-8) Prior to the work, he was informed that he would be compensated for the mileage for the work he would complete. The claimant was paid after he submitted the invoice, however, he had to cater for tax and insurance contributions. According to the Employment Tribunal, the claimant was not an employee and that he could not be compensated for the tax and insurance contributions. After this case, other factors have been developed to help identify the status of employment. Looking at the Ready Mixed Concrete case, it was judged that a driver who is self-employed could not be an employee of an organization because of the lack of what is termed as "mutuality of obligations". This ruling was made on 16th March 2011.[[10]](#footnote-9)

Distinguishing between an employee and an independent contractor is essential when it comes to determining whether to compensate a victim injured by the employee or the contractor or not.[[11]](#footnote-10) If an employee happens to commit a tort while working for his or her employer, the employer will be definitely liable as per the principle of vicarious liability. According to the ruling in *Bartonshill Coal Co v McGuire*, it was held that an act committed by an employee during the time of his official duty is termed as done by the employer’s orders and this indicates that it was the same as of the master did the act on his own.[[12]](#footnote-11) This is a judicial decision whereby the judges can force the employer to accept the burden for the torts employees commit while in employment. It is important to note that an employer is only responsible for torts which are done by his realistic employees and this does not take into consideration independent contractors. Thus, it is important for the courts to apply the rules and tests discussed above as well as others to help identify whether an individual working for an organization is an employee or an independent contractor before even seeking to establish the compensation.[[13]](#footnote-12)

Consider a situation where an employer gives an authority of an act. In such a case, the employer will have to accept vicarious liability in the case of the employee being injured or injuring other parties during the process of executing the act. In other situations, the employer can still be held vicariously liable for doings that they have not authorized provided that the claimant is an employee of the organization. In such a circumstance, the victim gets fairness as he or she is compensated but for the employer, it can be harsh. Below is an example; *Limpus v London General Omnibus Company*.[[14]](#footnote-13) In this case, an organization had provided the driver with a card that stated that he should never be involved in a race with any other company's omnibus or obstruct them, yet he went ahead and did the same. The driver saw an omnibus of another company and drove towards the path of that other omnibus. During the ruling, the jury was directed that if the driver was doing this while in employment, then the defendant (employer) was liable. Conversely, if the driver did an act of his own, then the defendant was not liable.[[15]](#footnote-14)In the end, it was ruled out that the driver was vicariously liable for the accident in spite of the driver being provided with instructions to exercise care. What made the employer liable was that the injury came because of an act done by the drive while he executed his official duties for the master’s purposes. The employer was held vicariously liable and had to compensate the injured party. In this case, the principle of vicarious liability comes in to support the law of torts. If the doctrine never existed, it would not be easy to determine whether compensation would be done as well as who would compensate the injured party. Thus, the doctrine of vicarious liability plays a big role when it comes to the two principal aims of tort law; which is to compensate the injured victim or to deter torts in general.[[16]](#footnote-15)

There are a number of other cases where employers were held vicariously liable for unauthorized acts done by employees during the process of executing their duties. A good example is *Century Insurance Co. Ltd. V Northern Ireland Road Transport Board.*[[17]](#footnote-16)In this case, the doctrine of vicarious liability was utilized. An employee was involved in smoking cigarettes as he transferred petrol to a tank from a lorry and in the process, there was fire. Although this was a case of the employee’s carelessness, the employer was liable for the injury caused as this accident happened in the scope of employment. Despite the fact that this was an unauthorised way of executing his roles as a driver, the employer was still supposed to accept vicarious liability for the injury and damages caused.[[18]](#footnote-17) Another similar case was *Harrison v Michelin Tyre Co Ltd*.[[19]](#footnote-18) In this case, an employee injured the plaintiff by steering his truck off the road, an act that was done deliberately. In spite of this action being deliberate, the courts held that the servant was still in employment and the employers had to pay the liability. [[20]](#footnote-19)Another similar case is *Rose v Plenty*.[[21]](#footnote-20) In this case, a milkman asked children to assist him to do his job and in the process, one got some injuries and took the milkman’s employer to court. The question was on who was to be held liable for this as it was against the employer’s orders for the employee to allow other people assist in any way. The doctrine of vicarious liability came into play. During the ruling, it was held that the milkman was still within the activities for which he was employed to do, and so, the employer had to compensate the child.

