

Welcome and introductions



Fatal Accidents in Scotland – an update

APIL Wales Meeting
9 November 2016



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SOLICITORS .co.uk

Fatal Accidents - Overview

- Damages (Scotland) Act 2011
- Awards under s.4(3)(b)
- Loss of support
- Executors' claims
- Services

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Relatives' Claims

- Damages (Scotland) Act 2011
 - S.4(3)(a) – loss of support and funeral expenses
 - S.4(3)(b) – (i) distress and anxiety endured by relative in contemplation of suffering of A before A's death
 - (ii) grief and sorrow of relative caused by death
 - (iii) loss of such non-patrimonial benefit as the relative might have been expected to derive from A's society and guidance if A had not died
 - S.6 – loss of personal services

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Relatives' Claims – Who can claim?

- S.4(3)(b) – Distress, Anxiety, Grief, Sorrow, Loss of Society
- S.14
- Spouse, civil partner, or co-habitee
- Parent or child
- Brother or sister,
- Grandparent and grandchild
- Includes a parent or grandparent who accepted deceased as child or grandchild of family
- Relative accepted by deceased as child or grandchild,
- Sibling brought up in same household

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S.4(3)(b) Awards – a brief history

- Nimrod Cases
- Sept 2006
- 14 deaths
- Cases in Scotland against MOD
- 3 go to jury



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Nimrod Cases

- Young v Advocate General for Scotland 2011 Rep LR 39
- Joe Windall
- 21 years old
- 57 year old mother - £90,000
- 29 year old sister - £60,000



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Nimrod Cases

- Dicketts v Advocate General for Scotland 2011 Rep LR 138
- Oliver Dicketts
- 27 years old
- Parents aged 62 and 68 - £98,000 each



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Nimrod Cases

- Swarbrick v Advocate General for Scotland 2011 Rep LR 40
- Steven Swarbrick
- 28 years old
- Parents aged 53
- £100,000 each



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Post Nimrod

- **Hamilton v Ferguson Transport**
- 50 year old deceased woman
- Spouse - £80,000
- 17 yr old daughter - £120,000

- **Thomson v Denis Thomson Builders**
2011 Rep LR 40
- 26 year old deceased man
- Father - £90,000

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Judge Decisions

- **Bellingham v Todd 2011 SLT 1124**
- 40 year old deceased man
- Spouse - £50,000
- Young children - £25,000 each
- Adult child - £15,000
- Parents - £15,000 each
- Brother - £10,000

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Judge Decisions

- **Wolff v John Moulds (Kilmarnock) Ltd**
2012 SLT 231
- 67 year old deceased man
- Widow - £50,000
- Adult children - £15-18,000 each
- 13 year old granddaughter - £6,500

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Appeal Decision in Hamilton and Thomson 2012 SC 486

- Accepted disconnect between judge and jury awards
- Lord President Hamilton:
 - “If greater regard than hitherto is not had by judges (at first instance or in the Inner House) to jury awards, then the disparity between judicial and jury awards is likely to remain – a state of affairs which “lacks the consistency which is one of the hallmarks of a mature system”The objective must now be to seek to narrow that disparity and to eliminate, in so far as practical, that lack of consistency.”



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Appeal Court Guidance

- Decisions in Bellingham and Wolff “markedly undervalue” the relatives’ claims.
- Once evidence completed, judge addressed, outwith presence of jury, on value of solatium
- Judge addresses jury. Sets out spectrum
- Counsel can suggest figures but no reference to authority

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Post Hamilton and Thomson Cases

Kelly v Upper Clyde Shipbuilders Ltd

Jury Decision – July 2012

82 year old deceased man.

Widow - £40,000

Adult child - £25,000

3 grandchildren - £1,500 – 8,000
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Post Hamilton and Thomson cases

- **McGee & Ors v RJK Building Services**
2013 SLT 428
- Lord Drummond-Young
- January 2013
- 71 year old deceased man
- Importance of evidence of close relationship



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McGee & Ors v RJK Building Services

- Widow - £80,000
- 2 adult daughters - £35,000 each
- Adult son - £27,500
- Daughters' children - £25,000 and £20,000
- Son's children - £12,000 each

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James Currie & Ors v Esure Ltd

2014 SLT 631

- February 2014
- Decision of Lady Wise
- 25 year old deceased man
- Parents - £42,000 each
- 26 yr old brother - £22,500
- Affirmed on appeal



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Scott v Parks

- 19 year old deceased
- May 2014
- Jury awarded mother £86,000
- Range given by Lady Stacey
- £40,000 - £80,000.



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Gallagher & Ors v SC Cheadle Hume [2014] CSOH 103

- 70 year old deceased
- June 2014
- Lord Uist
- Widow - £80,000
- 4 adult children -
£35,000 each
- Grandchildren-
£2,500 - £25,000
- Nature of relationship



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Stuart & Ors v Reid & NIG

2014 Rep LR 107

- 60 year old deceased
- July 2014
- Lord Woolman
- All claims settle other than grandchildren
- 5 yr old - £18,000
- 3 yr old - £16,000
- 4 months in utero - £14,000.



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Joseph McCarn & Ors v Sec of State 2014 Rep LR 138

- 69 year old deceased
- August 2014
- Lord Bannatyne
- 5 adult children - £35,000 each



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Martha Young v Arthur Macvean

2014 SLT 934

- 26 year old deceased
- August 2014
- Lady Rae
- Complex case
- Secondary victim
- S,4(3)(b) award -
£80,000 to mother



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Young v Macvean

- Lady Rae

Para 62:

- “While I agree with Mr Milligan that there is an accepted hierarchy in cases of loss of society awards, I cannot ignore the evidence in the present case of the exceptional and unusual closeness between the pursuer and her son. Also I cannot ignore the evidence from both psychiatrists that, as far as the medical professionals are concerned, there is no greater loss than that of an adolescent son.”

Para 66:

- “In making an award under this head I have particular regard to the following factors: the general uplift which appears to have been applied since *Bellingham and Wolff*; the Inner House’s comments in *Hamilton v Ferguson Transport*; the relevant judicial awards referred to above; the jury awards in the *Nimrod* cases, subject to my comments above; the recent jury award in *Scott v Parkes*; and especially to the very close relationship between the pursuer and the deceased as disclosed in the evidence.”

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Anderson v Brig Brae

- 33 year old deceased
- Jury Trial – June 2015
- 32 year old partner awarded £140,000
- 56 year old father and 1 year old child both awarded £80,000



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Anderson v Brig Brae

- Important aspect was the range of awards provided to jury by Lady Stacey
- Partner - £100,000- 140,000
- Father - £50,000- 80,000
- Child - £50,000 – 80,000

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Inner House Appeals

- Young v Macvean 2015 CSIH 70
- Appeal marked by defenders against both level of award and secondary victim.
- Successful re latter.
- Unsuccessful re former.

