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LIABILITY OF LANDOWNERS
Resultant From Their Employment of Independent Contractors

By ERROL TYLER*

"THE WHOLE WORLD," said Captain Boyle in O'Casey's *Juno and the Paycock*, "is in a state of chaos." One is apt to have the same thought when first meeting the law applicable to the liability of a landowner for injuries resulting from his employment of an independent contractor. But the seeming chaos is susceptible to the imposition of at least some semblance of order. It is the purpose of this comment to so order the material as to present a general survey of the problems which may be faced by the owner-employer; and, perhaps more importantly, to sketch the various situations in which the injured plaintiff may reach the more affluent owner. The situations being numerous, this comment will therefore necessarily be general—limited to the outlines of the areas involved.

The General Rule

It is the general rule that a person who employs an independent contractor to secure the performance of certain work, lawful in itself and not inherently injurious to others, is not responsible for injuries caused by the negligent acts of the contractor or his servants.[1] More shortly, there is no vicarious liability imposed upon the employer of an independent contractor. The reason most commonly accepted is that "since the employer has no right of control over the manner in which the work is to be done, it is to be regarded as the contractor's own enterprise, and he, rather than the employer, is the proper party to be charged with the responsibility of preventing the risk, and administering and distributing it."[2]

Exceptions

This rule has been subjected to many exceptions.[3] These exceptions embrace two classes of cases: (1) where the work contracted

*Member, Third Year class.

[1] Williams v. Fairhaven Cemetery Ass'n, 52 Cal. 2d 135, 338 P.2d 392 (1959); Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P.2d 1044 (1941); Luce v. Holloway, 156 Cal. 152, 103 Pac. 886 (1909); Louthan v. Hewes, 138 Cal. 116, 70 Pac. 1065 (1902); Hedge v. Williams, 131 Cal. 455, 63 Pac. 721, 64 Pac. 106 (1901); Frassi v. McDonald, 122 Cal. 400, 55 Pac. 139, 772 (1898); Boswell v. Laird, 8 Cal. 469 (1857); Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959); Sabin v. Union Oil Co., 150 Cal. App. 2d 606, 310 P.2d 685 (1957); PROSSER, TORTS 357 (2d ed. 1955); RESTATEMENT, TORTS § 409 (1934).

[2] PROSSER, TORTS 357 (2d ed. 1955); similarly stated in Snyder v. So. Calif. Edison Co., 44 Cal. 2d 793, 285 P.2d 912 (1955), citing with approval HARPER, TORTS § 292 (1933); Eli v. Murphy, 39 Cal. 2d 598, 247 P.2d 352 (1952).

[3] Courtell v. McEachen, 51 Cal. 2d 448, 334 P.2d 870 (1959); Risley v. Lenwell, 129 Cal. App. 2d 608, 277 P.2d 897 (1954).

for is inherently or intrinsically dangerous; and (2) where the employer owes a duty to the plaintiff which the law will not allow him to delegate.[4] In these cases the employer is held liable for the negligence of his contractor though he himself is free from negligence.

A non-delegable duty may be imposed by statute or ordinance,[5] by contract,[6] by franchise or charter,[7] or by the courts. The basis for holding a particular duty non-delegable is elusive—the holdings seem to be based on grounds of policy, where the responsibility of the employer is so important to the community that he should not be permitted to transfer it to another.[8] The inherent danger exception is closely interwoven with the non-delegable duty exception, but nevertheless the two have been applied independently by many courts. The former, however, has met with little favor in California in past years.[9] A fairly recent case[10] gives some indication that it may be accepted, and it has been alluded to in another,[11] so it is not to be overlooked completely. The exception rests on the belief that when danger and peril inhere in the very nature of the work, justice requires that the responsibility for injuries resulting from, or occasioned by, this peril should not be allowed to be passed on to the contractor.[12] This situation is to be distinguished from that where the work contracted for is such that its mere performance in the manner called for will result in injury. In this case the liability of the employer is based on the fact that the work is done at all, and he is the one who caused it to be done.[13]

The ownership of the property on which the contractor is doing the work is not sufficient in itself to charge the owner with liability

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[4] HARPER, TORTS § 292 (1933), cited with approval in Snyder v. So. Calif. Edison Co., 44 Cal. 2d 793, 285 P.2d 912 (1955).