To the extent the vicarious obligation is concerned, the time taken by a worker to do a demonstration is imperative in deciding if there ought to be any remuneration and in addition the gatherings to be held subject. As talked about before, a business will be held vicariously at risk for acts done by a worker while working or executing his obligations for the business. What's more, the demonstration ought to have been conferred amid the approved time of work. For instance, on account of Ruddiman& Co v Smith, an assistant did an error of unintentionally leaving a tap running, a circumstance that prompted flooding of the premises. The representative opened the tap before going home however after his hours of work had officially slipped by. Independent of the time, the business was considered in charge of the harm caused by the flooding as the agent's demonstration was thought to be inside the work's degree, consequently, the regulation of vicarious obligation comes in. Another factor that ought to be considered as representatives making a trip to and from their work environments. Such a case would not be thought to be inside the representatives' course of work unless it is firmly identified with what he or she does. A case of a case that can extend this thought is Smith v Stages. For this situation, a worker got into a mischance while he was returning to his standard work environment after he had completed the process of working in somewhere else. It was held that the representative was still in his work as the day was to be remunerated as a typical working day simply like different days. The business would consequently need to acknowledge vicarious obligation for the damage caused and needed to pay for the harm. Another angle that may emerge in this thought is a situation where the representative takes a bypass. For a situation where the worker makes a special effort against the charges of his lord yet at the same time doing his manager's work, at that point, the race will be held vicariously obligated. On the off chance that he occupies to do his own particular business, the ace would not acknowledge obligation, as found because of Joel v Morrison.

In different events, a business may boycott certain demonstrations by workers trying to abstain from carrying the monetary weight because of damage. In any case, what the courts do is to guarantee that they take after the regulation of whether the demonstration was finished amid the standard work to guarantee that businesses do not escape obligation. It ought to be noticed that representatives deny certain demonstrations by issuing particular requests to endeavor to get away from any budgetary liabilities that may leave damage caused by the workers. An illustration is the situation of Plumb v. Cobden Fluor Mills Co Ltd. Another case is LCC v Cattermole (Garages) Ltd. For this situation, the association utilized a carport specialist and gave him the duty of moving vehicles in the carport yet restricted him from driving them. One day, the carport laborer happened to drive a van out of the carport keeping in mind the end goal to give a path for different vans inside the carport. Simultaneously, the van he was driving crashed into another vehicle, yet it was held that the business would pay the remuneration since the worker was inside the extent of work. The business had prohibited him from driving vehicles however the part, which he was given, would at one time expect him to drive. The business was just attempting to escape money related weight by disallowing him from driving vans.

The law on vicarious liability has been shaped by either to compensate the victim or not to compensate, or rather act as a deterrent. In many cases given as examples throughout this paper, ruling done would be favoring the claimant, meaning that the employer would end up compensating the victim who has been injured by the employee. There are only a few cases where no compensation is done or tort are deterred, for example, in the case of Hilton, where the courts could rule that the employee was on his own frolic hence no liability is to be given to the employer. This is a case where a tort could be deterred. The doctrine of vicarious liability can be harsh to the employer most rulings do favor the claimant and the employee. The claimant gets the compensation while the employee is excluded from paying anything in spite of most of their acts being careless. The question that arises is whether employers should really bear the responsibilities of employees under the current state of law. Many argue that employers have the ability to pay for compensation as they have insurance policies, but the issue here is whether employers should still bear the liability even when employee act against instructions. To help counter this, employers are always encouraged to take caution with the people they recruit and ensure that they train the employee to follow instructions and to avoid being negligent. Thus, cases of employers paying for compensation because of employee negligence will be reduced. Organizations should thus have in place a human resource department that is tasked with the responsibility of conducting various tests to help assess new recruits before being given the job. In organizations with many probable risks such as in the manufacturing and building industry, recruiting careless and negligent employees will mean that compensation because of damages done by employees will increase.

Considering everything, this paper has analyzed how the convention of vicarious risk is connected to the law of torts in deciding if to repay a casualty or to prevent torts when all is said in done. As the meaning of tort passes by, it is a common rupture conferred against a man in which he or she can sue for harms. Once the inquirer sues for harms, the courts make a decision to decide whether he or she is to be remunerated for the torts ought to be stopped totally. Nevertheless, the essential concentration of this paper was the principle of vicarious risk. The vicarious obligation is essentially a rule that forces risk on businesses because of wrongdoings of their workers. Different UK cases were highlighted to help highlight the part of this regulation in supporting the chief points of tort law. It has been discovered that at whatever point a representative is included in a mischance, for instance, causing harm and damage, the business is constantly held vicariously at risk given that the demonstration of the worker was finished over the span of work. Accordingly, the law of vicarious risk figures out who is to repay the other, notwithstanding deciding if to remunerate or stop the Torts totally. I can certainly say that to a bigger degree, the principle of vicarious obligation helps in accomplishing the two essential points of tort law; to remunerate the casualty/inquirer/offended party and to dissuade torts when all is said in done. In a portion of the decisions, legal choices assume a major part. For instance, a worker who was going throughout his business and causes a mischance. In such a case, it is the part of the courts to decide if the worker was all the while doing the business' work or had occupied to do some other individual stuff. The individual decision becomes possibly the most important factor here, as the judge (s) will utilize different elements to help separate this. These components shift starting with one administering then onto the next, consequently, the effect of legal choice strategies can be felt all the while.

