Journal of
Law of Torts and Consumer Protection Law

ISSN: 2583-3898
Volume 6, Issue 2, 2023
DOI (Journal): 10.37591/JLTCPL

http://lawjournals.celnet.in/index.php/jltcpl/index

Review JLTCPL

Vicarious Liability of Artificial Intelligence

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Abstract

Artificial intelligence (AI) has become an integral part of numerous industries, transforming the way tasks are performed and decisions are made. However, this technological advancement raises important legal and ethical questions, particularly concerning the acts performed by the AI machines. There may come some instances where AI can perform activities in a manner which deviate from what was expected. There have been potential scenarios where AI systems have caused harm, such as accidents involving autonomous vehicles or erroneous decisions made by AI-powered financial algorithms. It presents various challenges in determining liability and assesses existing legal frameworks' effectiveness in addressing AI-related incidents. One of them is the question of liability for the wrongful acts committed by AI. The concept of vicarious liability comes handy in such situations. Vicarious liability refers to the legal responsibility imposed on an entity for the actions or omissions of another party. In the context of AI, determining who should be held liable when an AI system causes harm or makes a mistake is a complex challenge. The current legal framework for vicarious liability was developed in a world where human actors were the primary agents responsible for their actions. With the rise of AI, assigning liability becomes more complicated, as AI systems operate autonomously and can make decisions without direct human intervention. Although AI machines operate autonomously, there are various stakeholders present in designing, manufacturing, or using it for the purpose for which it was designed. Although a bit complex but still the concept of vicarious liability can be utilised to share the responsibility among various stakeholders who were there from designing to putting it into use.

Keywords: Artificial intelligence (AI), financial algorithms, legal frameworks, vicarious liability

INTRODUCTION

In the modern world, it is seldom that one takes full responsibility of one's own wrongful acts. So, it might come out as a surprise that there is a legal principle that talks about taking responsibility for the wrongful act of a third person. Yes, you read it right and this legal principle is known as vicarious liability. The legal concept of vicarious liability places responsibility for a harm upon an individual who may not have done it directly but who has a specific legal connection to the party who performed the conduct negligently, implying imputed carelessness. The test of vicarious liability arises out of certain special kinds of relationship which include master and servant, principal and agent, partners, etc. Through this project, we venture to discuss in detail the tort of vicarious liability, its essentials, and a special case where the vicarious liability can be applied.

LAW OF TORTS OF VICARIOUS LIABILITY

Vicarious liability is the liability imposed on the person for the acts committed by another person. It is a deviation from the general rules of

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Received Date: May 25, 2023
Accepted Date: June 30, 2023
Published Date: July 20, 2023

Citation: Sachin Dubey. Vicarious Liability of Artificial Intelligence. Journal of Law of Torts and Consumer Protection Law. 2023; 6(2): 1–6p.

liability under the law of torts. Usually, a person is liable for the torts committed by him. The tort of vicarious liability is based on the concept underlying the two latin maxims: "Qui facit per alium facit per se" (He who does an act through another does the act himself) and "Respondent superior" (Superior is accountable for the act of his servant) [1].

There are requirements that must be met in order for someone to be held vicariously accountable for the wrongdoings of another. These are:

1. There must be some kind of relationship existing between the parties.
2. The wrongful act committed by another person should be related to the relationship existing between the parties.
3. The act must be done during the course of the employment.

Relationship between the Parties

To establish vicarious liability, there has to be a certain kind of relationship between the person who does the wrongful act and the one at whose command the act is committed.

Some examples of relationships where the vicarious liability exists:

Principal and Agent

When a person empowers another person to perform some work on his behalf, then the principal and agent relationship comes into existence. The principal will be held vicariously accountable for any torts done by the agent as well as the agent itself, if the agent commits a wrongdoing while working for the principal. The liability would be both joint and several.

In the case of *Ormod v. Crossville Motor Services Ltd. (1953)* [2], in order for the two of them to enjoy their vacation, once they were at their destination, the car's owner asked his friend to drive the vehicle from Birkenhead to Montecarlo. The friend who had taken the steering wheel soon after the automobile left Birkenhead caused an accident. Because of his friend's carelessness, the car's owner was made accountable.

Lord Denning observed in the case:

> *"The law puts an especial responsibility on the owner of a vehicle who allows it to go on road in charge of someone else, no matter whether it is his servant, his friend, or anyone else. It is being used wholly or partly on the owner's purpose; the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires to a third person to be used for purposes in which the owner has no interest or concern."*

In another case of *State Bank of India v. Shyama Devi*, *1978* [3], the plaintiff's husband asked his friend, the defendant, a bank representative, to deposit money in the plaintiff's account. The plaintiff was not given a bank receipt as proof for the same. Instead, he misappropriated for his own purpose. The Supreme Court held that when the defendant did the fraud, he was not acting as an agent of the bank but as a friend of the plaintiff's husband. As a result, the bank was not held responsible for the defendant's actions.