[5] Luce v. Holloway, 156 Cal. 162, 103 Pac. 886 (1909); Spence v. Shultz, 103 Cal. 208, 37 Pac. 220 (1894); Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959); Atherley v. MacDonald, Young & Nelson, Inc., 142 Cal. App. 2d 575, 298 P.2d 700 (1956); Sawaya v. DeCou, 60 Cal. App. 2d 146, 140 P.2d 98 (1943).

[6] Colgrove v. Smith, 102 Cal. 220, 36 Pac. 411 (1894).

[7] Eli v. Murphy, 39 Cal. 2d 598, 248 P.2d 756 (1952); Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P.2d 1044 (1941); Lehman v. Robertson Truck - A - Way, 122 Cal. App. 2d 82, 264 P.2d 653 (1953); Gilbert v. Rogers, 117 Cal. App. 2d 712, 256 P.2d 574 (1953).

[8] PROSSER, TORTS 359 (2d ed. 1955).

[9] Comment, 44 CALIF. L. REV. 762, 767 (1956).

[10] Snyder v. So. Calif. Edison Co., 44 Cal. 2d 793, 285 P.2d 912 (1955), citing with approval Harper's discussion of the inherent danger exception in HARPER, TORTS § 392 (1933). See also RESTATEMENT, TORTS §§ 416, 423 (1934).

[11] Recognized but not applied in Gaskill v. Calaveras Cement Co., 102 Cal. App. 2d 120, 226 P.2d 633 (1951).

[12] Schmidlin v. Alta Planing Mill Co., 170 Cal. 589, 150 Pac. 983 (1915).

[13] Williams v. Fresno Canal & Irr. Co., 96 Cal. 14, 30 Pac. 961 (1892); Aston v. Nolan, 63 Cal. 269 (1883) *overruled on other grounds by* Sullivan v. Zeiner, 98 Cal. 346, 33 Pac. 209 (1893); Strodel v. Wilcox, 137 Cal. App. 2d 781, 291 P.2d 95 (1955); Atkinson v. Charles Nelson Co., 41 Cal. App. 304, 182 Pac. 759 (1919).

for acts of negligence otherwise chargeable to the contractor.[14] But the owner-employer relationship does give rise to an expanded number of situations in which the employer may be held liable. It is this wide range of situations—not limited to those involving vicarious liability—which will now be considered.

Non-Delegable Duties

To Invitees

The owner or possessor of land owes a duty to his invitees to exercise reasonable care to prevent their being injured on the premises.[15] He has a duty to warn them of dangers—natural or artificial—of which they are not aware, and of which he knows, or as a reasonable prudent man should know, unless the dangers are obvious to a person of ordinary intelligence.[16] Likewise, he has a duty to maintain the premises in reasonably safe condition for his invitees.[17] These duties cannot be delegated to an independent contractor.[18] The duty of the owner or possessor of land to exercise due care to protect his invitees from injury includes the duty to exercise reasonably careful supervision over the appliances or methods used by his independent contractor.[19]

The servant of an independent contractor is considered an invitee of the owner-employer while he is on the premises engaged in the work contracted for,[20] and is deemed to be there at the owner's invitation—either express or implied.[21] The owner's duty to the employee of the contractor extends to that portion of the premises over

[14] Boswell v. Laird, 8 Cal. 469 (1857); Hickey v. Nulty, 182 Cal. App. 2d 237, 5 Cal. Rptr. 914 (1960); Gardner v. Stonestown Corp., 145 Cal. App. 2d 405, 302 P.2d 674 (1956).

[15] Smith v. Kern County Land Co., 51 Cal. 2d 205, 331 P.2d 645 (1958); Edwards v. Hollywood Canteen, 27 Cal. 2d 802, 167 P.2d 729 (1946); Oettinger v. Stewart, 24 Cal. 2d 133, 148 P.2d 19 (1944); Mautino v. Sutter Hospital Ass'n, 211 Cal. 556, 296 Pac. 76 (1931); PROSSER, TORTS 453 (2d ed. 1955). See RESTATEMENT, TORTS § 343 (1934).

[16] Dingman v. Mattock Co., 15 Cal. 2d 622, 104 P.2d 26 (1940); Alvarado v. Anderson, 175 Cal. App. 2d 166, 346 P.2d 73 (1959); Curland v. Los Angeles County Fair Ass'n, 118 Cal. App. 2d 691, 258 P.2d 1063 (1953).

