

HEALTH AND SAFETY CASEBOOK

**Key cases from 1837 to 2014, with particular
reference to the land-based industries**

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'Safety is not an intellectual exercise to keep us in work. It is a matter of life and death. It is the sum of our contributions to safety management that determines whether the people we work with live or die.'

Piper Alpha Public Inquiry, 1988-1990
The Cullen Inquiry
Sir Brian Appleton

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The law is complex and ever changing and the case summaries herein are intended as guidance and reference only. No responsibility is taken for any inaccuracies and fulfilment of legal obligations remains the reader's responsibility. Professional advice should be sought with regard to compliance or in the event of a dispute.

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Due to the nature of the subject matter, this collection of case notes will be updated periodically, thus observations, queries, corrections and suggestions for improvements to future editions are most welcome. Please send any such comments to the author :

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Note : the Health and Safety at Work etc. Act 1974 is abbreviated throughout to HASAWA.

The majority of cases relate to England and Wales. It is clear from the name of the court and / or the narrative where Scotland, Northern Ireland or Éire are involved.

The substantive law operative through England, Scotland, Wales and Northern Ireland is largely the same. But note ...

Northern Irish readers will be aware that many elements of secondary legislation have been implemented under separate regulations to those operative in England, Wales and Scotland.

In **Scotland**, although the legislative framework is the same in this area of law, differences in criminal procedure and, to a lesser extent, tortious principles, will need to be borne in mind.

The Health and Safety Executive have regional branches as follows :

England and Wales
and generally
applicable information

Health and Safety Executive
www.hse.gov.uk/

Scotland

Health and safety at work in Scotland
www.hse.gov.uk/scotland/

Northern Ireland

Health and Safety Executive Northern Ireland
www.hseni.gov.uk/

Foreword

This book is *not* a general guide to the law or good practice for employers on health, safety and welfare at work. What it is, is a reference to some of the key cases where personal injury, psychological damage, damage to property or, too often, fatality, has been caused directly or indirectly by the operation of an undertaking - whether the claims are by employees or others. The cases date from 1837 (with the earliest known, albeit unsuccessful, attempt of an injured employee to ascribe liability to his employer - *Priestley v Fowler*), through to 2014. Cases reflect criminal prosecutions for breaches of statutory duties under health and safety legislation, and supporting regulations. There are also cases which were taken to the civil courts with a claim in negligence, nuisance and the like, and still others heard at first instance by an Employment Tribunal with regard to the contract of employment.

Detailed legal provisions and work practice guidelines are available in many textbooks, on the Health and Safety Executive website and, of course, in the primary and secondary legislation and this book is in no way a substitute for reference to those materials. The guide simply seeks to set out many of the cases in one place for ease of reference if they are come across elsewhere, and for reviewing a number of cases on the same subject area to, hopefully, help understand legal expectations and obligations and, importantly, the way the courts, from those of first instance through to the highest level, apply the law.

Most cases are of general relevance but an attempt has been made to gather together some cases of particular interest to rural practitioners, e.g. those involving agriculture, large livestock (cattle and horses) and falling trees. For a view of more specialist cases on the criminal side, the Health and Safety Executive maintain an open access prosecutions website where very brief outline details of cases can be found, searchable under industry, geographical area or name of defendant : www.hse.gov.uk/prosecutions/.

The majority of the cases have been included as they illuminate or develop a particular point of law. Others, however, are included purely for illustrative purposes, notably, some of the recent Health and Safety Executive farm / agriculture prosecutions. There are also a small number of cases brought in the civil courts under negligence, occupiers' liability or the Animals Act.

There is, in addition to the alphabetical listing, a listing under point of law / subject area (see contents for topics).

A bibliography at the back of the book also provides a direction to further resources, official, practical and academic.

Table of Cases

A small number of cases in the table have not been summarised. They have been included in the table as they are mentioned in the summaries and a full citation is given here.

Addie and Sons (Collieries) Limited, Robert v Dumbreck 1929 SC (HL) 51, 1929 SLT 242, [1929] AC 358, [1929] UKHL 3

Adsett v K and L Steel Founders and Engineers Limited [1953] 1 All ER 97, [1953] 1 WLR 773, 51 LGR 418, 97 Sol Jo 419

Aitkenhead, James Alister and Strang Steel, Robert Stanley v Procurator Fiscal [2006] HCJAC 51, appeal nos. XJ130/06, XJ131/06

Alcock v Chief Constable of the South Yorkshire Police [1991] 4 All ER 907

Ali v Courtaulds Textiles Limited [1999] EWCA Civ 1486, 52 BMLR 159

Allen v London Borough of Barnet [1997] EWCA Civ 2780

Allison v London Underground Limited [2008] EWCA Civ 71, [2008] ICR 719, [2008] IRLR 440, [2008] PIQR P185, 152 Sol Jo (no 8) 34, [2008] All ER (D) 185 (Feb)

Alsop v Sheffield City Council [2002] EWCA Civ 429, [2002] All ER (D) 45 (Mar)

Armour v Skeen [1977] IRLR 310, (1977) JC 15, (1977) SLT 71

Atkins, Albert v Scott, Sir James Bt (2008) Aldershot and Farnham County Court, 14th August 2008

Autoclenz Limited v Belcher and others [2011] UKSC 41, [2011] 4 All ER 745, [2011] ICR 1157, [2011] IRLR 820, [2011] NLJR 1099, (2011) *The Times*, 5th August, [2011] All ER (D) 251 (Jul)

Bain v Fife Coal Co. Limited (1935) SC 681

Baker v Quantum Clothing Group Limited and other companies [2011] UKSC 17, [2011] 4 All ER 223

Balfour Kilpatrick Limited v Acheson and Others [2003] IRLR 683, [2003] All ER (D) 15 (Apr)

Bilton v Fastnet Highlands Limited [1998] SLT 1323

Bowen and others v National Trust [2011] EWHC 1992 (QB)

Boyle v Kodak Limited [1969] 2 All ER 439, [1969] 1 WLR 661

British Railways Board v Herrington [1972] AC 877, [1972] 1 All ER 749

British Waterways v Royal and Sun Alliance Insurance plc [2012] EWHC 460 (Comm)

Burrow v Commissioner of Police for the Metropolis [2004] EWHC 1435 (QBD), [2004] All ER (D) 170

Bux v Slough Metals Limited [1974] 1 All ER 262

Byrne v Boadle (1863) 2 H and C 722, (1863) 159 ER 299, 33 LJ Ex 13, 10 Jur NS 1107, 3 New Rep 162, 12 WR 279, 9 LT 450, [1861-73] All ER Rep Ext 1528

Cambridge Water Co. Limited v Eastern Counties Leather plc [1994] 1 All ER 53, [1994] 2 WLR 53, [1994] 1 Lloyd's Rep 261, [1994] NLJR 15, 138 Sol Jo24

Caparo Industries plc v Dickman [1990] 2 AC 605, [1990] 1 All ER 568, [1990] 2 WLR 358, [1990] BCLC 273, [1990] BCC 164, 11 LDAB 563, 134 Sol Jo494, [1990] NLJR 248, [1991] LRC (Comm) 460

C Evans and Sons Limited v Spritebrand [1985] 2 All ER 415

Chapman v Barking and Dagenham LBC [1998] ECWA Civ 1200

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Davie v New Merton Board Mills and others [1959] AC 604, [1959] 1 All ER 346, [1959] 2 WLR 331, 103 Sol Jo 177

Davies v Health and Safety Executive [2002] EWCA Crim 2949, [2003] IRLR 170, [2003] 09 LS Gaz R 27, (2002) *The Times*, 27th December, 147 Sol Jo 29

Dietrich v Westdeutscher Rundfunk [2000] ECR I-5589

Donoghue v Stevenson [1932] AC 562, 101 LJPC 119, 37 Com Cas 350, [1932] All ER Rep 1, 76 Sol Jo3 96, 147 LT 281, 48 TLR 494, 1932 SC (HL) 31, 1932 SLT 317

Dugmore v Swansea NHS Trust and another [2002] All ER 333

Edwards v National Coal Board [1949] 1 KB 704, [1949] 1 All ER 743, 93 Sol Jo 337, 65 TLR 430

Egan v Central Manchester and Manchester Children's University Hospitals NHS Trust [2008] EWCA Civ 1424, [2009] ICR 585, (2009) *The Times*, 3rd February, [2008] All ER (D) 153 (Dec)

E H Humphries (Norton) Limited and Thistle Hotels plc v Fire Alarm Fabrication Services Limited and others [2006] EWCA Civ 1496, [2007] ICR 247, (2006) *The Times*, 22nd November, [2006] All ER (D) 133 (Nov)

Ellis v Bristol City Council [2007] EWCA Civ 685, [2007] ICR 1614, [2007] PIQR P397, (2007) *The Times*, 21st August, [2007] All ER (D) 76 (Jul)

European Commission v United Kingdom C-127/05 [2007] ECR I-4619, [2007] All ER (EC) 986, [2007] 3 CMLR 508, [2007] ICR 1393, [2007] IRLR 720, (2007) *The Times*, 25th June, [2007] All ER (D) 126 (Jun)

Eyres v Atkinsons Kitchens and Bedrooms Limited [2007] EWCA Civ 365, (2007) *The Times*, 21 May, 151 *Sol Jo* 576, [2007] All ER (D) 201 (Apr)

Fairchild v Glenhaven Funeral Services Limited and others [2002] [2002] UKHL 22, [2003] 1 AC 32, [2002] 3 All ER 305, [2002] ICR 798, [2002] IRLR 533, 67 BMLR 90, (2002) *The Times*, 21st June, [2003] 1 LRC 674, [2002] All ER (D) 139 (Jun)

Ferguson v Welsh [1987] 3 All ER 777, [1987] 1 WLR 1553

Galashiels Gas Co. Limited v O'Donnell (or Millar) [1949] AC 275, [1949] 1 All ER 319, 47 LGR 213, 113 JP 144, [1949] LJR 540, 93 *Sol Jo* 71, 65 TLR 76

General Cleaning Contractors Limited v Christmas [1952] 2 All ER 1110

Goldsmith v Patchcott and another [2012] EWCA Civ 183

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Hamilton v National Coal Board [1960] AC 633, [1960] 1 All ER 76, [1960] 3 WLR 313, 124 JP 141, 104 *Sol Jo* 106, 1960 SLT 24

Hampstead Heath Winter Swimming Club v Corporation of London [2005] EWHC 713, [2005] 1 WLR 2930

Harris v Evans [1998] [1998] 1 WLR. 1285, [1998] 3 All E.R. 522, [1998] EHLR 142, *The Times*, 5th May, 1998.

Health and Safety Executive v Thames Trains Limited [2003] EWCA Civ 720 CA

Heaven v Pender (1883) 11 QBD 503, 47 JP 709, 52 LJQB 702, [1881-5] All ER Rep 35, 27 *Sol Jo* 667, 49 LT 357

Hindle v Birtwistle [1897] 1 QB 192, 61 JP 70, 66 LJQB 173, 18 Cox CC 508, 45 WR 207, [1895-9] All ER Rep 175, 41 *Sol Jo* 171, 76 LT 159, 13 TLR 129

HM Advocate v Buccleuch Estates (2013) Dumfries Sheriff Court, 18th December 2013

HM Advocate v G Orr (2011) Cupar Sheriff Court, 15th September 2011
HM Advocate v Munro and Sons (Highland) Limited [2009] HCJAC 10
HM Advocate v Scottish Sea Farms Limited and Logan Inglis Limited [2012] HCJAC 11
HM Advocate v West Minch Salmon (2011) Stornoway Sheriff Court, 9th November 2011
Hudson v Ridge Manufacturing Co. Limited [1957] 2 QB 348, [1957] 2 All ER 229, [1957] 2 WLR 948, 101 Sol Jo 409
Hughes v Rosser (2008) Swansea County Court, claim no. 6HV01128
Hutchinson v York, Newcastle and Berwick Railway Co. (1850) 6 Ry and Can Cas 580, 19 LJ Ex 296, 5 Exch 343, 14 Jur 837, 15 LTOS 230

Imperial Chemical Industries Limited v Shatwell [1965] AC 656, [1964] 2 All ER 999, [1964] 3 WLR 329, 108 Sol Jo 578
John Summers and Sons Limited v Frost [1955] AC 740, [1955] 1 All ER 870, [1955] 2 WLR 825, 53 LGR 329, 99 Sol Jo 257

Kent v Marquis of Bristol [1947] *Quarterly Journal of Forestry*, 47: 1, 23-5
Kent County Council v Health and Safety Executive [2004] EWHC 2861 (Admin.)
Kilgollan v William Cooke and Co. Limited [1956] 2 All ER 294, [1956] 1 WLR 527
Knowles v Liverpool City Council [1993] 4 All ER 321, [1993] 1 WLR 1428, 91 LGR 629, [1994] 1 Lloyd's Rep 11, [1994] ICR 243, [1993] IRLR 588, [1993] NLJR 1479n, [1994] PIQR P 8
Kozłowska v Judie Thurloe Sports Horses [2012] EWCA Civ 236

Langridge v Howletts and Port Lympe Estates Limited (1996) 95 LGR 798, [1997] ICR 925, [1997] JPIL 51
Latimer v AEC Limited [1953] AC 643, [1953] 2 All ER 449, 51 LGR 457, 117 JP 387, 97 Sol Jo 486
L H Access Technology Limited and Border Rail and Plant Limited v HM Advocate [2009] HCJAC 11, 2009 SCCR 280
Lister and others v Hesley Hall Limited [2001] UKHL 22, [2002] 1 AC 215, [2001] 2 All ER 769, [2001] IRLR 472 [2001] Fam Law 595, [2001] ELR 422, [2001] NLJR 728, (2001) *The Times*, 10th May, 145 Sol Jo 126,

Lister v Romford Ice and Cold Storage Co. Limited [1957] AC 555, [1957] 1 All ER 125, [1957] 2 WLR 158, [1956] 2 Lloyd's Rep 505, 121 JP 98, 101 Sol Jo 106

Lynch v Binnacle Limited t/a Cavan Co-op Mart (2011) IESC 8

Lynch v Ceva Logistics Limited [2011] EWCA Civ 188, [2011] ICR 746, [2011] All ER (D) 291 (Feb)

M'Alister (or Donoghue) v Stevenson [1932] - see *Donoghue v Stevenson* [1932]

MacLellan v Forestry Commission (2005) QBD (TTC) Bristol, unreported.

Macpherson v Buick Motor Co. 217 NY 382, 111 NE 1050 (1916)

Mailer v Austin Rover Group Limited [1990] 1 AC 619, [1989] 2 All ER 1087, [1989] 3 WLR 520, [1990] ICR 133, [1989] IRLR 404

Marshall v Gotham [1954] AC 360, [1954] 1 All ER 937, [1954] 2 WLR 812, 98 Sol Jo 268

McArdle v Andmac Roofing Co. and others (1967) 1 AER 583, [1967] 1 WLR 356, 111 Sol Jo 37

McDermid v Nash Dredging and Reclamation Co. Limited [1987] AC 906, [1987] 2 All ER 878, [1987] 3 WLR 212, [1987] 2 Lloyd's Rep 201, [1987] IRLR 334, 131 Sol Jo 973,

McDonnell v Henry and McDonnell [2005] NICA 17, [2006]

McGhee v National Coal Board [1972] 3 All ER 1008, [1973] 1 WLR 1, 13 KIR 471, 116 Sol Jo 967

McKaskie v Cameron (2009) Preston County Court, 1st July 2009

McLean v University of St Andrews (2004) Outer House, Court of Session 24th February 2004, A1143/01

McWilliams v Sir William Arrol and Co. Limited [1962] 1 All ER 623, [1962] 1 WLR 295, 106 Sol Jo 218, 1962 SC 70, 1962 SLT 121

Meridian Global Funds Management Asia Limited v Securities Commission [1995] 2 AC 500

Mersey Docks and Harbour Board v Coggins and Griffiths (Liverpool) Limited [1947] AC 1, [1946] 2 All ER 345, 115 LJKB 465, 90 Sol Jo 466, 175 LT 270, 62 TLR 533

Micklewright v Surrey County Council [2011] EWCA Civ 922

Mirvahedy v Henley [2003] UKHL 16, [2003] 2 All ER 401

Nolan v Dental Manufacturing Co. [1958] 2 All ER 449, [1958] 1 WLR 936, 102 Sol Jo 619

Osborne v Bill Taylor of Huyton Limited [1982] ICR 168, [1982] IRLR 17
Oudahar v Esporta Group Limited (Unfair Dismissal) [2011] UKEAT
0566/10/2206

Paris v Stepney Borough Council [1951] AC 367, [1951] 1 All ER 42, 49 LGR
293, 84 Ll L Rep 525, 115 JP 22, 94 Sol Jo837

Philiphaugh Trust Estate - Inquiry into the death of Douglas Armstrong, 28th
August 2008, Selkirk Sheriff Court.

