**VICARIOUS LIABILITY**

Vicarious liability, sometimes referred to as “imputed liability,” is a legal concept that assigns liability to an individual who did not actually cause the harm, but who has a specific superior legal relationship to the person who did cause the harm. Vicarious liability most commonly comes into play when an employee has acted in a negligent manner for which the employer will be held responsible. To explore this concept, consider the following vicarious liability definition.

**Definition of Vicarious Liability**

**Noun**

1. Liability assigned to an employer or other principal for his agent’s or employee’s acts performed in the course of employment or other duty.

**Origin**

17th Century    English common law

**What is Vicarious Liability**

Vicarious liability, also known by the Latin term “[*respondeat superior*](https://legaldictionary.net/respondeat-superior/),” is the holding of a person or entity responsible for damages or harm caused by someone else. Most commonly thought of in employee-employer relationships, it applies in other situations in which a person or entity holds a superior position to an agent. For instance, a hospital is responsible for its doctors’ actions.

The concept of vicarious liability is rooted in the fact that the superior party (such as an employer) has induced, facilitated, or otherwise contributed to its agent’s acts. An example of vicarious liability is when an employer is held liable for the action of one of his employees.

**Vicarious Liability in Employment**

Employers can be held liable for the actions or omissions during the commission of the employee’s job. In order for the act to be considered “in the course of employment,” the employer must have authorized or directed the act, or be otherwise connected with the act. An employer is not, however, responsible for actions taken by his employee which are not within the scope of his employment.

**Elements of Vicarious Liability of an Employer**

Most often, a victim is required to prove that the elements of vicarious liability exist. If he fails to do so, the court may find that the employer is not liable for the damages. The primary element of vicarious liability that must be proven is:

* The agreement the employee entered into as a condition of employment required the employee to work under the authority of the employer.

Additional elements of vicarious liability require the employer to have control over the employee, and the actions of the employee to have fallen within the scope of his employment at the time of the incident.

**For example:**

Bob hires John as a forklift operator. While moving a large crate to the customer loading zone, John hits a customer’s car, damaging it. John was engaged in the duties required by his employment, therefore Bob can be held vicarious liable for the damages.

**Scope of Employment**

Scope of employment refers the actions of an employee within the terms of his employment. Scope of employment varies, depending on the specific requirements of the job the employee is hired to do. There are several instances however, where a worker is not working inside the scope of employment.

There are certain circumstances in which a worker is not working within a scope of employment. These include:

* **Independent Contractors** – Individuals performing work for someone else, though not considered legal employees but independent contractors, are not working within the scope of employment for the sake of vicarious liability.
* **Illegal Acts** – The commission of an illegal act is not within the scope of employment. Any damages caused by the act, or during the commission of the act, are not considered an employer’s [responsibility](https://legaldictionary.net/responsibility/) in most cases.

**Employee Acting Outside His Scope of Employment**

Employers whose employee engages in an activity that was not directed or controlled by the employer may not be responsible for damages. This depends on what the activity was, and what purpose it served. For instance, an employee simply taking a “detour” while in the business of his employer, such as stopping to get gas while making deliveries, may still expose the employer to liability. Having gas in the vehicle is necessary to making the employer’s deliveries.

On the other hand, an employee who remembers her child forgot her permission slip to the 4th grade field trip, runs home to pick it up, then delivers it to the school, all while she is supposed to be making those deliveries, is definitely not engaged in the employer’s business. Any damages caused, say from having a traffic accident while rushing to the school, is not the employer’s responsibility. This is known as an employee “frolic.”

**Vicarious Liability in Medical Care**

In a medical setting, a hospital or doctor can be held vicariously liable for a claim based on the acts of one of its employees. This includes the actions of its physicians, nurses, laboratory personnel, imaging and other technicians, CNAs, administrative employees, and other staff members.

Due to the possibility of vicarious liability, hospitals, clinics, and doctors are responsible for ensuring all of their employees have the necessary qualifications and credentials needed to perform their jobs. If a physician or other healthcare provider is considered an independent contractor of a hospital, vicarious liability may not apply, though laws on this vary by state.

