



STATE OF FLORIDA TRANSPORTATION COMPENDIUM OF LAW

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A. Elements of Proof for the Derivative Negligence Claims of Negligent Entrustment, Hiring/Retention and Supervision

1. Respondeat Superior

- a. What are the elements necessary to establish liability under a theory of Respondeat Superior?

Under Florida law, an employer is only vicariously liable for an employee's acts if the employee was acting to further the employer's interest through the scope of the employee's employment at the time of the incident. An employee acts within the scope of his employment only if (1) his act is of the kind he is required to perform, (2) it occurs substantially within the time and space limits of employment, and (3) is activated at least in part by a purpose to serve the master. Kane Furniture Corp. v. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987).

Additionally, once an employee deviates from the scope of his employment, he may return to that employment only by doing something which meaningfully benefits his employer's interests. Borough's Corp. v. American Druggists' Insur. Co., 450 So.2d 540 (Fla. 2d DCA 1984).

Florida has addressed the placard liability issue in the following manner: where a defendant's name appears on a commercial vehicle involved in an accident, there is a rebuttable presumption that (i) the vehicle is owned by the defendant, (ii) the operator of the vehicle is an employee of the defendant, (iii) and was, at the time of accident, engaged in the scope of his employment and in furtherance of his master's business. Crowell v. Clay Hyder Trucking Lines, Inc., 700 So.2d 120 (Fla. 2d DCA 1997); Carrazana v. Coca Cola Bottling Co., 375 So.2d 345 (Fla. 3d DCA 1979).

b. Recommended Reading

- i. Makris v. Williams, 426 So.2d 1186 (Fla. 4th DCA 1983) – holding that employer fault is not an element of a respondeat superior claim for compensatory damages.
- ii. Iglesia Cristiana La Case Del Senior, Inc. v. L.M., 783 So.2d 353 (Fla. 3d DCA 2001) – under the doctrine of respondeat superior, an employer cannot be held liable for the tortious or criminal acts of an employee, unless the acts were committed during the course of the employment and to further a purpose or interest, however excessive or misguided, of the employer.

2. Negligent Entrustment

- a. What are the elements necessary to establish liability under a theory of negligent entrustment?

Florida has not specifically enumerated elements for an action based on the theory of negligent entrustment. Rather, Florida's "dangerous instrumentality doctrine" would apply to a negligent entrustment action arising from a trucking accident. The "dangerous instrumentality" doctrine holds that the owner of a dangerous instrumentality, for example a commercial truck, who entrusts its use to another, is liable for the negligence of the person to whom the instrumentality is entrusted. Sun Chevrolet Inc. v. Crespo, 613 So.2d 105 (Fla. 3d DCA 1993). This doctrine only applies to the negligence of the entrusted individual, and not intentional misconduct, as intentional misconduct has been deemed unforeseeable. Id.

Furthermore, for the "dangerous instrumentality" doctrine to properly lie, the employer must be negligent at the time of the initial entrustment, not after the fact. Ruano v. Water Sports of America, Inc., 578 So.2d 385 (Fla. 3d DCA 1991).

- b. Recommend Reading

- i. State Farm Mut. Auto. Ins. Co. v. Austin Outdoor Inc., 918 So.2d 446 (Fla. 4th DCA 2006) - Genuine issue of material fact existed as to whether driver of landscaping company's truck involved in motor vehicle accident was operating vehicle with company's permission, or was instead a thief, precluding summary judgment on issue of whether company was liable under dangerous instrumentality doctrine.
- ii. Ryder TRS, Inc. v. Hirsch, 900 So.2d 608 (Fla. 4th DCA 2005) - To vitiate the initial consent of truck owner as to use of truck by person to whom owner entrusted truck to and deem the truck no longer on the public highways by authority of the owner, for purposes of dangerous instrumentality doctrine, the truck must be shown to have been the subject of a theft or conversion.
- iii. Kumarsingh v. PV Holding Corp., 2007 WL 2847956 (Fla. 3d DCA 2007) – Automobile rental company could not be held vicariously liable to motorist who was injured in collision with rented automobile and who filed suit after the effective date of the Graves Amendment, which provides that a lessor of a motor vehicle should not be held liable under state law for harm arising

out of use of the vehicle during the lease period if the owner is engaged in the trade of renting vehicles and there is no owner negligence or criminal wrongdoing.

3. Negligent Hiring/Retention/Supervision

- a. What are the elements necessary to establish liability under a theory of negligent hiring/retention/supervision?