Piggott Bros. and Co. Limited v Jackson [1992] ICR 85, [1991] IRLR 309

Pola, Shah Nawaz v Health and Safety Executive [2009] EWCA Crim 655,
[2010] 1 Cr App Rep (S) 32, [2009] Crim LR 603, [2009] All ER (D) 76 (Apr)

Poll v Viscount Asquith of Morley [2006] All ER (D) 158

Priestley v Fowler (1837) 7 LJ Ex 42, 1 Jur 987, 3 M and W 1, Murp and H 305,
150 ER 1030, [1835-42] All ER Rep 449

Puzey v Wellow Trekking (2005) Bristol County Court BS31192, 11th February
2005

Quinn v Bradbury and Bradbury [2012] IEHC 106, 2008/5709

R v Aceblade Limited [2001] 1 Cr App R (S) 105

R v Associated Octel Co. Limited [1996] 4 All ER 846, [1996] 1 WLR 1543,
[1996] ICR 972, [1997] IRLR 123, [1997] Crim LR 355, [1996] NLJR 1685

R v B and Q plc [2005] [2005] EWCA Crim 2297, (2005) *The Times*, 3rd
November, [2005] All ER (D) 153 (Sep)

R v Balfour Beatty Rail Infrastructure Services Limited [2006] [2006] EWCA
Crim 1586, [2007] Bus LR 77, [2007] 1 Cr App Rep (S) 370, [2007] ICR 354,
(2006) *The Times*, 18th July, [2006] All ER (D) 47 (Jul)

R v Barrow-in-Furness Borough Council (2005 and 2006) Preston Crown Court

R v Beckingham [2006] EWCA Crim 773

R v Binning, James (2014) Oxford Crown Court, 14th March 2014

R v Boal [1992] QB 591, [1992] 3 All ER 177, [1992] 2 WLR 890, 95 Cr App Rep
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R v Board of Trustees of the Science Museum [1993] 3 All ER 853, [1993] 1 WLR 1171, [1993] ICR 876

R v British Steel plc [1995] 1 WLR 1356, [1995] ICR 586, [1995] IRLR 310, [1995] Crim LR 654

R v British Sugar plc (2005) Bury St Edmund's Crown Court, 8th February 2005

R v Cardiff City Transport Services [2000] EWCA Crim 97, [2001] 1 Cr App Rep (S) 141, [2000] All ER (D) 711

R v Chargot and others [2008] UKHL 73, [2009] 2 All ER 645, [2009] 1 WLR 1, (2008) Times, 16th December, 153 Sol Jo (no 1) 32, [2008] All ER (D) 106 (Dec)

R v Colthrop Board Mills Limited [2002] Cr App R (S) 80

R v Cotswold Geotechnical (Holdings) Limited and Peter Eaton [2011] EWCA Crim 1337, (2011) *The Times*, 20th July, [2011] All ER (D) 100 (May)

R v Counsell, Geoffrey (2013) Bristol Crown Court, 10th December 2013

R v Crow [2002] 2 Cr App R (S) 49

R v DPP ex parte Timothy Jones [2000] IRLR 373

R v ESB Hotels Limited [2005] EWCA Crim 132

R v F Howe and Son (Engineers) Limited [1999] 2 All ER 249, [1999] 2 Cr App Rep (S) 37, [1999] IRLR 434, 163 JP 359, [1999] Crim LR 238, [1998]

R v F J Chalcraft Construction Limited [2008] EWCA Crim 770

R v Fresha Bakeries Limited and Harvestine Limited [2003] 1 Cr App R (S) 44

R v Friskies Petcare UK Limited [2000] 2 Cr App Rep (S) 401

R v Gateway Foodmarkets Limited [1997] 3 All ER 78, [1997] 2 Cr App Rep 40, [1997] ICR 382, [1997] IRLR 189, [1997] Crim LR 512, 141 Sol Jo 28

R v Hall Hunter Partnership (Farming) Limited (2005) Reading Crown Court, July 2005

R v Holtom [2010] EWCA Crim 934, [2011] 1 Cr App Rep (S) 128, 174 CL and J 285, 174 CL and J 637, [2010] All ER (D) 124 (Apr)

R v HTM Limited [2006] EWCA Crim 1156, [2007] 2 All ER 665, [2006] ICR 1383, [2006] All ER (D) 299 (May)

R v Jarvis Facilities Limited [2005] EWCA Crim 1409, [2006] 1 Cr App Rep (S) 247, (2005) *The Times*, 6th June, [2005] All ER (D) 429 (May)

R v J M W Farms Limited (2012) NICC 17, Belfast Crown Court

R v J Murray and Sons Limited (2013) NICC 15, Downpatrick Crown Court

R v John Pointon and Sons [2008] EWCA Crim 513

R v Lion Steel Equipment Limited (2012) Manchester Crown Court, 20th July 2012.

R v Lucas [1981] QB 720

R v Mark and Nationwide Heating Services Limited [2004] EWCA Crim 2490, [2004] All ER (D) 35 (Oct)

R v Middleton [2001] Crim LR 251

R v Milford Haven Port Authority [2000] 2 Cr App Rep (S) 423, [2000] JPL 943, [2000] All ER (D) 352

R v MNS Mining Limited (2014) Swansea Crown Court

R v Mobile Sweepers (2014) Winchester Crown Court, 26th February 2014

R v Morris, Marshall and Poole (2011) Mold Crown Court, sitting in Chester Crown Court 20th December 2011, ref. T20110335

R v OLL Limited and Peter Kite [1994] 2 Cr App R (S) 295, *The Times*, 9th December

R v P Limited and others [2007] EWCA Crim 1937, [2008] ICR 96, (2007) *The Times*, 13th August, 151 *Sol Jo* 987, [2007] All ER (D) 173 (Jul)

R v P and O European Ferries (Dover) Limited [1991] 93 Cr App Rep 72, [1991] Crim LR 695

R v Porter [2008] EWCA Crim 1271, [2008] ICR 1259, (2008) *The Times*, 9th July, [2008] All ER (D) 249 (May)

R v Princes Sporting Club Limited (2013) Southwark Crown Court, 22nd November 2013

R v PS and JE Ward Limited (2014) Norwich Crown Court, 14th April 2014

R v Rollco Screw and Rivet Co. Limited [1999] 2 Cr App Rep (S) 436

R v Sellafield Limited and R v Network Rail Infrastructure Limited [2014] EWCA Crim 49

R v Swan Hunter Shipbuilder and Another [1982] 1 All ER 264, [1981] 2 Lloyd's Rep 605, [1981] ICR 831, [1981] IRLR 403, [1981] Crim LR 833

R v Tangerine Confectionery Limited and Veolia ES (UK) Limited [2011] EWCA Crim 2015

R v TDG (UK) Limited [2008] EWCA Crim 1963

R v Total (UK) Limited, Hertfordshire Oil Storage Limited, Motherwell Control Systems (2003) Limited, Tav Engineering Limited, and British Pipeline Agency Limited (2010) St Albans Crown Court, 16th July 2010

R v Transco plc [2006] EWCA Crim 838

R v Turnbull, Allan and Taylor, Christopher (2013) Newcastle Crown Court, T20127180.

R v Velcourt (2011) Salisbury Crown Court, 17th May 2011

R v Watkin Jones and Son Limited [2013] EWCA Crim 969

R v Wilson and Mainprize [2004] EWCA Crim 2086, [2005] 1 Cr App R (S) 64

Reid v Equiworld Club Ltd (2010) Aberdeen Sheriff Court, 23rd November 2010, A1967/07

Richard Thomas and Baldwins Co. Limited v Cummings [1955] AC 321, 1 All ER 285

Robb v Salamis (M and I) Limited [2006] UKHL 56, [2007] 2 All ER 97 HL

Rose v Plenty [1976] 1 All ER 97, [1976] 1 WLR 141, [1976] 1 Lloyd's Rep 263, [1975] ICR 430, [1976] IRLR 60, 119 Sol Jo 592

Ross v Tennant Caledonian Breweries Limited (1983) SLT 676

Rylands v Fletcher (1868) LR 3 HL 330, 33 JP 70

Schwalb v H Fass and Son Limited (1946) 90 Sol Jo 394, 175 LT 345

Selwyn-Smith v Gompels (2009) Swindon County Court, 22nd December 2009

Shirvell v Hackwood Estates Co Ltd [1938] 2 All ER , 2KB 577

Smith v Charles Baker and Sons [1891] AC 325, 55 JP 660, 60 LJQB 683, 40 WR 392, [1891-4] All ER Rep 69, 65 LT 467, 7 TLR 679

Spalding v University of East Anglia [2011] EWHC 1886 (QB), [2011] All ER (D) 11 (Aug)

Square D Limited v Cook [1992] ICR 262, [1992] IRLR 34, [1992] PIQR P 33, 135 Sol Jo 180

Stark v The Post Office [2000] All ER (D) 276

Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Limited [1968] 1 WLR 1776, 5 KIR 401, 112 Sol Jo 821

Sutherland v Hatton; Barber v Somerset County Council; Jones v Sandwell Metropolitan District Council; Bishop v Baker Refractories Limited [2002] EWCA Civ 6, [2002] 2 All ER 1, [2002] ICR 613, [2002] IRLR 263, 68 BMLR 115, (2002) *The Times*, 11th February, [2002] All ER (D) 53 (Feb)

Tesco Supermarkets Limited v Natrass [1972] AC 153, [1971] 2 All ER 127, [1971] 2 WLR 1166, 69 LGR 403, 135 JP 289, 115 Sol Jo 285

Thompson v Smiths Shiprepairers (North Shields) Limited [1984] QB 405, [1984] 1 All ER 881, [1984] 2 WLR 522, [1984] ICR 236, [1984] IRLR 93, 128 Sol Jo 225

Threlfall v Hull City Council [2010] EWCA Civ 1147, [2011] ICR 209, (2011) *The Times*, 4th March, [2010] All ER (D) 184 (Oct)

Transco plc v HM Advocate [2004] SLT 995

Turnbull v Warrener [2012] EWCA Civ 412, 156 Sol Jo (no 14) 31, [2012] All ER (D) 51 (Apr)

Twine v Bean's Express Limited (1946) 202 LT 9, 62 TLR 458

Uddin v Associated Portland Cement Manufacturers Limited [1965] 2 QB 582, [1965] 1 All ER 213, [1965] 2 WLR 1183, 63 LGR 241, 109 Sol Jo 313

Uren v Corporate Leisure (UK) Limited and Ministry of Defence [2011] EWCA Civ 66, [2011] ICR D11, [2011] All ER (D) 49 (Feb)

Walker v Northumberland County Council [1995] 1 All ER 737, [1995] ICR 702, [1995] IRLR 35, [1995] ELR 231, [1994] NLJR 1659

Wallace v Newton [1982] 2 All ER 106, [1982] 1 WLR 375, 126 Sol Jo 101

Ward v Tesco Stores Limited [1976] 1 All ER 219, [1976] 1 WLR 810, [1976] IRLR 92, 120 Sol Jo 555

Whitehead v Trustees of the Chatsworth Settlement [2012] EWCA Civ 263

Wilson and Clyde Coal Co. Limited v English [1938] AC 57, [1937] 3 All ER 628, 106 LJPC 117, 81 Sol Jo 700, 157 LT 406, 53 TLR

Legislation

Animals Act 1971

Coal Mines Act 1911 (repealed)

Corporate Manslaughter and Corporate Homicide Act 2007

Criminal Justice Act 2003

Criminal Procedure (Scotland) Act 1995

Employers' Liability Act 1880 (repealed)

Employers' Liability (Defective Equipment) Act 1969

Employment Rights Act 1996

Factories Act 1937 (repealed)

Factories Act 1947 (repealed)

Factories Act 1961

Factory and Workshop Act 1878 (repealed)

Fatal Accidents Acts 1846 to 1908 (repealed)

Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

Fire Precautions Act 1971 (repealed)

Health and Safety at Work etc. Act 1974

Law Reform (Contributory Negligence) Act 1945

Law Reform (Personal Injuries) Act 1948

Metalliferous Mines Regulations Act 1872 (repealed)

Mines and Quarries Act 1954

Occupiers Liability Act 1957

Occupiers Liability Act 1984

Powers of Criminal Courts Act 1973 (repealed)

Prosecution of Offences Act 1985

Safety, Health and Welfare at Work Act 2005 (Ireland)

Sale of Goods Act 1893 (repealed)

Sale of Goods Act 1979

Trade Descriptions Act 1968

Water Resources Act 1991

Workmen's Compensation Act 1925 (repealed)

Abrasive Wheels Regulations 1970 (repealed)
Building (Health, Safety and Welfare) Regulations 1948 (repealed)
Confined Spaces Regulations 1997
Construction (Health, Safety and Welfare) Regulations (Northern Ireland) 1996
Control of Asbestos Regulations 2006
Control of Major Accident Hazard Regulations 1999
Control of Substances Hazardous to Health Regulations 1988 – 2002 (as amended)
Costs in Criminal Cases (General Regulations) 1986
Diving at Work Regulations 1997
Electricity at Work Regulations 1989
Employers' Health and Safety Policy Statements (Exception) Regulations 1975
Gas Safety (Installation and Use) Regulations 1994
Health and Safety at Work Order (Northern Ireland) 1978
Health and Safety (Display Screen Equipment) Regulations 1992
Management of Health and Safety at Work Regulations 1999
Management of Health and Safety at Work Regulations (Northern Ireland) 1992
Manual Handling Operations Regulations 1992
Metalliferous Mines General Regulations 1938 (repealed)
National Minimum Wage Regulations 1999
Noise at Work Regulations 1989
Non-Ferrous Metals (Melting and Founding) Regulations 1962
Personal Protective Equipment at Work Regulations (Northern Ireland) 1993
Personal Protective Equipment Regulations 1992
Provision and Use of Work Equipment Regulations 1998
Quarries (Explosives) Regulations 1959 (repealed)
Work at Height Regulations 2005
Working Time Regulations 1998
Workplace (Health, Safety and Welfare) Regulations 1992

European Directive on the introduction of measures to encourage improvements in the safety and health of workers at work - the 'Framework Directive' (89/391)

Approved Codes of Practice and other HSE guidance for land agents

There are repeated references in judgments to employers not referring, and not referring their employees and other workers, to relevant and easily available guidance.

Rather than a detailed reference list of specific publications, this is a list (although certainly not exhaustive) of some key areas where the Health and Safety Executive have information. So where these areas are pertinent, search the HSE website for the relevant publications. These are largely areas of general importance for all business but the list also includes some of those activities typically undertaken by land agents, their employees or others engaged by them.

Many land agents will, of course, be involved with properties and clients where activities are being carried out where specialist guidance must be sought for example agriculture, construction, mining and quarrying and adventure recreation. There are many HSE publications pertaining to these areas.

A full list of Health and Safety Executive Publications can be found at : www.hse.gov.uk/pubns/hsebooks-catalogue.pdf and can be reviewed for the publications, whether a guidance note or an Approved Code of Practice on the given area.

- Asbestos
- Chainsaws
- Contractors, use of
- Control of Substances Hazardous to Health (COSHH)
- Crowd management at events
- Driving
- Electricity
- Fire
- First aid
- Gamekeeping
- Gas
- Glazing
- Health risk management
- Ladders and stepladders
- Machinery
- Manual handling
- New and expectant mothers at work
- Personal protective equipment (PPE)
- Pesticides
- Roof work
- Sewage
- Slips and trips

- Stress
- Tractors
- Training
- Transport
- Tree work
- VDUs
- Working at height
- Young people (minors)

Cases listed under subject matter / point of law

Many of the cases could be listed under more categories than they have been - for instance very many cases may have reference to duty of care, risk assessment, statutory duty, etc. The classifications given should, however, highlight some of the main features of particular cases and looking at a group of cases should aid a broader understanding of the application of an area of law and/or shed light on the requirements of practical compliance in working life.

Agriculture and fishing

HM Advocate v G Orr (2011)
HM Advocate v Scottish Sea Farms Limited and Logan Inglis Limited [2012]
HM Advocate v West Minch Salmon (2011)
Lynch v Binnacle Limited t/a Cavan Co-op Mart (2011)
McKaskie v Cameron (2009)
Quinn v Bradbury and Bradbury [2012]
R v Chargot and others [2008]
R v Crow [2002]
R v Hall Hunter Partnership (Farming) Limited (2005)
R v Holtom [2010]
R v J M W Farms Limited (2012)
R v PS and JE Ward Limited (2014)
R v Velcourt (2011)

Animals Act 1971

Burrow v Commissioner of Police for the Metropolis [2004]
Goldsmith v Patchcott and another [2012]
Hughes v Rosser (2008)
McKaskie v Cameron (2009)
Puzey v Wellow Trekking (2005)
Turnbull v Warrener [2012]
Wallace v Newton [1982]

Causation

Fairchild v Glenhaven Funeral Services Limited and others [2002]
McGhee v National Coal Board [1972]
McWilliams v Sir William Arrol and Co. Limited [1962]
R v Tangerine Confectionery Limited and Veolia ES (UK) Limited [2011]

Codes of Practice, etc.