**Example of Vicarious Liability in Medical Care**

A few weeks after John had abdominal surgery at his local hospital, he felt he had perhaps broken a rib, and went to the Emergency Department. The x-ray showed that a surgical clamp had been left inside John’s abdominal cavity, which required immediate surgery for removal. John can sue the original surgeon for [medical malpractice](https://legaldictionary.net/medical-malpractice/), but he can also sue the hospital, which holds vicarious liability for the actions of its physicians.

**Other Types of Vicarious Liability**

Vicarious liability may apply to a number of situations in which someone other than the person who caused damages has some type of control, direction, or ownership in the situation. The most common “other” types of vicarious liability include principal liability and parental liability.

**Principal Liability**

An automobile owner can be held vicariously liable if he lends his vehicle to another person, and that person causes damage or injury through negligence. This generally only applies if the driver was using the car in order to perform a task for the owner of the vehicle.

**Example of Principal Liability**

Robert, who recently had surgery to repair a broken leg, lends his car to Jane so that she can run personal errands for him. As Jane is pulling out of the parking lot at Robert’s bank, she hits another vehicle. Robert may be held vicariously liable for Jane’s accident.

If, on the other hand, Jane kept Robert’s car to use while he is laid up, and she hit another car while driving to the grocery store, for her own needs, Robert is not likely to held vicariously liable. Simply lending a car to someone does not expose the owner to liability for the driver’s actions. The driver would need to be acting in the service of the owner.

**Parental Liability**

In the United States, parent liability is an issue that is poorly understood and evolving. Parents can be held directly liable for their own actions as related to their children, such as allowing a child to drive, or leaving a loaded gun within a child’s reach. If the child in either circumstance caused harm by taking advantage of the opportunity left before them by the parent, the parent can be held liable.

In some jurisdictions, parents may be held vicariously liable for negligent acts committed by their child, if the parent failed to provide adequate supervision.

**Example of Parental Liability**

Nancy works eight hours a day, and cannot afford to hire a babysitter to watch her 10- and 12-year old boys after school. She feels they are old enough to take care of themselves during that short time until she gets home. One afternoon, Nancy’s sons join other neighborhood children in throwing rocks at a neighbor’s backyard workshop, breaking out three windows. In many jurisdictions, Nancy may be held vicariously liable for her sons’ destructive acts, and be ordered to replace the windows.

**Vicarious Liability Example as Court Holds Employer Responsible**

Patrick Lynch was a cattle drover for the Cavan Town Cattle Market. In 2010, he and two other employees were supposed to be herding cattle between pens, on the way to the auction floor. This is a three-man job, but Patrick’s fellow employees left to take care of their own business, leaving him to move the cattle by himself. While moving through the pens to open a gate, Patrick had to pass behind a large bull, which kicked him in the groin, causing serious injuries.

Patrick filed a [civil lawsuit](https://legaldictionary.net/civil-lawsuit/) against Cavan Town Cattle Market, claiming his injuries were a direct result of his employer’s negligence. The employer responded, stating that the employee should not have performed the duties if the job was unreasonably risky. The court ruled in favor of the employer, finding it had not been negligent, and overlooking any question of negligence on the part of the two other employees.

Patrick appealed his case. The appellate court disagreed with the lower court’s decision, holding that the actions of the other two workers, who had deserted their duties, acted negligently. The employer, therefore, was vicariously liable for those employees’ acts. The court further held that the employer had a duty to provide a safe work environment, and that it had failed in that duty.

The appellate court did not overlook Patrick’s own contribution to his injuries, finding that he indeed should not have performed the duty if it was risky. The amount of Patrick’s damages was reduced by 33%, as he was found to be one-third responsible. This is referred to as “[contributory Negligence](https://legaldictionary.net/contributory-negligence/).”

**Related Legal Terms and Issues**

* **Civil Lawsuit** – A lawsuit brought about in court when one person claims to have suffered a loss due to the actions of another person.
* **Damages –** A monetary award in compensation for a financial loss, loss of or damage to personal or [real property](https://legaldictionary.net/real-property/), or an injury.
* **Liable**– Responsible by law; to be held legally answerable for an act or omission.
* **Negligence –**Failure to act as, or to exercise the level of care of, another reasonably prudent person would be expected to act.
* **Victim –** A person who is injured, killed, or otherwise harmed as a result of a criminal act, accident, or other event.