



## Legal review of the year

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Vicarious liability	<i>JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust</i>
Extent of RTA cover	<i>AXN v Worboys</i>
Loss of Insurer's chance to investigate claim	<i>Milton Keynes Borough Council v Nulty and others</i>
Limitation	<i>AB v Ministry of Defence</i>
Fraudulent / exaggerated claims	<i>Summers v Fairclough Homes Limited</i>
Protective clothing	<i>Blair v Chief Constable of Sussex</i>
Manual handling	<i>Costa v Imperial London Hotels Limited</i>
Risk assessments	<i>Cornish Glenroy Blair-Ford v CRS Adventures Limited</i>
Discount rates	
Court statistics 2011	

## Vicarious liability

# *JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust* Court of Appeal 12 July 2012



## High court

- The nature of the relationship between Bishop and Priest
- The scope of the relationship

## Why no vicarious liability

- a) No real element of control or supervision
- b) No wages paid
- c) No employment contract

## Endowment of Father Baldwin's position as a priest

- Materially increased the risk of sexual assault
- Introduced the risk of wrongdoing

*"It is the nature and closeness of the relationship which is the test at stage one. This close connection may be easier to recognise than to define."*



## Court of Appeal decision

- The law of vicarious liability had moved beyond the confines of a contract of service
- The test was whether the relationship was so close in character to an employer/employee relationship that it was just and fair to hold the employer vicariously liable
- The Roman Catholic Church looked like a business and operated like one
- Father Baldwin was more like an employee than an independent contractor

### Scope of RTA Insurance cover

## *AXN v John Worboys & Inceptum Insurance* High Court 25 June 2012



## Preliminary issues to be decided

- The significance of the use of the vehicle as part of the crimes
- Whether the crimes were covered by his Insurance policy
- Whether Insurers were obliged to pay any judgment obtained against Warboys

## High court decision

- Injuries did not “arise out of the use of” the taxi
- Injuries were not required by Statute to be covered by an Insurance policy and were not covered by this Policy
- Insurers not liable to compensate Warboys' victims

## Conflict:

Bishop of Portsmouth: Priest's assaults arose out of his position as a priest

Warboys: Warboys' assaults did not arise out of the use of his taxi

Should the taxi licensor be liable in the same way as the Bishop of Portsmouth?

Loss of Insurer's chance to investigate claim

***Milton Keynes Borough Council v Michael Nulty  
and others***  
**High Court 3 November 2011**

## Potential causes of the fire

1. Discarded cigarette
2. Arcing from a live electric cable
3. Arson by an intruder

## Action required by the Insured under the Policy

- Immediate notification – not a condition precedent

## Judge's decision

*"It is possible, but I put it no higher than that, that if such evidence was obtained the court might, for example, have been persuaded that the second fire was not a rekindling of the first fire."*

*"However, I do not think that the prejudice can be said to be so nebulous as to be intangible. In my judgment, and doing the best I can, I would assess the prejudice to NIG - in the form of its loss of opportunity to secure a different result - at 15%."*

- Make notification a condition precedent - no need to prove prejudice
- Otherwise reduction uncertain and subject to proof of prejudice

Limitation – date of knowledge of injury

## ***AB & ORS v Ministry of Defence*** **Supreme Court 14 March 2012**



### **Supreme Court decision**

- By the time a Claimant issued proceedings he must know that his injuries were attributable to the defendant's alleged fault
- A Claimant acquires "knowledge" of injury when he first comes reasonably to believe the fact and cause of his injury
- Rebuttable inference that the Claimant had knowledge by the date he first took legal advice
- Time of consultation of expert not likely to assist in determining whether the Claimant had the requisite knowledge by then. \$\$\$

Does this change anything?

Short-term delay v long term delay in issuing proceedings

**Fraudulent claims**

***Summers v Fairclough Homes Ltd***  
**Supreme Court 27 June 2012**

## Supreme Court

- The evidence of the Claimant's fraud was overwhelming
- The Claimant lied to the medical experts
- The Claimant lied to the Department of Work and Pensions
- The Claimant was able to work without difficulty in October 2007 and 2009
- The Claimant's explanations to try to explain this were lies
- The Claimant's wife's diary confirmed he was working at various other times

## Supreme Court

- The Courts have the power to strike out a claim for abuse of process
- Striking out must be proportionate
- Only exceptional cases will be struck out after a trial. This was not such a case

## Supreme Court – guidance on correct approach to fraudulent / exaggerated claims

- Completely fraudulent cases will be struck out
- Exaggerated but otherwise justified claim will not be struck out but adverse inferences and adverse costs orders will be made against the Claimant
- Defendants should protect themselves by making a Calderbank offer
- Defendants (or their Insurers) should bring contempt proceedings against the Claimant

## 2 May 2012 - report of research carried out by LV=car insurance

- 87% of GPs at some point have seen someone who was completely making an injury up
- 96% of GP's said they have been visited by someone they thought was exaggerating an injury
- 25% who have been in a car accident in the last 12 months admit they attempted to exaggerate or feign injuries in order to claim compensation. 23% of these admitted making an injury up entirely

## Protective clothing

# *Blair v Chief Constable of Sussex* Court of Appeal 15 May 2012



## Personal Protective Equipment at Work Regulations 1992

“4 (1) Every employer **shall** ensure that **suitable** personal protective equipment is provided to his employees who may be exposed to a **risk** to their health or safety while at work except where and to the extent that such risk has been **adequately controlled** by other means which are **equally or more effective**.”

