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Agency - Scope of Employment - Liability of Corporation for Tort of Agent

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Notes

AGENCY—SCOPE OF EMPLOYMENT—LIABILITY OF CORPORATION FOR TORT OF AGENT—*A*, salesman of the defendant insurance company, while engaged in soliciting insurance and collecting premiums, approached plaintiff, salesman of a rival company, who was in the act of writing an application for a former regular customer of *A*, and denounced plaintiff as a thief. Plaintiff brought an action against the defendant company and *A*, and the defendant's exception of no cause of action was maintained. On appeal, it was *held*, with two judges dissenting, that the case be remanded. An act of defamation within the scope of *A's* employment rendered *A* and the defendant company liable *in solido*. *Wisemore v. First Nat. Life Ins. Co., Inc.*, 190 La. 1011, 183 So. 247 (1938).

As a general rule, a corporation is liable, like a natural person, for the torts of its officers or agents within the scope[1] or apparent scope[2] of their authority—or, in the language of the Civil Code, "in the exercise of the functions in which they are employed."[3] Louisiana courts have consistently held corporations responsible for defamations committed by their agents.[4] Liability is imposed although a specific intent or malice is an element of the tort committed.[5] Even though the act of an agent is performed in an unlawful or criminal manner, the corporation is liable, so long as the thing done forms a part of the agent's duties.[6] Thus, a corporation may be held liable for a homicide committed by a watchman,[7] or by a private policeman after an attempted arrest.[8]

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1. Ware v. Barataria and Lafourche Canal Co., 15 La. 169, 35 Am. Dec. 189 (1840); Williams v. Pullman Palace Car Co., 40 La. Ann. 87, 3 So. 631, 8 Am. St. Rep. 512 (1888); Cassidy v. Holliman & Spiers, 13 La. App. 468, 126 So. 733 (1930).

2. See Gann v. Great Southern Lumber Co., 131 La. 400, 404, 59 So. 830, 831 (1912).

3. Art. 2320, La. Civil Code of 1870. Williams v. Pullman Palace Car Co., 40 La. Ann. 87, 3 So. 631, 8 Am. St. Rep. 512 (1888); Matthews v. Otis Mfg. Co., 142 La. 88, 76 So. 249 (1917). But see Arts. 442-443, La. Civil Code of 1870.

4. Benito Vinas v. Merchants' Mutual Insurance Company of New Orleans, 27 La. Ann. 367 (1875); Pattison v. Gulf Bag Co., Ltd., 116 La. 963, 41 So. 224 (1906); Vicknair v. Daily States Pub. Co., Ltd., 153 La. 677, 96 So. 529 (1923).

5. See Gann v. Great Southern Lumber Co., 131 La. 400, 404, 59 So. 830, 831 (1912).

6. Nash v. Longville Lumber Co., 148 La. 943, 88 So. 226 (1921).

7. Vincent v. Morgan's Louisiana & T. R. & S. S. Co., 140 La. 1027, 74 So. 541 (1917).

8. Gann v. Great Southern Lumber Co., 131 La. 400, 59 So. 830 (1912).

To impose liability upon the corporation, the act of the agent must be within the *scope* of his employment and not merely in the *course* thereof.[9] An assault by the lockkeeper employed to collect tolls upon a boatman who had failed to pay the toll,[10] the act of a boat's mate in throwing a pine knot at a deckhand who was stealing whiskey,[11] an assault by a railroad porter upon a passenger,[12] murder by a railroad conductor,[13] the act of a driver of a street car in having a passenger arrested,[14] an assault upon a customer by a servant employed to deliver merchandise,[15] and an attack by an express agent upon a customer against whom the agent held a grudge,[16] have been held outside the *scope* of the agent's employment.