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Young v Macvean – Inner House

- Factors
- (i) Judge heard the evidence
- (ii) Loss of deceased had special significance – here closeness of relationship
- (iii) At top end of range of awards
- (iv) Psychiatric evidence

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Young v Macvean – Inner House

- Factors
- (v) Jury awards
- “For us it is of some significance that in each case the jury chose to fix the loss of society award either above or at the highest figure in the range suggested by the trial judge. In each case the figure fixed was close to that chosen by the Lord Ordinary in the present case. We do not say that that last fact completely vindicates the Lord Ordinary in the sense of putting this ground of appeal beyond argument or that it would necessarily persuade us to make an award at the same figure were it our function to do so. However, it does demonstrate what may be described as a continuing upward pull of jury awards.”

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Stanger & Ors v Flaws & Anr

- 71 year old woman killed in RTA
- Jury trial in June 2016
- Several relatives: Range from judge
- Widower aged 65 £80K-120K
- Sons £30K-70K
- Siblings Agreed at £25K
- Grandchildren £12K-28K

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Stanger & Ors v Flaws & Anr

- Awards from jury
- Widower £120K
- Sons £50K
- Grandchildren £15K-20K

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Current Position

- Upward pull of jury awards has raised judicial awards
- Reflected in extra-judicial offers
- Insurers keen to “buy off” the risk

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Current Position

- Upper Range of extra-judicial offers
- Spouse/partner - £100,000-140,000
- Adult child - £35,000 - 80,000
- Parent - £50,000 – 85,000
- Sibling - £25,000 - 50,000
- Grandchild - £15,000 – 30,000

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However.....

- Depends on good evidence of nature of relationship
- If litigating, consider family dynamics
- Judge dependent, even with jury

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Comparison with rest of UK

- England & Wales - £12,980
- Northern Ireland - £14,200
- Shared between qualifying relatives



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Loss of Support – how to calculate

- Key recommendation of SLC Report
- Section 7 of 2011 Act
- General principle – 75% of deceased's net income to be available to support relatives

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Relatives' Claims – Who can claim?

- S.4(3)(a) – Loss of Support

As for non-patrimonial loss plus:

- Ascendant or descendant, other than parent, child, grandparent or grandchild
- Uncle or Aunt
- Child or other issue of sibling or uncle or aunt
- Former spouse or civil partner

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Loss of Support

- Spouse/civil partner, dependent child under 18
 - 75% figure is multiplicand
- Other qualifying relative –actual level of support is relevant amount and requires to be deducted from 75% figure

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Personal Services

- Section 6 of Damages (S) Act 2011
- Relative entitled to claim for services that would have been provided by deceased
- Particularly relevant for younger deceased
- Use of Ogden Tables
- In Young – award made of £25,000

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Executors' Claims

- Damages (Scotland) Act 2011 – section 2
- Executor of deceased
- Claim includes solatium (PSLA), past loss of earnings,
cost of past care, expenses, services
- If killed outright – no claim

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Who can claim?



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Questions?

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What's occurring in Wales?



Cenric Clement-Evans
9th November 2016

NewLaw
solicitors



Cyfraith Hywel Dda



Llywelyn ein Llyw Olaf



Laws in Wales Act 1535 & 1542



The Welsh Office April 1965



National Assembly for Wales 1999

- **Government of
Wales Act 1998**
- **Government of
Wales Act 2006**
- **Conferred powers
in contrast with
Scotland and
Northern Ireland**



Counsel General for Wales 2006



Y Senedd



- **1st March 2006**

Personal Injury in Wales

- Not devolved
- But
- Free Prescriptions
- NHS Redress Wales



Recovery of Medical Costs for Asbestos Diseases (Wales) Bill



Wales Bill 2016

- **St David's Day Agreement 2015**



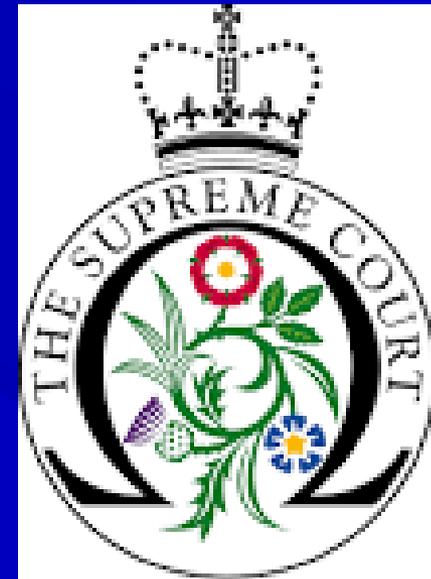
Wales Bill 2016

- Reserved Powers Model
- Tax raising powers



What's missing?

- “Top lawyers campaign for a separate justice system for Wales”



Justice Stakeholder Group

- “The Welsh Government should be proactive in developing a **jurisdictional solution** to the accommodation of Welsh law and the **distinct** needs of Wales, without creating barriers for the operation of justice or the ability of practitioners to continue to work across England and Wales.”



Opportunities for PI Lawyers?

- The Future
- Health
- Education
- Transport
- Housing
- Environment
- Cross Party Group on Asbestos



Latest developments in Northern Ireland

**Martin Hanna
EC member, APIL NI**

Dealing with the media



Lorraine Gwinnutt
Head of Public Affairs

- **Understanding news**
- **Writing press releases**
- **Handling journalists**
- **Dealing with interviews**

Approaches to media handling

- **Apathy**
- **Arrogance**
- **Terror**



Why bother?



- To attract clients
- To influence opinion formers
- PR versus advertising

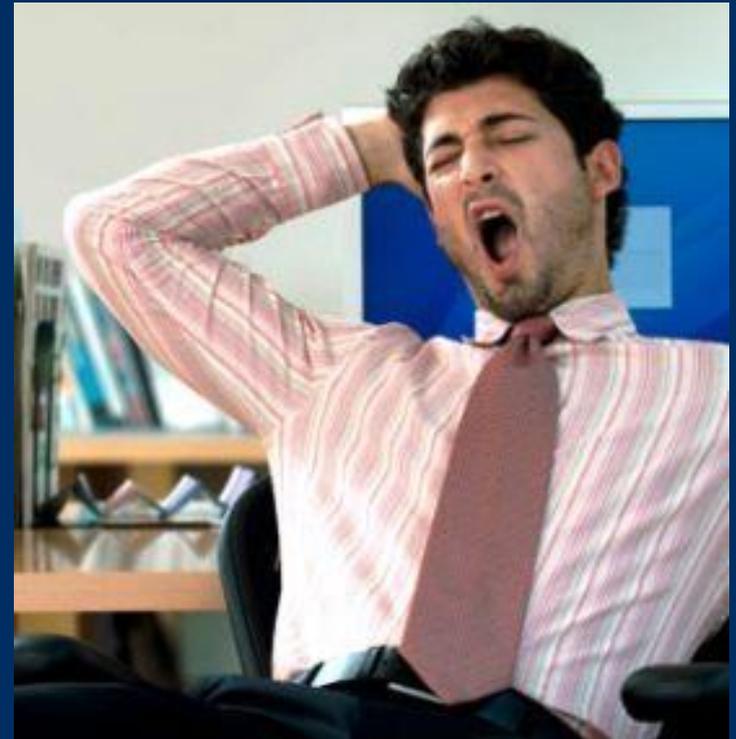
News is...