Ellis v Bristol City Council [2007]
R v Friskies Petcare UK Limited [2000]
HM Advocate v Scottish Sea Farms Limited and Logan Inglis Limited [2012]
R v Morris, Marshall and Poole (2011)

Competent staff

Hudson v Ridge Manufacturing Co. Limited [1957]
Wilson and Clyde Coal Co. Limited v English [1938]

Contributory negligence

Bux v Slough Metals Limited [1974]
Lynch v Binnacle Limited t/a Cavan Co-op Mart (2011)
Quinn v Bradbury and Bradbury [2012]
Uddin v Associated Portland Cement Manufacturers Limited [1965]

Control of Substances Hazardous to Health (COSHH)

Bilton v Fastnet Highlands Limited [1998]
Dugmore v Swansea NHS Trust and another [2003]

Corporate Manslaughter

R v Cotswold Geotechnical (Holdings) Limited and Peter Eaton [2011]
R v J M W Farms Limited (2012)
R v J Murray and Sons Limited (2013)
R v Lion Steel Equipment Limited (2012)
R v MNS Mining Limited (2014)
R v Mobile Sweepers (Reading) Limited (2014)
R v Princes Sporting Club Limited (2013)
R v PS and JE Ward Limited (2014)

Display screen equipment regulations

Dietrich v Westdeutscher Rundfunk [2000]

Due diligence

Tesco Supermarkets Limited v Natrass [1971]

Employer status

Autoclenz Limited v Belcher and others [2011]
McDermid v Nash Dredging and Reclamation Co. Limited [1987]
McDonnell, Paul v Henry and McDonnell, James (deceased) [2005]
Pola, Shah Nawaz v Health and Safety Executive [2009]
R v Binning, James (2014)

Employer's duty of care

Cotterell v Stocks (1840)
Edwards v National Coal Board [1949]
Hampstead Heath Winter Swimming Club v Corporation of London [2005]
Langridge v Howletts and Port Lympne Estates Limited [1997]
Kozłowska v Judi Thurloe Sports Horses [2012]
Priestley v Fowler (1837)
Quinn v Bradbury and Bradbury [2012]
R v British Steel plc [1995]
Wilson and Clyde Coal Co. Limited v English [1938]

Equine

Burrow v Commissioner of Police for the Metropolis [2004]
Goldsmith v Patchcott and another [2012]
Hughes v Rosser (2008)
Kozłowska v Judi Thurloe Sports Horses [2012]
Puzey v Wellow Trekking (2005)
Quinn v Bradbury and Bradbury [2012]
Reid v Equiworld Club Ltd (2010)
Turnbull v Warrener [2012]
Wallace v Newton [1982]

European law compliance

Davies v Health and Safety Executive [2002]
European Commission v United Kingdom [2007]
Stark v The Post Office [2000]

Fatality

Alcock v Chief Constable of the South Yorkshire Police [1991]
Armour v Skeen (Procurator Fiscal of Glasgow) (1977)
Bowen v National Trust [2011]
Cunliffe v Bankes (1945)
Davies v Health and Safety Executive [2002]

Edwards v National Coal Board [1949]
E H Humphries (Norton) Limited and Thistle Hotels plc v Fire Alarm Fabrication Services Limited and others [2006]
Fairchild v Glenhaven Funeral Services Limited and others [2002]
Galashiels Gas Co. Limited v O'Donnell (or Millar) [1949]
HM Advocate v Buccleuch Estates (2013)
HM Advocate v G Orr (2011)
HM Advocate v Scottish Sea Farms Limited and Logan Inglis Limited [2012]
HM Advocate v West Minch Salmon (2011)
Health and Safety Executive v Thames Trains Limited [2003]
Langridge v Howletts and Port Lympne Estates Limited [1997]
L H Access Technology Limited and Border Rail and Plant Limited v HM Advocate [2009]
Mailer v Austin Rover Group Limited [1990]
Marshall v Gotham [1954]
McKaskie v Cameron (2009)
McWilliams v Sir William Arrol and Co. Limited [1962]
Micklewright v Surrey County Council [2011]
Philiphagh Trust Estate - Inquiry into the death of Douglas Armstrong (2008)
R v B and Q plc [2005]
R v Balfour Beatty Rail Infrastructure Services Limited [2006]
R v Barrow-in-Furness Borough Council (2005)
R v Beckingham [2006]
R v British Sugar plc (2005)
R v Chagot [2008]
R v Cotswold Geotechnical (Holdings) Limited and Peter Eaton [2011]
R v Crow [2002]
R v Counsell, Geoffrey (2013)
R v DPP ex parte Timothy Jones [2000]
R v Fresha Bakeries Limited and Harvestine Limited [2003]
R v Hall Hunter Partnership (Farming) Limited (2005)
R v Holtom [2010]
R v HTM Limited [2006]
R v Friskies Petcare UK Limited [2000]
R v Gateway Foodmarkets Limited [1997]
R v J M W Farms Limited (2012)
R v J Murray and Sons Limited (2013)
R v John Pointon and Sons [2008]
R v Lion Steel Equipment Limited (2012)
R v Mark and Nationwide Heating Services Limited [2004]
R v MNS Mining Limited (2014)
R v Morris, Marshall and Poole (2011)
R v Mobile Sweepers (Reading) Limited (2014)
R v OLL Limited and Peter Kite [1994]
R v P and O European Ferries (Dover) Limited [1991]
R v P Limited and others [2007]
R v PS and JE Ward (2014)
R v Porter [2008]
R v Princes Sporting Club Limited (2013)
R v Swan Hunter Shipbuilders Limited and another [1982]

R v Tangerine and Veolia [2011]
R v Turnbull, Allan and Taylor, Christopher (2013)
R v Velcourt (2011)
R v Watkin Jones and Son Ltd [2013]
R v Wilson and Mainprize [2004]
Shirvell v Hackwood Estates Co Ltd [1938]
Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Limited [1968]
Transco plc v HM Advocate [2004]
Twine v Bean's Express Limited [1946]
Wilsons and Clyde Coal Co. Limited v English [1938]

Foreseeability

Alcock v Chief Constable of the South Yorkshire Police [1991]
Alsop v Sheffield City Council [2002]
Cambridge Water Co. Limited v Eastern Counties Leather plc [1994]
Close v Steel Co. of Wales Limited [1962]
Hindle v Birtwistle [1897]
R v Porter [2008]
R v Tangerine Confectionery Limited and Veolia ES (UK) Limited [2011]
Sutherland v Hatton; Barber v Somerset County Council; Jones v Sandwell Metropolitan District Council; Bishop v Baker Refractories Limited [2002]
Uddin v Associated Portland Cement Manufacturers Limited [1965]
Uren v Corporate Leisure (UK) Limited and Ministry of Defence [2011]

Forestry and trees

Atkins, Albert v Scott, Sir James Bt (2008)
Bowen and others v National Trust [2011]
Chapman v Barking and Dagenham LBC [1998]
Cunliffe v Bankes (1945)
HM Advocate v Buccleuch Estates (2013)
MacLellan v Forestry Commission (2005)
Micklewright v Surrey County Council [2011]
Poll v Viscount Asquith of Morley [2006]
Shirvell v Hackwood Estates Co Ltd [1938]

Independent contractor

Autoclenz Limited v Belcher and others [2011]
British Waterways v Royal and Sun Alliance Insurance plc [2012]
E H Humphries (Norton) Limited and Thistle Hotels plc v Fire Alarm Fabrication Services Limited and others [2006]
Ferguson v Welsh [1987]
Lynch v Ceva Logistics Limited [2011]
Mailer v Austin Rover Group Limited [1990]
McArdle v Andmac Roofing Co. and others (1967)

McDonnell, Paul v Henry and McDonnell, James (deceased) [2005]
Philippaugh Trust Estate - Inquiry into the death of Douglas Armstrong (2008)
R v Associated Octel Co. Limited [1996]
R v Gateway Foodmarkets Limited [1997]
R v Morris, Marshall and Poole (2011)
R v Watkin Jones and Son Ltd [2013]
Uren v Corporate Leisure (UK) Limited and Ministry of Defence [2011]

Individual liability

Armour v Skeen (Procurator Fiscal of Glasgow) (1977)
C Evans and Sons Limited v Spritebrand [1985] 2 All ER 415
Meridian Global Funds Management Asia Limited v Securities Commission [1995]
R v Barrow-in-Furness Borough Council (2005)
R v Beckingham [2006]
R v Boal [1992]
R v Chargot and others [2008]
R v P Limited and others [2007]

Limitation

Ali v Courtaulds Textiles Limited [1999]

Lone working

Philippaugh Trust Estate - Inquiry into the death of Douglas Armstrong (2008)

Machinery guarding

Close v Steel Co. of Wales Limited [1962]
Groves v Lord Wimborne [1898]
Hindle v Birtwistle [1897]
John Summers and Sons Limited v Frost [1955]
Kent County Council v Health and Safety Executive [2004]
Kilgollan v William Cooke and Co. Limited [1956]
Richard Thomas and Baldwins Co. Limited v Cummings [1955]
Uddin v Associated Portland Cement Manufacturers Limited [1965]

Manslaughter

R v Barrow-in-Furness Borough Council (2005)
R v Beckingham [2006]
R v Cotswold Geotechnical (Holdings) Limited and Peter Eaton [2011]
R v Crow [2002]

R v DPP ex parte Timothy Jones [2000]
R v Holtom [2010]
R v J M W Farms Limited (2012)
R v J Murray and Sons Limited (2013)
R v Lion Steel Equipment Limited (2012)
R v Mark and Nationwide Heating Services Limited [2004]
R v Mobile Sweepers Limited (2014)
R v OLL Limited and Peter Kite [1994]
R v P and O European Ferries (Dover) Limited [1991]
R v Princes Safety Limited (2013)
R v PS and JE Ward (2012)
R v Turnbull, Allan and Taylor, Christopher (2013) Newcastle Crown Court,

Manual handling

Egan v Central Manchester and Manchester Children's University Hospitals NHS Trust [2008]

Negligence - neighbour

Alcock v Chief Constable of the South Yorkshire Police [1991]
Caparo Industries plc v Dickman [1990]
Donoghue v Stevenson [1932]
Heaven v Pender (1883)

Negligence - breach

Allen v London Borough of Barnet [1997]
Atkins, Albert v Scott, Sir James Bt (2008)
Bowen and others v National Trust [2011]
Boyle v Kodak Limited [1969]
Burrow v Commissioner of Police for the Metropolis [2004]
Bux v Slough Metals Limited [1974]
Byrne v Boadle (1863)
Cambridge Water Co. Limited v Eastern Counties Leather plc [1994]
Close v Steel Co. of Wales Limited [1962]
Eyres v Atkinsons Kitchens and Bedrooms Limited [2007]
Groves v Lord Wimborne [1898]
Harris v Evans [1998]
Health and Safety Executive v Thames Trains Limited [2003]
Hughes v Rosser (2008)
Kilgollan v William Cooke and Co. Limited [1956]
Kozłowska v Judi Thurlow Sports Horses [2012]
Lynch v Binnacle Limited t/a Cavan Co-op Mart (2011)
MacLellan v Forestry Commission (2005)
McGhee v National Coal Board [1972]
McKaskie v Cameron (2009)

McLean v University of St Andrews (2004)
Micklewright v Surrey County Council [2011]
Paris v Stepney Borough Council [19511]
Reid v Equiworld Club Ltd (2010)
Shirvell v Hackwood Estates Co Ltd [1938]
Spalding v University of East Anglia [2011]
Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Limited [1968]
Threlfall v Hull City Council [2010]
Turnbull v Warrenner [2012]
Whitehead v Trustees of the Chatsworth Settlement [2012]

Newly emerging dangers

Baker v Quantum Clothing Group Limited and other companies [2011]
Dugmore v Swansea NHS Trust and another [2003]
Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Limited [1968]
Thompson and others v Smiths Shiprepairers (North Shields) Limited [1984]

Nuisance

Cambridge Water Co. Limited v Eastern Counties Leather plc [1994]
Chapman v Barking and Dagenham LBC [1998]
Rylands v Fletcher (1868)

Number of employees

Osborne v Bill Taylor of Huyton Limited [1982]

Occupiers' liability

Allen v London Borough of Barnet [1997]
British Railways Board v Herrington [1972]
Ferguson v Welsh [1987]
Heaven v Pender (1883)
McKaskie v Cameron (2009)

Personal protective equipment

Spalding v University of East Anglia [2011]
Threlfall v Hull City Council [2010]

Reasonably practicable

Adsett v K and L Steel Founders and Engineers Limited [1953]

Alsop v Sheffield City Council [2002]
Baker v Quantum Clothing Group Limited and other companies [2011]
Dugmore v Swansea NHS Trust and another [2003]
Edwards v National Coal Board [1949]
Marshall v Gotham [1954]
R v HTM Limited [2006]
Schwalb v H Fass and Son Limited [1946]

***Res ipsa loquitur* (the facts speak for themselves)**

Byrne v Boadle (1863)
Ward v Tesco Stores Limited [1976]

Risk assessment

Allison v London Underground Limited [2008]
Alsop v Sheffield City Council [2002]
British Waterways v Royal and Sun Alliance Insurance plc [2012]
Edwards v National Coal Board [1949]
Egan v Central Manchester and Manchester Children's University Hospitals NHS Trust [2008]
Philippaugh Trust Estate - Inquiry into the death of Douglas Armstrong (2008)
Quinn v Bradbury and Bradbury [2012]
R v Board of Trustees of the Science Museum [1993]
R v British Sugar plc (2005)
R v Charget [2008]
R v Counsell, Geoffrey (2013)
R v Hall Hunter Partnership (Farming) Limited (2005)
R v Morris, Marshall and Poole (2011)
R v Porter [2008]
Spalding v University of East Anglia [2011]
Threlfall v Hull City Council [2010]
Uren v Corporate Leisure (UK) Limited and Ministry of Defence [2011]

Safe equipment

Davie v New Merton Board Mills and others [1958]
Galashiels Gas Co. Limited v O'Donnell (or Millar) [1949]
Hamilton v National Coal Board [1960]
Knowles v Liverpool City Council [1993]
Nolan v Dental Manufacturing Co. [1958]
R v Hall Hunter Partnership (Farming) Limited (2005)
Robb v Salamis (M and I) Limited [2006]
Stark v The Post Office [2000]
Whitehead v Trustees of the Chatsworth Settlement [2012]
Wilson and Clyde Coal Co. Limited v English [1938]

Safe premises

Baker v Quantum Clothing Group Limited and other companies [2011]
Corn v Weirs Glass (Hanley) Limited [1960]
Ellis v Bristol City Council [2007]
General Cleaning Contractors Limited v Christmas [1952]
Latimer v AEC Limited [1953]
Square D Limited v Cook [1992]
Wilson and Clyde Coal Co. Limited v English [1938]

Safe system of work

Davies v Health and Safety Executive [2002]
HM Advocate v G Orr (2011)
HM Advocate v Buccleuch Estates (2013)
HM Advocate v Scottish Sea Farms Limited and Logan Inglis Limited [2012]
HM Advocate v West Minch Salmon (2011)
L H Access Technology Limited and Border Rail and Plant Limited v HM Advocate [2009]
Lynch v Ceva Logistics Limited and S W Lynch Electrical Contractors [2011]
Mailer v Austin Rover Group Limited [1990]
McWilliams v Sir William Arrol and Co. Limited [1962]
R v B and Q plc [2005]
R v Balfour Beatty Rail Infrastructure Services Limited [2006]
R v Swan Hunter Shipbuilders Limited and another [1982]
R v Total (UK) Limited, Hertfordshire Oil Storage Limited, Motherwell Control Systems (2003) Limited, Tav Engineering Limited, and British Pipeline Agency Limited (2010)
R v Velcourt (2011)
Ross v Tennant Caledonian Breweries Limited (1983)
Transco plc v HM Advocate [2004]
Wilson and Clyde Coal Co. Limited v English [1938]

Sentencing

HM Advocate v Munro and Sons (Highland) Limited [2009]
HM Advocate v Scottish Sea Farms Limited and Logan Inglis Limited [2012]
L H Access Technology Limited and Border Rail and Plant Limited v HM Advocate [2009]
R v Aceblade Limited [2001] 1 Cr App R (S) 105
R v Cardiff City Transport Services [2000]
R v Colthrop Board Mills Limited [2002]
R v ESB Hotels Limited [2005]
R v F Howe and Sons (Engineers) Limited [1999]
R v Fresha Bakeries Limited and Harvestine Limited [2003]
R v Friskies Petcare UK Limited [2000]

R v Holtom [2010]
R v Jarvis Facilities Limited [2005]
R v John Pointon and Sons [2008]
R v Milford Haven Port Authority [2000]
R v Morris, Marshall and Poole (2011)
R v Rollco Screw and Rivet Co. Limited [1999]
R v Sellafeld Limited and *R v Network Rail Infrastructure Limited* [2014]
R v Wilson and Mainprize [2004]

