

Respondeat Superior and Diligentissimi Paterfamilias — A Comparative Study

Amelito R. Mutuc

5 ATENEO L.J. 1 (1955)

KEYWORD(S): VICARIOUS LIABILITY, TORT, RESPONDEAT SUPERIOR,
DILIGENCE OF A GOOD FATHER OF THE FAMILY, FAULT
SUBJECT(S): VICARIOUS LIABILITY, TORT

Comparison of legal ideas and principles is said to be a tool towards a more comprehensive understanding of the law. In this Article, the Author compares Philippine civil law with common law, stating that such comparison is apt due to the very nature of the combination of legal systems (i.e., Roman, Anglo-American, and Mohammedan) in the Philippines, which makes for such an atypical case. The scope of the Article is limited to the concept of vicarious liability, particularly, the liability of a master or employer for the torts of his servant or employee and as interpreted in the common-law doctrine of *respondeat superior* (i.e., “Let the superior respond.”) and civil law doctrine of *diligentissimi paterfamilias* (i.e., “diligence of a father of a family”). The method of approach and treatment of the subject matter followed Justice Holmes’ formula of comparative legal analysis, starting with a characterization of the current state of the doctrine of vicarious liability, followed by an analysis of tort and quasi-delictual jurisprudence, which would then lead to a comparison of the basis and application of and defenses available against vicarious liability under both legal doctrines.

In comparing the views of several common law jurists, the Author notes that, under the common law, there seems to be no single underlying principle of tort liability. On the other hand, in civil law, the general rule is based on the “culpability theory,” in which there is no liability without fault. Upon making this distinction, comparisons were also made between the treatment of fault in common law and civil law, *culpa* and *dolo*, *culpa criminal* and *culpa aquiliana*, and *culpa contractual* and *culpa aquiliana*. The Article also delves into the question of the extent of the influence of morality on the concept of tort but maintains the general rule — that the basis of Philippine tort law is still fault.

Finally, a historical background of the rules of vicarious liability in both common law and civil law is drawn, indicating the different influences of its development. This coverage of this Article in this Issue ends with the

Author's general statement on the different theories, together with their respective criticisms, on the basis of vicarious liability in both systems.