- Anything you don't want the journalist to know
- Local angle
- Hook
- Relevance



News is not...

- A 'puff' for your firm



- Something which happened last week

Getting the message across

- **Telephone/ Email**
- **Responding to an enquiry**
- **Social media**
- **Press release**

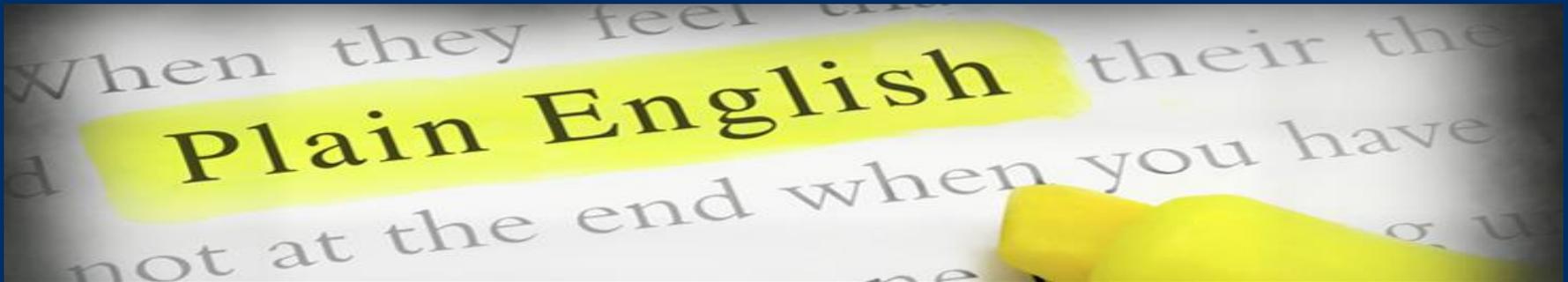


Writing the perfect press release

- Is it really news?
- Headline
- The first sentence
- Who, what, where, when, why?
- Quotes



Writing the perfect press release



- Avoid legal jargon
- The human angle
- Keep it short
- Contact details

- **Presentation**
- **Timing**
- **Follow-up**



Handling journalists

A journalist is not:

- **Your friend**
- **Your enemy**
- **Legally qualified**
- **Lazy**





NO TOURS
BEYOND
THIS POINT

Handling journalists

A journalist is:

- **Always under pressure**
- **Just trying to fill space**
- **Already thinking about the next deadline**
- **An opportunity**



Handling journalists

If a journalist contacts you:

- Don't shoot from the hip
- Stall if necessary
- If you can't help, point him in the right direction



Handling journalists

- **Be proactive (provided it's newsworthy)**
- **Be reliable**
- **Be trustworthy**
- **Be honest**



**“I did not have
sexual
relations with
that
woman...”**

Dealing with interviews

Remember the 5 'P's:

1. Poor

2. Planning

3. Produces

4. Poor

5. Performance

Dealing with interviews

Preparation:

- Prepare three key points
- Prepare for counter arguments
- Check the facts - and check again
- Paint pictures

Dealing with interviews

Preparation:

- Will it be live?
- Studio/office/phone?
- How long?
- Will anyone else be taking part?
- When will it be aired and where?



Dealing with interviews

Delivery:

- **Be concise**
- **Never repeat negative phrasing**
- **Soundbites**
- **Be sincere**

**And remember...
...it ain't over 'til it's over!**



“She was just a sort of bigoted woman. She said she used be a Labour voter. I mean it's just ridiculous.”

Golden rules

- **Respect deadlines**
- **Don't say 'no comment'**
- **Don't expect the journalist to be an expert**
- **Don't be flippant**

People say, "How can you sell this for such a low price?", I say, "because it's total crap."

"cheaper than an M&S prawn sandwich but probably wouldn't last as long."



Golden rules

- Don't dwell on negative questions
- Don't ask to see copy
- Never go 'off the record'

EVER !

THANK YOU

COURT REFORMS

- how are they going?

OPEN FORUM

Supreme Court



Greek Tragedy

- **MOTOR INSURER'S BUREAU v MORENO**
- **SC (Lord Mance JSC, Lord Clarke JSC, Lord Sumption JSC, Lord Toulson JSC, Lord Hodge JSC) 03/08/2016**
- **[2016] UKSC 52**



Insurance

- **CAMPBELL v PETER GORDON JOINERS LTD**
- **SC (Lady Hale, Deputy President, Lord Mance, Lord Reed, Lord Carnwath Lord Toulson) 06/07/2017**
- **[2016] UKSC 38**



Prison Case

- **COX v MINISTRY OF JUSTICE**
- **SC (Lord Neuberger PSC, Lady Hale DPSC, Lord Dyson JSC, Lord Reed JSC, Lord Toulson JSC) 02/03/2016**
- **[2016] UKSC 10**



**Ministry of
JUSTICE**



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Claimant

- **Susan Cox worked as the catering manager**
- **She had day to day charge of all aspects of catering at the prison.**



Claimant

- She ran the kitchen producing prisoners' food
- She was in charge of four members of staff
- Plus @ 20 prisoners who worked in the kitchen.



10 September 2007

- Kitchen supplies were delivered to the ground floor of the prison
- Mrs Cox instructed 4 prisoners to take them up to the kitchen stores.



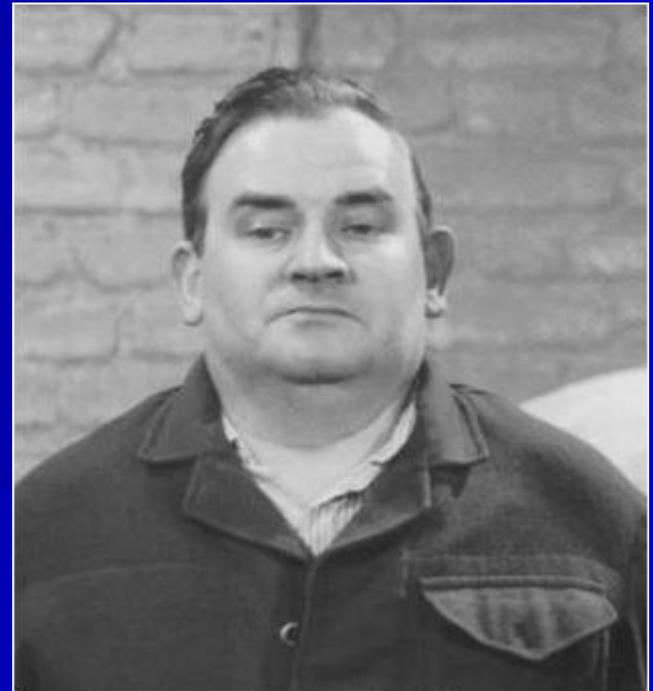
10 September 2007

- **During the process**
- **A sack of rice was dropped by a prisoner and burst open**
- **Mrs Cox bent to prop it up & prevent spillage.**