Statutory duty

Boyle v Kodak Limited [1969]
Groves v Lord Wimborne [1898]
Harris v Evans [1998]

Stress / psychiatric illness

Sutherland v Hatton; Barber v Somerset County Council; Jones v Sandwell Metropolitan District Council; Bishop v Baker Refractories Limited [2002]
Walker v Northumberland County Council [1995]

Strict liability / (Rylands v Fletcher)

Cambridge Water Co. Limited v Eastern Counties Leather plc [1994]
Rylands v Fletcher (1868)

Training

HM Advocate v West Minch Salmon (2011)
R v British Sugar plc (2005)
R v Crow (2002)
R v Hall Hunter Partnership (Farming) Limited (2005)
R v Velcourt (2011)

Unfair dismissal

Balfour Kilpatrick Limited v Acheson and Others [2003]
Oudahar v Esporta Group Limited [2011]
Piggott Bros. and Co. Limited v Jackson [1992]

Vicarious liability

Bain v Fife Coal Co. Limited (1935)
Conway v George Wimpey and Co. Limited [1951]

Lister and others v Hesley Hall Limited [2001]
Lister v Romford Ice and Cold Storage Co. Limited [1957]
Lynch v Binnacle Limited t/a Cavan Co-op Mart (2011)
Mersey Docks and Harbour Board v Coggins and Griffiths (Liverpool) Limited
[1946]
Rose v Plenty [1976]
Twine v Bean's Express Limited [1946]

***Volenti non fit injuria* (voluntary acceptance of risk)**

Imperial Chemical Industries Limited v Shatwell [1964]
Smith v Charles Baker and Sons [1891]

Working at height

Armour v Skeen (Procurator Fiscal of Glasgow) (1977)
Boyle v Kodak Limited [1969]
E H Humphries (Norton) Limited and Thistle Hotels plc v Fire Alarm Fabrication Services Limited [2006]
McArdle v Andmac Roofing Co. and others (1967)
McWilliams v Sir William Arrol and Co. Limited [1962]
Pola, Shah Nawaz v Health and Safety Executive [2009]
R v Lion Steel Equipment Limited [2012]
R v Morris, Marshall and Poole (2011)
R v Turnbull, Allan and Taylor, Christopher (2013)

Working hours

Eyres v Atkinsons Kitchens and Bedrooms Limited [2007]

Cases

Adsett v K and L Steel Founders and Engineers Limited [1953]

Court of Appeal

Reasonably practicable.

This case referred to the duties in section 47 of the Factories Act 1947 to protect employees from dust, fumes or other impurities by all 'practicable' measures. The employer argued that an extractor had been installed as soon as it became apparent that it was necessary.

The Court of Appeal held that the employer could not be held liable, as for a measure to be 'practicable' meant that it had to be known about, especially by experts, so that it could be applied by people in the industry. Once something is found to be practicable, as in the ventilation systems, it is feasible. It must then be done no matter how expensive or inconvenient. However, this also means that an employer cannot be liable for failing to use a safety device which was not invented at the time of the accident but appeared subsequent to it.

The expression 'practicable' denotes a stricter standard than 'reasonably practicable'.

Alcock v Chief Constable of the South Yorkshire Police [1991]

House of Lords

Fatality; foreseeability; negligence - neighbour.

When looking at the range of persons owed a duty of care (in this case, by the police, in managing the Hillsborough football disaster in 1989), constraints were placed on those who could be construed as 'neighbours' under Lord Atkin's test expressed in ***Donaghue v Stevenson [1932]***, for reasons of public policy.¹

The claimant who is a 'secondary victim' must perceive a 'shocking event' directly with his own unaided senses, as an eye-witness, hearing the event in person, or viewing its 'immediate aftermath'. This requires close physical proximity to the event, and would usually exclude events witnessed by television or informed of by a third party.

The shock must be 'sudden' and not a 'gradual' assault on the claimant's nervous system. So a claimant who develops a depression from living with a relative debilitated by the accident will not be able to recover damages.

If the nervous shock is caused by witnessing the death or injury of another person the claimant must show a 'sufficiently proximate' relationship to that person, a 'close tie of love and affection'. Such ties are *presumed* to exist only

¹ See the Law Commission Report *Liability for Psychiatric Illness*, 1968.

between parents and children, spouses and fiancés. In other relationships, including siblings, ties of love and affection must be particularly proved.

It must be reasonably foreseeable that a person of 'normal fortitude' in the claimant's position would suffer psychiatric damage. The closer the tie between the claimant and the victim, the more likely it is that he would succeed in this element. However, once it is shown that *some* psychiatric damage was foreseeable, it does not matter that the claimant was particularly susceptible to psychiatric illness - the defendant must 'take his victim as he finds him' and pay for all the consequences of nervous shock - the 'eggshell skull rule'.

Ali v Courtaulds Textiles Limited [1999]

Court of Appeal

Limitation.

The Court of Appeal allowed an appeal by a retired Bangladeshi cotton-mill worker, Irshad Ali, whose claim for damages for deafness was dismissed for being out of time. The Court said that the worker's personal circumstances meant that he was isolated and that the 'date of knowledge' of his injury was therefore later than it might otherwise have been.

Allen v London Borough of Barnet [1997]

Court of Appeal

Negligence - breach; occupiers' liability.

Mrs Allen, a 46 year old teacher in Hampstead, slipped and broke her left leg in school. Mr Clement, expert witness for the claimant, confirmed that Mrs Allen was wearing 'sensible, low-heeled court shoes'. She sought damages from the London Borough of Barnet, in negligence and breach of duty under the Occupiers Liability Act 1957.

In the High Court, Mrs Allen succeeded. The defendant employer appealed against the finding on liability. In summing up, Lord Justice Beldam said: 'The question for the judge was whether in the circumstances the defendant authority had taken reasonable care to see that pupils and staff would not be exposed to an unnecessary risk of injury from slipping in the area of the corridor between the two doors, one leading from the courtyard and the other leading to the street. The judge decided that the defendant authority had not taken the precaution of providing a mat to absorb water which could be carried into the corridor from the courtyard. It was a simple and, some might think, obvious precaution, but would it have been effective to prevent the claimant's accident? That was the question which was addressed by each side in the expert evidence which they put before the judge.'

Mr Clement, placed reliance on guidance given in a leaflet published by the Health and Safety Executive called *Watch Your Step* and on his experience,

stating that wooden blocks treated in the way in which these wooden blocks had been treated and with moisture upon them were more slippery than they otherwise would be and that the presence of the mat would have improved the safety. Accordingly, it seems to me the judge was entitled in this case to come to the conclusion that the claimant had been exposed to an unnecessary risk of slipping in this corridor, and for those reasons I ... would dismiss the appeal.'

Thus the appeal failed and the employer Council were liable.

Allison v London Underground Limited [2008]

Court of Appeal

Risk assessment.

This case involved the industrial strain injuries of Ms Latona Allison, a London underground train driver, and possible breach of reg. 9 of the Provision and Use of Work Equipment Regulations 1998. The case is particularly useful with regard to the comments of Lady Justice Smith on risk assessments, which had not, in her view, been given adequate weight at first instance :

'I do not think that Judge Cowell [sitting in the Central London County Court] was alone in underestimating the importance of risk assessment. It seems to me that insufficient judicial attention has been given to risk assessments in the years since the duty to conduct them was first introduced. I think this is because judges recognise that a failure to carry out a sufficient and suitable risk assessment is never the direct cause of an injury. The inadequacy of a risk assessment can only ever be an indirect cause.'

Her consideration of risk assessment is picked up again in ***Uren v Corporate Leisure (UK) Limited and Ministry of Defence [2011]***.

Alsop v Sheffield City Council [2002]

Court of Appeal

Foreseeability; reasonably practicable; risk assessment.

The claimant was a refuse collector working for the defendant authority. He pulled a 'wheelie' bin up a ramp with a 30° gradient and slipped, injuring his elbow. He claimed that the Council employer was in breach of its statutory duty as it had failed to make suitable and sufficient risk assessment of the manual handling operation, contrary to reg. 4(1)(b)(i) of the Manual Handling Operations Regulations 1992, which states that : (1) Each employer shall— ... (b) where it is not reasonably practicable to avoid the need for his employees to undertake any manual handling operations at work which involve a risk of their being injured—(i) to make a suitable and sufficient assessment of all such manual handling operations to be undertaken by them.

It was held at first instance that there was no real risk of injury, but to the extent that there had to be an inherent risk in every task that was performed, that risk of injury was very low, and that it was not practicable to expect there to be a precise evaluation of each task and precise warnings as to how it was to be carried out. The defendant was found *not* to be in breach of its statutory duty and the claim was dismissed.

The claimant appealed. The appeal was dismissed. It was settled law that reg. 4(1)(b) of the 1992 Regulations only applied where the risk of employees being injured was a real risk which meant that there was a foreseeable possibility of injury (although nothing approaching a probability). The defendant had not, therefore, been in breach of its statutory duty.

Armour v Skeen (Procurator Fiscal of Glasgow) (1977)

High Court of Justiciary, Scotland

Fatality; individual liability.

A workman fell to his death while repairing a road bridge over the river Clyde. John Armour was the Director of Roads for Strathclyde Regional Council and, as such, was responsible for supervising the safety of road workers. He had not produced a written safety policy for such work, contrary to his statutory duty.

He was prosecuted under section 37(1) HASAWA which imposes personal liability on senior executives.

Armour's defence was that he was under no personal duty to carry out the Council's statutory duties, which included the formulation of a detailed safety policy for the roads department. This argument was rejected. Section 37(1) imposed the personal duty to carry out the Council's statutory duty to prepare a written policy. This he had failed to do and he was, consequently, guilty.

Atkins, Albert v Scott, Sir James Bt (2008)

Aldershot and Farnham County Court

Forestry and trees; negligence – breach.

The claimant, Albert Atkins, was driving along the A32 in Hampshire when his car was struck and injured by the branch from an oak tree on the Rotherfield Park Estate. The branch failure was due to internal decay. Neither tree nor branch exhibited any external signs of decay before the branch fell. Mr Atkins claimed damages for personal injury and consequential losses. The defendant, Sir James Scott, owned the estate where the tree was located.

It was found that the defendant, as a landowner of property fronting a public highway, owed a duty of care to those passing along the road, to take reasonable care for their safety. The defendant stated that 'there was no formal or written system for inspecting trees on the estate or for recording what trees

had been inspected'. Judge Iain Hughes accepted that 'the informal system for observing the trees worked adequately in the particular circumstances that obtained on the estate although he also stated 'this informality has the obvious disadvantage that it makes it more difficult for the estate to resist claims based on an inadequate system of inspection'. He did not accept the classification method as to the required qualification and experience of tree inspectors as outlined in ***Poll v Bartholomew***, namely Level 1 and Level 2 inspectors.

The judgment quoted the HSE guidance : 'For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff who work in parks or highways as to what to look for would normally suffice'. The judgment also noted that the HSE make no reference as to the frequency of inspections.

The Court found in favour of the defendant.

***Autoclenz Limited v Belcher and others* [2011]**

Supreme Court

Employer status; independent contractor.

This case was not about health and safety issues at all, but as the status of workers - whether employees, self-employed or sub-contractors - is often of importance in health and safety cases, the latest word on the matter from the Supreme Court is of interest.

The issue was whether car valeters working for Autoclenz at various British Car Auctions' sites, were workers within the meaning of the National Minimum Wage Regulations 1999 and the Working Time Regulations 1998. The workers in question had a contract in which they were expressly referred to as 'sub-contractors'. Among other terms of that contract was a right of substitution (of the contractor to have someone else do the work). That would have been fatal to construing the agreement as one of employment. However, the court held that, regardless of any written terms, the actuality of the situation should be examined. In reality the individuals involved were obliged to carry out work offered in person. They were thus, regardless of a formal contract which expressed otherwise, held to be employees.

Note, that although a contract which provides for substitution *cannot* be a contract of employment, a contract requiring personal service *can* be one of self-employment.

Bain v Fife Coal Co. Limited (1935)

Court of Session, Scotland

Vicarious liability.

The following judgment was drawn on by both Lords Thankerton and Maugham in the House of Lords in the important case of ***Wilson and Clyde Coal Co. Limited v English [1938]*** where Lord Thankerton referred to it as an 'admirable statement of the law'.

Lord Aitchison : '... there are certain duties owed by a master to his servant so imperative and vital to safety that the master cannot divest himself of responsibility by entrusting their performance to others, so as to avoid liability in the event of injury arising to the servant through neglect of any of these duties. The master's liability as for breach of these paramount duties is unaffected by the doctrine of fellow-servant, for in the eye of the law they are duties that cannot be delegated. If, in fact, they are entrusted by the master to others, the maxim applies *qui facit per alium facit per se* [He who acts through another does the act himself]'. The duty may not be absolute, and may be only a duty to exercise due care, but, if, in fact, the master entrusts the duty to someone else instead of performing it himself, he is liable for injury caused through the want of care of that someone else, as being, in the eye of the law, his own negligence.'

Baker v Quantum Clothing Group Limited and other companies [2011]

Supreme Court

Newly emerging dangers; reasonably practicable; safe premises.

Stephanie Baker suffered from hearing difficulties which she considered to be due to exposure to excessive noise during her employment in a knitting factory between 1971 and 2001. Her employers appealed against a decision in the Court of Appeal that they were liable for hearing loss sustained *before* the entry into force of the Noise at Work Regulations 1989.

Q were average-sized employers. B had allegedly been subjected to noise levels at work between 85 and 90 dB. The Government issued a code of practice in 1972 stating that 90 dB was not to be exceeded. In 1983 a European Directive was proposed which would require the provision of ear protection for workers exposed to levels above 85 dB. That was implemented by Regulations in 1990. B was given ear protection in the late 1980s. The trial judge rejected B's claims on the ground that the employers had been entitled to rely on the code of practice until the terms of the Directive had become generally known and that they had been entitled to two years from then to implement policies. The judge held that other larger employers, joined in the action, would have had a greater understanding of the risks by 1983 and so should have taken action from 1985, but found that, as a matter of fact, their employees had not been exposed to levels above 85 dB.

B successfully appealed.

The issues before the Supreme Court were whether the judge had been correct to (i) treat a larger employer differently to average employers; (ii) find that employers had been entitled to rely on the code and had not breached their common law duty; (iii) find that there had been no breach of duty under the Factories Act 1961 section 29 (repealed) regarding safe premises.

It was held that :

- The judge's assessment that larger employers may, on the basis of their greater resources and research and awareness of the discussions generated by the European proposals, have appreciated by 1983 that the 90dB limit was no longer acceptable, was correct. That appreciation was sufficient to found liability.
- The date when employers should have been aware that the code of practice was no longer the accepted standard was when the terms of the 1986 Directive became generally known. The judge had allowed two years from the end of the consultation process for the Directive in 1988, meaning that Q had no potential common law liability before 1990. The Court of Appeal had not been justified in interfering with that conclusion. As larger employers were in a special position and should have taken steps from 1983, they were liable as from 1985.
- A workplace was unsafe under section 29 if operations constantly and regularly carried out in it made it so. The noise generated by the knitting machines would make the place unsafe if section 29 related to noise.
- There was no such thing as an unchanging concept of safety. As safety was a relative concept, foreseeability had to play a part in determining whether a place was safe. The judge had been entitled to find that the standard of safety was determined by the code and that judged by that standard, the workplaces had been safe. Had reasonable foreseeability not been imported into the meaning of safety, it would have been imported into reasonable practicability; that meant that some degree of risk was acceptable, and that degree had to depend on current standards.

In consequence of the above reasoning, at common law, the appellant employer was *not* in breach of their duty of care or their duty under section 29(1) of the 1961 Act in not implementing measures to protect their employees in respect of noise exposure at levels below 90dB prior to 1 January 1990 - ***Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Limited [1968]*** applied.

Balfour Kilpatrick Limited v Acheson and Others [2003]

Employment Appeal Tribunal

Unfair dismissal.

The employees were employed at a construction site at the premises of a major pharmaceutical company, Pfizer. The employer was an electrical trade contractor with around 240 electricians on site. The site was located on low-

lying marshy ground, liable to flooding. The employer had various portacabins where work clothes were kept. The heaters in the portacabins did not provide sufficient heat to dry the clothing, which included safety boots, overalls, hardhats and high visibility vests.

Following some exceptional weather, there were extensive areas of standing water that concerned the site workers. The workers contacted a union representative of the AEEU (Amalgamated Engineering and Electrical Union - now within Amicus), and an unauthorised representative for the TGWU (Transport and General Workers' Union), to approach the management with their concerns. The management rejected requests for the site workers to be released for the rest of the day, however shortly after this decision was reported to the workers by the union reps. the workers left anyway.