## Bibliography

Bartonshill Coal Co v McGuire (1858) 3 Macq 300

Century Insurance Co Ltd v Northern Ireland Road Transport Board [1942] AC 509, HL

Copyright Act 1911, section 5(1)

Copyright Act 1911, section 5(1)

[Denham v Midland Employers’ Mutual Assurance Limited](http://swarb.co.uk/denham-v-midland-employers-mutual-assurance-limited-ca-1955/) CA ([1955] 2 QB 437)

Harrison v. Michelin Tyre Co Ltd [1985] 1 All E.R. 918. H

LCC v Cattermole (Garages) Ltd (1953).

Limpus v London general omnibus company: cexc 23 Jun 1862

Limpus v London v. General Omnibus

Mersey Docks and harbor Board v Coggins and Griffith (Liverpool) Ltd [1947] AC 1, HL

P S Atiyah, *Vicarious Liability in the Law of Torts* (Butterworths: London, 1967)

Plumb v Cobden Flour Mills Co Ltd [1914] AC 62

Ready Mixed Concrete (South East) v Minister of Pensions [1968] 1 All ER 433

Rose v Plenty: CA 7 Jul 1975

Ruddiman& Co v Smith (1889) 60 LT 708

Smith v Stages [1989] AC 928, HL

[Stevenson, Jordan & Harrison Ltd v MacDonald & Evans [1952] 1 TLR 101](http://acourtofyounglawyers.blogspot.co.ke/2017/02/stevenson-jordan-harrison-ltd-v.html)

T Baty, *Vicarious Liability* (London, 1916)

[Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd and others](http://swarb.co.uk/viasystems-tyneside-ltd-v-thermal-transfer-northern-ltd-and-others-ca-10-oct-2005/) CA ([Bailii](http://www.bailii.org/ew/cases/EWCA/Civ/2005/1151.html), [2005]

1. P S Atiyah, *Vicarious Liability in the Law of Torts* (Butterworths: London, 1967) [↑](#footnote-ref-0)
2. T Baty, *Vicarious Liability* (London, 1916) [↑](#footnote-ref-1)
3. P S Atiyah, *Vicarious Liability in the Law of Torts* (Butterworths: London, 1967) [↑](#footnote-ref-2)
4. Mersey Docks and harbor Board v Coggins and Griffith (Liverpool) Ltd [1947] AC 1, HL [↑](#footnote-ref-3)
5. Mersey Docks and Harbor Board v Coggins and Griffith (Liverpool) Ltd [1947] AC 1, HL [↑](#footnote-ref-4)
6. [Stevenson, Jordan & Harrison Ltd v MacDonald & Evans [1952] 1 TLR 101](http://acourtofyounglawyers.blogspot.co.ke/2017/02/stevenson-jordan-harrison-ltd-v.html) [↑](#footnote-ref-5)
7. [Stevenson, Jordan & Harrison Ltd v MacDonald & Evans [1952] 1 TLR 101](http://acourtofyounglawyers.blogspot.co.ke/2017/02/stevenson-jordan-harrison-ltd-v.html) [↑](#footnote-ref-6)
8. Act 1911, section 5(1) [↑](#footnote-ref-7)
9. Ready Mixed Concrete (South East) v Minister of Pensions [1968] 1 All ER 433 [↑](#footnote-ref-8)
10. Ready Mixed Concrete (South East) v Minister of Pensions [1968] 1 All ER 433 [↑](#footnote-ref-9)
11. Ready Mixed Concrete (South East) v Minister of Pensions [1968] 1 All ER 433 [↑](#footnote-ref-10)
12. Bartonshill Coal Co v McGuire (1858) 3 Macq 300 [↑](#footnote-ref-11)
13. Bartonshill Coal Co v McGuire (1858) 3 Macq 300 [↑](#footnote-ref-12)
14. Limpus v London general omnibus company: cexc 23 Jun 1862 [↑](#footnote-ref-13)
15. Limpus v London general omnibus company: cexc 23 Jun 1862 [↑](#footnote-ref-14)
16. Limpus v London general omnibus company: cexc 23 Jun 1862 [↑](#footnote-ref-15)
17. Century Insurance Co Ltd v Northern Ireland Road Transport Board [1942] AC 509, HL [↑](#footnote-ref-16)
18. Century Insurance Co Ltd v Northern Ireland Road Transport Board [1942] AC 509, HL [↑](#footnote-ref-17)
19. Harrison v. Michelin Tyre Co Ltd [1985] 1 All E.R. 918. H [↑](#footnote-ref-18)
20. Harrison v. Michelin Tyre Co Ltd [1985] 1 All E.R. 918. H [↑](#footnote-ref-19)
21. Rose v Plenty: CA 7 Jul 1975 [↑](#footnote-ref-20)