

18 ST JOHN STREET CHAMBERS

CIVIL AND PERSONAL INJURY DEPARTMENT

JONATHAN DALE

VICARIOUS LIABILITY
"ON THE MOVE"
THE JOURNEY SO FAR

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INTRODUCTION

What is vicarious liability?

- A “species of strict liability”
- A “loss-distribution device”

Lister v Hesley Hall Limited, L Millett



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SCOPE OF VICARIOUS LIABILITY

Depends on answers to 2 questions

- What sort of relationship has to exist between an individual and a defendant?
- In what manner does the conduct of the individual have to be related to that relationship

Cox v Ministry of Justice, L Reed



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EMPLOYMENT RELATIONSHIP

The Salmond Test for acts in course of employment:

- Either a wrongful act authorised by employer;
or,
- A wrongful and unauthorised mode of doing an act authorised by employer



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LISTER v HESLEY HALL LIMITED **[2002] 1 A.C. 215**

- Marks the departure from the Salmond test in context of historical sexual abuse case (but of general application)
- Proper approach is to make a broad assessment of the nature of the employee’s employment



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MOHAMUD v WM MORRISON SUPERMARKETS PLC **[2016] A.C. 677**

- Reformulation of the test in context of assault case (again of general application)
- Court has to consider 2 questions
 1. What was the nature of the employee’s job?
 2. Whether there was sufficient connection between that and conduct for it to be fair and reasonable for VL to apply

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FLETCHER v CHANCERY SUPPLIES LIMITED **[2016] EWCA CIV 1112**

If the Court has no evidence about what the purpose of an employee’s negligent act was (in context, crossing a road) it will not be possible to show a sufficient connection between the employee’s work and the wrongful conduct to make it reasonable for VL to apply



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BELLMAN v NORTHAMPTON RECRUITMENT LIMITED **[2016] EWHC 3104**

A failed attempt to make an employer liable for an assault perpetrated on a social occasion -
- but everything depends on context!



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VARIOUS CLAIMANTS v CATHOLIC CHILD WELFARE SOCIETY AND OTHERS [2013] 2 A.C. 1 (“THE CHRISTIAN BROTHERS CASE)

- Where the defendant and tortfeasor are not employer / employee, but their relationship has the same incidents that relationship can give rise to VL on ground that it is akin to an employer / employee relationship



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COX v MINISTRY OF JUSTICE **[2016] A.C. 660**

- Application of the principles in the Christian Brothers case in context of accident caused by a serving prisoner working in prison kitchen
- The fact that purposes of activity not commercially motivated, but, serve the public interest -
 - no bar to VL



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