Master and Servant [4]

The master would be accountable for the wrong done by his servant if the task was being done by the servant in the course of employment and he committed a wrongdoing while doing so. Two essentials which need to fulfil to make the servant liable:

i. The servant must be the one who did the wrongful act.
ii. The act must be carried out by the servant during the course of employment (Master and Servant: Tests of Independent Contract, 1931) [4].

A servant is a person employed by another to do work under the control and guidance of his master. As a general rule, master is liable for the tort of the servant but he is not liable for the tort of an independent contractor. The question now is: what distinguishes a servant from the independent contractor?

There are some tests to distinguish between a servant and an independent contractor:

The Control Test

If the master is in a position to tell the person what and how the work should be done, then the person doing the work will be a servant rather than an independent contractor. When using an independent contractor, the master can only specify the tasks that must be completed, not how they should be carried out.

But when it comes to someone performing a "professional or skillful job", the control test loses its effectiveness or authority because the employer, who could be a businessperson, a public official, etc., might not have sufficient knowledge to comprehend the nature of the task these experts are performing. For instance, despite the fact that the hospital administration has no control over how the doctors should perform their work, the doctors who work there, are employees rather than independent contractors.

In the case of Dharangadhara Chemical Works Ltd. V. State of Saurashtra, 1957 [5], the Supreme Court stated that the right of the master to exercise control and supervision over the job performed by a servant is a prima facie test and that the type of control used may vary from business to business and is inherently impossible to define precisely. It is not essential to show that the employer had control over the employee's work, that the test of control is not always applicable, and that there are numerous relationships in which the master had no control over how the task was carried out.

The Nature of Employment Test

This test explains that the person who is doing work under the "contract of service" is an employee whereas the person working under the "contract for service" is an independent contractor.

In *Collins v. Hertfordshire, 1947* [6], judge said*; "*the distinction between a contract for services and a contract of service can be summarised in this way: in one case, the master can order or require what is to be done, while in other case, he cannot only order or require what is to be done, but how it shall be done."

Although a contract can mention that the person performing work is a servant or an independent contractor, it is not the end in itself. It is open for the court to decide the exact nature of employment.

The 'Integral Part of the Business' Test

In case of Stevenson*, Jordan and Harrison Ltd. v. Macdonald and Evans, 1952* [7], the 'Integral part of business' test was implemented. According to this criteria, if a man does some job that is a necessary component of a business, then that work falls under a contract for services, however if the work is not a necessary component of a business, then that work falls under a contract for service.

Example: In a pharma company, the pharmacists are the employees of the company, and the master-servant relationship exists between them. However, if the business employs someone to make tea and coffee for employees, that will not be seen as a necessary component of the business, and there will not be a master-servant connection between them.

Multiple Test

In the case of *Montreal v. Montreal Locomotive Works Ltd. 1944* [8], it was said that given the modern industries complex nature in the contemporary world, it is necessary to evolve a more complex test. That complex test would involve:

(a) Control
(b) Possession of tools

(c) Prospect of profit
(d) Chances that losses may occur

Thus, the traditional test—the control test is not the only test which decides master-servant relationship. Given the complex modern environment, there are other considerations which we need to pay attention to because they decide the relation between master and servant. So, using only one test to determine master-servant relationship may not be an effective formula.

Course of Employment

The master or principle may be held accountable for any unlawful acts committed by a servant or agent while they are on the job. The responsibility of the master extends to the things that a servant accomplishes while working for him, in addition to the things that he commanded them to do.

"An act is supposed to be done in the course of employment if it is either: (1) a wrongful act authorized by the master, or (2) a wrongful and unauthorized mode of doing some act authorized by the master." Bangia, 2017 [1].

For instance, the principal instructs his agent to sign some papers on his behalf and while signing, agent commits fraudulent act then the principal must be accountable for the act of his agent.

VICARIOUS LIABILITY FOR AI

About AI

With the growth of modern industries accompanied by the innovation in the field of technology, a new type of machines comes into being with autonomous decision-making capabilities. These machines embedded with the skills similar to humans such as thinking, reasoning, retaining, etc. fulfil their tasks without human help is known as artificial intelligence.

> "*Artificial intelligence is a field of science and engineering concerned with the computational understanding of what is commonly called intelligent behaviour, and with the creation of artefacts that exhibit such behaviour*". Thomas, 2020 [9].

Artificial intelligence machines were brought with the intention to 'complement and supplement human intelligence' which would bring a transformation in the lives of people making their lives more comfortable. Devices based on AI are being used in different sectors of the country like medical, hospitality, engineering, space, and many more. They are complementing as well as replacing the human effort thereby contributing in the development of society. However, with advancement also come challenges because AI is unreliable, unpredictable, and unaccountable. There also comes the question of liability for the wrongful act of artificial intelligence devices.