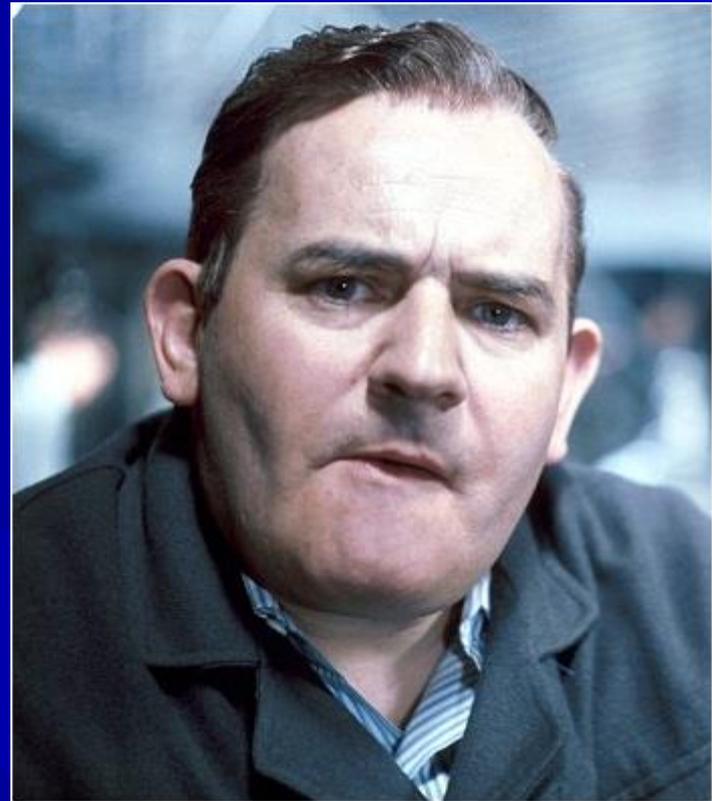
10 September 2007

- **Another prisoner: Mr Inder**
- **Attempted to carry two sacks past her**
- **Lost his balance**
- **Dropped a sack onto Mrs Cox's back.**



Accepted

- **Inder was negligent.**



First Instance

- Andrew Keyser QC held:
- “Payment for the work
- Is an 'element in the process of motivating prisoners' ...
- The position is not properly analogous to the employment situation”



Andrew Keyser QC - Held

- **MoJ not liable for the prisoner's**
- **“Disobedient and foolish” actions**
- **Mrs Cox appealed.**



Second Appeal



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How it Works

- The scope of vicarious liability
- Depends upon the answers to two questions.



First

- **What sort of relationship has to exist between an individual & a defendant**
- **Before the defendant can be made vicariously liable in tort**
- **For the conduct of that individual?**



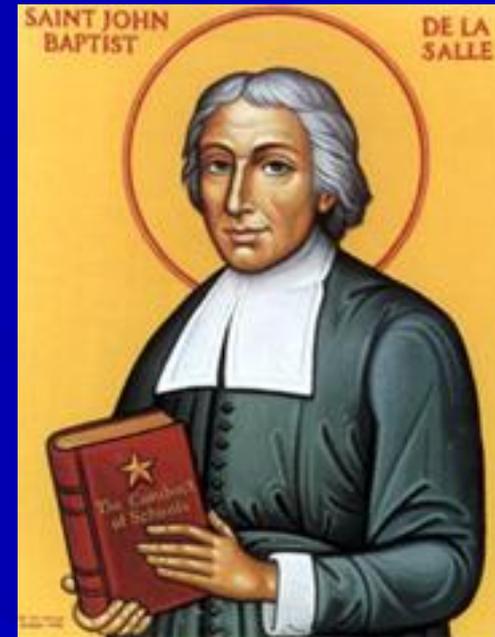
Second

- In what manner does the conduct of that individual
- Have to be related to that relationship
- In order for vicarious liability to be imposed on the defendant?



The Christian Brothers?

- Extended the scope of vicarious liability
- Beyond an employer's responsibility for the acts of its employees.



Limits

- It did not impose liability
- Where a tortfeasor's activities were entirely attributable
- To an independent business.



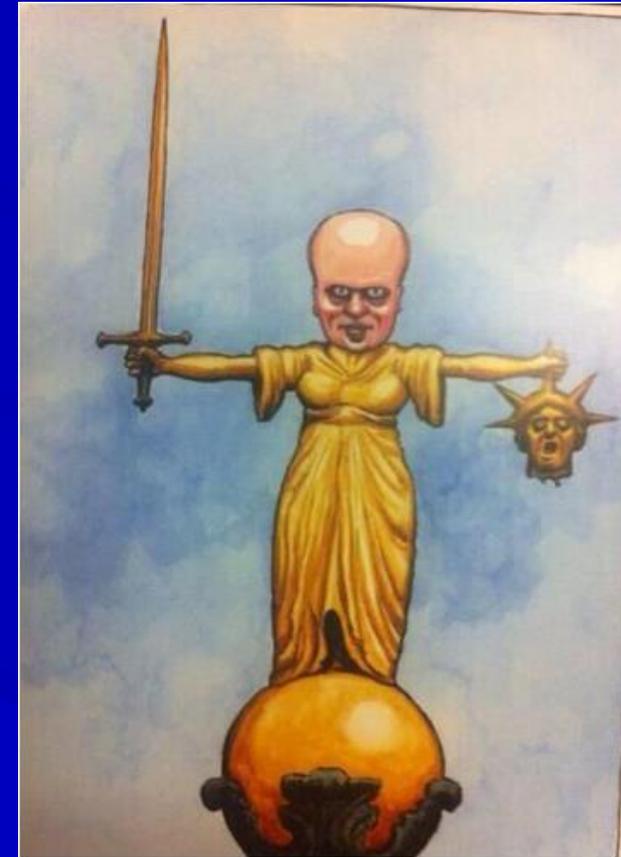
Consider

- **Who set in motion the activities connected with the tort and/or**
- **Who benefited from their performance?**



This Case

- **MoJ didn't have to carry on commercial activities**
- **Nor did it need to derive a profit from the tortfeasor's activities.**



Enough

- It was sufficient
- There was a defendant carrying on activities
- In furtherance of **its own** interests.