In Florida, the test for all three theories is as follows: (1) the employer was required to make an appropriate investigation of an employee and failed to do so; (2) an appropriate investigation would have revealed the unsuitability of the employee for the particular duty to be performed or for the employment in general; and (3) it was unreasonable for the employer to hire, retain or fail to supervise the employee in light of the information he or she knew or should have known. Malicki v. Doe, 814 So.2d 347 (Fla. 2002); Garcia v. Duffy, 492 So.2d 435 (Fla. 2d DCA 1986).

The primary distinction between these three theories of recovery lies at the moment the employer becomes aware, or should have become aware, of the information that makes the employee unfit for employment. Tallahassee Furniture Co., Inc. v. Harrison, 583 So.2d744 (Fla. 1st DCA 1991).

In determining whether an employer's investigation was reasonably performed, the scope of the employment responsibilities will dictate the breadth of the requisite investigation into the employee's background. Jenkins v. Milliken, 498 So.2d 495 (Fla. 2d DCA 1986).

Florida adheres to the rule held by the vast majority of jurisdictions that where a plaintiff seeks to impose liability on the driver's employer under theories of both respondeat superior and negligent employment, and the employer admits that it is vicariously liable for its driver's actions, the plaintiff may not proceed on the negligent employment claims. Clooney v. Geeting, 352 So.2d 1216 (Fla. 2d DCA 1977).

An issue that remains to be decided in Florida is whether a plaintiff can admit a commercial driver's driving record against the employer in support of a punitive damages claim that arises out of a negligent hiring/retention/supervision claim. Although the driving record is inadmissible as to the negligence counts, at least one court has alluded to the possibility that the driving record is admissible as it relates to a properly submitted punitive damages claim. See Clooney v. Geeting, 352 So.2d 1216 (Fla. 2d DCA 1977).

b. Recommended Reading

- i. Tallahassee Furniture Co., Inc. v. Harrison, 583 So.2d 744 (Fla. 1st DCA 1991) - Element of foreseeability was established in action for negligent hiring and retention brought by customer violently attacked by employee; customer established correlation between employee's history of unlawful and violent behavior, drug abuse and mental illness and employee's propensity for future dangerousness.
- ii. Anderson Trucking Service, Inc. v. Gibson, 29 Fla. L. Weekly D2293 (Fla. 5th DCA 2004) - The reason that negligent hiring is not a form of vicarious liability is that, unlike vicarious liability, which requires that the negligent act of the employee be committed within the course and scope of the employment, negligent hiring may encompass liability for negligent acts that are outside the scope of the employment.
- iii. Island City Flying Service v. Gen. Elec. Credit Corp. 585 So.2d 274 (Fla. 1991) - Flying service was not negligent in hiring employee who had military prison record and who twice had been fired by flying service, and thus could not be held liable for employee's post-rehire theft of airplane, absent showing of similarity between prior offenses and theft such as would have made theft foreseeable.
- iv. Riddle v. Aero Mayflower Transit Co., 73 So.2d 71 (Fla. 1954) - The business of the corporation was that of a common carrier in moving household goods. The employee was engaged by the common carrier to assist in carrying on that business and not for the purpose of committing an assault. Negligent supervision will not lie as the assault was in no way connected with the business of the common carrier.

B. Defenses

1. Traditional Tort Defenses

Generally, the cases in which these claims arise are those that avail themselves to the traditional tort defenses found in most civil matters.

C. Punitive Damages

1. For employer's actions.

In Florida, an employer may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the employer was personally guilty of intentional misconduct or gross negligence. §768.72, Florida Statutes (2007). Even then, the punitive damages award will generally be limited to the greater of three times the amount of compensatory damages or \$500,000. §768.73, Florida Statutes (2007).

2. For employee's actions.

In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified directly above and:

- i. The employer actively and knowingly participated in such conduct;
- ii. The managers of the employer knowingly condoned, ratified, or consented to such conduct; or
- iii. The employer engaged in conduct that constituted gross negligence and that contributed to the loss, damages or injury suffered by the claimant. §768.72, Florida Statutes (2007).

3. Recommended cases

- c. Partington v. Metallic Engineering Co., Inc., 792 So.2d 498 (Fla. 4th DCA 2001) - Issue of whether employee's job foreman knew that employee was intoxicated when employee left job site to drive a truck on company business, such that employee's corporate employer would be independently negligent for injuries to motorist involved in collision with employee, was for the jury, in motorist's action seeking to hold employer vicariously liable for punitive damages.
- d. U.S. Concrete Pipe Co. v. Bould, 437 So.2d 1061 (Fla. 1983) - Jury could not impose punitive damages against company solely for company's active negligence in retaining employee.

This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.