

Vicarious Liability

Defin ition	Where a third party has a legal responsibility for the unlawful actions of another. It is commonly seen in the workplace where the employer is responsible for the actions of his or her employee, who acted in the course of his or her employment.	
Testing Employment Status	<p>The old test - Whether or not a person was providing</p> <ul style="list-style-type: none"> • A contract of service s/he would be an employee • A contract for services -s/he would be an independent contractor <p>Over the years different forms of working have developed (e.g. zero hrs contracts) so the courts have developed tests to determine employment status.</p>	
	The Control Test	<p>Developed in Yewens v Oakes (1880) – did the master have the right to control what the employee did and the way in which they did it.</p> <p>It was held in Performing Rights Society v Mitchell and Booker (1924) that the test concerns ‘the nature and degree of detailed control’</p> <p>In Short v J W Henderson Ltd (1946) many key features of the control test were identified including</p> <ul style="list-style-type: none"> • The power to select the servant (employee) • The right to control the method of working • The right to suspend and dismiss • The payment of wages <p>The control test is virtually impossible to apply accurately but is still useful – esp in cases of borrowed workers as in Mersey Docks and Harbour Board v Coggins and Griffiths (Liverpool) Ltd (1947)</p> <p><u>In recent cases clubs have been held to responsible for bouncers outside their night clubs. Also more that one employer can be liable as in Viasystems (Tyneside) Ltd v Thermal Transfer (Northern Ltd) (2005)</u></p>
	The in the integration or organisation test	<p>In Stevenson Jordan Lord Denning created this test. A worker is an employee if his or her work is fully integrated into the business. If they are only an accessory to the business they are not an employee.</p> <p>According to the test a master or a ship, chauffer and staff reporter on a newspaper are employees. On the other hand a pilot bringing a ship into port, a freelance writer and a freelance writer are not employees.</p> <p>This works well in some cases but causes issues in others. Teacher who also employed by exam boards as examiners have tax and employment deductions taken from their earning but are not considered as employees and there are no rights of dismissal or redundancy pay when their services are no longer required.</p>
	The economic reality or multiple test	<p>This test considers various factors that may indicate employment or self- employment and was created in Ready Mixed Concrete (South East Ltd) v Minister of Pensions and National Insurance (1968). These are:</p> <ol style="list-style-type: none"> 1) The employee agrees to provide work or skill in relation for a wage 2) The employee expressly or impliedly accepts that the work will be subject to the control of the employer 3) All other considerations in the contract are consistent with there being a contract of employment rather than any other relationship <p>The test has since been updated so that all factors in a relationship should be considered including</p> <ul style="list-style-type: none"> • Ownership of tools or equipment (an employee is less likely to own these) • Method of payment – a self-employed person is likely to be paid for completing a job rather than a regular salary • Tax – Are NI and tax payments made by the employer? A self- employed person would need to submit an independent tax return • Job description – how is the person referred to? • The level of independence and flexibility of the person to determine their own work <p>The above are aids and there can still be conflict decisions</p>
	Recent developmen ts	<p>Various cases where it was unclear as to whether or not the person who carried out the tort was an employee or not. There was no traditional employment relationship and it had to be decided whether ‘the employer’ should be vicariously liable. Several of these cases involve historic abuse</p>
Acting in the course of employment	<p>Two clear lines</p> <ul style="list-style-type: none"> • Where there is vicarious liability because the employee is acting in the course of employment • Where there is no vicarious liability because the employee is said not to be acting in the course of employment 	
	Tests to decide if something was committed in the course of employment	<p>Acting against orders – If employee is doing his or her job but acts against orders in the way they do it the employer can still be liable.</p> <p>Employee commits a criminal act – the employer may be liable if there is a close connection between the crime and what the employee was employed to do</p> <p>Employee committing a negligent act – if an employee does a job badly the employer can be liable for any harm suffered.</p> <p>Employee acting on a frolic of his or her own – in this case the employer will not be liable.</p>
		<p>Limpus v London General (1962)</p> <p>Rose v Plenty (1976)</p> <p>Twine v Bean Express (1946)</p> <p>Beard v London General Omnibus Co. (1990)</p>
		<p>Lister v Hesley Hall (2001)</p> <p>N v Chief Constable of Merseyside Police (2006)</p> <p>Mattis v Pollock (2003)</p> <p>Mohamad v WM Morrison (2016)</p>
		<p>Century Insurance Co’ Ltd v Northern Ireland Road Transport Board (1942)</p> <p>Hilton v Thomas Burton (Rhodes) Ltd (1961)</p> <p>Smith v Stages (1989)</p>
Payment of Compensation	<p>Employer may be ordered to pay compensation if they are held to be vicariously liable. V will only receive one payment</p> <p>Under the Civil Liability (Contribution) Act (1978) the employer can recover the compensation from the employee. However, this is not always possible.</p>	