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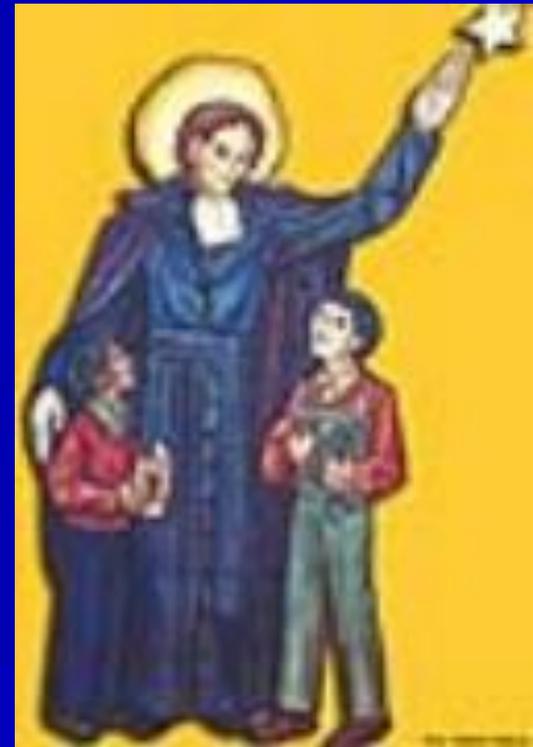
This Case

- **Defendants cannot avoid liability**
- **By technical arguments**
- **About the employment status of the tortfeasor.**



Held

- The Christian Brothers requirements were met
- The Ministry was vicariously liable.



Shopping?

- MOHAMUD v WM MORRISON SUPERMARKETS PLC
- SC (Lord Neuberger PSC, Lady Hale DPSC, Lord Dyson JSC, Lord Reed JSC, Lord Toulson JSC) 02/03/2016
- [2016] UKSC 11





Morrisons Small Heath Birmingham

The Original Claimant

- **Ahmed Mohamud was of Somali descent.**



15th March 2008

- He checked his car's tyre pressures
- Then he went into the shop
- He spoke to a staff member Mr Amjid Khan .



15th March 2008

- He politely asked if there was a printing facility
- And if it was possible to print off some documents stored on his USB stick.



Court of Appeal Applied

- **WARREN v
HENLYS LTD**
- **KBD (Hilbery, J.)
[1948] 2 All E.R. 935**



WARREN v HENLYS LTD

- Man employed selling petrol to motorists
- As requested by Warren he put petrol in his van
- Warren moved the van from the pump to make room for another car.



WARREN v HENLYS LTD

- He thought Warren was driving off without paying
- Employee pursued Warren and abused him
- Warren paid for the petrol.



WARREN v HENLYS LTD

- Warren called a Policeman
- He attempted to calm both men down.



WARREN v HENLYS LTD

- The PC turned his back
- The employee asked Warren if he'd report him to the defendants
- Warren said yes!



WARREN v HENLYS LTD

- The employee hit Warren and knocked him unconscious.



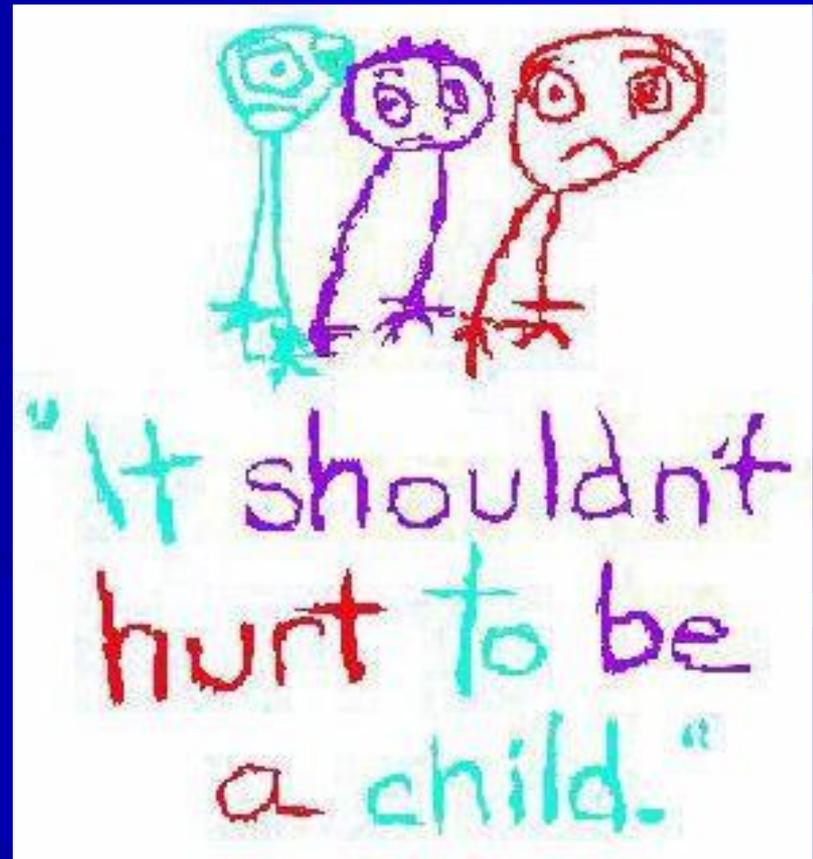
WARREN v HENLYS LTD

- The attack had no connection whatever
- With the discharge of any duty for the defendants - No liability.



Approved By

- **LISTER v HESLEY
HALL LTD**
- **[2002] 1 AC 215**



Lord Justice Treacy

- “Our law is not yet at a stage
- Where the mere fact of contact between a sales assistant and a customer
- Which is plainly authorised by an employer, is of itself
- Sufficient to fix the employer with vicarious liability.”



Supreme Court

- The "close connection" test is still what matters
- In its simplest terms
- Two matters have to be considered.



Matter One

1. What functions had been entrusted by the employer to the employee?
 - That had to be addressed broadly;



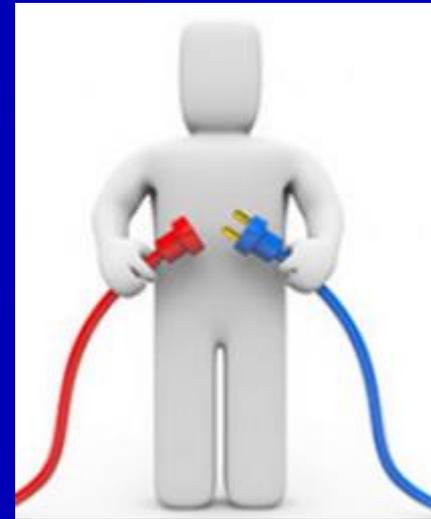
Matter Two

2. Was there sufficient connection between the employee's wrongful conduct
- & the position in which he was employed
 - To make it right for the employer to be fixed with vicarious liability?



Supreme Court

- The cases in which the necessary connection
- Had been found to exist.



Supreme Court

- Were those in which the employee had used *or*
- Misused his position
- In a way which injured the third party.



Supreme Court

- There's nothing wrong with the **close connection** test as such
- The law would not be improved by a change of vocabulary.

