

1 Agency Liability for Alleged Sexual Molestation by Employees

2 Legal Basis for Liability
Agency & Tort Law

Respondeat Superior:
“Superior will Respond”

Forseeability: notice of likely risk of injury

3 Respondeat Superior

The principal will be liable for the negligent, perhaps even intentional, misdeeds of agent

committed within the scope of agent’s authority

4 Principal/Agent relationship includes acts of both employees & volunteers

when Agent is under control of Principal, acting within scope of authority

5 if Agent, to some degree is acting on behalf of Principal (aka “Master Servant Rule)

Principal may be vicariously liable for acts of agents as a “cost of doing business”

6 Master still liable for mere “detours” of servants

Servants’ personal excesses and misdeeds still mixed in with service

for master within scope of authority

- 7 Master NOT liable where the servant engages in a “frolic on his own.”

Servant is effectively “doing his own thing” and has abandoned any service to Master within scope of authority

- 8 Respondeat Superior
Master Servant Rule
Examples

Night Club Bouncer- excessive force

Pizza Delivery Man- speeding

- 9 Still doing his job, albeit in a negligent, even criminal, fashion?

Not “usual or startling” that bouncer may get too rough, or pizza delivery drives too fast.

- 10 Master should be responsible for such foreseeable excess on the part of his servant/agents

- 11 Master should absorb loss, not victim of agent’s negligence within scope of authority conferred by master

- 12 Respondeat Superior
4 non-exclusive factors

determine whether Servant acting within Scope of Authority

Vicarious Liability for Master

- 13 (1) during hours of service/employment

(2) occurred on premises

(3) primarily employment rooted

(4) incidental to employment

14 Limit Liability Exposure

Clearly define "Scope of Authority" both real and apparent

Make Sure Everyone Knows When They are Yours, and when NOT

15 Sport coaches socialize with boys

"Take Me Out to the Ballgame"

16 What is sexual molestation?

Simply a form of assault/battery

an offensive unpermitted touching of another

17 When would touching be within the scope of authority of an employee or volunteer

Compare 2 boy scout cases

18 SUBSTANTIAL DEVIATION?

Cordts v.

Boy Scouts of America,

(Cal.App. 3 Dist. 1988)

19 molestation occurred in a back room,

while victimized boys and the scoutmaster were out of the presence of the other scouts.

20 Plaintiff alleged sexual misconduct was incidental to the scoutmasters duties

because it occurred while her sons participated in scouting activities.

21 Specifically, Cordts referenced language in the Scout Manual to support her contention

that the scoutmaster's duties included sex education.

22 misuse of one's authority to facilitate sexual misconduct is, generally,

solely for personal purposes and entirely unrelated to one's occupation.

23 scout leader's sexual molestation of the scouts constituted a substantial deviation from his duties for personal purposes.

24 sexual misconduct between a scoutmaster and his charges so unusual and startling

unfair to hold BSA vicariously liable under Respondeat Superior for damages caused by this activity.

25 EMPLOYMENT PERMITS TOUCHING?

M.V. v.

Gulf Ridge Council

of Boy Scouts

(Fla.App. 2 Dist. 1988)

- 26 intentional homosexual acts of a first aid attendant at a camp operated by Council.

First aid attendant vs Scoutmaster

- 27 Respondeat Superior

constructive or actual knowledge of the employee's unfitness to work

as a first aid attendant at the camp.

- 28 "convenient test" for determining the applicability of respondeat superior

"whether the employee was doing what his employment contemplated"

- 29 whether the servant acted within the real or apparent scope of the master's business.

First Aid attendant vs Scoutmaster tells you to drop your pants.

Unusual/Startling?

- 30 no liability for the master when the servant steps aside from his employment

to commit a wrongful act to accomplish some purpose of his own...

- 31 employer may be liable for the intentional act of the employee under respondeat superior

if the employee's misconduct occurred within the scope of employment.

32 court characterized the alleged wrongful act of the Council's employee as "a mixed bag"

involving "medically permitted touching followed by unpermitted touching."

33 jury question "whether the employee's intentional tort was within the scope of his employment with the Council"

as a first aid attendant at the camp.

34 DUTY TO SCREEN RECREATION SUPERVISOR APPLICANT

WILLIAMS v. BUTLER

577 So.2d 1113 (La.App. 1991)

35 when an employee is to be placed in a position of supervisory and/or disciplinary authority over children,

36 the employer has a duty to properly screen the applicant

and continue to provide screening

For what?

37 to determine if the applicant has been convicted of a crime (or crimes)

involving "moral turpitude."

38 Moral Turpitude

gross violation of standards of moral conduct, vileness.

An act considered intentionally evil, making the act a crime.

- 39 Here, evidence Butler arrested
for theft, robbery, distribution of controlled dangerous substances

Record does NOT reveal what Butler was convicted of
PRIOR to his employment by BREC

- 40 Presumption "World at Large" Acts Reasonably

Who's doing what out there in your "community" field or neighborhood?

