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Employer Liability: Respondeat Superior Doctrine

One of the very first doctrines of law that I learned in law school was the doctrine of *respondeat superior*. Though the legal field has largely abandoned the use of Latin phrases for every legal concept imaginable there are still a few doctrines that maintain their Latin designation. One such doctrine is *respondeat superior* translated into English to mean, “let the master answer.” This is not to be confused with our previous discussion of the doctrine of *res ipsa loquitur* whereby one might be found to be negligent by the very occurrence of the injury. The doctrine of *respondeat superior* is quite a different creature from *res ipsa loquitur*. The latter is a means by which to establish a claim for negligence that circumvents the requirement of proving a breach of a duty. The former, which is the topic of our discussion today, is a means for attaching what is known as vicarious liability.

If my somewhat flippant use of complex legal terms has not driven you off then sit back and let us delve into this doctrine.

As I noted, this was one of the first doctrines that I learned in law school. That means I have spent half a decade using this phrase and not given all that much thought to the novelty of it to non-lawyers. That is until I was talking to my grandmother about the passing of her friend. The man was killed when a driver abruptly changed lanes into the motorcycle driven by her friend. As she speculated as to the potential ability for the man’s widow to recover damages for the wrongful

loss of her husband, I noted in a rather matter-of-fact manner that it could make a tremendous difference whether the driver was acting within the scope of his employment.

My statement made two fundamental errors. The first was to toss out the phrase “scope of his employment” as if the mere statement alone provided some reasonable explanation of what it means. The second, perhaps much more egregious, was that I just assumed that everyone knew that an employer, under certain circumstances, could be held liable for the acts of its employee. Needless to say, my grandmother – who despite having two grandsons who are members of the bar, has never had to pick up a law book – quickly made apparent my error. I then proceeded to explain to her the doctrine of *respondeat superior* and thus this blog post was born.

With the genesis of this blog post established, let us now delve into what the doctrine means.

There is a consensus that the doctrine originated in seventeenth century English courts. However, no one seems to know exactly what case created the doctrine. The modern statement of the rule is best summarized by the Restatement (Third) of Agency, which states:

§ 2.04 *Respondeat Superior*

An employer is subject to liability for torts committed by employees while acting within the scope of their employment.

And just like that you know see why I used the phrase “scope of his employment” while talking to my grandmother. However, the mere recitation of the rule does very little to actually convey how complex the doctrine can be.

The magic little phrase “scope of their employment” holds the key to uncovering the complexity of the doctrine. As this doctrine is so universally recognized with each court putting its own slight spin on the doctrine, we will not focus on any specific state’s application of the doctrine. That said, while we always warn against relying on anything you read on the Hoosier Litigation Blog, this is particularly true here where our discussion will seamlessly blend the laws of many different states.

A good discussion of what constitutes “scope of employment” was addressed in the 2002 federal case *Booker v. GTE.net LLC* from the Eastern District of Kentucky. In *Booker*, the court used the following standard to determine whether an employee’s action was “within the scope of employment”:

(1) whether the conduct was similar to that which the employee was hired to perform; (2) whether the action occurred substantially within the authorized spacial and temporal limits of the employment; (3) whether the action was in furtherance of the employer's business; and (4) whether the conduct, though unauthorized, was expectable in view of the employee's duties.

This is a fairly common standard. It requires a court to look at these four criteria and after balancing their application to the facts of the case determine whether the employee's actions were sufficiently tied to his employment as to be "within the scope of that employment."

Generally, the touchstone of whether an employee is "acting within the scope of his employment" is whether the employee was on the clock when the action occurred. This is not dispositive but still a pretty solid indicator. The second question that typically follows is whether there is some purpose or interest of the employer that is being advanced by the employee. The third question is usually some variant of whether the employer had some control over his employee's action or could reasonably expect the action to occur in light of the employee's duties.

The prototypical scenario for the doctrine is an automobile accident. A semi truck driver hauling freight for his employer on a highway is almost always going to be acting within the scope of his employment when he gets into an accident. The same could be said for a bus driver running her morning route. Where the doctrine gets a bit more complicated is with the interjection of the concepts of frolic and detour.

This somewhat antiquated way of looking at the doctrine was meant to address the circumstances where an employee has gone somewhere as part of his job but has wandered off of the path for some reason. The term detour generally meaning the employee has only made a slight jog outside the typical duties of employment. Whereas a frolic was meant to describe a scenario in which the employee has gone well beyond the confines of his employment.