Subsequently, another AEEU official repudiated the action taken by the men and told them to go back to work. When the site workers returned the next day the clothing was still wet and so they again left work.

Some days later, when the workers returned, they were all dismissed, although no ultimatum had previously been given. The employees claimed unfair dismissal proceedings before the Employment Tribunal.

The Tribunal found that the employees did not return to work because they were taking action under section 100(1)(c) of the Employment Rights Act 1996, and that the reason for the dismissals was because of that action. Section 100(1)(c) indicates that an employee can bring matters connected with work which he reasonably believes are harmful, or potentially harmful, to health or safety to his employer's attention by 'reasonable means'. The Employment Tribunal found the dismissal to be unfair.

The employer appealed and it was held that although the employees were entitled to raise their concerns through the union, even with a liberal construction of the sub-section, it was not possible to say that taking industrial action could be 'reasonable means' of bringing the employer's attention to health and safety concerns. The concept of informing the employer could not extend to taking industrial action to impress upon him the gravity of the issue as perceived by the employees. The result was, therefore, that the employees were *not* protected under the automatically unfair provisions of section 100(1)(c).

Bilton v Fastnet Highlands Limited [1998]

Court of Session

COSHH.

It was held that Karen Bilton, a fish processor at a prawn factory in Fort William, who developed occupational asthma, could pursue a claim for compensation against her employer under the Control of Substances Hazardous to Health Regulations 1988, even though the substance is not specified by COSHH.

Bowen and others v National Trust [2011]

High Court

Fatality; forestry and trees; negligence - breach.

A claim in negligence was brought after a child was killed and three children seriously injured by a falling tree whilst on a school trip to Felbrigg Hall in Suffolk. Whether the National Trust had breached their duty of care hung on their tree management, risk assessments and appropriate expertise. They were found to be *not* liable due to the exercise of 'reasonable' care. Both the initial training and, importantly, the regular CPD of the tree inspectors was highlighted in Judge Mackay's report.

Boyle v Kodak Limited [1969]

House of Lords

Negligence - breach; statutory duty.

This was an appeal by Patrick Boyle, an experienced painter, from the decision of the Court of Appeal and the judgment at first instance, where he lost in an action against his employer, Kodak Limited for personal injury sustained when he fell off a ladder whilst painting the outside of a 30 feet high oil storage tank.

No negligence was proved. It was not proved that the employer ought to have foreseen any danger, and there is no evidence that any negligence on the part of the Boyle caused or contributed to the fall. But Boyle asserted, and his employer admitted, that the method of work involved a breach of statutory duty with regard to working with ladders per reg. 9(4) of the Building (Safety Health and Welfare) Regulations 1948 (since repealed).

It was held that in a claim for damages for breach of statutory duty an employer, to avoid liability, must show that he has complied with his statutory duty by taking all reasonable steps to prevent his employees from committing breaches of the relevant regulations. Thus, if the employer ought to have realised that there was a substantial risk that skilled workmen would not be sufficiently familiar with the regulations imposing a statutory duty on them, in situations where no danger was apparent, it would be his duty under the regulations to instruct the workmen on what steps they must take to avoid a breach. This duty exists even where failure to give such instructions did not amount to negligence at common law.

The appeal was allowed.

British Railways Board v Herrington [1972]

House of Lords

Occupiers' liability.

An employer, British Railways Board, in their capacity as an occupier of land, was held liable for injuries sustained by a six year old boy who had been playing on the railway line. The child had climbed through a gap in the fence near the railway line, from National Trust land where he had been playing with his two older brothers, and where he was permitted to be. The Board were aware of previous, repeated trespasses but had failed to maintain the fence.

The House of Lords held that, although trespassers were not owed the level of 'reasonable care' afforded to lawful visitors, the occupier of the railway premises owed a duty of 'common humanity' to the child. Until this case no duty of care was owed to trespassers in common law (following **Addie and Sons (Collieries) Limited, Robert v Dumbreck [1929]**) and the legislation (Occupiers' Liability Act 1957) only extended to lawful visitors. It might be noted that this was the first substantive instance of the House of Lords using the authority of the 1966 Practice Statement to divert from their own previous precedent.

Subsequently, a Law Commission Report : *Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability* (1976) led to the Occupiers Liability Act 1984 covering the position with regard to trespassers.

British Waterways v Royal and Sun Alliance Insurance plc [2012]

High Court, QBD

Independent contractor; risk assessment.

Mark Wells and his son Luke died when the tractor (with attached hedge-cutter) they were reversing along part of a towpath of the Kennet and Avon Canal toppled into the river. It was clear that the bank had collapsed under the tractor as it travelled too near to the edge.

The two men were independent contractors supplying their services to British Waterways (BW), a public corporation, amongst whose responsibilities was the routine maintenance of the hedgerows along the towpaths. They were substantially to blame for the accident themselves because (i) they should not have driven the tractor along that part of the towpath, which did not allow for a sufficient clearance and (ii) they should not have been in the tractor together in a single person cab (with clear signage in the cab). However the HSE took the view that BW had committed an offence contrary to section 3 HASAWA and BW were charged, the particulars being : 'in that the practices adopted for the use of tractors on the said towpath for construction, maintenance and cutting undertaken by contractors, including Mark Wells and Luke Wells, had not been suitably assessed and were unsafe'.

A 'Friskies Schedule'² (so called because its preparation resulted from the recommendations of the case of ***R v Friskies Pet Care UK Limited [2002]***) was agreed between the parties. When the HSE prosecutes, it should set out in writing the case summary and any aggravating features in schedule form. All of the relevant aggravating features should be set out from the outset. If a defendant pleads guilty on the basis set out in a Friskies schedule, then other aggravating features cannot be raised at a later sentencing hearing. The Friskies schedule should be served on the court and the defendants as soon as possible, and in any event before they enter their plea.

The Schedule indicated that BW's Safety Bulletin clearly set out the requirement for risk assessments (including minimum distances between any vehicle or heavy plant and the canal) which were not carried out. The leaflet was often not passed on to employees and sub-contractors. And they failed to ensure the hedge cutting process was operated, supervised and controlled in accordance with its own requirements specified in their Safety Bulletin.

BW pleaded guilty at Swindon Crown Court and was fined £100,000. Mark Wells' partner and Luke Wells' infant son and their estates sued BW in Trowbridge County Court. They achieved a negotiated settlement, with a discount for contributory negligence of £76,250 for Luke's son, £105,000 for Mark's partner and £3,954 for the estates.

This case was brought by BW against their insurers who did not accept that BW's claims are covered by their policy. They would have been covered if the deaths were caused by the use of a vehicle but *not* if the vehicle were being operated 'as a tool'. As a point of fact, it was found that the deaths were caused by the canal bank collapsing, not through the hedge cutting operation itself, so BW could claim under their insurance policy.

Burrow v Commissioner of Police for the Metropolis [2004]

High Court, QBD

Animals Act 1971; equine; negligence - breach.

The claimant was a mounted policeman who sued his employer in negligence and under the Animals Act 1971 when he sustained serious physical and psychological injuries when thrown from his horse whilst on duty.

His employers successfully argued that he was responsible for his own injuries, per the defence provided by section 5(1) Animals Act. Given that the claimant had already lodged concerns that the horse was too much of a handful for duty - 'an accident waiting to happen' - (a claim which was rejected), he had been displaying a culpable lack of control in having loose reins held in one hand, holding a cigarette in his other hand whilst cantering in wet conditions.

His claim for negligence also failed.

² See www.hse.gov.uk/enforce/enforcementguide/pretrial/procedure-friskies.htm.

***Bux v Slough Metals Limited* [1974]**

Court of Appeal

Contributory negligence; negligence - breach.

An employer provided all employees with goggles to wear while handling molten metals, after due consultation with the British Safety Council. Razul Bux (the claimant), a Pakistani with a limited command of English, had not been trained to wear goggles initially, but when they were provided, some time into his employment, he did not wear them as he found they misted up badly every few minutes. Bux's work included the ladling of molten metal into dies. He was paid piece work and was known to be an exceptionally fast worker. On one occasion, the ladle caught on a projection from the die and molten metal splashed into his unprotected eyes, causing serious burning.

Although the employer had complied with his statutory obligation of provision as required by the Non-Ferrous Metals (Melting and Founding) Regulations 1962, failing to ensure correct usage of the PPE was negligent, with the claimant 40% contributorily negligent.

***Byrne v Boadle* (1863)**

Court of Exchequer Chamber

Negligence - breach; res ipsa loquitur.

Byrne was walking past Boadle's flour dealership when a barrel of flour fell from above hitting him on the head. Byrne sued for negligence. The defendant argued that the claimant must provide evidence as to the facts in order to establish negligence. The principle of *res ipsa loquitur* (roughly translated from the Latin as 'the thing speaks for itself') reverses the burden of proof such that the defendant has to establish that they were *not* negligent rather than the claimant establishing that they were.

Per Pollock CB (Chief Baron) : 'There are certain cases of which it may be said *res ipsa loquitur*, and this seems one of them. In some cases the courts have held that the mere fact of the accident having occurred is evidence of negligence, as, for instance, in the case of railway collisions. If an article, calculated to cause damage is put in the wrong place and does mischief, I think that those whose duty it was to put it in the right place are *prima facie* responsible, and if there is any state of facts to rebut the presumption of negligence, they must prove them.'

Cambridge Water Co. Limited v Eastern Counties Leather plc [1994]

House of Lords

Foreseeability; negligence - breach; nuisance; strict liability / (Rylands v Fletcher).

The Cambridge Water Co. purchased the Sawston Mill borehole in 1976 to extract water for public supply under the Water Resources Act 1963. In 1983 they tested the water to ensure that it met minimum standards for human consumption and discovered that it was contaminated with an organochlorine solvent (tetrachloroethane). On investigation, it emerged that the solvent came from the premises of Eastern Counties Leather plc, and old established leather business about 1.3 miles from the borehole. Since the tannery opened in 1879 until 1976, the solvent used in its processes had been delivered in 40 gallon drums which were tipped into a sump. Since 1976, solvents had been delivered in bulk and stored in tanks. It was then piped to the tanning machinery. There was no evidence of any spills from the tanks or pipes, and it was concluded that the water had been contaminated by frequent spills under the earlier system.

Cambridge Water Co. claimed damages against Eastern Counties Leather plc alternatively in negligence, nuisance and under the rule in **Rylands v Fletcher**.

At first instance it was found that Eastern Counties Leather plc could not have foreseen this type of damage and, therefore, the claims in nuisance and negligence failed. Furthermore, it was found that the actions of Eastern Counties Leather plc constituted a natural use of the land and consequently dismissed the claim based on the rule in **Rylands v Fletcher**.

Cambridge Water Co. Limited successfully appealed. Eastern Counties Leather plc then appealed to the House of Lords.

The House of Lords unanimously found that Eastern Counties Leather plc was *not* liable for the water contamination. The Lords accepted the original finding that a reasonable supervisor employed by Eastern Counties Leather plc could not have reasonably foreseen that the solvent would leak from the tannery floors down into the water source, given the state of scientific knowledge at the time. It was thought at the time that any spilt solvent would evaporate and that the only foreseeable risk was that if large quantities were spilt, someone might be overcome by the vapour.

Caparo Industries plc v Dickman [1990]

House of Lords

Negligence - neighbour.

The claimant sued in negligence when they relied, during a takeover bid, on the defendant's inaccurate and misleading accounts which stated a pre-tax profit of some £1.2 million, whereas the true picture was a loss of £400,000. The case is

relevant in a wider sphere as it sets out certain constraints on persons likely to be owed a duty of care.

A starting point in establishing whether a duty of care was owed by the defendant to the claimant was Lord Atkin's 'neighbour' test in ***Dongahue v Stevenson* [1932]**, i.e. anyone who the defendant could reasonably foresee would be affected by their acts or omissions. However, the notion of reasonable foresight is unquestionably too wide - given that company accounts are available to anyone in the world for payment of a modest fee to Companies House, there would be no constraint on the pool of potential claimants. The rule has therefore been further refined.

Nowadays it is usual to talk of a three-stage test as defined in this case :

- reasonable foreseeability,
- proximity (often referred to as a 'special relationship'), and
- is it fair, just and reasonable to impose a duty?

The last step brings in the concept of policy in which the courts have to balance the needs of an injured claimant against that of opening the 'floodgates' and creating an indeterminate liability. See also ***Alcock v Chief Constable of West Yorkshire* [1991]**.

***C Evans and Sons Limited v Spritebrand Limited and another* [1985]**

Court of Appeal

Individual liability.

This case involved alleged breaches of copyright but contained useful statements about the relationship between corporate liability and that of individual directors :

A director of a company is not *automatically* liable for the torts of his or her company, no matter how small the company or how powerful his control over its affairs. In determining the liability of a director for the torts of his company it is necessary to examine carefully the role he played regarding the alleged tortious acts. There is, however, no general requirement that a director will only be liable for torts committed by a company where he has acted recklessly or knowing that the company's acts were tortious. The director's state of mind might be relevant where it is a necessary ingredient in proving the commission of the particular wrong, but different considerations may apply where the state of the mind of the tortfeasor is not relevant.

Where, in an action against a limited company its directors are joined as co-defendants with the company as a tactical move to put unfair pressure on the defendants to settle, an application to strike out the joinder may well be justified.

Chapman v Barking and Dagenham LBC [1998]

Court of Appeal

Forestry and trees; nuisance.

A horse chestnut in Lodge Avenue, Barking fell during high gales (after a serious weather warning) leaving the 20 year old victim permanently paralysed. The claimant succeeded, in considerable part, due to the lack of an adequate safety inspection regime. The case was brought in nuisance, negligence and breach of statutory duty under the Highways Act with liability founded on nuisance.

Close v Steel Co. of Wales Limited [1962]

House of Lords

Foreseeability; machinery guarding; negligence - breach.

The claimant, Leo Close, was employed by the defendants in their instrument workshop - the Abbey Works in Margam, Glamorganshire. Whilst operating an electric drilling machine the drill bit shattered and a piece entered his left eye. Although bits not infrequently shattered, there was no evidence of any such accident having happened previously, for the fragments of a shattered bit were light and did not fly out with force. On appeal against dismissal of a claim for damages for breach of statutory duty under Factories Act 1937 (repealed) to fence a dangerous part of machinery it was held that : (1) the employers were not in breach of their duty under Factories Act 1937 as there was not a reasonably foreseeable danger from this operation, and the bit was not, therefore, a 'dangerous' part of machinery; (2) if, however, the bit were a dangerous part of machinery, then (a) the obligation to fence securely imposed by Factories Act was a requirement that the dangerous part should be fenced to prevent the body of the operator coming into contact with the machinery; (b) the obligation to fence securely, so imposed, did not require the dangerous part to be fenced for the purpose of preventing fragments of it, if it shattered (or fragments of the material on which the machine was working) flying out of the machine.

Lord Denning drew extensively on the old cotton mill case of **Hindle v Birtwistle [1897]** which he acknowledged as setting out the test of whether a machine / part of a machine is dangerous based on the foreseeability informed by the history of incidents.

Lord Goddard, noted that if a machine is known from experience to have a tendency to throw out parts of the machine itself or of the material on which it is working, so as to be a danger to the operator, the absence of a shield to protect him may well afford him a cause of action in negligence at common law, even where the statutory duties have been met.

Conway v George Wimpey and Co. Limited [1951]

Court of Appeal

Vicarious liability.

The defendant company was a contractor engaged in building work at an aerodrome. One of their drivers, despite express prohibition (given both orally and by notice in the vehicle), gave a lift to an employee of another firm, and negligently injured him in an accident. The employer was held *not* to be vicariously liable as the activity was deemed to be completely outside of the employee's duties, unlike **Rose v Plenty [1976]**.

There was evidence that the defendant had no knowledge that their employees were regularly giving lifts to other workers on the site.

Corn v Weirs Glass (Hanley) Limited [1960]

Court of Appeal

Safe premises.

Corn, a glazier was carrying a large sheet of glass with both hands. He overbalanced on the stairs and fell, causing himself injury. There was no handrail on the stairs contrary to the, then, relevant regulations - Building (Health, Safety and Welfare) Regulations 1948.

It was held that, since both hands were involved in holding the glass, a handrail would not have helped him, and therefore its absence was not the cause of the injury.

Cottrell v Stocks (1840)

Liverpool Assizes

Employer's duty of care.

This early case, sponsored by Lord Ashley, the Earl of Shaftesbury, involved a factory girl, Elizabeth Cottrell, who suffered appalling injuries, leaving her disabled for life, when her dress caught on an unguarded machine shaft in a Manchester mill. Her employer, Samuel Stocks, ceded liability to the extent of £100 (around £7,000 in current values using RPI, £73,000 using average earnings).

