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# **VICARIOUS LIABILITY IN MEDICAL FIELD**

**Authored By- Akshita Jha**

## **Abstract**

Vicarious liability arise in a situation where a person is responsible for the act of any other person whom he appoints to lessen his workload. The prominent examples of vicarious liability are the principal agent relationships and the employee contractor relationships where there is a delegation go work from the person with a higher authority to a person with lower authority..In medical terms if we see these situations arise when there is a negligence on the part of medical professionals and a question arises as to weather a hospital should be held liable for the negligent act of their medical professionals, and how can this medical negligence can impact a society

**Key words:** Negligence,society,medical,vicarious liability

## Introduction

There may be times where one person may appoint some other person to lessen his workload by delegating or distributing some of the share of the work to the other person. The person who delegates his or her work to some other person is known as the master or the employer and the person to whom he delegates his or her work is the servant or the employee. The person or the boss appointing the servant or the employee under him becomes directly responsible for the act which the employed agent or employee commits during the course of employment. Speaking about the master servant relationship where the master appoints his servants to delegate the work or for example bring any essential goods for him, and if the agent fails to do so or commits any negligent act during the same, then the master will be held liable for the negligent acts of his servant as that particular negligent act was committed by the agent during the course of employment. In an employee contractor relationship the contractor employs the servant for a specific period to get a particular task done on a daily wage basis, therefore if the employee commits any negligent act while performing the task given the contract will be held responsible for the same as the employee has committed the negligent act during the course of employment, and as the rule of vicarious liability exists the master or the employer is liable for the negligent acts of the person appointed by him, so will be the situation in these cases. (master-servant, employee-contractor). Broadly speaking in the medical field where the negligence of medical professionals gives rise to a very important question that should a hospital be held liable for the act of negligent acts of the medical professionals as most of them are medical interns employed under some or the other doctors. Many of the staff who commit a medical negligence are also employed on a short term basis or we can say on a contractual basis.

Speaking about the contractual basis, the employees are hired for a specific period and further they are not liable to the rules of company or hospital therefore a issue arises as to who will be entitled to own the responsibility of the act committed by such contractual employers.

## Literature Review

### ARTICLES

#### 1) Philip Morgan, Recasting Vicarious Liability<sup>1</sup>

- First and foremost this article broadly explains what is a vicarious liability and what are the conditions under which any party can be held vicariously for the acts of their servants.
- Secondly this article talks about the responsibility of the owners and organisations in the cases where employees are hired upon on the basis of contractual basis
- Thirdly the article helps us to understand for which group of people should the employer or the contractor owe up the responsibility of their negligent acts.

#### 2) Harold J. Laski , The Basis of Vicarious Liability<sup>2</sup>

- First and foremost this article helps us to understand why should a master be held liable for the negligent acts his servants his servants commits during the course of employment

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<sup>1</sup> Philip Morgan, Recasting Vicarious Liability, Published by Cambridge law journal, Doi10.17, PP 615-650, available at [https://www.researchgate.net/publication/259427292\\_Recasting\\_Vicarious\\_Liability](https://www.researchgate.net/publication/259427292_Recasting_Vicarious_Liability)

<sup>2</sup> Harold J. Laski, The Basis of Vicarious Liability, vol 26, issue 2, PP 105-135, available at [https://www.jstor.org/stable/786314#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/786314#metadata_info_tab_contents)

- Secondly this article helps us to understand what should be the penalty or the punishment of the master in the cases where he himself fails to provide his agent with complete information which might have led to the commission of the negligent act by the agent which caused a greater damage to the victim or in simple word if we say proved to be very costly for the master or the agent

## Case Laws

### 2) **Kumudben Sureshchandra, vs Jamnagar Municipal Corporation**<sup>3</sup>

**FACTS**-The victim accused the municipal corporation for their negligent management which further led to victims accident. But the corporation constantly argued that it was the fault of their employees and that they had taken adequate precautions regarding the same.

**ISSUES**-what are the necessary conditions to prove the liability of the master and claim the insurance amount

**JUDGEMENT**-It was held that to claim the insurance the claim of negligence must be established and in order to prove the liability of the master in such acts it must be proved that the agent committed the negligent act during the course of employment.

### 2) **Pravinbhai N Sonara vs Kesar Sal Hospital on 31 December, 2021**<sup>4</sup>

**FACTS**- Even after several hospital visits and multiple rounds of operation THE PROBLEM OF victim did not subside but only kept on increasing with each visit. Post a thorough analysis it was found on that the reason for this pain was a cloth piece left by the doctor during operating the patient

**ISSUES**-Should a hospital be held liable for the negligent acts of the agents employed by them.

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<sup>3</sup> Kumudben Sureshchandra, vs Jamnagar Municipal Corp. AIR 1988 GUJ 13

<sup>4</sup> Pravinbhai N Sonara vs Kesar Sal Hospital on AIR 2021,CDRC 1055

**JUDGEMENT-**It was held that any act negligent act which the doctor commits during the course of employment, and which has caused harm to the patient will automatically hold the hospital responsible as the acts were committed by the doctors during the course of employment

**CRITICAL ANALYSIS-**Medical field is considered to be one of the most life saving fields as doctors are considered no less than a god. But these days there are many instances where the doctors have committed medical negligence by leaving dangerous items in the body parts in the patients body which further led to more and more complications, these instances only lead to loss of trust by the people in the medical fraternity. Lets take a simple example of covid times where everything was closed at people were blindly dependent on doctors to save their lives, sadly in these dreadful times many of the doctors also committed medical negligence by failing to provide the patient with adequate oxygen and proper medication on time, which was the primary reason for the shoot in no of deaths during the different covid waves. The medical fraternity has their own explanation towards their negligent acts but the sad truth if such kind of medical negligence is not checked and rectified in time, then a day will definitely come where people will start loosing trust in the medical fraternity.

## **Societal Effects**

These medical negligence will only have a negative impact on society as these ,medical negligences will instill a fear in the minds of people and people will slowly and steadily start losing trust in the medical system.Lets analyse one more aspect of this medical negligence which is holding the hospitals liable, the hospitals should be held liable for the acts of the negligence of the doctors as when hospitals reputation will be at stake then only they will be more vigilant of such negligent acts and then only the society will be Able to maintain their trust with the assurance that any medical negligence will be dealt strictly and the people who commit it won't be spared.

### **Website Databases**

[www.manupatra.com](http://www.manupatra.com)

[www.Jstor.com](http://www.Jstor.com)

[www.ssconline.com](http://www.ssconline.com)

[www.heinonline.com](http://www.heinonline.com)

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