[17] Alvarado v. Anderson, 175 Cal. App. 2d 166, 346 P.2d 73 (1959); Oldenburg v. Sears, Roebuck & Co., 152 Cal. App. 2d 733, 314 P.2d 33 (1957); Powell v. Vracin, 150 Cal. App. 2d 454, 310 P.2d 27 (1957).

[18] Brown v. George Pepperdine Foundation, 23 Cal. 2d 256, 143 P.2d 929 (1943); Raich v. Aldon Const. Co., 129 Cal. App. 2d 278, 276 P.2d 822 (1954); Bazzoli v. Nance's Sanitarium, Inc., 109 Cal. App. 2d 232, 240 P.2d 672 (1952); Dobbie v. Pacific Gas & Elec. Co., 95 Cal. App. 781, 273 Pac. 630 (1928).

[19] McCordic v. Crawford, 23 Cal. 2d 1, 142 P.2d 7 (1943); Basye v. Craft's Golden State Shows, 43 Cal. App. 2d 782, 111 P.2d 746 (1941). See RESTATEMENT, TORTS § 344 (1934).

[20] Dobbie v. Pacific Gas & Elec. Co., 95 Cal. App. 781, 273 Pac. 630 (1928).

[21] 26 CAL. JUR. 2d, *Independent Contractors*, § 24 (1956).

which the owner remains in control,[22] but not to that portion over which the contractor retains control.[23] Even if the owner is aware that the contractor is performing the work negligently and is endangering the employees, no duty on the owner's part is created toward the employees;[24] for although the employee is considered an invitee, the owner's duty toward him is more limited than that owed to other invitees. The duty owed the employee may not be delegated to the contractor.[25] Nor is the contractor's knowledge of the danger imputable to his employees.[26]

Trespassers and Licensees

The law imposes no duty on the owner or possessor of property to maintain his premises in such a condition that they will be safe for one trespassing thereon,[27] or for one present as a licensee.[28] But if the presence of the trespasser is discovered,[29] or if the owner knows that they frequently invade a particular area,[30] then they are owed a duty to exercise reasonable care as to any active operations carried on upon the premises.[31] This duty is not altered by the fact that the trespasser is a child,[32] except in cases that fall within the attractive nuisance doctrine.[33]

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[22] Austin v. Riverside Portland Cement Co., 44 Cal. 2d 225, 282 P.2d 697 (1955); Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959); Brown v. Board of Trustees of Leland Stanford Junior University, 41 Cal. App. 100, 182 Pac. 316 (1919).

[23] See note 22 *supra*.

[24] Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959).

[25] See note 18 *supra*.

[26] Dobbie v. Pacific Gas & Elec. Co., 95 Cal. App. 781, 273 Pac. 630 (1928).

[27] Toomey v. Southern Pac. Co., 86 Cal. 374, 24 Pac. 1074 (1890); Hickey v. Nulty, 182 Cal. App. 2d 237, 5 Cal. Rptr. 914 (1960); Hume v. Hart, 109 Cal. App. 2d 614, 241 P.2d 25 (1952); PROSSER, TORTS 433 (2d ed. 1955); RESTATEMENT, TORTS § 333 (1934).

[28] Hession v. San Francisco, 122 Cal. App. 2d 592, 265 P.2d 542 (1954); PROSSER, TORTS 445 (2d ed. 1955).

[29] Fernandez v. Consolidated Fisheries, Inc., 98 Cal. App. 2d 91, 219 P.2d 73 (1950); Parrott v. United States, 181 F. Supp. 425 (S.D. Cal. 1960).

[30] Fernandez v. American Bridge Co., 104 Cal. App 2d 340, 231 P.2d 548 (1951); PROSSER, TORTS 437 (2d ed. 1955).

[31] Radoff v. Hunter, 158 Cal. App. 2d 770, 323 P.2d 202 (1958); Northon v. Schultz, 130 Cal. App. 2d 488, 279 P.2d 103 (1955); Hagen v. Laursen, 121 Cal. App. 2d 379, 263 P.2d 489 (1953); Tesone v. Reiman, 117 Cal. App. 2d 211, 255 P.2d 48 (1953); Davis v. Silverwood, 116 Cal. App. 2d 39, 253 P.2d 83 (1953); Church v. Headrick & Brown, 101 Cal. App. 2d 396, 225 P.2d 558 (1950); Fernandez v. Consolidated Fisheries, Inc., 98 Cal. App. 2d 91, 219 P.2d 73 (1950). See RESTATEMENT, TORTS §§ 334-38 (1934).