Lord Ashley took the case : '... in the hope not only of obtaining for the plaintiff such compensation as money could supply, but also for the purpose of an example, which might lead to measures of precaution, by which such accidents might be prevented in future.' He recorded in his diary that : 'I undertook [the case] in the spirit of justice . I constituted myself, no doubt, a defender of the poor and miserable for their rights ... I have advanced their cause, done individual justice, anticipated many calamities by this forced prevention, and

soothed, I hope, many angry, discontented Chartist spirits by showing them that men of rank and property can, and do, care for the rights and feelings of all their brethren.³

Cunliffe v Bankes (1945)

Liverpool Winter Assizes

Fatality; forestry and trees; negligence.

A motorcyclist was killed after colliding with a fallen elm. A case was brought under the Fatal Accidents Act, 1846. Although the tree was found to have honey fungus there was found to be no negligence as all 'reasonable' steps had been taken and the defendant could not, on the facts, have been expected to know of the condition of the tree.

Davie v New Merton Board Mills and others [1958]

House of Lords

Safe equipment.

An employee was injured by a defective drift (a tapered metal bar) which shattered when hammered due to latent defects caused by inadequate heat treatment in manufacture. The employer was not liable as he evidenced reasonable care and skill in sourcing the drifts from a reputable supplier who, in turn, obtained them from a reputable firm of toolmakers in Sheffield.

This decision was reversed by the Employers' Liability (Defective Equipment) Act 1969 which provided that the employer was liable for the negligence of third parties. A wide view is taken of the word 'equipment' : see **Knowles v Liverpool City Council [1993]**.

Davies v Health and Safety Executive [2002]

Court of Appeal

European law compliance; fatality; safe system of work.

The facts of the case were not in dispute. The appellant ran a plant hire firm from a yard near Neath. He had three employees and engaged three self-employed sub-contractors, one of whom was Mr Gardner. One day Mr Gardner returned to the yard to ask if there was any more work to do. The appellant was working on a dumper truck. He told Mr Gardner that he could go home and then shouted to an employee who was in the yard to bring a JCB down and park next to the dumper. The JCB was reversed with lights flashing but the driver had limited visibility to the rear. Unfortunately Mr Gardner was fatally crushed between the two vehicles. The appellant had resumed working in the cab of the

³ Hodder, E (1886).

truck. Sometime before the accident he noticed that Mr Gardner had not left the workshop but did not see the accident itself.

A Health and Safety Executive witness produced a leaflet entitled *Reversing Vehicles*. This indicated that nearly a quarter of all deaths involving vehicles at work occur while the vehicle is reversing and that most happen at low speeds and could be prevented by simple safety precautions, including the use of a banksman (assistant to direct the reversing of large vehicles) to ensure safe reversing. The appellant said that they had never used a banksman.

The defence case was that by telling Mr Gardner to go home before the accident, by shouting an instruction to the JCB driver which Mr Gardner should have been able to hear and by relying on the noise and lights of the JCB to alert Mr Gardner to the danger, the appellant had done all that was reasonably practicable. The Crown submitted he had not. He had not ensured that Mr Gardner was safely out of the way before returning to work on the truck and could have guided the JCB back himself.

The appeal case was about the burden of proof with regard to the employer's duty of reasonable care and compatibility for Human Rights provisions.

In establishing whether an employer has failed to take such care as is 'reasonably practicable' per section 3(1), section 40 HASAWA says that in any proceedings for such an offence '... consisting of a failure to comply with a duty ... to do something ... so far as is reasonably practicable ... it shall be for the accused to prove ... that it was not reasonably practicable to do more than was in fact done to satisfy the duty ...' i.e. the burden of establishing compliance is on the defendant. In this case the appellants argued that in reversing the burden of proof the section contravened Article 6 of the European Convention of Human Rights.

The Court of Appeal dismissed this argument and reaffirmed that it was for the defendant to establish that he had not breached his general duty under the Act.

***Dietrich v Westdeutscher Rundfunk* [2000]**

European Court of Justice

Display screen equipment.

The European Court of Justice ruled that, for the purposes of the Display Screen Equipment Directive, the term 'graphic display screen' must be interpreted as including screens that display film recordings in analogue or digital form.

Donoghue v Stevenson [1932]

House of Lords

Negligence - neighbour.

In August 1928 a friend of the claimant, May Donoghue, purchased a bottle of ginger beer in the Wellmeadow Café on the corner of Wellmeadow Street and Lady Lane in Paisley, near Glasgow. The claimant drank some of the beer in which was found the remains of a decomposed snail. She was subsequently ill and sued the manufacturer. Mrs Donoghue was unable to sue the café for breach of contract (Sale of Goods Act 1893, now 1979) because she had no contract and the person who had contractual rights (her friend) had suffered no damage.

The claimant appealed to the House of Lords, from the Scottish Court of Session, as a pauper. It was held that the defendant, David Stevenson, being the manufacturer of the ginger beer, owed a duty of care to the claimant as the consumer of the beer to take reasonable care to ensure that the bottle did not contain anything that might cause harm.

Lord Atkin, so often quoted since, stated that : ‘You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.’

See, along with the above test, the more recent policy constraints applied by, for example, **Caparo v Dickman [1990]** and **Alcock v Chief Constable of the South Yorkshire Police [1992]**.

Interestingly, whilst this was the first UK case to ascribe product liability in the absence of contract it did not, of course, develop in a vacuum and, as well as previous British cases, notably the dissenting judgment of Sir William Brett, MR in *Heaven v Pender* (1883), drew particularly, on the American judgment of Justice Benjamin Cardozo in the New York Court of Appeals in **Macpherson v Buick Motor Co. (1916)**.

Dugmore v Swansea NHS Trust and another [2003]

Court of Appeal

COSHH; newly emerging dangers; reasonably practicable.

Alison Dugmore, a nurse, had suffered from eczema and asthma since infancy. At some time between 1993 and 1995, she developed an allergy as a result of using powdered latex gloves during her employment by the first defendant hospital.

International medical literature published before 1993 had suggested a risk of allergies from the use of latex gloves, but there was no evidence at that time that such gloves were causing a problem in the UK. In June 1996 the first hospital supplied the claimant with vinyl gloves after she suffered a serious reaction while using latex gloves. From January 1997 the claimant was employed by the second defendant hospital which was aware of her allergy and supplied her with vinyl gloves. In December 1997 the claimant suffered an anaphylactic attack when picking up an empty box which had contained latex gloves. The claimant brought proceedings against both hospitals, seeking damages for negligence and breach of reg. 7(1) of the Control of Substances Hazardous to Health Regulations 1988 and 1994 (COSHH).

Reg. 7(1) provided that every employer 'shall ensure' that the exposure of his employees to a substance hazardous to health was either prevented or, where that was not reasonably practicable, adequately controlled. The trial judge dismissed the claim.

On appeal, the Court of Appeal held that the duty under reg. 7(1) was absolute : to *ensure* that exposure was prevented or adequately controlled. The defence of reasonable practicability qualified only the duty of total prevention, and it was for the hospital to prove that it was not reasonably practical to replace latex gloves with vinyl. With such a simple step, questions of degree and magnitude of risk did not arise. Even if they did, the onus was on the employer to go out and find out about them - there was material available from which an employer could have discovered what was required. It could *not* be adequate control to oblige an employee frequently to wear latex gloves when other barriers were available. The purpose of the regulations was protective and preventative. It was by no means incompatible with that purpose that an employer who failed to discover a risk or rated it so low that it took no precautions against it should be liable to the employee who suffered as a result. It followed that 1996 was the date on which the employer should have known that there was a risk against which it should take action, thus they were liable. The second hospital, however, was not liable since it was difficult to hold that any breach of the regulations had been causative of the claimant's attack.

Edwards v National Coal Board [1949]

House of Lords

Employer's duty of care; fatality; reasonably practicable; risk assessment.

This phrase now appears in section 2(1) HASAWA : 'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.'

The Act itself does not, however, contain a definition of the expression and common law guidance is still relevant.

Joseph Edwards, a colliery timberman, was killed when a section of the road on which he was travelling subsided. The section in question had no timber

supports (contrary to the requirements under the Coal Mines Act 1911 (repealed)), although other sections were properly supported. The Coal Board stated that the cost of supporting all roads was prohibitive in relation to the risk. Lord Asquith, said that a balance had to be struck in deciding whether it would have been reasonably practicable to have taken the precaution of providing supports for the section of road which collapsed. The balance was struck by weighing the quantum of risk involved (the danger of collapse and loss of life) against the quantum of sacrifice involved (the cost, time and trouble). If there was a gross disproportion between the two and the risk was insignificant to the cost, there would be no requirement to take the additional precautions. However, in this particular case, the risk was not an insignificant one, and the costs of making safe should have been applied.

Therefore, to carry out a duty 'so far as is reasonably practicable' means that the degree of risk has to be balanced against the time, trouble and cost involved in taking the measures necessary to avoid the risk.

If the measures are so disproportionate to the risk involved that it would be unreasonable to take the measures, then there can be no obligation to take them. The greater the risk, the more likely it is that it would be reasonable to go to the expense of implementing the precautions. In short, where the consequences and degree of risk are small and the cost of measures to reduce the risk very expensive, it would be unreasonable to incur that cost. The size or financial resources of a business are *not* a consideration in arriving at a decision.

***Egan v Central Manchester and Manchester Children's University
Hospitals NHS Trust [2008]***

Court of Appeal

Manual handling; risk assessment.

Donna Egan, a nurse in the high dependency unit, injured her back whilst lifting disabled patients with a hoist at Manchester Royal Infirmary. She submitted that the defendant was in breach of the Manual Handling Operation Regulations 1992. It was common ground that no risk assessment had been carried which amounted to a breach of the Regulations. However, the trial judge said that the question was whether that breach had been causative. The claimant appealed. She submitted that the risk existed even though the operator was well trained and knew all there was to know; and that experience showed that even when well trained, people could make mistakes due to inadvertence or because they were in a hurry, were distracted or simply not concentrating as they should. Further steps should have been taken. She contended that the judge had been wrong to reject her submission that markings on the floor would have designated precisely how the hoist legs could be guided around the bath.

The appeal was allowed. The requirements of reg. 4(1)(b)(ii) were separate from and additional to the requirement to carry out a risk assessment. The two were related in that a risk assessment would show the employer what steps it should take in order to reduce the risk of injury to the lowest level

reasonably practicable. Also, if an employer had carried out a careful and thorough risk assessment and had taken all the steps which appeared to be appropriate to reduce the risks to the lowest level reasonably practicable, the employer would be in a strong position to defend itself under reg. 4(1)(b)(ii). However, where no risk assessment had been carried out, the judge should focus on the regulation which imposed the duty to take positive action to reduce risk, namely, reg. 4(1)(b)(ii).

Once it had been shown that the manual handling operation carried some risk of injury, the burden of proof was on the employer to prove that it had taken appropriate steps to reduce that risk to the lowest level reasonably practicable. Accordingly, it was not sufficiently merely for the judge to have examined whether a risk assessment would have made any difference.

E H Humphries (Norton) Limited and Thistle Hotels plc v Fire Alarm Fabrication Services Limited [2006]

Court of Appeal

Fatality; independent contractor.

Ian Gray, was employed by Fire Alarm Fabrication Services, a small company specialising in commercial fire alarm systems. E H Humphries was the main contractor in respect of work at Thistle Hotels' premises and Fire Alarm Fabrication Services was engaged by E H Humphries to fit alarm systems. Gray fell from a walkway through a plate glass, causing severe injuries from which he died. His widow brought a claim for damages for negligence and breach of statutory duty. Her claims were settled by an admission of liability by Fire Alarm Fabrication Services and a consent judgment was entered against them for £400,000. They sought contribution from the E H Humphries and Thistle Hotels.

The trial judge found all parties negligent with apportionment 50% to Fire Alarm Fabrication, 30% to E H Humphries and 20% to Thistle Hotels. E H Humphries and Thistle Hotels appealed. They asserted, among other things, that the facts did not justify departure from the general rule that a main contractor did *not* owe a duty of care to employees of a sub-contractor.

The appeals were allowed. There could be no doubt that in certain circumstances both an independent contractor and the owner of a building *could* owe a duty of care to the employee of a sub-contractor. The question was one of mixed fact and law, and it was unnecessary and unhelpful to attempt to formulate any specific test for deciding when such a duty arose, as set out in ***Ferguson v Welsh [1987]***.

The judge had been entitled to hold that, in the circumstances, the main contractor (E H Humphries) owed a duty of care to the deceased. However, he had been wrong on the evidence to find them in breach of that duty.

Whether or not Thistle Hotels (the occupier of premises) had owed a duty of

care to Fire Alarm Fabrications and their employees, on the facts the alleged breach of that duty could not have amounted to such a breach.

Ellis v Bristol City Council [2007]

Court of Appeal

Code of Practice, etc.; safe premises.

The Court of Appeal stated that a judge should consider the Code of Practice issued by the Health and Safety Commission when deciding whether a place of work was unsafe, allowing the appeal of the claimant, Susan Ellis, regarding her claim against Bristol City Council for injuries suffered in a fall on a slippery surface in the care home where she worked.

It was stated that the Code of Practice issued by the Health and Safety Commission under section 16 HASAWA was designed to give practical guidance to employers as to how to comply with their statutory duties. It should be taken as providing some assistance as to the meaning that it was intended the safety regulations should have. The purpose of the provisions was to promote the safety of workers.

In this case, if a smooth floor was frequently and regularly slippery (because many of the home residents were incontinent), albeit only temporarily, the surface of the floor might properly be said to be unsuitable if the slipperiness was such as to give rise to a risk to the safety of those employees using it.

European Commission v United Kingdom [2007]

European Court of Justice

European law compliance.

The European Commission set out a number of complaints against the United Kingdom concerning the transposition of Council Directive (EC) 89/391 (on the introduction of measures to encourage improvements in the safety and health of workers at work) into national law. One of its complaints was that the insertion of the words 'so far as is reasonably practicable' into section 2 HASAWA, disregarded the scope of the duty to be imposed on employers which was envisaged under art. 5(1) of the directive which stated that 'The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work.', with no limitation with reference to 'reasonable practicability.

The Commission issued a reasoned opinion which requested the UK to take the necessary measures so that it complied with the directive. The UK did not make any changes to the legislation, and the Commission instituted proceedings for the UK's failure to fulfil its obligations, seeking a declaration to that effect.

Held : it was for the Commission to prove the existence of the alleged infringement of art. 5(1). The Commission had not established to the requisite

legal standard that by limiting the duty on employers to what was reasonably practicable, the UK had failed to fulfil its obligations under art. 5. Accordingly, the Commission's action would be dismissed.

Eyres v Atkinsons Kitchens and Bedrooms Limited [2007]

Court of Appeal

Negligence - breach; working hours.

Michael Eyres was a 20 year old employee of the defendant company. Whilst driving home to Bradford on the M1 with the company's 28 year old managing director, after having driven from Bradford and completed two jobs in Swindon and Sidmouth in one day, Eyres braked so suddenly and violently that smoke appeared from the tyres. He lost control and was flung out because he was not wearing a seat belt. He suffered a severe spinal injury which rendered him tetraplegic. The accident occurred at around 10.15pm, after a 3.30am start and several hundred miles driving between jobs.

Eyres claimed damages for personal injury, alleging that the defendant company was liable in negligence and / or breach of statutory duty because it had caused or permitted him to drive when he was too tired after having worked excessively long hours without a proper break. He claimed to have fallen asleep at the wheel. There was an alternative claim that he may have been distracted by mobile 'phone use. There was evidence from an eye-witness that before the accident, the car was being driven in a straight line and was not veering or drifting. It was accepted that if the accident had been caused by the claimant's tiredness, the defendant was liable to him. The judge at first instance found that the accident had been caused by the claimant's mobile telephone use, and entered judgment for the defendant. The claimant appealed.

The appeal was allowed. Taking all the factors into account, the claimant showed on a balance of probabilities that he had fallen asleep which was the cause of the accident with 33% contributory negligence.

An issue, aside from health and safety, which concerned the Court of Appeal was that the judge at first instance failed to give himself a *Lucas* direction (per ***R v Lucas [1981]***) : a lie told by a defendant can only strengthen or support evidence against the defendant *if* the jury are satisfied that (a) the lie was deliberate, (b) it relates to a material issue and (c) there is no innocent explanation for it. The jury are to be reminded that sometimes people lie out of shame or out of a wish to conceal disgraceful behaviour. Also, even more fundamental, was that he failed to guard against the forbidden line of reasoning that the telling of lies equals guilt (***R v Middleton [2001]***).

Fairchild v Glenhaven Funeral Services Limited and others [2002]

House of Lords

Causation; fatality.

Claims were brought against employers by, or on behalf of, former employees. Each employee had been employed at different times and for differing periods by more than one employer. Both employers had breached their duty of reasonable care with regard to the risks surrounding the inhalation of asbestos dust. The question arose whether the employee was entitled to recover damages against either employer or both of them, even though, because of the current limits of scientific knowledge, he was unable to prove that his mesothelioma was the result of inhaling asbestos dust during his employment with a specific employer.