The bare allegation that an agent's acts are done within the scope of his employment is only a conclusion of the pleader.[17] Consequently, the actual facts of a given case necessarily determine whether a tort, that has been committed in the course of a servant's employment, was within the scope of his employment or authority.[18] To be within the scope of employment, the conduct giving rise to the defamation must be of the same general nature as that authorized, or incidental to it.[19] The only question is whether the wrongful act was merely an excessive manner of performing a duty within the scope of the employment so as to be entirely beyond contemplation on the part of the employer.[20] A helpful test in determining liability is: *In whose behalf* was the

9. Godchaux v. Texas & P. Ry. Co., 144 La. 1041, 81 So. 706 (1919); Comfort v. Monteleone, 163 So. 670 (La. App. 1935).

10. Ware v. Barataria & Lafourche Canal Co., 15 La. 169, 35 Am. Dec. 189 (1840).

11. Peter Dyer v. Peter Rieley & Thomas P. Leathers, 28 La. Ann. 6 (1876).

12. Williams v. Pullman Palace Car Co., 40 La. Ann. 87, 3 So. 631, 8 Am. St. Rep. 512 (1888).

13. Daniel Candiff v. Louisville, New Orleans & Texas Railway Company, 42 La. Ann. 477, 7 So. 601 (1890).

14. Louis Lafitte v. New Orleans City & Lake Railroad Company, 43 La. Ann. 34, 8 So. 701, 12 L.R.A. 337 (1891).

15. McDermott v. American Brewing Co., 105 La. 124, 29 So. 498, 52 L.R.A. 684, 83 Am. St. Rep. 225 (1901). Cf. Matthews v. Otis Mfg. Co., 142 La. 88, 76 So. 249 (1917).

16. Godchaux v. Texas & P. Ry. Co., 144 La. 1041, 81 So. 706 (1919).

17. Hale v. Gilliland Oil Co., 151 La. 500, 91 So. 853 (1922). See Valley v. Clay, 151 La. 710, 713, 92 So. 308, 309 (1922).

18. See Godchaux v. Texas & P. Ry. Co., 144 La. 1041, 1044, 81 So. 706, 707 (1919).

19. 1 Restatement, Agency (1933) § 229.

20. See Godchaux v. Texas & P. Ry. Co., 144 La. 1041, 1045, 81 So. 706, 707 (1919).

employee acting, and was it with the intention of serving the purposes of the employer.[21]

In the instant case, the court practically disregarded the requirement that, in order to impose liability upon a corporation, the act of its agent must be within the *scope* of employment as well as in the *course* thereof. As was said in *Comfort v. Monteleone*:[22] "If an employee whose duties are limited to peaceful functions undertakes to perform others of a different character . . . the master is not responsible. . . ." The defendant company in the principal case could not have contemplated that their salesman would so far depart from his peaceful duties as to slander the salesman of a rival company. Undoubtedly, the company did not *intend* to authorize its agent to defame. Liability should not be imposed for abnormal acts of the agent or for an act committed by the agent with no intention to perform it as a part of, or incident to, a service on account of which he was employed.[23].

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CONFLICT OF LAWS—JURISDICTION UNDER NON-RESIDENT MOTORIST STATUTE DOES NOT EXTEND TO AGENT—A non-resident corporation was sued for an injury caused by the negligent operation of its automobile by its agent. Substituted service was made upon the Secretary of State of Illinois under a statute[1] which provided that the operation by a non-resident of a motor vehicle within the state shall be deemed an appointment of the Secretary of State as attorney for the service of process. *Held*, that the statute should be construed strictly, confining its operation to cases in which the vehicle is personally operated by its non-resident owner, and that operation by an agent of the non-resident corporation is not such "personal" operation. *Jones v. Pebler*, 16 N.E. (2d) 438 (Ill. App. 1938).

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21. See McDermott v. American Brewing Co., 105 La. 124, 126, 29 So. 498 (1901).

22. Comfort v. Monteleone, 163 So. 670, 672 (La. App. 1935).

23. 1 Restatement, Agency (1933) § 235. In *Comfort v. Monteleone* the court said: "An employee is never vested with authority to exercise force in the venting of personal animosity." (163 So. at 673). See 13 A. L. R. 1142 (1921) (Liability of insurance company for libel or slander by its agents or employees); and Comment (1936) 20 Minn. L. Rev. 805 (discussion of existing jurisprudence regarding a master's liability for defamation published by servant, and a suggested solution of certain problems).

1. Ill. Rev. Stats., c. 95½, § 23.