[32] Giannini v. Campodonico, 176 Cal. 548, 169 Pac. 80 (1917) *distinguished on another point in* Oettinger v. Stewart, 244 Cal. 2d 133, 148 P.2d 19 (1944); Peters v. Bowman, 115 Cal. 345, 47 Pac. 113, 598 (1896); Puchta v. Rothman, 99 Cal. App. 2d 285, 221 P.2d 744 (1950).

[33] Lake v. Ferrer, 139 Cal. App. 2d 114, 293 P.2d 104 (1956). See Prosser, *Trespassing Children*, 47 CALIF. L. REV. 427 (1959).

Licensees are also owed a duty to use reasonable care in carrying on active operations on the premises.[34] As the licensee has the owner's consent to come on the premises, the owner may be required to exercise reasonable care to discover his presence.[35] In addition, reasonable care must be exercised to warn the licensee of any concealed dangerous conditions known to the owner.[36]

Although the question has apparently not yet been decided in California, it is likely that the duties owed trespassers and licensees would be considered non-delegable. As far as they go, they are of essentially the same nature as those owed an invitee. If the owner employs an independent contractor to conduct active operations on a part of the premises over which the owner knows trespassers frequently pass, and he knows, or should know,[37] of a risk of injury to them, he should not be permitted to delegate to the contractor his duty to warn them or to take other proper precautions to safeguard them from injury. The same should apply to the duty owed the licensee, including the possible duty to use reasonable care to discover his presence.

Duty to Maintain and Repair

The owner or possessor of land is charged with a non-delegable duty to place and maintain structures thereon in a reasonably safe condition,[38] and is liable for the negligent failure of his contractor to do so.[39] The owner of property cannot escape liability for dangerous conditions on his property by having an independent contractor assume the duty of constructing or repairing a building or chattel.[40] It should be noted that this duty to maintain and repair is closely related to the duty owed invitees, licensees, and trespassers. Its application,

[34] Simpson v. Richmond, 154 Cal. App. 2d 27, 315 P.2d 435 (1957); Boucher v. American Bridge Co., 95 Cal. App. 2d 659, 213 P.2d 537 (1950); Oettinger v. Stewart, 24 Cal. 2d 133, 148 P.2d 19 (1944); *supra* note 31.

[35] PROSSER, TORTS 448 (2d ed. 1955).

[36] Fernandez v. Consolidated Fisheries, Inc., 98 Cal. App. 2d 91, 219 P.2d 73 (1950). *Cf.* Fisher v. General Petr. Corp., 123 Cal. App. 2d 770, 267 P.2d 841 (1954). See RESTATEMENT, TORTS § 342 (1934).

[37] See Hickey v. Nulty, 182 Cal. App. 2d 237, 5 Cal. Rptr. 914 (1960), where the court states that the employer must have *actual* knowledge of the risk. But the opinion taken as a whole, and the citation of RESTATEMENT, TORTS § 413 (work which the employer "should" recognize as creating an unreasonable risk) indicate that the court means actual knowledge of facts, or constructive knowledge of them, from which a reasonable man would conclude that a risk exists.

[38] Dow v. Holly Mfg. Co., 49 Cal. 2d 720, 321 P.2d 736 (1958); Snyder v. So. Calif. Edison Co., 44 Cal. 2d 793, 285 P.2d 912 (1955); Knell v. Morris, 39 Cal. 2d 450, 247 P.2d 352 (1952); Brown v. George Pepperdine Foundation, 23 Cal. 2d 256, 143 P.2d 929 (1944); Lilienthal v. Hastings Clothing Co., 131 Cal. App. 2d 343, 280 P.2d 824 (1955); Bazzoli v. Nance's Sanitarium, Inc., 109 Cal. App. 2d 232, 240 P.2d 672 (1952). See RESTATEMENT, TORTS § 422 (1934).

[39] See note 38 *supra*.