THE CLOSE
CONNECTION



Alternative Test

- “**Representative capacity**” test
- Would a reasonable observer consider the employee to be acting in a representative capacity?
- It was hopelessly vague!



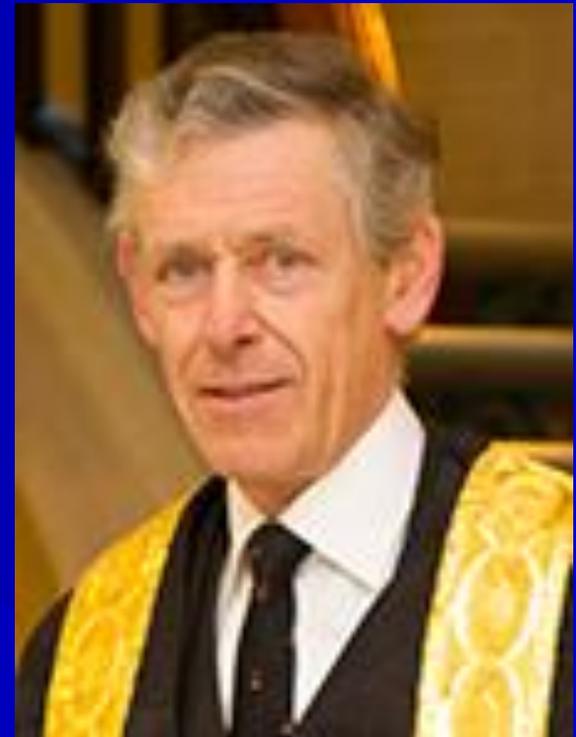
Lord Toulson

- “47. In the present case it was Mr Khan’s job
- To attend to customers and
- To respond to their inquiries.”



Lord Toulson

- “His conduct
- In answering the claimant’s request in a foul mouthed way *and*
- Ordering him to leave
- Was inexcusable”



Lord Toulson

- “But within the
“field of activities”
- Assigned to him.”



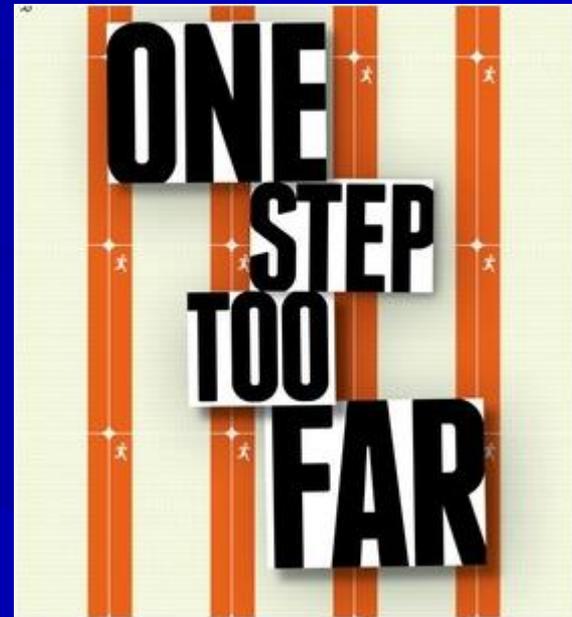
Lord Toulson

- “What happened thereafter
- Was an unbroken sequence of events.”



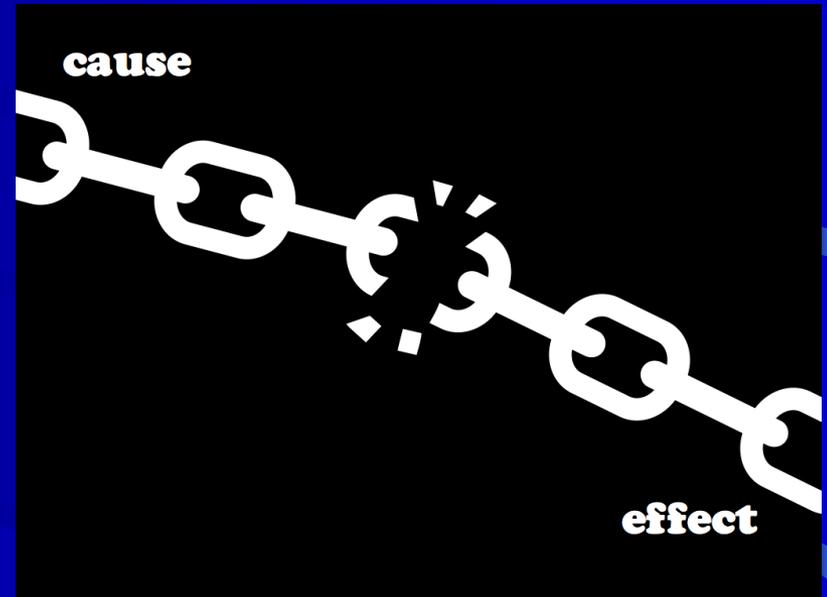
Lord Toulson

- “It was argued by the respondent
- And accepted by the judge”



Lord Toulson

- “That there ceased to be any significant connection
- Between Khan’s employment
- And his behaviour towards the claimant”



Lord Toulson

- “When he came out from behind the counter
- And followed the claimant onto the forecourt.”



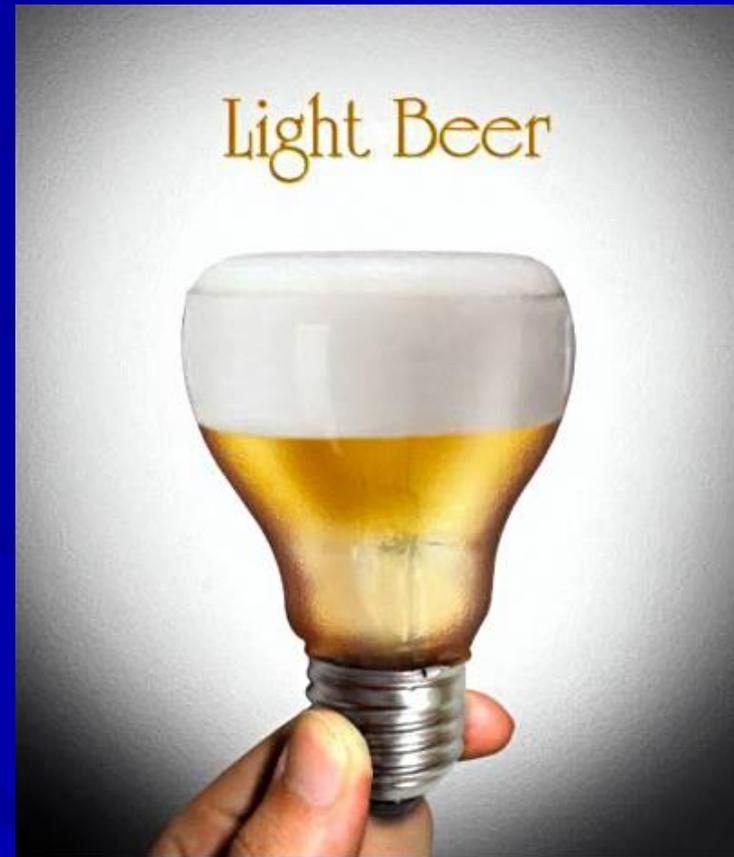
Lord Toulson

- “I disagree for two reasons.”



