



**Guildhall Chambers Personal Injuries Claimant Seminar
17th November 2009**

CONTRIBUTORY NEGLIGENCE PRINCIPLES APPLICATION WORKSHOP

Adam Chippindall and Abigail Stamp

CASE STUDY ONE

Please read the following case study as well as the materials provided and answer the questions below.

You represent Ivor Nobelt and Si Clyst who were both injured as a result of Stew Pendusspeed's negligent driving.

Stew Pendusspeed was driving Ivor Nobelt and three others home after a night out. He had agreed to be designated driver because he had just passed his test and liked showing off in his souped up Vauxhall Astra.

At the end of the evening the group piled into the Vauxhall Astra. Two of the group sat in the back of the car and Ivor Nobelt sat in the front of the car with one of the girl's on his lap.

One of the occupants of the car has suggested that at some point Ivor Nobelt told Stew Pendusspeed to "go fast" but he is not really sure about this, partly because of the loud music and noisy exhaust pipe and partly because he was more interested in the attractive young lady sat next to him. Anyhow Stew Pendusspeed loved going fast and certainly did not need any encouragement from Ivor Nobelt to do so.

Whilst Stew Pendusspeed was travelling at 72 mph in a 30mph limit he clipped the curb and the car turned over. During the crash the wheel of the car flew off and knocked Si Clyst, who was cycling in the opposite direction, off of his bicycle.

As a result Ivor Nobelt sustained a serious spinal injury and Si Clyst a bad head injury.

It turns out that Ivor Nobelt was not wearing his seatbelt and Si Clyst was not wearing a cycle helmet. Si Clyst did have a cycle helmet at home which he sometimes wore but it was 20 years old and did not conform to BS Standards.



In respect of Ivor Nobelt, your expert has opined that accidents such as this (where there has been an impact to the roof of the car directly above the seated occupant) are actually one of the rare cases where the occupant is better off without a seatbelt. He thinks that had Ivor been wearing a seatbelt he would have avoided the spinal injury but may well have sustained a head injury instead.

In respect of Si Clyst, he thought that Si's head injury would have been less severe if he had worn a modern helmet which complied with BS Standards but the old helmet would have made no difference at all.

Materials

- **Section 1 Law Reform (Contributory Negligence) Act 1945**
- ***Froom v Butcher* [1976] 1QB 286 CA**

Questions

1. **What, if any, is the appropriate deduction for contributory negligence in Ivor Nobelt's case?**
2. **What, if any, is the appropriate deduction for contributory negligence in Si Clyst's case?**



CASE STUDY TWO

Please read the two case studies below and then answer the questions.

Case Study 2(a)

Dai Gitless was a very well trained and experienced joiner.

Part of Dai's job involved cutting fascia boards. Initially the fascia boards were cut by hand but there came a point when Dai asked his employer to provide a portable bench saw. Dai thought this would be a lot easier and quicker than trimming them by hand. His employer agreed.

The bench saw was provided but it turned out that the bench was shorter than the fascia boards. This meant the fascia boards would bow as they passed over the saw's bench. This problem could have been easily solved by either the provision of a run off bench or by another employee supporting the fascia board whilst it was being cut. These precautions, however, were not taken.

One day, many months after the bench saw's arrival, Dai lost his left thumb whilst using the machine. Dai cannot explain exactly how the accident happened but it is pretty clear that it was a combination of him having his hand too close to the blade and the bowing fascia boards.

Dai accepts that the problem of the bowing fascia boards was obvious and that it was obvious that he needed a run off table or a second pair of hands. He also accepts that he could have asked for help, asked for a run off table or even made a run off table himself. He can't really explain why he did not do this.

The employer accepts that they did not undertake a risk assessment and accepts that they did not instruct Dai to make a run off table or ensure he worked with a colleague. They say that Dai was very experienced and these things ought to have been blinding obvious to him.



Case Study 2(b)

Mikey Babb sustained a serious injury to his arm whilst working as a kitchen assistant in a kebab shop. As he was cleaning the meat mixing machine he caught his arm in the revolving blade.

When Mikey Babb first started at the shop he was taught how to use and clean the mixing machine. There was an interlocking device on the mixing machine. This device meant that the machine switched off when the lid was opened. As a result it was impossible to clean the machine if the blade was running.

At some point, however, one of Mikey's colleagues discovered that if you put a magnet onto part of the machine it would disable the interlocking device which in turn meant you could open the lid and have the machine running at the same time. This discovery made it possible to overfill the mixing machine and use it with the lid open. It also meant that the machine could be cleaned by letting the blade come to the cloth rather than vice versa. Everybody in the kitchen used the magnet and Mikey's employer turned a blind eye to this.

Mikey has explained that he did not think it was too dangerous to clean the machine with the blade running because when you first switch the machine on, the blades run very slowly and it is possible to complete the cleaning job before the blade speeds up.

On the day of the accident the cleaning operation took longer than usual because Mikey answered the telephone ½ way through the cleaning operation. As a result he was still cleaning the machine when the faster cycle kicked in. Mikey accepts that he knew the blade would speed up but forgot or misjudged when this would happen.



Questions

- 1) What do you consider the appropriate apportionment to be in case study 2(a)?**

- 2) What do you consider the appropriate apportionment to be in case study 2(b)?**

- 3) If your answers differ, why do they differ?**