

Motor Insurance in Community Law

Recent Developments

TOM COLLINS



I COMMUNITY LAW BASICS

Community law is *'equal in force to any statute'*

Denning LJ, H.P. Bulmer Ltd v Bollinger SA [1974] Ch 401

Regulations (Art. 249 Treaty)

- Binding in their entirety
- Direct effect

Directives (Art. 249(3) Treaty)

- High level policy objectives
- More discretion to member states



II INTERPRETING COMMUNITY LAW

CJEU ultimate authority
(Art. 220 Treaty)

Rulings incorporated into
English law, s.3(1) European
Community Act 1972



Art. 10 Treaty obliges national courts to construe national
legislation in a way that is consistent with Community law

Emphasis is on purposive construction, *Marleasing*

III THE MOTOR INSURANCE DIRECTIVES

Member states *'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. The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures.'*

Art 3(1), First Directive

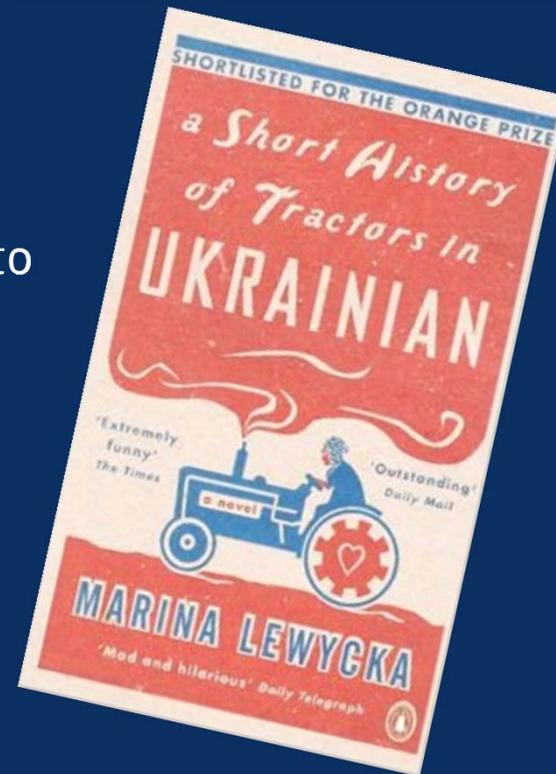
- Aim to deliver a consistent approach across member states but on a literal constriction, allowed considerable latitude
- *Bernaldez* (1996) reduced the scope for national or contractual limitations and exclusions in coverage
- The Sixth 'consolidating' Directive arrived in 2009

IV VNUK

Claimant injured by Tractor being used as farm machinery on farm

Domestic law only required vehicles to have insurance when used on public roads

CJEU: Still a 'vehicle' regardless and Therefore required to be covered by policy of insurance



V IMPLICATIONS OF *VNUK* (2014)

(1) Domestic law is not compatible with Community law

- *Restrictions in s.143 RTA 1988 unlawful*
- *Generous construction unlikely to overcome this*
- *EUI v Bristol Alliance (2012) Likely to be wrongly decided*



V IMPLICATIONS OF *VNUK* (2014)

(2) A wave of Francovich claims

- *Delaney v Sec of State for Transport* (2015)
- Confirms the *Bernaldez* ratio.
- Jay J held that this result was '*close to being self-evident*'.



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Everything's Bigger in Texas by Thomas Crockett

As a bit of light relief for a Friday afternoon... the indomitable Professor Gary Slapper in the Times gave me cause to laugh last week. Whilst we in UK are getting our proverbial knickers in a twist in what the a member of the Government may or may not have said to a policeman outside 10 Downing Street, compare this alleged outburst with that from a member of the judiciary... .. Ok ... [Continue Reading]

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Posted: 28 September, 2012 | Permanent Link | Comments (0)

Holidays (and hotels) from Hell - The duty to warn by Jack Harding

"To many people holidays are not voyages of discovery, but a ritual of reassurance" (Phillip andrew) So it was with the Russell family, who took their 4 year old daughter - the Claimant - on her (and the family's) first ever holiday together to a Hotel in Spain. At the time that the Holiday was booked the Claimant's parents made it clear that they were not seasoned travellers a...



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piBlawg Spotlight On....



David Foster

Partner at Barlow Robbins LLP

1. If I was a superhero my superpower would be... being fully human.
2. If I wasn't a solicitor I would be... playing No 9 for Chelsea.
3. My worst day at work was... as a young lawyer when acting for a criminal client and tried to get him bail unsuccessfully despite him having