Lord Toulson

- “I do not consider that it is right
- To regard him as having
- **Metaphorically”**



Lord Toulson

- “Taken off his uniform
- The moment he stepped from behind the counter.”



Lord Toulson

- “ He was following up on what he had said to the claimant
- It was a seamless episode.”



Lord Toulson

- “When Mr Khan followed the claimant back to his car
- And opened the front passenger door”



Lord Toulson

- “He again told the claimant
- In threatening words
- That he was never to come back to petrol station.”



Lord Toulson

- “This was not something personal between them
- It was an order to keep away from his employer’s premises
- Which he reinforced by violence.”



Lord Toulson

- “In giving such an order he was purporting
- To act about his employer’s business.”



Lord Toulson

- “It was a gross abuse of his position
- But it was in connection with the business in which he was employed to serve customers.”



Lord Toulson

- “His employers entrusted him with that position *and*”



Lord Toulson

- “It is just that as between them and the claimant
- They should be held responsible for their employee’s abuse of it.”



Lord Toulson

- “48. Mr Khan’s motive is irrelevant
- It looks obvious that he was motivated by personal racism”



Result

- The appeal was allowed.



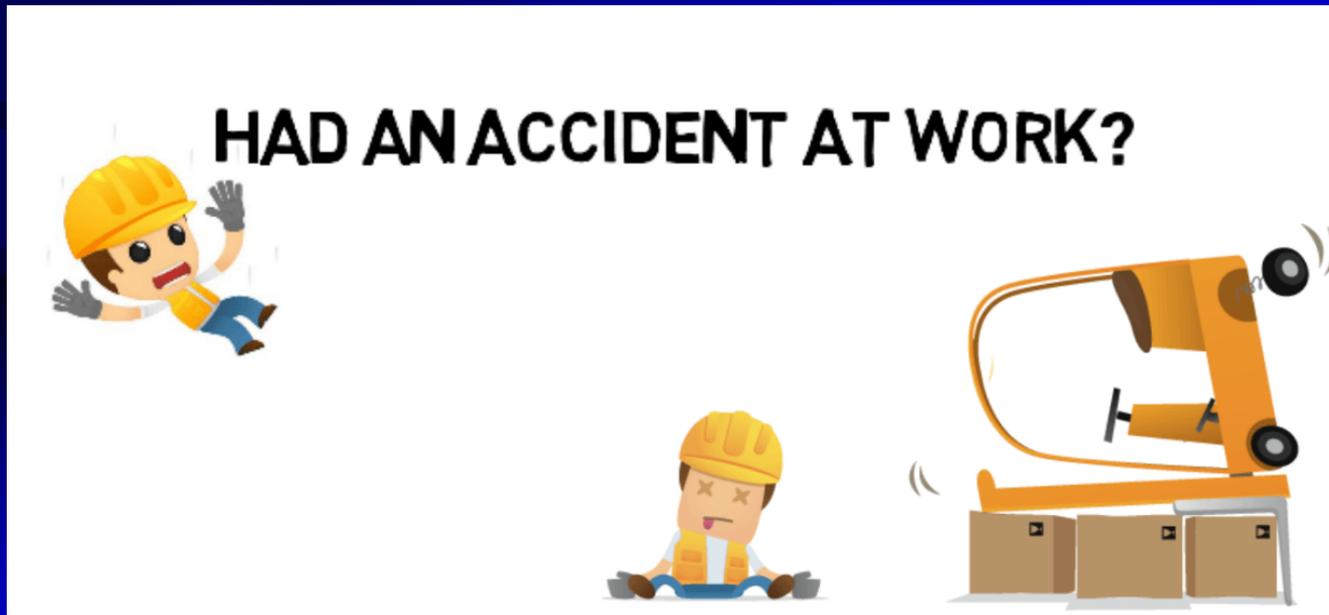
Fraud - Setting Aside Settlement

- HAYWARD v ZURICH INSURANCE CO PLC
- SC (Lord Neuberger PSC, Lady Hale DPSC, Lord Clarke JSC, Lord Reed JSC, Lord Toulson JSC) 27/07/2016
- [2016] UKSC 48



Basic History - 1998

- Colin Richard Hayward
- Injured in the course of his employment.



EL Insurers

- Zurich Insurance Company plc.



History

- **Claim made against the employer**
- **Liability remained in dispute**
- **Some correspondence followed**
- **Medical reports were exchanged between solicitors for the parties.**



Early Stages

- Zurich and its solicitors were suspicious Hayward might be exaggerating his injuries
- October 1999 - they instructed enquiry agents to undertake video surveillance.



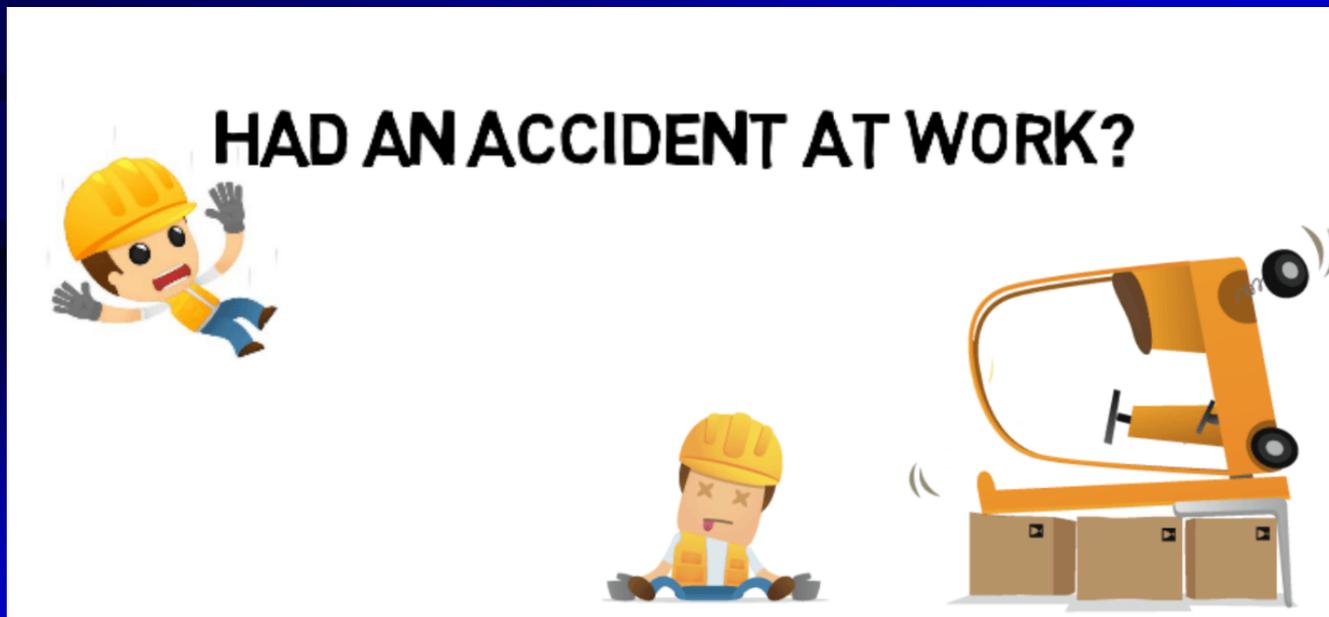
ZURICH[®]

