RTA INSURANCE:

When is an accident caused by, or arising out of, the use of a vehicle?

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Section 145 of Road Traffic Act 1988

- Section 145 of the Road Traffic Act specifies the conditions which a policy of insurance must satisfy.

- Section 145 (3) provides that the policy:

  "must insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property **caused by, or arising out of, the use of the vehicle** on a road or other public place in Great Britain"

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Elliott v Grey [1960] 1 QB 367

- Car had broken down and could not be driven. It was laid up outside owner's house on the road.
- Owner suspended insurance policy until car was in running order. Another car collided with the stationary car.
- Owner convicted of unlawfully using vehicle without policy of insurance. Upheld by Divisional Court.

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Pumbien v Vines [1996] RTR 37

- When purchased motor vehicle it was in full working order. It was parked on a public road and not driven.
- Owner cancelled policy of insurance covering his use of the vehicle.
- Subsequently MOT test certificate expired. Vehicle remained parked on road for over seven months, by which time brakes had seized, tyres were deflated and gearbox did not work.
- Convicted of using vehicle on road without insurance. Upheld by Divisional Court.

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Dunthorne v Bentley [1999] Lloyd's Rep IR 560

- Whether an accident caused by a motorist running across the road to get petrol for her car was an accident arising out of the use of the car for which her insurer was liable to indemnify under s. 145 (3).

- First instance Judge's decision upheld by the Court of Appeal: accident arose out of the use of the vehicle.

- Once it is accepted that "arising out of" is a wider concept than "caused by" it is a question for the Judge and essentially one of fact rather than law.

- Excludes cases of bodily injury in which the use of the vehicle is a merely casual concomitant, not considered to be, in a relevant causal sense, a contributing factor.

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AXN v Worboys
[2013] Lloyds Rep IR 213

- The victims of a taxi driver, who lured women into his taxi, sedated and sexually assaulted or attempted to assault them, could not claim against the driver's motor insurer.

- Their injuries were caused by criminal acts and did not “arise out of the use of a vehicle on a road”.

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Vnuk v Zavarovalnica Triglav dd [2016] RTR 188

- Motor Insurance Directive - Article 3 Compulsory Insurance “Each Member State shall… take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.”
- Article 12 (3) “the insurance referred to in Article 3 shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with the national law.”
- C injured when trailer attached to a tractor reversing in farm yard struck ladder on which standing.
- Referred for preliminary ruling by CJEU whether use of vehicles in Article 3 covered manoeuvre

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Vnuk - 2

- Held: “use of vehicles” in Article 3(1) of the Directive meant “any use of a vehicle that is consistent with the normal function of that vehicle”.

- Concepts of “accident”, “use or “use of vehicles” for the purposes of the Directives must be understood in light of dual objective of protecting victims of accidents caused by motor vehicles and of liberalising movement of persons and goods with a view to achieving internal market pursued by those Directives.

- “The view cannot be taken that the European Union legislature wished to exclude from the protection granted by those Directives injured parties to an accident caused by a vehicle in the course of its use, if that use is consistent with the normal function of that vehicle”.

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Relevance of Vnuk

- Not directly applicable, but…
- Statute must be interpreted so as to give effect to Directive, so far as that does not go "against the grain" of legislation and is compatible with the thrust of the legislation (*Vodafone 2 v Revenue and Customs Commissioners* [2009] EWCA Civ 446).
- Authoritative guidance

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Wastell v Woodward and Chaucer - LTL 16.3.17

- Van was parked up in a lay-by at side of road in order to sell hamburgers. Owner of hamburger van walked into path of oncoming motorcyclist after stepping into road when displaying sign for his business.
- Master Davison held in trial of preliminary issue (stating that arguments were finely balanced):
- Court has to determine the relevant use of the vehicle on road and then ask whether the accident arose out of that use.
- Accident arose out of the use of the van as a hamburger van. Owner met with accident having set up a sign to further activity of selling hamburgers. He was on his way back to the van. Temporally, geographically and qualitatively, the accident was closely linked to using the van on road as a hamburger van.

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R&S Pilling (T/A Phoenix Engineering) v UK Insurance Ltd [2017] EWCA Civ 259

- Repairs to car, which had recently failed its MOT.
- While welding, sparks ignited flammable material inside the car, causing a fire to break out.
- Substantial damage was caused to P's premises and the adjoining premises, in respect of which P's insurer paid out over £2 million. P’s insurer brought subrogated claim for indemnity.
- Was the damage caused by or arising out of the use of the vehicle?

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Pilling - First Instance

- Judge held that repair to car was not "use" of the vehicle within s.145(3)(a), on the basis that the car was not being operated in any way at the time, but was immobile and raised partly off the ground.

- He concluded (with reference to *Vnuk*) that it was not a "normal function" of a car to undergo repair.

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Court of Appeal - Propositions

- Following propositions as to the meaning of "use of the vehicle" in s.145(3)(a) could be derived from Directive 2009/13, the CJEU jurisprudence and the English authorities:

(a) "use" was not confined to the actual operation of the car in the sense of being driven;

(b) there could be "use" of a car when it was parked or even immobilised and incapable of being driven in the immediate future;

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Propositions (continued)

(c) "use" of a vehicle included anything which was consistent with the normal function of the vehicle;

(d) damage or injury could "arise out of" the use of the car if it was consequential, rather than immediate or proximate, provided that it was, in a relevant causal sense, a contributing factor.

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Court of Appeal's decision

- Judge had erred in concluding that carrying out of repairs was not "use" of the car within s.145(3)(a).

- Repair of a car, which owner wished to effect as soon as possible to drive car lawfully and safely, was "use" of the car within s.145(3)(a), being an activity consistent with its normal function for purpose of that statutory provision.

- Alternatively, injury or damage resulting from such repair in such circumstances arose out of the use of the car, for purposes of s.145(3)(a), because it was, in a relevant causal sense, a contributing factor.

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CPR Definition of Road Traffic Accident

- Road traffic accident means:

  An accident resulting in bodily injury to any person or damage to property caused by, or arising out of, the use of a motor vehicle on a road or other public place.

- Personal injury protocols and costs recovery

- Relevance of authorities re RTA s.145 (3)

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Orange v Taylor - LTL 9.5.14

- C driving vehicle when falling tree hit the vehicle causing injuries.

- Was the accident a RTA? If so success fixed at 12.5%. C sought 100%

- On appeal, HHJ Cotter QC upheld decision of Master O'Hare:

  It was a RTA – the need for their to be a clear connection with the use of the vehicle was easily met by the fact that the car was being driven at the time of the accident.

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