[40] Dow v. Holly Mfg. Co., 49 Cal. 2d 720, 321 P.2d 736 (1958).

however, is broader, and it would seem to include the case where a trespasser or licensee, whose presence is or should be known, is endangered by the contractor's negligence in building or maintaining structures on the employer's land, and the employer neither knows nor should know of this negligence. In other words, in this situation it is not necessary that the owner have knowledge of the risk to the trespasser or licensee.

Abutting Owner

The possessor of land must exercise reasonable care, with regard to activities carried on, for the protection of those outside of his premises.[41] This section is concerned only with dangers to the adjacent highway. The occupier of abutting land is under a duty to use reasonable care to see that the passage is safe.[42] This duty extends to any reasonable risk to persons on the highway, such as an inadequately covered hole in the sidewalk,[43] an excavation next to the street,[44] or an obstruction on the sidewalk.[45] The abutting owner is not liable for injuries resulting from such conditions, when they are created by his contractor, unless he knows or should know of the conditions.[46] If the condition is one which the owner has hired the contractor to create, as an excavation in the street or on his land next to the street, then the owner necessarily has knowledge of its existence, and is liable for the negligent failure of the contractor to maintain proper warning signals.[47] If the owner knows or should know of the dangerous condition created by his contractor, then he is under a non-delegable duty to exercise reasonable care to protect passers by from injury.[48]

Duty Imposed by Public Authority

If the owner-employer undertakes to carry on an activity involving possible danger to the public under a license or franchise granted by

[41] Potter v. Empress Theatre Co., 91 Cal. App. 2d 4, 204 P.2d 120 (1949); 35 CAL. JUR. 2d, *Negligence,* § 169 (1957). See PROSSER, TORTS 427-32 (2d ed. 1955); RESTATEMENT, TORTS §§ 363-71 (1934).

[42] Potter v. Empress Theatre Co., 91 Cal. App. 2d 4, 204 P.2d 120 (1949); Marton v. Jones, 44 Cal. App. 299, 186 Pac. 410 (1919).

[43] Frassi v. McDonald, 122 Cal. 400, 55 Pac. 139 (1898); Barry v. Ferkildsen, 72 Cal. 254, 13 Pac. 657 (1887).

[44] Spence v. Schultz, 103 Cal. 208, 37 Pac. 220 (1894); Sawaya v. DeCou, 60 Cal. App. 2d 146, 140 P.2d 98 (1943).

[45] Wise v. Maxwell Hardware Co., 94 Cal. App. 765, 271 Pac. 918 (1928).

[46] Frassi v. McDonald, 122 Cal. 400, 55 Pac. 139 (1898); Wise v. Maxwell Hardware Co., 94 Cal. App. 765, 271 Pac. 918 (1928).

[47] Spence v. Schultz, 103 Cal. 208, 37 Pac. 220 (1894); Sawaya v. DeCou, 60 Cal. App. 2d 146, 140 P.2d 98 (1943); Robbins v. Hercules Gasoline Co., 80 Cal. App. 271, 251 Pac. 697 (1926). See RESTATEMENT, TORTS § 417 (1934).

[48] Snyder v. So. Calif. Edison Co., 44 Cal. 2d 793, 285 P.2d 912 (1955); Knell v. Morris, 39 Cal. 2d 450, 247 P.2d 352 (1952); Katz v. Helbing, 215 Cal. 449, 10 P.2d 1001 (1932); *supra* notes 46, 47.

public authority, subject to liabilities or obligations imposed by the authority, such liability may not be evaded by delegating performance to an independent contractor.[49] Likewise, a duty imposed by statute, where the activity involves possible danger to others, is non-delegable.[50] The employer remains subject to liability for harm caused by the negligence of the contractor.[51] The rationale for holding the duty non-delegable in the license and franchise cases seems to be that the activity which the employer is carrying on through his contractor would be unlawful without the license or franchise.[52] Where the duty is imposed by statute or ordinance, it would seem that the justification for holding it non-delegable is that the statute or ordinance is directed personally at the one who contracts to have the work done.[53]

Other Bases for Liability

The Nature of the Work

If the manner of performance, or the thing constructed, amounts to a nuisance, and the owner knows or should know of its existence, then the owner is liable for injuries resulting therefrom.[54] Hence, if the nuisance results from the contractor's negligent performance, it must be shown that the owner either knew or should have known of the existence of the nuisance.[55] If the mere non-negligent performance of the work contracted for results in the creation of a nuisance, then the owner is necessarily aware of its existence, as he formulated the plan. The injury results from the fact that the work was done at all, and it was the owner who caused it to be done.[56]

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[49] Snyder v. So. Calif. Edison Co., 44 Cal. 2d 793, 285 P.2d 912 (1955); Eli v. Murphy, 39 Cal. 2d 598, 248 P.2d 756 (1952); Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P.2d 1044 (1941); Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959); Lehman v. Robertson Truck - A - Way, 122 Cal. App. 2d 82, 264 P.2d 653 (1953); Gilbert v. Rogers, 117 Cal. App. 2d 712, 256 P.2d 574 (1953). See RESTATEMENT, TORTS §§ 417, 428 (1934).

