The Vicarious Liability of Franchisors in Australia

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Abstract

Franchisors and franchisees are legally and financially independent parties responsible for their own torts, contracts and other legal obligations. From the perspective of the general public however the independent contractor nature of the relationship is obscured by system standardisation and uniformity which conveys the appearance of a single entity. Although in law there is a fundamental difference between a system outlet operated by a franchisee and a system outlet operated by the franchisor through a manager, the outlets are otherwise identical and the legal subtleties are imperceptible to customers and the public generally. The legal ramifications are nevertheless significant. In general terms a franchisor is liable under the principle of vicarious liability for the torts committed by employee managers but not for the torts committed by franchisees who are independent contractors. Franchisors may also be liable under agency principles- for contracts made by those agents who have the actual or apparent authority to make contracts on behalf of the franchisor principal-which will generally be the case for employed outlet managers but rarely for franchisees. Liability in particular cases may also be imposed under legislation. This paper addresses the liability of franchisors for franchisee conduct in the Australian context.

Keywords

vicarious liability
agency
franchisor/franchisee relationship