- 41 Employee's Duties, Unexpected?

Randi F. v.
High Ridge YMCA
Ill.App. 5 Dist. 1988

- 42 Reason to Anticipate Assault?

Doe v.
Boys Clubs of Greater Dallas, Inc.
Tex. 1995

- 43 Little League?

YMCA?
Boy Scouts?
Public Schools & Agencies?

Criminal Background Checks?

- 44 State Sex Offender Registries

<http://www.prevent-abuse-now.com/register.htm>

- 45 What if simply entering a zip code identifies employee or volunteer as a registered sex offender on a sex offender registry?

Not too much to ask?

Burdensome?

- 46 Federally funded technology, e.g. instant background checks for firearms, making screening faster/easier to screen and continue to screen for crimes of “moral turpitude.”
- 47 Sex Offender and Crimes against Minors Registry program is statutorily provided

Chapter 9, of Title 9.1
of the *Code of Virginia*.

- 48 publicly-available information about persons convicted of specified violent and sexual offenses.
- 49 NOT considered or assessed the specific risk of re-offense with regard to any individual
- 50 NO determination that any individual included in the registry is currently dangerous.
- 51 data on the internet is to make the information more easily available and accessible, NOT to warn citizens about any specific individual.
- 52 Unlawful use of the information for purposes of intimidating or harassing another is prohibited
willful violation shall be punishable as a Class 1 misdemeanor.

53 Generally, unpermitted inappropriate touching only possible under limited circumstances where an adult is alone with children

54 Avoid limited circumstances & situations where adults are alone with children in a non-public setting

buddy system

parent chaperones

Case Study: Keys to the Shed

55

LITTLE LEAGUE LIABLE FOR MOLESTATION BY VOLUNTEER

SOUTHPORT LITTLE LEAGUE v. VAUGHAN

(Ind.App. 2000)

56 Simmerman, long time volunteer coach

1992, no Little League criminal background checks of volunteers

Simmerman no criminal background

57 Upon request, Simmerman given keys to shed, authorized to fit uniforms,

only adult present with boys in locked shed Bad Idea?

58 Simmerman viewed boys' genitalia while "helping" them take off their pants.

Pleaded guilty to two counts of child molestation

\$450K judgment against Little League

59 Respondeat Superior?

proper test is whether the employee's actions were at least for a time authorized by his employer. Jury issue

60 inference some of Simmerman's acts were authorized (such as fitting the youths' uniforms)

when he viewed J.V. and M.V.'s genitalia for his sexual gratification and when he sexually molested the youths

61 principal charged with knowledge of that which his agent by ordinary care could have known

where the agent has received sufficient information to awaken inquiry

62 Evidence of "Unfitness"?

employees and agents of the Little League gained knowledge about Simmerman, a Little League official,

63 which should have raised a "red flag" to the Little League that Simmerman was or was capable of committing the wrongful acts.

64 Little League's groundskeeper observed Simmerman inappropriately hugging child to whom he was not related near the concession stand located on Little League property.

65 member of the Little League organization, testified observed Simmerman

several occasions cruising and sitting in a parked car in Garfield Park,

an area known for its homosexual activity

66 also observed Simmerman spending an unusual amount of time with a youth not related to him.

67 Little League received information on programs from the district office on how to protect youths from child molesters,

but no action was taken by the Little League.

68 Defamation Per Se
words which import an indictable criminal offense involving moral turpitude

Statutory immunity/duty
to report child abuse?

69 Suggesting someone was engaging in sexual molestation of minor boys, if untrue

sufficiently states cause of action for slander per se

70 Doe

v.

Church of St. Christopher

New York, Nassau County 2006

71 sexual molestation of plaintiff, age 13,

by volunteer coach coordinator CYO basketball then thirteen years of

age

72 act of sexual assault by an employee has been held to be

a clear departure from the scope of employment,

Substantial deviation?

73 committed solely for personal reasons,

and unrelated to the furtherance of the employer's business.

74 sexual molestation perpetrated against plaintiff clearly outside scope of
CYO volunteer duties

no liability under

Respondeat Superior

75 Volunteer's intentional conduct could NOT have reasonably been
expected by Church.

Substantial deviation

unusual/startling, unexpected

Not cost of doing business

76 employer can still be held liable under theories of negligent hiring,
negligent retention and negligent supervision

77 necessary element of such a cause of action is that the employer knew, or should have known,

of an employee's propensity to commit the acts which caused the injury.

78 persons to whom the care of children is entrusted

not the absolute insurers of their safety

79 charged with highest degree of care.

scope of defendants' duty is circumscribed by those risks that are reasonably foreseeable.

80 Defendant Church submitted sufficient proof of the lack of notice, either actual or constructive, that molestation was foreseeable.