[50] Luce v. Holloway, 156 Cal. 162, 103 Pac. 886 (1909); Spence v. Schultz, 103 Cal. 208, 37 Pac. 220 (1894); Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959); Atherley v. MacDonald, Young & Nelson, Inc., 142 Cal. App. 2d 575, 298 P.2d 700 (1956); Sawaya v. DeCou, 60 Cal. App. 2d 146, 140 P.2d 98 (1943); Robbins v. Hercules Gasoline Co., 80 Cal. App. 271, 251 Pac. 697 (1926); Kirk v. Santa Barbara Ice Co., 157 Cal. 591, 108 Pac. 509 (1910).

[51] See note 50 *supra.*

[52] Smith v. San Joaquin Light & Power Corp., 59 Cal. App. 647, 211 Pac. 843 (1922).

[53] See Atherley v. MacDonald, Young & Nelson, Inc., 142 Cal. App. 2d 575, 298 P.2d 700 (1956).

[54] See notes 55, 56 *infra.*

[55] Frassi v. McDonald, 122 Cal. 400, 55 Pac. 139 (1898); Wise v. Maxwell Hardware Co., 94 Cal. App. 765, 271 Pac. 918 (1928); Wile v. Los Angeles Ice & Cold Storage Co., 2 Cal. App. 190, 83 Pac. 271 (1905).

[56] Snow v. Marian Realty Co., 212 Cal. 622, 299 Pac. 720 (1931); Louthan v. Hewes, 138 Cal. 116, 70 Pac. 1065 (1902); Spence v. Schultz, 103 Cal. 208, 37 Pac. 220 (1894); Barry v. Terkildsen, 72 Cal. 254, 13 Pac. 657 (1887); Boswell v. Laird,

A similar situation occurs where the performance of the contract is in its nature necessarily injurious to a third party. Here too, the injury does not result from the manner in which it is done, but from the fact that it is done at all, and the owner is liable.[57]

Acts of the Employer

There are many cases where the injury may be attributed to the negligence of the owner-employer, or the fact that he contracted for the performance of work for which he would be held strictly liable had he done it himself.

One who employs an independent contractor to do work which involves a risk of bodily harm to others unless it is skillfully and carefully done is liable for the harm caused by a lack of reasonable care in selecting the contractor.[58] The employer must also use reasonable care to provide for the necessary precautions which will alleviate the foreseeable risk, either by contract or otherwise.[59] If the employer has supplied the appliance to the contractor, he is liable for any injury which a servant of the contractor may sustain by reason of a defect in the appliances which was known to the employer or which he might have discovered with the exercise of reasonable care at the time the appliance or instrumentality was turned over to the contractor.[60] He is also liable for injuries to the contractor's servants caused by defective appliances when he has the privilege of selecting them or the materials out of which they are made.[61] This liability would undoubtedly extend to third persons other than the servants of the contractor, as it is simply a case of the employer's negligence being the proximate cause of the injury. Also, the employer has a duty to exercise reasonable care in accepting the work after it is finished, and if

8 Cal. 469 (1857); Yee Chuck v. Board of Trustees of Leland Stanford Junior University, 179 Cal. App. 2d 405, 3 Cal. Rptr. 825 (1960); MacLean v. San Francisco, 127 Cal. App. 2d 263, 273 P.2d 698 (1954).

[57] Luthringer v. Moore, 31 Cal. 2d 489, 190 P.2d 1 (1947); Williams v. Fresno Canal & Irr. Co., 96 Cal. 629, 4 Pac. 669 (1884); Aston v. Nolan, 63 Cal. 269 (1883); Gardner v. Stonestown Corp., 145 Cal. App. 2d 405, 302 P.2d 674 (1956); Atkinson v. Charles Nelson Co., 41 Cal. App. 304, 182 Pac. 759 (1919); Hedstrom v. Union Trust Co., 7 Cal. App. 278, 94 Pac. 386 (1908).