There were some instances where AI acted in manner deviant from what we generally expected. In 2016, a chatbot named Tay designed by the Microsoft to communicate with people on twitter started giving derogatory statements hurting the sentiments of the people. Actually, it was designed in a way that it used data from twitter as an input and then it does conversation with people using that data. In the latter part of 2016, Uber decided to conduct tests for their automated cars in San Francisco without any assent taken from authorities there. From internal documents, it came to be known that these automated cars crossed six red lights during testing [10].

Now the question arises: who will share the burden of liability if the AI powered machines does some wrongful act causing injury to other persons? The common principle in law of torts is that if someone commits an unlawful act, he would be held liable for that. But in order to hold someone accountable, it must be demonstrated that he has a legal obligation to others. The legal person is usually given legal obligations and rights. Therefore, in order to hold AI accountable, it must be given the status of a legal person and be subject to legal sanctions. However, as of right present, no law anywhere in the world accords legal personhood to AI devices. Also, it would not be fair to grant them the legal status as these remain dependent on their owner, manufacturer, or programmer for giving them required task to do as well as foe decision making process.

Who should be Held Vicariously Liable for the Wrongful Act Committed by the AI Powered Machines?

As we all know, it is impossible to hold artificial intelligence accountable for wrongdoing. Therefore, the responsibility must be shared among the various participants from the designing to putting it into use. In order to demonstrate liability among different stakeholders, the vicarious liability of the principal for the acts of the agent might be employed [10].

The validity of the argument stems from the reality that AI-powered devices are created and run by their creators, operators, and owners who use them solely for the purpose of profiting from them. Who will be held accountable for the wrongdoing performed by these devices while carrying out their normal duty if they are only used to obtain certain benefits? Of course, the parties involved [11].

Here, AI is acting as a gratuitous agent. A gratuitous agent is an agent who works for the principal without any consideration. But he has to work according to the instructions given by the principal. Suppose, in the course of acting as gratuitous agent he does some wrongful act then the principal would be held liable for that. In case of AI, manufacturers, operators, owners are the various principals who could be held liable [12].

But the problem is: how to identify the principal? Should the manufacturers (designers) be held liable who designed them, the programmers who help in programming AI machines or users who utilises their services? These are the questions which come in our mind.

There are two ways which we can consider upon to identify the principal. First way is to consider upon the task which AI machines are doing and at whose direction it is being done. Second, to see who has the most effective control on the working of AI powered devices in the form of monitoring, regulation, and guidance. There are situations where it is quite unambiguous that who is regulating and monitoring the working of AI except few cases where AI itself is quite unpredictable and unforeseeable. For instance, the corporation controlling and guiding the operation of AI can be held liable if AI does some wrongful act. Agency law considers corporations as legal persons who have certain rights and duties, who can sue as well as get sued. We can also state that the programmer and manufacturer bear the greatest responsibility for the operation of AI during the earliest stages of the development of AI devices. However, as their use develops, there is a greater likelihood that the owner or user will have more control and a greater likelihood of being held accountable for the actions of AI. So, “this approach focuses on the question of where is the greatest pressure point for who is willing and able to take into consideration the costs its AI agent may inflict” [13].

Sometimes, there may be situations where more than one principal may be held responsible for the harm afflicted by AI machines because there are more than one principal regulating and guiding the functions of AI. They can be called “multiple principals.” Israel agency legislation also mentions about “multiple principals” in the following words: “where one authorization is given by several principals, it shall be presumed that the agent is to act by the joint authority of all of them.” [11]. In these types of cases, the principle of joint and several liability may be applied. The various prospective principals that we have seen in the case of AI are programmer, designer, and operator. So, in case, where multiple principals are involved in monitoring, controlling, and guiding the working of AI, they may be held liable jointly and severally for the damages that occurs due to the acts of AI. Consider a scenario in which a school maintains an AI-based robot to trim the grass and plant leaves. One day while doing the gardening, robot injures one student of the school. In this case, the owner as well as operator of the robot is school itself and it has control and guidance on the working of the robot. So, the school is the principal who may be held liable for the injurious act of the robot. But what if the robot's programmer or designer is already aware of the flaws in its operation but neglected to inform the school of them? The idea of "multiple principals" is now clear.

So, these are some of the ways to identify principal which can help us in establishing the liability of the human principals for the acts committed by AI machines.

CONCLUSION

Currently, there are no laws and regulations which determine the liability for the wrongful acts of AI entities as well as no legal status has been assigned to AI entities as of now. The most significant connection we can make in this case to evaluate the accountability for the AI computers is to think of them as agents who are being controlled and led by their human sponsors.

This is because of the various stakeholders who are involved in utilising AI entities for gaining some benefit from them. So, if these entities commit some wrong these human principals would be held liable for wrongful act.

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