Let us return to the bus driver scenario. If a school bus driver is driving students on a trip to the State Museum then certainly he is acting within the scope of his employment. But what happens if while the students are at the museum he takes the bus to a filling station? Would that too be within the scope of his employment? The answer is probably yes but a tougher call. To make it even more difficult, consider that he decides that he has always wanted to see the Indianapolis Motor Speedway so instead of going to the closest filling station he decides to find one near the track just so he can drive by the Speedway. That would be a much

more difficult call and would require excellent legal arguments on both sides to guide a court in applying the doctrine.

Another nuance to the doctrine is that many jurisdictions do not recognize traveling to and from work each day as being within the scope of employment. The way I think best in describing this concept is to think of it like this. An employer is liable for an accident that you cause when your employer controls the starting and ending point of its employee's journey. Let us look at how this simplified definition applies. When an employee is driving to work, that is not a scenario in which the employer controls both the starting and ending point of the journey. True, the employer controls the ending point – i.e. the place of business – but the employer has, presumably, no control over where the employee lives. The same would be true but in reverse for when the employee goes home at the end of the day – that is the employee would then control the starting but not the ending point. Once an employee has arrived for the day and the employer sends him somewhere then we now have a scenario in which the employer controls both the destination and the starting point. This is the typical scenario.

Yet another nuance to the doctrine is that it typically only acts to bind an employer for the negligent acts of its employees. That means that generally an employer is not liable for the intentionally tortious actions of its employees. Intentional torts are things where a person who meant to cause the injury caused the injury. A good example is the tort of battery. Though this is a general rule, it does have its exceptions. The *Booker* case discussed the classic law school example for an exception in which an employee's intentional tort is part of his job.

One might recall, for example, the classic law school hypothetical positing the bar bouncer who injures a patron by using excessive force in removing him from the bar; the law has long recognized that in such an instance the bar owner may be held vicariously liable for the bouncer's actions, the intentional nature of the bouncer's actions notwithstanding. The justification commonly advanced in support of this result is that some intentionally tortious employee acts are so closely related to the nature of the employment that no real distinction can be made for purposes of determining liability.

Put simply, the reason that the bouncer example would create liability is because part of the core function of a bouncer is to use physical force against other people.

These are just a few examples of the complexity in determining when the actions of an employee are “within the scope of employment.” To fully vet the doctrine would be a herculean task not well suited to a blog post. Nevertheless, this

post would be lacking if we did not explain why all of this matters. The reason is that phrase that I used early on: “vicarious liability.” The doctrine allows an injured person to seek recovery from a third-party for his injuries. Part of the underlying reason for the existence of the doctrine, according to the others of the Restatement, is “the likelihood that an employer will be more likely to satisfy a judgment.” The judgment is meant to be an accurate reflection of the injuries suffered by a person. Thus, a purpose of the doctrine is to help an injured person to recover the damages to compensate him or her for injuries suffered on account of the employee.

An additional rationale put forth by the Restatement is that “an employer may insure against liability encompassing the consequences of all employees’ actions, whereas individual employees lack the incentive and ability to insure beyond any individual’s liability or assets.” This is a vitally important part of the doctrine and what even sparked the discussion between my grandmother and me. I noted that the driver probably had, at best, an insurance policy that was capped at \$100,000. In the typical situation, an individual is not capable of paying much out of pocket for the injuries caused to another. That is why there are laws that mandate insurance coverage on motor vehicles. But who honestly thinks that a human life is only worth \$100,000? What loving spouse wouldn’t give one hundred times or one thousand times more than that just to spend another hour with her beloved? Thus, the doctrine recognizes that the entity most well positioned to seek sufficient insurance coverage is the employer with a great deal of exposure. Indeed, this is why very many business automobile insurance policies have one million dollar limits.

So to summarize our discussion: the doctrine of *respondeat superior* exists to obligate an employer for the actions of its employees that injure another where the employer was acting “within the scope of employment.” The doctrine helps injured people to more fully seek monetary recovery for their loss/injury. The doctrine is also very nuanced and generally does not cover the intentionally tortious actions of an employee except where the tortious actions are a core part of his employment.

Join us again next time for further discussion of developments in the law.

Sources

- Restatement (Third) of Agency § 2.04 (2006).
- *Booker v. GTE.net LLC*, 214 F. Supp. 2d 746, 749-50 (E.D. Ky. 2002), *aff’d*, 350 F.3d 515 (6th Cir. 2003).

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