



**Guildhall Chambers Personal Injuries Defendant Seminar  
9<sup>th</sup> June 2010**

**CREDIT HIRE FACTS**

**Gabriel Farmer, Stephen Garner, Daniel Neill**

**Background Facts**

Mr X (a wealthy young novelist) and Mrs Y are involved in a road traffic accident when Mrs Y pulls out from a minor road into the path of Mr X's clapped-out 15-year-old BMW. They exchange details and drive away from the scene of the accident.

Five days after the accident Mr X enters into an agreement with Z Cars (a credit hire company) for a brand-new BMW 4x4 at £150.00 per day.

Mr X uses the replacement vehicle to run his daughter to and from school, to go to the supermarket at the weekends and for getting to and from the odd social event. The school is ten minutes' walk down the road. The supermarket is a few miles from his house.

The day after signing the agreement Mr X receives a message on his answer-phone from Mrs Y's insurer offering to take care of the repairs to his vehicle and to provide him with a replacement vehicle. He ignores the message.

The day after that Mr X receives a letter from Mrs Y's insurer reiterating the offer. He puts the letter in a drawer and forgets about it.

One week after signing the agreement Mr X takes his vehicle in for repairs.

The vehicle is inspected by an engineer 10 days after it goes in for repairs. The engineer estimates that the repairs will take 4 working days.

Two weeks after the vehicle goes in for repairs Mr X calls the garage to ask when it will be ready for collection. The garage tells him that they don't know because they are waiting for a part to be shipped over from Germany.

Five weeks after the vehicle goes in for repairs the garage calls Mr X to tell him that his vehicle will be ready for collection in a week's time. Mr X arranges to collect his vehicle in three week's time. (He is about to go to the USA for a book tour.) He calls Z Cars to arrange for the return of the replacement vehicle on the same day.



Mr X collects his vehicle on the arranged date. Z Cars collect the replacement vehicle one week after the arranged date.

Mr X now wishes to claim the hire charges on the replacement vehicle from Mrs Y's insurer. Liability is not in dispute.

## **QUESTIONS**

1. Disregarding the offer from Mrs Y's insurer, what are the prospects of Mr X establishing a need for a replacement vehicle?
2. Would it have made any difference if Mr X had just used the replacement vehicle to run his daughter to and from school?
3. Would it have made any difference if the replacement vehicle had remained unused in Mr X's garage throughout?
4. What are the prospects of Mr X successfully arguing that he is entitled to a brand-new BMW 4x4?
5. What are the prospects of Mr X successfully recovering damages at the £150.00 daily rate?
6. What evidence will Mrs Y's insurer require if it is to argue successfully for a reduction of the daily rate? What problems might it encounter in deploying this evidence?
7. What are the prospects of Mr X successfully claiming for the full period of hire?
8. What are the prospects of Mrs Y's insurer successfully arguing that in failing to take up its offer of a replacement vehicle Mr X failed to mitigate his loss?
9. Would it have made any difference if the offer of a replacement vehicle had been made before Mr X entered into the agreement with Z Cars?
10. If such an argument were to succeed, can Mrs Y's insurer argue that Mr X should be entitled to nothing?