The Court of Appeal indicated that there could be no claim, holding, on the basis of the conventional 'but for' test of tortious liability, that the employee had failed to prove against either employer that his mesothelioma would not have occurred but for the breach of duty by that employer, and had similarly failed to prove against both of them that it would probably not have occurred but for the breach of duty by both of them together. On appeal, their Lordships were required to determine whether, in the special circumstances of such a case, a modified approach to proof of causation was required by principle, authority or policy.

It was held that an employee was entitled to recover damages against both employers in the circumstances set out above. That conclusion was consistent with both principle and the authorities. The overall object of the law of tort law was to define cases in which the law could justly hold one party liable to compensate another, and it would be contrary to principle to insist on the application of a rule that appeared to yield unfair results. Accordingly, the appeals would be allowed.

Ferguson v Welsh [1987]

House of Lords

Independent contractor; occupiers' liability.

A local authority had an independent contractor to carry out demolition work on their land. Their contract of engagement prohibited sub-contracting without the consent of the local authority. The contractor, in breach of their contract, arranged for another firm to carry out the demolition without notifying the local authority.

One of the sub-contractor's workmen was badly injured when a collapse occurred on the site, as a result of which he was paralysed from the waist down. The accident arose directly out of the unsafe system of work adopted by the sub-contractors. Was the local authority, as owner and occupier of the site, liable to the workman under the Occupiers' Liability Act 1957?

It was held that despite the prohibition contained in the contract, there was sufficient evidence to suggest that the contractor had ostensible authority from the local authority to invite the sub-contractors and their employees on to the site. The Occupiers' Liability Act 1957 was designed to afford some protection from liability to an occupier who engaged a contractor who executed work in a faulty manner and the issue was whether the local authority knew, or had reason to suspect, that the contractor was bringing in sub-contractors who would proceed with the job in an unsafe way. There was no evidence that the local authority knew or ought to have known that the contractor was likely to contravene the prohibition on engaging sub-contractors without consent. Further, the injuries to the workman did not arise from his use of the local authority's premises but from the manner in which work was being carried out on those premises. Accordingly, the workman had no case against the local authority under the 1957 Act or otherwise.

Galashiels Gas Co. Limited v O'Donnell (or Millar) [1949]

House of Lords

Fatality; safe equipment.

George Millar, employed as a stoker in the appellants' gas works, was using an electrically operated lift to carry coke to a screening plant on the first floor when there was a brakes failure and he was, consequently, killed. After the accident the mechanism was dismantled and examined, but nothing was discovered to account for the failure and it was found that the appellants had taken every practical step to ensure that the lift worked properly and was safe.

On appeal by Mr Millar's widow, for damages in respect of his death, the appellant employer contended that they were only bound to take such steps as would ensure that the lift was in efficient working order, and that, in the absence of proof of the nature of the defect which caused the accident, the respondent could not succeed.

Held, on appeal from the Scottish Court of Session : the words 'shall be ... properly maintained' in section 22(1), read with the definition of 'maintained' in section 152(1), were imperative and imposed on the occupiers of a factory an absolute and continuing obligation, and there was nothing in the context or the general intention of the Factories Act 1937 (repealed) which could lead to the inference that there should be any qualification of that obligation; the claimant need only prove that the mechanism of the lift had failed to work efficiently and the failure had caused the accident; and that burden had been discharged.

General Cleaning Contractors Limited v Christmas [1952]

House of Lords

Safe premises.

The injured employee was an experienced window cleaner. His employers were liable for failing to provide a safe system and place of work in the form of instruction and warnings.

Goldsmith v Patchcott and another [2012]

Court of Appeal

Animals Act 1971; equine.

Robert Patchcott, a horse owner, was not liable when Kara Goldsmith, who described herself as an experienced rider, was injured when trying a horse prior to purchase. An Animals Act section 2 claim was brought but the horse, a nine year old gelding, Red, was not previously known to be dangerous and it was held that the rider voluntarily undertook the risks, i.e. the section 5(2) defence operated.

Groves v Lord Wimborne [1898]

Court of Appeal

Machinery guarding; negligence - breach; statutory duty.

The claimant was a boy of 15 years employed in the service of Lord Wimborne at the Dowlais Iron Works near Cardiff. Amongst the machinery in the works was a steam winch with revolving cogs which were dangerous unless fenced. There was evidence that there had originally been a guard or fence to these cog wheels, but it had for some reason been removed, and there had been no fence at the wheels while Groves was employed at the winch, a period of about six months. Whilst working, Groves's right arm was caught by the cogs, and was so badly injured that it had to be amputated.

It was held by the Court of Appeal that an action will lie to an employee in respect of personal injury caused through a breach by his employer, the occupier of the workplace, of the duty to maintain fencing for dangerous machinery imposed by him by section 5(4) of the Factory and Workshop Act 1878. The defence of common employment⁴ was not applicable in a case where injury had been caused to a servant by the breach of an absolute duty imposed by statute upon his master for his protection.

⁴ Whereby an employer was not liable if the injury to one of his employees was caused by another employee - a principle abolished by the Law Reform (Personal Injuries) Act 1948.

Hamilton v National Coal Board [1960]

House of Lords

Safe equipment.

John Hamilton, a miner, was employed by the National Coal Board at the Whitrigg Colliery in West Lothian. It was his duty to tighten a main haulage rope whenever it became slack, and for this purpose the NCB provided a hand-operated winch contained in a metal frame which rested on the ground but was not bolted to it. Mr Hamilton stated that as he was winding the winch, he placed his hand on the frame to steady it and that the whole winch tipped forward pinning his left hand between the raised back portion of the framework and a roof girder, thereby severely injuring it. It was claimed that this was due to parts of the winch, which would have steadied it, being missing.

Under the Mines and Quarries Act 1954, it is provided that all parts and working gear, whether fixed or movable, forming part of the equipment of a mine shall be properly maintained. Mr Hamilton argued that this statutory obligation was absolute and, self-evidently, the statutory obligation properly to maintain the winch had not been observed. Their lordships agreed.

Although the accident occurred in a quarry, Lord Jenkins drew on the Factories Act 1937 (repealed) which had similar references to the maintenance of machines and equipment :

'Were it not for the presence in the Act of 1937 of the definition of the word 'maintained' ... I would have no hesitation in regarding the case of **Galashiels Gas Co. Limited v Millar** as sufficient to conclude the present question in the [employee's] favour. The process of construing one statute by reference to another, and treating decisions on the meaning of the latter as determining the construction of the former is a process which should be applied with caution. But in the present case the language, the subject-matter and the intent of (for example) section 24 (1) of the Act of 1937 and section 81 (1) of the Act of 1954 are so closely allied that (apart from the ground of distinction afforded by the omission from the Act of 1954 of the definition contained in the Act of 1937, whatever it may be worth) it would, to my mind, be clearly wrong to give the words 'properly maintained' in section 81 (1) a different meaning from that which has been authoritatively assigned to precisely the same words in comparable provisions of the Act of 1937... It would, as I think, be manifestly absurd if the same statutory language applied to two precisely similar machines with precisely similar defects contracted in precisely similar circumstances should give rise to a breach of statutory duty with respect to one of them, but not with respect to the other, merely because the *locus in quo* was in the one case a mine and the other a factory.'

Hampstead Heath Winter Swimming Club v Corporation of London [2005]

High Court

Employer's duty of care.

The proceedings concerned the three ponds used for swimming on Hampstead Heath. The claimant Club wished to swim in a pond early in the morning in winter when it was unattended and closed to the public. They acknowledged and willingly accepted the risks involved. The Corporation of London, which manages the Heath, considered that it could not permit unsupervised early morning swimming as its officers could be prosecuted by the Health and Safety Executive should an accident occur, or if the Executive felt that the defendant had not complied with its statutory obligations. The HSE was approached and stated that it 'cannot... provide any kind of indemnity ... in terms of the conduct of this undertaking. The duty on [the defendant] is non-delegable and is only subject to the defence of reasonable practicality...'. On that basis the Corporation of London decided to refuse to permit the claimants to swim as requested.

The Club issued judicial review proceedings challenging that decision. The Corporation of London sought a declaration from the High Court as to whether the HSE could prosecute it under s 3 HASAWA. The HSE declined to participate in the proceedings, leaving it to the claimant Club and the Corporation of London to argue the issue.

The High Court held that the Corporation's grant to the Claimants of permission to swim unsupervised in the pond would not of itself render it liable for prosecution. If an adult swimmer was given permission to swim unsupervised in a pond that had no hidden dangers, and the swimmer decided to swim in it, the risks he incurred in doing so were in a sense the result of both the permission and his decision. But if the law was to protect individual freedom of action, it had to discriminate between those causes. For the purposes of section 3, if an adult swimmer with knowledge of the risks of swimming chose to swim unsupervised, the risks he incurred were the result of his decision and not of the permission given to him to swim. It followed that those risks were not the result of the conduct by the employer of his undertaking, and the employer was not liable to be convicted of an offence under that provision.

Harris v Evans [1998]

Court of Appeal

Statutory duty; negligence.

John Harris sued Glynne Evans, an HSE inspector, for negligence in respect of economic loss arising from advice given in the exercise of his functions under the Health and Safety at Work etc. Act 1974. Evans had advised certain local authorities on remedial steps necessary to ensure compliance with safety

requirements in respect of a crane and other equipment used by Harris in connection with a bungee jumping business.

Acting on that advice, the authorities had either banned Harris from offering bungee jumping or served prohibition notices under the 1974 Act. When the Secretary of State revealed that Evans's advice had not accorded with HSE policy, the ban was lifted and the notices withdrawn. The issue was whether an HSE officer, in advising local authorities on the safety of equipment used for a bungee jumping business, owed a duty of care to the proprietor of an affected business, to avoid causing economic loss.

Harris's claim was, at first, disallowed. He won a preliminary appeal. Evans, however, succeeded in the Court of Appeal. It was held that the issue had to be considered in the context of an inspector's powers and duties within the statutory system provided under the 1974 Act for reduction of health and safety risks created by business activities. The existence of a statutory appeals procedure, together with the tendency of the imposition of liability to engender a cautious and defensive approach by statutory authorities to their duties, suggested that Harris's action should not be allowed.

Health and Safety Executive v Thames Trains Limited [2003]

Court of Appeal

Fatality; negligence - breach.

It was held that there may be circumstances in which the Health and Safety Executive would owe a common law duty of care to the victims of an accident, for failure to enforce compliance.

Heaven v Pender (1883)

House of Lords

Negligence - neighbour; occupiers' liability.

The owner of a dry dock supplied ropes that supported a stage slung over the side of a ship. The stage failed because the ropes were damaged. The failure of the stage injured the employee of an independent contractor working in the dock. The House of Lords decided the case on the basis that a duty of care was owed by an occupier of land (the owner of the dry dock) to invitees (the employees of the contractor who were on the site to the economic benefit of the dry dock owner).

The case is of particular interest in that the dissenting judgment of the Master of the Rolls, William Brett, 1st Viscount Esher in the Court of Appeal, suggested that there was a wider duty to be responsible in tort to those who might be injured if 'ordinary care and skill' was not exercised.

Brett MR's *obiter* views would later be expressly adopted by in the USA in the New York Court of Appeals by Justice Benjamin Cardozo in ***Macpherson v Buick Motor Co. (1916)*** and later by Lord Atkin in the House of Lords in ***Donoghue v Stevenson [1932]***.

Post script : the defendant was represented by Henry Dickens, QC (1849-1933), eighth and most successful of Charles Dickens's ten children.

Hindle v Birtwistle [1897]

High Court

Foreseeability; machinery guarding.

The occupier of a cotton factory was prosecuted for neglecting to fence the shuttles of his looms. Shuttles were known to occasionally fly out from the machine making them dangerous to anyone in the line of flight. The flying out of the shuttles could be caused by the negligence of the weaver in charge of the machine, or by reason of something getting accidentally into the shuttle-race, or by defects in the yarn.

It was held that the obligation to fence under the Factory and Workshop Act 1878, as amended (repealed) was not confined to machinery which was dangerous in itself in the ordinary course of careful working; the shuttles, even though not in themselves defective, were 'dangerous parts of the machinery' if any of the above-mentioned causes of their flying out of the shuttle-race were likely to occur with any degree of frequency.

HM Advocate v Buccleuch Estates (2013)

Dumfries Sheriff Court

Fatality; forestry and trees; safe system of work.

Ross Findlay, a forestry worker employed by Buccleuch Estates on the Drumlanrig Castle, Thornhill estate in Scotland, died in a tree felling operation. Mr Findlay was 49 and had learning difficulties. He was employed as a signalman, whose job it is to stand in a position where he can ensure the area around a tree is safe. The Court heard that Mr Findlay's difficulties sometimes made it hard for him to judge what his instructions, to be positioned two tree lengths away from where debris could potentially fall, actually meant. At the time the accident, he was standing too close to the felling of spruce and larch trees of up to 36 metres in height at Borgie Wood.

The HSE investigation that found Buccleuch Estates did not properly assess the risks to employees involved in tree felling operations and did not have a safe system of work in place. There was no adequate information, instruction, supervision or training for personnel involved in this task and it was particularly (and poignantly) important this was in place given the extent of Mr Findlay's learning difficulties. It was also discovered equipment was lacking as while

employees were told to adhere to the two tree length rule, the winch cable was only 40 metres long and this meant following this guidance for 36 metre tall trees was impossible.

A fine of £140,000 was imposed after a guilty plea to a section 2(1) HASAWA charge. After the trial, HSE inspector Aileen Jardine said, 'A system of waves and nods is not a safe way to manage the felling of large, heavy trees and put all three workers at unnecessary risk.'

'This informal and unsafe way of working had been in place unchallenged and not updated for over 15 years with the estate making no efforts to follow industry safety guidelines or to even accurately assess the risks its workers faced.'

HM Advocate v G Orr (2011)

Cupar Sheriff Court

Agriculture; fatality; safe system of work.

An agricultural worker, Keith Wannan, was fatally injured when, during routine maintenance work, he was drawn into and trapped in a potato harvester at Foodie Farm, near Cupar. The employer incurred a £112,500 fine for breach of section 2 HASAWA.

HM Advocate v Munro and Sons (Highland) Limited [2009]

Appeal Court, High Court of Justiciary, Scotland

Sentencing.

The Crown appealed purporting an unduly lenient fine. Munro Limited had been charged with an offence under section 3(1) HASAWA 1974 and fined £3,750.

The Court observed that the Scottish courts had not previously issued a reported judgment where the relevant considerations for assessing the appropriate level of fine had been discussed at length.

What are the relevant considerations for Scottish courts when seeking to identify the appropriate fine for a contravention of health and safety legislation?

Under reference to, firstly, the principles identified by the English Court of Appeal in ***R v Balfour Beatty Rail Infrastructure Limited*** [2007] and, secondly, the Sentencing Advisory Panel's *Consultation Paper on Sentencing for Corporate Manslaughter*, in allowing the appeal and increasing the discounted fine to £30,000 it was held that :

(i) the gravity of the offence, any aggravating/mitigating features and the ability of the accused to pay a fine should be taken into account;

(ii) the policy underlying section 3 HASAWA 1974 and the public interest in the requirement that the accused should be 'punished for its culpable failure to pay due regard for safety, and for the consequences of that failure', should be borne in mind; and

(iii) any fine should 'serve the purposes of retribution and deterrence, and thus serve as punishment without bringing a company to its knees'.

Obiter - where a company has been convicted of an offence under health and safety legislation, it is for the company to place before the court sufficiently detailed information about its financial position to enable the court to see the complete picture without having to resort to speculation - '...it may in some cases be thought appropriate to lead the evidence of an accountant.'

HM Advocate v Scottish Sea Farms Limited and Logan Inglis Limited [2012]
High Court of Justiciary, Scotland

Agriculture; Code of Practice, etc.; fatality; safe system of work; sentencing.

The employer failed to ensure that no persons at work entered a confined space on a barge without there being suitable and sufficient arrangements for the rescue of persons in the event of an emergency which might arise due to the confined space and risk of loss of consciousness. Two persons died as a result of just such an emergency, resulting in a £600,000 fine in Oban Sheriff Court. This was reduced from £900,000 for an early guilty plea and was based on a business turnover of £93 million and gross profits of £11 million.

On appeal the penalty was reduced to a base of £500,000, and by a further third for an early plea to £333,335.

Reference to *Safe Work in Confined Spaces* that contains the Approved Code of Practice and guidance on the Confined Spaces Regulations 1997 was recommended.

HM Advocate v West Minch Salmon (2011)

Stornoway Sheriff Court

Agriculture; fatality; safe system of work; training.

An employee on an organic salmon farm, Peter Duce, drowned when his boat sunk on a return journey from inspecting fish cages and feeding fish on the freshwater Loch Heather on the Isle of Lewis. The boat was not suitable for the tasks involved, the environment on the loch and specified loading levels were regularly being exceeded, with five men in a boat which had a maximum capacity of three. Duce was not wearing buoyancy equipment contrary to company policy, although the other four men on the boat were.

