

is liable for any injury caused by the tort. However, if an agent's motivation in committing the intentional tort is personal, the principal is not liable, even if the tort takes place during business hours or on business premises.

Example Under the motivation test, an employer—the principal—is not liable if his employee, who is motivated by jealousy, injures someone on the job who dated her boyfriend. Here, the motivation of the employee was personal and not work related.

- **Work-related test.** Some jurisdictions have rejected the motivation test as being too narrow. These jurisdictions apply the work-related test instead. Under this test, if an agent commits an intentional tort within a work-related time or space—for example, during working hours or on the principal's premises—the principal is liable for any injuries caused by the agent's intentional torts. Under this test, the agent's motivation is immaterial.

Example Under the work-related test, an employer—the principal—is liable if his employee, who was motivated by jealousy, injures someone on the work premises and during work hours who dated her boyfriend. Here, the motivation of the employee is not relevant. What is relevant is that the intentional tort was committed on work premises and during the employee's work hours.

In the following case, the court was called upon to determine whether an employer was liable for an employee's intentional tort.

work-related test

A test that determines whether an agent committed an intentional tort within a work-related time or space; if so, the principal is liable for any injury caused by the agent's intentional tort.



CASE 18.1 Intentional Tort

Burlarley v. Walmart Stores, Inc.

904 N.Y.S.2d 826, Web 2010 N.Y.App. Div. Lexis 6278 (2010)
Appellate Division of the Supreme Court of New York

"In our view, Supreme Court properly concluded that throwing a full bag of heavy items at an unsuspecting customer's face as a 'joke' is not commonly done by a cashier and, indeed, substantially departs from a cashier's normal methods of performance."

—Mercure, Judge

Facts

After an hour of shopping at a Walmart store, Michael Burlarley and his wife proceeded to the checkout at the store. The cashier, joking with the couple in an effort to make her work shift "go a little faster," pretended to ring up items for vastly more than their price and threw various items at Michael. Michael, not amused, told her to stop, and the cashier initially complied. When Michael turned away, however, the cashier threw a bag containing a pair of shoes and shampoo at him. Michael was struck in the face. Michael sued Walmart Stores, Inc., to recover damages. Walmart filed a motion for summary judgment, alleging that the cashier's actions were personally motivated and that Walmart was not liable under the motivation test. The trial court granted summary judgment to Walmart. Michael appealed.

Issue

Is Walmart vicariously liable for the personally motivated acts of its cashier?

Language of the Court

In our view, the court properly concluded that throwing a full bag of heavy items at an unsuspecting customer's face as a "joke" is not commonly done by a cashier and, indeed, substantially departs from a cashier's normal methods of performance. Moreover, the cashier's actions arose not from any work-related motivation, but rather her desire to pass the time and relieve mounting frustration with her job. Accordingly, inasmuch as the cashier acted for purely personal reasons and not in the furtherance of any duty owed to Walmart, the court appropriately determined that the doctrine of respondeat superior was inapplicable.

Decision

Applying the motivation test, the appellate court held that Walmart was not vicariously liable for the intentional tort of its cashier, which was solely motivated by

personal reasons and not in the furtherance of Walmart's business. The appellate court affirmed the trial court's grant of summary judgment in favor of Walmart.

Ethics

Was it ethical for Walmart to deny liability for its employee's actions in this case?

Case Questions

Critical Legal Thinking

If the court applied the work-related test, would the outcome of the case be different?

Contemporary Business

Do employers prefer the use of the motivation test or the work-related test when assessing liability for the intentional torts of their employees?

Misrepresentation

Intentional misrepresentations are also known as fraud or deceit. They occur when an agent makes statements that he or she knows are not true. An innocent misrepresentation occurs when an agent negligently makes a misrepresentation to a third party. A principal is liable for the intentional and innocent misrepresentations made by an agent acting within the scope of employment. The third party can either (1) rescind the contract with the principal and recover any consideration paid or (2) affirm the contract and recover damages.

intentional misrepresentation (fraud or deceit)

A deceit in which an agent makes an untrue statement that he or she knows is not true.

Example Assume that a car salesperson is employed to sell the principal's car, and the principal tells the agent that the car was repaired after it was involved in a major accident. If the agent intentionally tells the buyer that the car was never involved in an accident, the agent has made an intentional misrepresentation. Both the principal and the agent are liable for this misrepresentation.

CONCEPT SUMMARY

TORT LIABILITY OF PRINCIPALS AND AGENTS TO THIRD PARTIES

Agent's Conduct	Agent Liable	Principal Liable
Negligence	Yes	The principal is liable under the doctrine of <i>respondeat superior</i> if the agent's negligent act was committed within his or her scope of employment.
Intentional tort	Yes	<i>Motivation test:</i> The principal is liable if the agent's motivation in committing the intentional tort was to promote the principal's business.
	Yes	<i>Work-related test:</i> The principal is liable if the agent committed the intentional tort within work-related time and space.
Misrepresentation	Yes	The principal is liable for the intentional and innocent misrepresentations made by an agent acting within the scope of his or her authority.

Contract Liability to Third Parties

Agency law imposes contract liability on principals and agents, depending on the circumstances. A principal who authorizes an agent to enter into a contract with a third party is liable on the contract. Thus, the third party can enforce the contract against the principal and recover damages from the principal if the principal fails to perform it.

The agent can also be held liable on the contract in certain circumstances. Imposition of such liability depends on whether the agency is classified as *fully disclosed, partially disclosed, or undisclosed*.

The crowning fortune of a man is to be born to some pursuit which finds him employment and happiness, whether it be to make baskets, or broad swords, or canals, or statues, or songs.

Ralph Waldo Emerson