81 nothing transpired during twenty years of service which alerted Church to possibility

defendant posed danger of sexual assault to children

82 not a case in which the Church defendants actually observed, or unreasonably ignored,

incidents or complaints preceding the misconduct

83 which indicated Schlacter represented threat to children in the CYO

program

triggering the need for some protective action by the Church defendants.

- 84 general proposition that, tragically, sexual abuse of children is a pervasive problem in society

NOT notice a particular criminal act of molestation by volunteer is foreseeable

- 85 first time plaintiff told any adult about the abuse committed against him

when detectives came to his house to question him regarding defendant Schlacter's arrest

- 86 parents and/or coaches, were unaware of any complaints made against or about defendant Schlacter prior to his arrest.

- 87 PAL volunteer for approx 20 years, no problems.
Unforeseeable, No notice

No liability for negligent hiring, retention and/or supervision, or failure to safeguard plaintiff

- 88 Known Dangerous Propensities?
Foreseeable Risk?

Haddock

v.

City of New York.

N.Y. App. Div. 1 Dept. 1988

89 Plaintiff, 9 yrs
raped
by utility worker employed by New York City Parks Department.

90 Johnson in charge of playground
would pick up garbage and hand out basketballs.

91 Johnson was a career criminal
who had been hired by the City of New York for this job in 1974

City had actual knowledge and assigned Johnson to work
unsupervised in playground

92 Employer has a duty to use reasonable care
refrain from knowingly retaining in its employ

93 person with known dangerous propensities

in a position that would present a foreseeable risk of harm to others."

94 DUTY TO EDUCATE YOUTH ABOUT RISK OF SEXUAL ABUSE BY
VOLUNTEERS?

KNOWLEDGE OF PROPENSITIES?

95 *Juarez v. Boy Scouts of America, Inc.*, No. A085271 (Cal.App. Dist.1,
2000),

- 96 "an employer can be held liable for negligent hiring if he knows the employee is unfit,
- 97 or has reason to believe the employee is unfit or fails to use reasonable care to discover the employee's unfitness before hiring him."
- 98 Juarez If the members of Troop 255 had been effectively educated and trained to recognize indicators of pedophile activities,
- 99 they would have recognized suspicious activity by Paz,
- 100 education and training of the scouts as to how to "repel" adult sexual advances would have prevented the molestations...
- 101 what, if any, legal duty the Scouts had to warn, train or educate about the risk of sexual abuse by adult male volunteers involved in the scouting program, and how to avoid or minimize such risk.
- 102 "reasonably foreseeable to the Scouts that a child participating in scouting might fall prey to a sexual predator, with no documented history of such proclivities,
- 103 Scouts acknowledge pedophiles will be attracted to scouting to gain legitimate access to young boys in order to seduce the more susceptible ones into sexual activity.
- 104 whether the Scouts owed a legal duty of care to take "reasonable protective measures to protect Juarez from the risk of sexual abuse by adult volunteers involved in scouting programs,
- 105 such as warning, training or educating him (either directly or through

his parent or adult volunteers) about how to avoid such a risk."

106 "Scouting literature" recognized that "the best line of defense to protect children from sexual exploitation is educating them, their parents, and the adult volunteers on how to avoid such harm":

107 Scouts make youth protection materials available to members and their parents on a continuing basis."

108 absence of information warning indicators of impending molestation in this particular instance, created a sufficient "causal link" between the Scouts omissions and the acts of sexual molestation.

109 not "too onerous" a burden to impose on the Scouts a "legal responsibility to incorporate into their program information designed to prevent a significant risk of harm to the youths it serves."

110 whatever materials [the Scouts] may have had in its arsenal of abuse prevention programming --including Spanish-language print materials --it failed to deploy them in Troop 255,"

111 haphazard delivery system simply was not good enough."

112 generally, a greater degree of care is owed to children because of their lack of capacity to appreciate risks and avoid danger.

113 courts have found "a special relationship, giving rise to a duty to protect children against a known risk that they might be sexually molested."

114 youth organizations are required to exercise reasonable care to protect

their members from the foreseeable conduct of third persons."

- 115 "Youth Protection Program" created by Scouts, failed to take reasonable steps to see information in the program was communicated to the scouts, parents, or adult leaders of Troop 255
- 116 aware that Paz sometimes took the troop on overnight camping excursions by himself, and sometimes slept in the same tents as the boys,
- 117 no information that such activities were prohibited in the scouting program.

Spanish-speaking boys, troop were provided with English-language copies of the "Boy Scout Handbook."

- 118 Although the handbook was available in Spanish, neither the boys nor their parents were even advised of such.
- 119 MOLESTATION BY REGISTERED SEX OFFENDER

J.A. v. LITTLE LEAGUE BASEBALL
Court of Appeals of California,
May 3, 2007

- 120 triable issues whether East Baseline Little League had reason to believe Watson was unfit and failed to use reasonable care to investigate him.
- 121

