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3. Supreme Court of Oregon
4. *Fearing v. Bucher*, 328 Or. 367 (Or. 1999)
5. Angela Engström
6. Vicarious Liability, *Respondeat Superior*
7. The Oregon Supreme Court determined the question of liability against the Archdiocese of Portland under the doctrine of *respondeat superior* was one for the jury, overruling the Court of Appeals' decision granting defendant's motion to dismiss. A jury could find acts that were within the scope of Bucher's employment resulted in the acts that caused injury to the plaintiff, a minor that was sexually assaulted by Bucher.
8. Discussion Questions:
  - a. Do you think the Archdiocese should be liable to Plaintiff for Bucher's sexual abuse in this case?
  - b. After reviewing the standard for vicarious liability as defined in *Chesterman v. Barmon*, 305 Or. 439 (Or. 1988). Do you think the Archdiocese can be found liable to Plaintiff?
  - c. If so, what do you think is an appropriate remedy? How much should Defendant pay?
  - d. Are any of the acts of Bucher within the "scope of his employment?"
  - e. Do you think the doctrine of vicarious liability should be able to extend as far as this court suggests? That an employer can be held liable for not only the act that caused the harm that may have been done within the scope of his employment, but also the acts (within the scope of employment) which led to the act (not within the scope of employment) that caused the harm?

## HOW FAR VICARIOUS LIABILITY CAN EXTEND

### *Fearing v. Bucher*

#### FACTS

Plaintiff's complaint alleges from 1970 to 1972, defendant Bucher was a priest and employee of the Archdiocese of Portland in Oregon. The plaintiff Fearing claims that Bucher acted as a youth pastor, friend, confessor and priest to him and his family. Because of his position as a priest and youth pastor, Bucher was able to gain the trust and confidence of the plaintiff, who was then a minor. He was also able to spend substantial periods of time alone with the plaintiff and eventually he committed a series of sexual assaults on him.

Plaintiff here is suing the Archdiocese of Oregon, Bucher's employer, (Plaintiff settled with all other defendants) on a theory of vicarious liability for Bucher's acts based on *respondeat superior*.

This case never had a chance to go to trial because the trial court dismissed plaintiff's complaint for failure to state a claim. The Court of Appeals affirmed this dismissal. The Supreme Court in this case reverses and remands this case for trial because plaintiff stated a claim for relief and a jury needs to decide if the Archdiocese is liable to plaintiff for damages arising out of Bucher's conduct.

#### ISSUE

- 1.) Can the doctrine of *respondeat superior*, pursuant to which an employer can be held vicariously liable for the acts of its employee, be applied to a case involving an employee's sexual abuse of a child?
- 2.) In light of the allegations in the complaint, could the trial court decide as a matter of law that the Archdiocese could not be held vicariously liable for Bucher's actions?

#### HOLDING

- 1.) Yes, *respondeat superior* can apply in a case involving an employee's sexual abuse of a child.
- 2.) No. Plaintiff stated facts sufficient to allow his case to go to trial. The question of whether plaintiff's harm arose from actions committed within the scope of Bucher's employment is one for the jury to decide.

## ARGUMENTS

Plaintiff Fearing argued the Archdiocese should be liable for damages resulting from Bucher's sexual assault based on a theory of *respondeat superior* because the damages arose out of conduct within the scope of Bucher's employment. Plaintiff argues that this case is similar to *Chesterman*. There, defendant was held vicariously liable for an employee's rape of a woman when it was found that taking a drug called chocolate mescaline was within the scope of his employment even though the rape wasn't.

Defendant Archdiocese argues that the complaint "fails to identify 'any interest of the employer' that could possibly be served by the acts of abuse plaintiff alleges were committed by Bucher," or "any acts which Bucher was hired to perform that are of the same kind as the acts of abuse alleged to have been perpetrated by him." Defendant argues that this case is distinguishable from *Chesterman*, but the court disagrees.

## VICARIOUS LIABILITY ANALYSIS

A complaint generally is sufficient to state a claim for vicarious liability based on application of the doctrine of *respondeat superior* if it states ultimate facts that, if true, would establish that an employee was acting within the scope of employment when the employee allegedly committed the acts that led to plaintiff's injury.

In *Chesterman v. Barmon*, 305 Or. 439, 442, 753 P.2d 404 (1988), this court outlined three requirements that must be met to establish that the employee's conduct was within the scope of employment: (1) the conduct must have occurred substantially within the time and space limits authorized by the employment; (2) the employee must have been motivated, at least partially, by a purpose to serve the employer; and (3) the act must have been of a kind that the employee was hired to perform.

"[T]he focus should be on the *act* on which vicarious liability is based and not on when the act results in *injury*." *Id.* The Archdiocese still could be found vicariously liable, if acts that were within Bucher's scope of employment "resulted in the acts which led to injury to plaintiff." *Id.* at 443, 753 P.2d 404.

## WHO WINS?

You decide! This case has not gone to trial yet.

## FEARING v. BUCHER, 328 OR. 367 (OR. 1999)

This case arises out of allegations by plaintiff that, as a minor, he was sexually abused by his priest in the early 1970s. The case presents two issues. The first concerns whether the doctrine of *respondeat superior*, pursuant to which an employer can be held vicariously liable for the