INSIDER[™]

Simple, sharable insurance expertise
to give you the edge

Time Moves On

- 2001 - Hayward issued proceedings
- Particulars of claim – 11th September 2001.



Alleged....

- Hayward had suffered a spinal injury involving damage to two dorsal vertebrae
- Suffered continuing physical disabilities
- Was only fit for light work
- Plus he was also suffering from a depressive disorder of moderate severity.

**I FEEL
REALLY BAD!**

Medical Support

- Orthopaedic surgeon
Mr J Bracegirdle
- Consultant psychiatrist
Dr R. O'Flynn.



Schedule

- **Just under £420,000**
- **It included a claim for loss of earnings**
- **On the basis that Mr Hayward was and would remain**
- **Unfit for any work.**



Next Steps

- Zurich conducted the employer's defence
- Helpful video evidence was obtained
- Hayward was doing heavy work at home
- Zurich argued that he had exaggerated the consequences of his injury.



Nevertheless....

- The parties reached an agreement
- Zurich agreed to pay £134,973 in full and final settlement of the claim.



Putting people's livelihoods back on track.

Time Passes

- About 2 years later
- Hayward's neighbours
Mr and Mrs Ian Cox
- Approached the
employer



Their Evidence

- Hayward's conduct and activities showed
- Complete recovery from his injuries
- At least 1 year before the settlement.



Reaction

- Zurich sued claiming damages for deceit
- Asserting Hayward's statements about the extent of his injury
- In his P/C and witness statements constituted
- Fraudulent misrepresentations.



Trial

- His Honour Judge Moloney QC agreed
- Damages of £14,720 were awarded
- Hayward was ordered to repay the rest of the £134,973.



Court of Appeal – “Wrong”

- If fraudulent misrepresentation is the basis of a claim to rescind a contract
- You must have been **induced** into making the contract
- By a perception it was true.



Underhill LJ

This Case?

- You entered into an agreement to settle
- Having positively asserted statements in the P/C & witness statements
- Were dishonestly advanced.



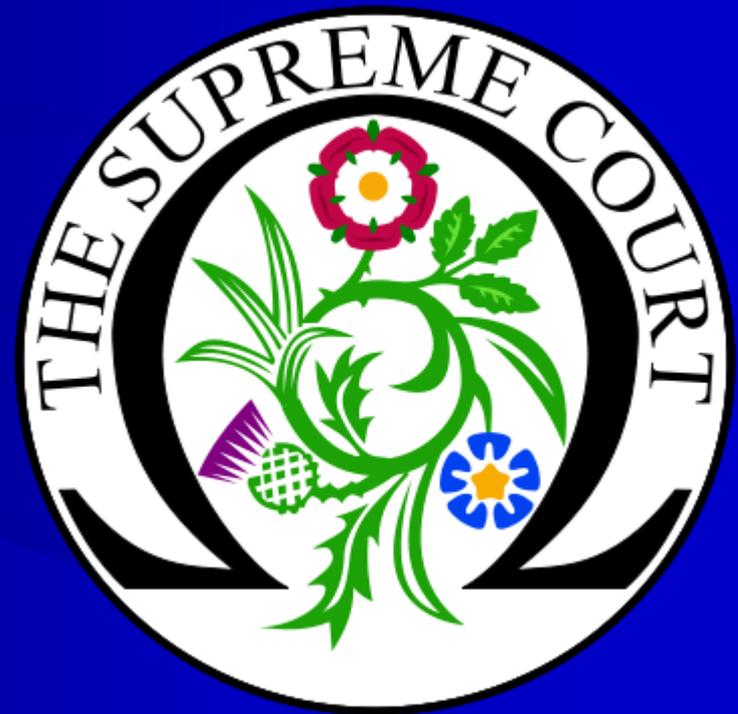
Appeal Allowed

- You implicitly agreed
- Not to later seek to have the settlement set aside
- On the basis that statements made in support of the claim were false.



Supreme Court

- No that's wrong!
- HHJ Moloney QC was right.



The Law Now

- Insurers who settle a PI claim when they **suspect** claimant fraud
- If they later discover **proof** of fraud
- Can be entitled to set aside that settlement.



Important

- Insurers seeking to set aside a settlement on the basis of
- “Fraudulent misrepresentation”
- Don’t have to prove they settled because they **believed**
- The misrepresentations were true.



I Believe Quotes And Sayings

How?

- Insurers merely have to show they'd been **influenced** by those misrepresentations
- Here **influenced** by statements made by the claimant about the extent of his injury.



How are People
INFLUENCED BY YOU?

Another Day?

- Just for the purposes of this appeal
- Zurich expressly conceded one point.

**CHOOSE EXCITEMENT
TODAY.
LOVE YOUR FUTURE
TOMORROW.**

ZURICH INSURANCE.
FOR THOSE WHO TRULY LOVE.



Conceded

- However a legal claim is settled
- A party seeking to set aside the settlement for fraud
- Must **prove** the fraud by evidence
- It **couldn't** have obtained by due diligence at the time of settlement.

ONE TIME OFFER

You'll Never See This Again



Note

- It made no difference to the outcome of this case at all
- The SC heard no argument about whether the concession was correct.

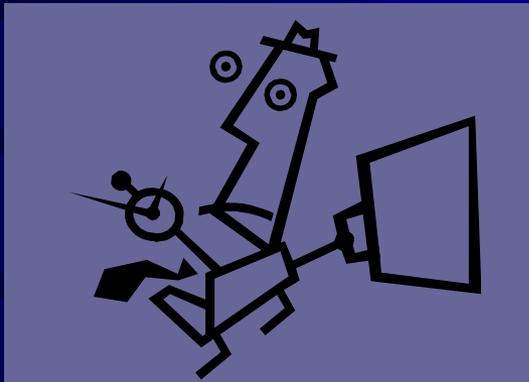


Comment

- “It is better to say nothing about it”
- Any opinion would have been obiter
- They hadn’t considered the relevant authorities or academic writing.



Lord Toulson



Nigel Tomkins
personal injury training
Consultancy

End of Session