Vicarious liability annotated problem question

Harry Lock Eyes is a popular restaurant and bar. Mario, its owner, prides himself on its mellow atmosphere and friendly staff. However, behind the scenes it is a different story.

Bert, the restaurant's sommelier, and Dillon, the head chef, have fallen out over Bert's wine choices for his signature dish. Eventually Dillon's quick temper gets the better of him—he grabs an empty wine bottle and hits Bert across the back of the head. Meanwhile, Cadbury Blacker, the local librarian, is setting up for her regular evening set singing chilled out versions of indie classics. As Dillon storms out from the kitchen he trips over a lead she has failed to tape down, and twists his ankle. Clem, the restaurant manager, phones Dougal at home to see if he can come in to cover Bert's shift. Dougal had been expecting to have the night off and had just settled down to watch TV. Though Clem makes it clear he does not have to come in, Dougal is irritated by her request. He cycles to the restaurant and when he gets there he punches her.

Meanwhile, Biggles is walking around the bar talking to the customers. He is employed as a host to make the guests feel comfortable, and so is a well-known figure at the bar. For convenience, Mario employs Biggles through an agency, which pays Biggles's wages. Bella has been coming to the bar for a few weeks and Biggles has been particularly welcoming. He often encourages her to stay late to help him tidy up and then gives her a lift home in his sports car. After one such occasion Bella complains that Biggles has sexually assaulted her. A subsequent criminal investigation upholds her claim.

Advise the parties.

In order for Mario to be vicariously liable you will also need to establish that Cadbury Blacker is an employee and that the battery has happened in the 'course of her employment'. See *Lister* [2002] and compare *Wendall Barchester Healthcare Ltd* [2012] and *Wallbank v Wallbank Fox Designs Ltd* [2012].

Dillon will want to argue that Mario is vicariously liable for Cadbury Blacker's actions but is she an employee? See *JGE* [2012] and *Various Claimants* [2012].

So are Mario or the agency liable for his actions? Or both? See *Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd and others* [2005] and *Various Claimants.*

Biggles has clearly committed a tort (battery) against Bella but has he done so in the 'course of his employment'?

Like Dillon, Dougal has committed a battery against Clem. There is no need to repeat your discussion of the relevant law here, you can simply refer to your discussion of Bert's claim against Dillon, pointing out any factual/legal differences. This should remind you of the facts of *Wendall v Barchester Healthcare Ltd* [2012]. Often examiners will use or adapt the facts of cases in a problem question. Be careful not to fall into the trap of assuming that just because the facts of the problem question look similar to a real case that the outcome will be the same. Your examiner may have 'tweaked the facts' in order to test your knowledge and application of the law.

Unless you are told otherwise, usually you should not discuss matters relating to criminal law when answering a tort problem question.

In absence of any other information, potential claims will be brought against Mario.

Dillon has therefore committed a battery against Bert. You should work through the relevant stages of this tort, to clearly establish this (see **section 20.2**). Remember it is essential that the employee commits a tort (for which they will be *personally* liable), otherwise there is nothing for the employer to be *vicariously* liable for. When doing this you should also consider any defences—is Bert contributorily negligent?

Has Cadbury Blacker committed a tort? You should consider whether she owes Dillon a duty of care, that she has breached this duty (i.e. that she has fallen below the standard of care expected) and that this has caused Dillon's injuries. Could Dillon also be contributorily negligent? What would you need to know in order to establish this?