[58] Courtell v. McEachen, 51 Cal. 2d 448, 334 P.2d 870 (1959); Risley v. Lenwell, 129 Cal. App. 2d 608, 277 P.2d 897 (1954); Skelton v. Fekete, 120 Cal. App. 2d 401, 261 P.2d 339 (1953). See RESTATEMENT, TORTS § 411 (1934).

[59] Risley v. Lenwell, 129 Cal. App. 2d 608, 277 P.2d 897 (1954). See RESTATEMENT, TORTS § 413 (1934).

[60] Williams v. Fairhaven Cemetery Ass'n, 52 Cal. 2d 135, 338 P.2d 392 (1959); Moran v. Zenith Oil Co. 92 Cal. App. 2d 236, 206 P.2d 679 (1949); Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959); Dickson v. So. Calif. Edison Co., 136 Cal. App. 2d 85, 288 P.2d 310 (1955); Martin v. Food Machinery Corp., 100 Cal. App. 2d 244, 223 P.2d 293 (1950).

[61] Hard v. Hollywood Turf Club, 112 Cal. App. 2d 263, 246 P.2d 716 (1952); *supra* note 60.

he is negligent in so doing he is liable for subsequent injuries resulting therefrom.[62]

Similarly, the employer may be held liable on the ground that he would have been strictly liable had he himself done the work contracted for.[63] In such a case he cannot insulate himself from liability by employing an independent contractor.[64] This is similar to the inherent danger exception to the rule that there is no vicarious liability imposed on the employer. But the latter exception is of broader scope, imposing liability where the employer has done all that could be required of him,[65] while the former is based on the employer's act of securing the result.

When the employer interferes with or exercises control over the contractor, his servants, or equipment, he may then be held liable for resulting injuries.[66] The injury may be viewed as a direct result of the employer's interference or control. But it is more accurate to view the exercise of control as creating a relation of master and servant,[67] at least to the extent the control is exercised, and to hold the employer liable for the acts of the servants on the basis of respondeat superior.[68]

Conclusion

An attempt has been made to give a brief, general outline of the various bases for holding liable the owner of land who employs an independent contractor. It is apparent that more often than not he will be held liable for injuries sustained by third persons. Liability may attach under one of the exceptions to the so-called general rule—a rule whose applications are outnumbered by its exceptions; it may also attach because of the peculiar relationship of owner-employer involved; or because the employer himself was negligent. Indeed, it is becoming increasingly difficult for the owner of land to insulate himself from liability by hiring an independent contractor. But this is by no means to be regretted; it is in consonance with the increasing burdens which modern law is placing upon the owner of land.

[62] Donovan v. Oakland & Berkeley Rapid Transit Co., 102 Cal. 245, 36 Pac. 516 (1894); Boswell v. Laird, 8 Cal. 469 (1857); Kolburn v. Walker Co., 38 Cal. App. 2d 545, 101 P.2d 747 (1940). See RESTATEMENT, TORTS § 412 (1934).

[63] See Houghton v. Loma Prieta Lumber Co., 152 Cal. 574, 93 Pac. 377 (1907).

[64] See note 63 *supra*.

[65] See notes 9-13 *supra* and accompanying text.

[66] Williams v. Fairhaven Cemetery Ass'n, 52 Cal. 2d 135, 338 P.2d 392 (1959); Katz v. Helbing, 215 Cal. 449, 10 P.2d 1001 (1932); Bedford v. Bechtel Corp., 172 Cal. App. 2d 401, 342 P.2d 495 (1959); Revels v. So. Calif. Edison Co., 113 Cal. App. 2d 673, 248 P.2d 986 (1952); Willis v. San Bernardino Lumber & Box Co., 82 Cal. App. 751, 256 Pac. 224 (1927). See RESTATEMENT, TORTS § 414 (1934).

[67] The employer's lack of the legal right to control is the primary element in the existence of an employer-independent contractor relationship. Malloy v. Fong, 37 Cal. 2d 356, 232 P.2d 241 (1951).

[68] The doctrine of respondeat superior, too well settled to require citation, is that the master is liable for the acts of his servant done within the scope of the servant's employment.