“4 (3) Without prejudice to the generality of paragraph (1) personal protective equipment shall not be suitable unless

- (a) it is **appropriate for the risk or risks involved** and the conditions at the place where exposure to the risk may occur.
- (b) it takes account of ergonomic requirements and the state of health of the person or persons who may wear it.”

## First instance trial judge

The Regulations were not breached, taking into account:

- The particular circumstances of this case
- The extent of the risks that could be **foreseen**
- The nature of the hazards which were known and for which protection was provided

## Court of Appeal

The trial judge adopted an incorrect approach. The correct approach was:

- Identify the risk of injury
- Ask if the equipment (so far as practicable) was **effective** to prevent or adequately control that risk

**Decision:**

- The boots provided not effective to prevent significant injury
- It was possible for boots to be provided that would have prevented significant injury
- The employer was therefore liable

*"Likelihood or foresight of injury does not come into the matter...The 1992 Regulations do not address matters of that kind. This is a sea-change from the old concepts of common law negligence. Whether that is a good or bad thing is not for this court to say, since the 1992 Regulations are now the law of the land."*

## Manual handling

# *Costa v Imperial London Hotels Ltd* Court of appeal 1 May 2012



## Manual handling

### Manual Handling Operations Regulations 1992 reg.4(1)(b)(ii)

Each employer shall ... take appropriate steps to reduce the risk of injury to those employees arising out of their undertaking any such manual handling operations to the lowest level reasonably practicable.

## At trial

### The defendant hotel produced:

1. The training video which she had been shown
2. Other documents with which she had been provided when she started
3. Samples of the carpet
4. The wheels on the bed

## First instance trial judge's decision

- There had been adequate initial training but no subsequent training
- There ought to have been refresher training or continuing training
- The accident was caused by the lack of training

## Court of Appeal decision

- Confirmed requirement to carry out continuing or refresher training
- Refresher training consistent with the Regulations even though the Regulations did not state this specifically.
- Claim dismissed because the injury was not caused by lack of training

Risk assessments

***Cornish Glennroy Blair-Ford v CRS  
Adventures Ltd***  
**High Court 13 August 2012**



**Risk assessments**

“Mini-Olympics” event - throwing a Wellington boot in a game of “welly-wanging”

### **Claimant:**

- If the Defendant had carried out a risk assessment the method of throw would have been modified and injury avoided

### **Defendant:**

- Welly-wanging had been subject to a dynamic risk assessment and no further action was identifiable
- The accident was a chance event and that neither it, nor any similar accident causing serious injury, could have been foreseen

## **High Court Decision**

- Tort law should not stamp out socially desirable activities just because they carried some risk
- Formal written risk assessments were probably more effective in relation to static conditions or routinely repeated activities. A dynamic risk assessment was acceptable and had been carried out
- Risk of serious injury needed to be foreseen – not just the risk of any injury
- The standard of care was an objective test of reasonableness which should take into account the circumstances and characteristics of the persons at risk
- There was no foreseeable real risk. This was a tragic and freak accident for which no blame could be established

Blair: Risk assessment decided existing boots acceptable. Foreseeable injury. Regulations required suitable boots to control risk of injury. Likelihood of injury not relevant. Suitable boots to control the risk of serious injury not provided. Employer liable under PPE Regulations.

Costa Risk assessment / good training. Non-compliance due to lack of refresher training. Manual Handling Regulations

CRS Risk assessment carried out. Adequate. Public liability – not employer

- Knowledge of Regulations pre-requisite to adequate risk assessment
- Insurer's assessment of risk of Insured's lack of knowledge?

## Ministry of Justice Judicial and Court Statistics published 28 June 2012

### High Court 2011

- Proceedings started in the Chancery Division increased by 6% from 2010
- Applications filed at the Bankruptcy Court increased by 10% from 2010
- Proceedings started in the Queen's Bench Division decreased by 16% from 2010

### County Court 2011

- Money claims for a specified sum - typically related to debt issues down 4% from 2010
- Money claims for an unspecified amount - typically personal injury down 6% from 2010)

## County Court January to March 2012

10% fewer claims issued in the county courts than in the first quarter of 2011

### Why?

- Fewer claims?
- More claims settled before issue?

## Discount rates

*Simon v Helmot 2012 (Privy Council)*

- Discount rate applicable to Channel Islands cases
- 0.5% for non-earnings future losses
- -1.5% for earnings related losses

Current consultation open until 23 October 2012

Should a Claimant investor be linked to low-risk index-linked government stocks or to a calculation based upon a mixed portfolio of appropriate investments?

Likely change?

**Q&A**

