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PERSONAL INJURIES LEGAL UPDATE

James Townsend &
Julian Benson

Wendy Lewis v Avidan Ltd t/a High
Meadow Nursing Home (2005)
EWCA Civ 670



- Claimant care assistant slips on water in care home
- Water spill caused by recent unexpected leak in hidden pipe
- Claimant relies upon Regs 5 and 12 of Workplace Regs
- Judge finds for Defendant

Lewis v Avidan (cont)

- CA holds that the pipe burst was not a breach Reg 12 (1), or (3) (because recent and unexpected) or 5.
- Does Lewis drive a coach and horses through the principle of near strict liability?

Workplace (Health, Safety and Welfare) Regulations 1992



5 Maintenance of workplace, and of equipment, devices and systems

- 1) The workplace and the equipment, devices and systems to which this regulation applies shall be maintained (including cleaned as appropriate) in an efficient state, in efficient working order and good repair.
- 2) Where appropriate, the equipment, devices and systems to which this regulation applies shall be subject to a suitable system of maintenance.

Workplace (Health, Safety and Welfare) Regulations 1992 (cont)



- 3) The equipment, devices and systems to which this regulation applies are-
 - a) equipment and devices a fault in which is liable to result in a failure to comply with any of these Regulations;
 - b) mechanical ventilation systems provided pursuant to regulation 6 (whether or not they include equipment or devices within subparagraph a) of this paragraph)

12 Condition of floors and traffic routes

- 1) Every floor in a workplace and the surface of every traffic route in the workplace shall be of a construction such that the floor or surface of the traffic route is suitable for the purpose for which it is used.
- 2) Without prejudice to the generality of paragraph 1), the requirements of that paragraph shall include requirements that-

Workplace (Health, Safety and Welfare) Regulations 1992 (cont)



- a) the floor, or surface of the traffic route shall have no hole or slope, or uneven or slippery so as, in each case, to expose any person to a risk to his health or safety; and
- b) every such floor shall have effective means of drainage where necessary

Workplace (Health, Safety and Welfare) Regulations 1992 (cont)



3) So far as is reasonably practicable, every floor in a workplace and the surface of every traffic route in a workplace shall be kept free from obstruction and from any article or substance which may cause a person to slip, trip or fall

Rita Burgess v Plymouth City
Council (2005) EXCA Civ 1659



- “a very nice lady who had a very nasty accident”
 - Application of Regulation 12(3) of Workplace Regulations
 - Falling over an object which “would have been staring her in the face”
 - Claimant employed to clear away object she fell over

- Contributory negligence: a “large and conspicuous obstruction”
- Contrast with other recent decisions

Haward & Others v Fawcetts

House of Lords (2006) UKHL 9



- Date of knowledge – how much does the Claimant need to know?
- House of Lords ruling in economic torts case
- Claimant making disastrous investments on Defendant's advice
- 1st instance judge rules knowledge complete when investment made on advice of Defendant

Haward & Others (cont)

- CA reverses judge – knowledge only achieved when Claimant knew that something was wrong with the advice
- HL unanimously overturn CA decision but scrap amongst themselves as to why

Haward & Others v Fawcetts

House of Lords (2006) UKHL 9



- Essential rule that knowledge only acquired when 'something had gone wrong of which he was prima facie entitled to complain'
- Effect on PI claims?

Haward & Others v Fawcetts

House of Lords (2006) UKHL 9



- Decision of CA in *Dobbie –v- Medway HA* [1994] questioned (again). *Dobbie* effectively no longer good law?
- The Claimant must have reasonable cause to embark on preliminary investigations into the possibility that the Defendant “did not do his job properly (Lord Nicholls).

Haward & Others (cont)

- Cf Lord Brown – all that is required is that the Claimant knew that his loss “might well have” resulted from Defendant’s advice
- Onus is on Claimant to show that he does not have the requisite knowledge (Lord Mance)

Jane Sowerby v Elspeth Charlton (2005) EWCA Civ 1610



- A revolution for admissions
 - CPR does not apply to pre-action admissions in MT cases
 - what about FT cases?
 - what about cases transferred out of FT?
 - the new test for post-action admissions

Jane Sowerby v Elspeth (cont)

- Solving 'admissions problem'
 - we will not investigate further...
 - contractual compromise
- Solving Ms Sowerby's problem

Cressey v E Timm & Son Ltd &
E Timm & Son Holding Ltd (2005)
EWCA Civ 763



- CA decision on constructive knowledge as to identity of employer Defendant for limitation purposes
- Claimant misled as to true name of employer
- Claimant adds name of true employer with similar name outside 3 year period

Cressy v E Timm (cont)

- Held no constructive knowledge because misled as to name
- *Simpson v Norwest Holst [1980]* survives CPR
- Who am I? Rix LJ gets existentialist

Trustees of Stokes Pension Fund v
Western Power Distribution (2005)
EWCA Civ 854



- Payment into Court - who needs it?
- Extending costs protection to parties who do not pay into Court
- Significance for personal injury litigation?
 - future judicial discretion instead of certainty of costs consequences
 - the four principles - yet more uncertainty
 - withdrawn offers

Trustees of Stokes (cont)

- A practical approach to the problems for
 - claimants
 - defendants

Bretton v Hancock (2005)

EWCA Civ 404



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- Oh, what a tangled web we weave
- Claimant passenger in car insured in her name only, driven by her fiancé, and involved in RTA with Defendant.
- Defendant counterclaims for breach of statutory duty in failing to ensure fiancé was insured, depriving him of right to indemnity/contribution from fiancé

Bretton v Hancock (2005)

EWCA Civ 404



- Defendant relies on *Monk v Warbey*
- Claimant says principle does not apply because Defendant not counterclaiming for personal injuries, but economic loss.
- The *Monk v Warbey* principle does not apply to pure economic loss

David Philip Hawley v Lumiar
Leisure & Others (2006)
EWCA Civ 18



- Part of the story - negligent employer escapes liability for employee's brutal assault...
- Some more of the story - ...employee *so embedded* in a contractor's organisation that it was vicariously liable
- The rest of the story - dual vicarious liability - reflections on Viasystems

David Hawley v Luminar (cont)



- Contribution between parties - nil finding despite negligence
- Construing contractual terms where an insurer seeks to withdraw indemnity

Jacqueline Adam v Rasal Ali (2006) EWCA Civ 91



- *Walkley* continues to spawn litigation 27 years on
- Gross solicitor's negligence rewarded
- Claim issued beyond 3 years, and struck out for non-service of Particulars
- Second set of proceedings allowed by CA under s.33
- Claimant's solicitor's negligence not to be held against her

Maria Freeman v Christopher Lockett (2006) EWHC 102 (QB)



- Local authority care obligations - fly removed from ointment?
- Assessing future care in light of LA statutory obligations
- Proving the certainty of future LA assistance?
- Deducting LA care to avoid double recovery
- Solving the problem - contractual indemnity?

Flora v Wakom (Heathrow) Ltd EWHC 2822 (QB)



- Watch this space – in June/July 2006
- First instance decision (Turner, J) on S 2(9) Damages Act
- Defendant's application to strike out Claimant's attempt to invoke S 2(9) dismissed
- Position all up in the air

Keown v Coventry Healthcare NHS (2006) EWCA Civ 39



- Trespasses beware - even children
- Limited liability to trespassers: OLA 1984
- The threshold criterion - danger due to the state of the premises
- The adult choice and the child's choice
- Contrast Maloney v Torfaen BC (EWCA) Civ 1762 - a trespasser's charter