Vicarious liability and employee fraud

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An employer is vicariously liable for the torts of an employee committed in the course of employment, including fraud, where the wrongful act is so closely connected with the employment that it is fair and just to hold the employer liable.[1] *ByBit* was a case of an employee of a payroll contractor defrauding the exchange itself, so vicarious liability did not arise. The converse case, where a platform's employee diverts customer assets, is the more frequent one. A platform whose employee used her authorised access to the withdrawal system to steal from customers is likely to be vicariously liable. The access was conferred by the employment, and the theft was a misuse of the very function she was employed to perform. The platform's recourse is against the employee and against any insurer. Platforms should know that fidelity cover for crypto theft is expensive and narrowly drawn.

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Notes

1. *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] SGCA 22 at [75]–[93], adopting the close-connection test for vicarious liability in Singapore. ↩

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