During investigation failures were found in the management of personal buoyancy equipment - a range of buoyancy equipment was being provided but some was below the recognised standard for prevailing conditions of work and there was a lack of information, instruction and training in use and maintenance procedures. Essentially it was left to the workers to decide what they would wear on any particular day.

The firm was fined £70,000 for breach of section 2(1) HASAWA.

Hudson v Ridge Manufacturing Co. Limited [1957]

Court of Appeal

Competent staff.

For a number of years an employee, Harold Chadwick, was disruptive and played practical 'jokes' on his colleagues. Streatfield J described him as a person :

'... who, if I may be forgiven for saying so, is not over-intelligent and appears to have grown to manhood with childish pranks still part of his make-up.'

He had been reprimanded by the foreman but even though he ignored these reprimands no further action had been taken and he was allowed to continue in work. One day he tripped up the claimant resulting in injury.

The employer was held to be liable as they knew of the potentially dangerous misbehaviour and had failed to take preventative action.

Hughes v Rosser (2008)

Swansea County Court

Animals Act 1971; equine; negligence - breach.

An experienced 18 year old groom (and BHS Assistant Instructor pupil), Rebecca Hughes, was kicked in the head after falling, whilst leading a horse at Malcom Rosser's farm in Llansamlet, near Swansea. Her hat fell off during the accident. There was held to be no negligence but strict, Animals Act, liability on the part of the livery yard owner. The case included a useful review of the operation of section 2(2) liability.

Imperial Chemical Industries Limited v Shatwell [1964]

House of Lords

Volenti non fit injuria.

George Shatwell (the claimant) and his brother, James, were certificated and experienced shotfirers employed by ICI Limited in a quarry. Part of the brothers'

work included wiring up detonators and checking the electrical circuits. It had been the old practice for a galvanometer⁵ to be applied directly to each. This practice was known to be dangerous and was outlawed by statutory regulation (the Quarries (Explosives) Regulations 1959 (revoked), made under the Mines and Quarries Act 1954). They were both injured in an explosion.

George claimed that his brother, James, was 50% to blame for the explosion and that their employer was vicariously liable. He was awarded half of the total amount of damages. The defendant employer appealed.

Held : the claimant and his brother were both experts. They freely and voluntarily assumed the risk involved in using the galvanometer. There was no pressure from any other source. To the contrary, they were specifically warned about complying with the new safety regulations.

The employers were not liable because :

- 1 the employers not being themselves in breach of duty, any liability of theirs would be vicarious liability for the fault of James, and to such liability (whether for negligence or for breach of statutory duty) the principle *volenti non fit injuria* afforded a defence, where, as here, the facts showed that George and James knew and accepted the risk (albeit a remote risk) of testing in a way that contravened their employer's instructions and the statutory regulations.
- 2 each of the brothers emerged from their joint enterprise as cause of his own injury, and neither should be regarded as having contributed a separate wrongful act injuring the other.

The defence of *volenti non fit injuria* should be available where the employer is not himself in breach of statutory duty and is not vicariously in breach of any statutory duty through neglect of some person of superior rank to the claimant and whose commands the claimant is bound to obey.

John Summers and Sons Limited v Frost [1955]

House of Lords

Machinery guarding.

Albert Frost, the defendant's employee, was injured on the grindstone of an unguarded power grinder. It was held that there is an absolute duty of secure fencing and a careless or inattentive operative was not relevant. Where, as in this case, secure fencing would render the machine inoperable, the duty was not negated.

⁵ An old form of ammeter used to detect and measure current.

To overcome this unsatisfactory state of affairs the Abrasive Wheels Regulations 1970 (since revoked) were introduced which permitted a lower standard of guarding than that required by the Factories Act.

Kent County Council v Health and Safety Executive [2004]

High Court, QBD

Machinery guarding.

There was an appeal from the conviction of the employer in the Magistrates Court for failure to prevent access to dangerous parts of machinery by an employee, who was injured when he came into contact with the unguarded power take-off shaft of a post hole borer.

The guard should have been attached to the auger. There was originally a guard but it was not taken from the storage shed for use. The employer had provided information and training in relation to the use of guards such as this. In fact there was evidence that the machinery officer had recently sent round a memo. reminding staff that such machinery should always be guarded. The memorandum ended : 'Under no circumstance should a PTO be used without guards on secure fittings. If any person is found using an unguarded PTO immediate disciplinary action will occur as that is deemed as gross misconduct.

Per Collins J : 'It is no doubt galling to employers, in particular to good employers ... who make every effort to try to ensure that the law is not broken, to find that largely because of the failures by those who ought to deal with the matter, namely the foreman or the chargehands, there has been a breach of the law. But I am afraid that that is often the situation with employers of large work forces (indeed sometimes not so large). Even if it can be shown that all reasonable steps have been taken but the system, for whatever reason, failed to deliver the right result, that cannot constitute a defence to a charge such as this where an absolute offence is created.'

The appeal was therefore dismissed.

Kilgollan v William Cooke and Co. Limited [1956]

Court of Appeal

Machinery guarding; negligence - breach.

Nora Kilgollan was employed as a strander in a wire-rope factory in Attercliffe, Sheffield. She was in charge of a machine where a long barrel revolved at 800 revolutions per minute and contained 18 bobbins, to each of which was attached a strand of wire. As the barrel revolved the strands were drawn to one end and twisted together into a wire rope by the rotation of the barrel. The machine was partially fenced but a considerable portion of the revolving barrel was exposed below the guard. If, as sometimes happened, one of the wires on the bobbins

broke, the loose end would frequently lash out under the guard and strike the worker in charge of the machine.

Mrs Kilgollan was standing in front of the machine when a small particle of broken wire struck her in the eye and blinded that eye. Over the three years prior to the accident there had been some 600 accidents in the ropery; these accidents, though not very serious, were not trivial, and defendants knew of the risk. Another type of guard for the machine was in existence and this, if it had been used, would have given protection against an accident of the type in question.

She sued her employer alleging negligence at common law and breach of duty under the Factories Act 1937, section 14(1) (repealed). It was held that (1) she was entitled to recover damages for negligence because they had knowledge of the risk and reason to foresee injury to their employees and had failed to take reasonable care, *but* (2) the defendants were not liable for breach of statutory duty under the Act, since that enactment imposed an obligation to fence the machine so as to protect the body of the workman from coming into contact with dangerous machinery, not to protect a workman against particles flying out of the machine, and accordingly plaintiff's injury was not one against which the enactment on which she sued was designed to protect.

Note : the interaction between civil and health and safety claims is now addressed by section 47 HASAWA which sets out that, per section 47(1), breaches of general duties under sections 2 – 8 give no automatic rights in negligence, whereas, per section 47(2), breaches of regulatory duties, *will* give such a right.

Knowles v Liverpool City Council [1993]

House of Lords

Safe equipment.

The claimant, employed by the defendants, was injured in the course of his work when a defective flagstone which he was handling broke. He was awarded damages of £3,092 on his claim under section 1 of the Employers Liability (Defective Equipment) Act 1969. The local authority employer appealed contending that the flagstone was not 'equipment'.

A broad approach to the Act was taken, bearing in mind its general purpose, rather than argument based upon a precise, legalistic, construction. Thus, the legislation was seen as being to protect an employee from exposure to dangerous material, albeit which had become dangerous through the fault of a third party, here the supplier. An artificial distinction between equipment and material was inappropriate.

Kozłowska v Judi Thurloe Sports Horses [2012]

Court of Appeal

Employers' duty; equine; negligence – breach.

A groom working at a Yorkshire competition yard, Marta Kozłowska, was told to ride a 10 year old cob. She swapped horses on took a 7 year old thoroughbred called Double, against her employer's express instructions. The horse slipped and she broke her ankle in trying to quickly jump down from the horse. She claimed she should have been better supervised. She succeeded in the County Court but the Court of Appeal found for her employer. She had been correctly assessed, given adequate instructions and consciously disobeyed those instructions. It was held that employees have a level of responsibility to look after themselves.

Langridge v Howletts and Port Lymne Estates Limited [1997]

High Court, QBD

Employer's duty; fatality.

Section 2(1) HASAWA provides that it is the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees. The matters to which that duty extends include the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health.

The owners of a zoo operated a programme of breeding endangered species for release into the wild and they ensured that there was social contact between animals and keepers. Following the death of a keeper, 32 year old Trevor Smith, killed by a Siberian tiger when he entered its enclosure in November 1994, the local authority served a prohibition notice on the owners under the 1974 Act, section 22 on the basis that an absolute duty to ensure the health, safety and welfare of employees was imposed on the owners by section 2. The authority submitted that, when keepers entered an enclosure, there was no reason why the animals could not be confined to one part of the enclosure. The owners appealed against the notice, submitting that it ignored their ethos on the underlying importance of bonding, which could not be achieved unless a keeper entered an enclosure in which an animal was roaming freely. At first instance, an industrial tribunal found in the zoo's favour.

On appeal by Richard Langridge, the senior environmental officer who had served the prohibition notice on the council's behalf, it was held that there might be circumstances which made it necessary that an activity, which would by any ordinary standards be regarded as dangerous, might nevertheless have legitimacy which justified it, but which would otherwise have laid the employer open to proceedings for the breach of his statutory duty. It was impossible to conceive the circumstances in which the Act could have intended to outlaw certain activities merely on the basis that they were dangerous. The Act was not seeking to legislate as to what work could or could not be performed but was

properly concerned with the manner in which it was done. Accordingly, the appeal would be dismissed.

Latimer v AEC Limited [1953]

House of Lords

Safe premises.

This case deals with the position at common law relating to an 'unprecedented, unexpected and freak hazard' and the practicability of precautions.

The claimant, Albert Latimer, was employed by AEC in their Southall works as a milling machine operator. On the afternoon of the accident, an unusually heavy rainstorm had flooded the defendant's premises. Oil, which normally ran in covered channels in the floor of the building, rose to the surface and when the water drained away, left an oily film on the floor. The defendants took measures to clean away the oil, using all the sawdust available to them.

Latimer came on duty with the night shift, unaware of the condition of the floor. While trying to lift a heavy barrel onto a trolley, he slipped and fell on the oily surface and the barrel crushed his left ankle. The trial judge found a breach of the common law duty to provide a safe place of work.

The Court of Appeal reversed this decision. The employer had to make a decision whether or not to shut the factory down and totally eliminate the risk. There is no duty to totally eliminate risk - the employer took every step reasonable in the circumstances and in so doing had negated allegations of negligence.

In looking at 'unprecedented and freak hazard' a 'temporary' delay may be expected in eliminating or mitigating an issue. However, there must be reasonable attempts to deal with the problem. The Court also ruled that the definition of 'maintained', used in the Factories Act 1937, section 25 (subsequently the Factories Act 1961), was clearly directed to the state of the construction of the floor and not its temporary and unexpected condition or obstructions on its surface. As a result Latimer lost his claim.

L H Access Technology Limited and Border Rail and Plant Limited v HM Advocate [2009]

High Court of Justiciary, Scotland

Fatality; safe system of work; sentencing.

The appellants pleaded guilty to breaches of duties under sections 2 and 3 HASAWA in relation to an accident in which Neil Martin, an employee of Border Rail, was killed. The accident occurred when a mobile work access platform at Waverley Station in Edinburgh. It was manufactured by L H Access and supplied by them to Border Rail. It developed a fault which could not be repaired

on site, and the deceased and Steven Barclay, the engineer employed by L H Access, decided to move it offsite. Because the machine could not be operated from the control panel it was agreed to move it by manually operating valves on each side of the machine. One valve, operated by Barclay on one side of the machine controlled the forward/ reverse movement of the machine and the other, operated by Martin on the other side, controlled its steering. Martin had to stand or walk between the front and rear wheels to operate the valve, which should have been done when the machine was stationary, and there was no direct line of sight between him and Barclay. No banksmen were employed as lookouts or to aid communication. The moving operation was seen by a Border Rail supervisor, and he did not stop it. In circumstances which were not clear, Martin was fatally run over.

The principal allegations were the adoption by L H Access of an unsafe system of work, by failing to appoint banksmen and / or failing to employ more effective means of communication, and by Border Rail in the failure by the Border Rail supervisor to recognise the risk and stop the operation when he became aware of it. It was accepted that by the time the supervisor became aware of the operation the manoeuvre was substantially advanced and apparently under Barclay's control, a factor which was advanced as reducing the second appellants' responsibility.

It was said in mitigation for both appellants that they were first offenders, that this was not a case in which the system of work was chosen for financial reasons, that this was an isolated occurrence and not one in which warnings were ignored, that they had adopted a responsible approach after the accident and, in the case of the first appellants, had introduced improvements in health and safety procedures and, in the case of the second appellants, no longer used the type of platform involved. The annual turnover of the first appellants in 2007 was £3.7m, and that of the second appellants £2.7m.

The sheriff held that what was done was well below what was reasonably practicable and that there was no distinction in culpability between the appellants, and fined each appellant £240,000, reflecting a discount from £300,000 to take account of the pleas.

The appellants appealed to the High Court against the sentences as excessive. In the course of the appeal reference was made to the English Sentencing Advisory Panel's recommendations for sentences for corporate manslaughter (now the Sentencing Council), which suggested a range between 2.5 per cent and 7.5 per cent of a company's annual turnover.

It was held (1) that it was reasonably foreseeable that quick and effective communication between the operators of the valves might be required and that Martin might be tempted to take a short-cut by adjusting the steering controls while the wheels were moving;

(2) that given the many obvious ways in which risk of injury to Martin could arise the provision of banksmen was fundamental to the safety of the manoeuvre, that the gravity of the offence was not diminished to any extent because the plea was

accepted on the basis that the precise sequence of events could not be established, and that the sheriff's assessment of the gravity of the breach and the dangerousness of the situation could not be criticised;

(3) that it was a major aggravating factor that an employee of the manufacturers of the machine adopted an inherently dangerous procedure not authorised or envisaged by the operator's manual, and introduced an unsafe system of work without any compensatory feature such as the provision of banksmen;

(4) that in the case of Border Rail the death of Martin was a major aggravating factor, as was the supervisor's direct responsibility for Martin, that the supervisor's failure to intervene and check the safety precautions was a highly significant failure, and that the presence of an employee of L H Access did not absolve the Border Rail supervisor from his duties or mitigate Border Rail's breach of duty;

(5) that the sheriff had not erred in his assessment of the aggravating and mitigating features; and

(6) that the fines were not outside the range of reasonable levels of fine available to him;

The appeals against sentence were thus dismissed. It was observed that the recommendations of the Sentencing Advisory Panel were *recommendations* and not in any sense prescriptive.

***Lister and others v Hesley Hall Limited* [2001]**

House of Lords

Vicarious liability.

A warden at a school for boys with emotional and behavioural difficulties (Axeholme House, a boarding annex of Wilsic Hall School, Wadsworth, Doncaster) sexually abused the claimants. He was convicted of multiple criminal offences. Although clearly not part of his employment, the approach which was best to be used when determining whether a wrongful act was to be deemed to be done in the course of employment, was by concentrating on the relative closeness of the connection between the nature of the employment and the particular wrong.

In this case, the defendants undertook to care for the claimants through the services of a warden so there was a very close connection between the torts and the defendants. Those torts were also committed in the time and at the premises of the defendants the warden was caring for the claimants. Accordingly, the wrongful acts were deemed to be done in the course of the warden's employment and the defendants were, thus, vicariously liable.

***Lister v Romford Ice and Cold Storage Co. Limited* [1957]**

House of Lords

Vicarious liability.

A father and son were employed by the same company. The son negligently backed an ice truck into his father whilst both were on a collection from a slaughterhouse, causing injury. The father sued the company for the negligence of their employee, his son. The company, or rather their insurance company, succeeded in obtaining similar damages from the son thus it can be seen that an employer who has been held liable and required to pay damages can be legally indemnified by his own employee.

This rarely happens, however, in practice and following this case the Association of British Insurers issued a statement saying they would not pursue employees through the courts in general, but that this was a special case on its facts.

Under the terms of a contract of employment, an employee must be diligent and use reasonable skills while at work. This amounts to a general duty to take reasonable care while at work. These contractual duties are owed to the employer and not to any person who may be injured as a result of the breach. As a consequence, the employer may be able to sue the employee for breach of contract.

Lynch v Binnacle Limited t/a Cavan Co-op Mart (2011)

Supreme Court, Ireland

Agriculture; contributory negligence; negligence - breach; vicarious liability.

The case concerned the question of whether an employer could be vicariously liable for an injury occurring in the absence of employees who were required to be present for the successful operation of a safe system of work.

The appellant, Patrick Lynch, was employed as a drover at a cattle mart and his duties included helping to operate a weighbridge system. At the time of the accident two other workers who had been operating the weighbridge system with Lynch had temporarily absented themselves. This meant that Lynch had to enter a pen in which a Limousin bullock was present in order to open the gate into the weighbridge, something he would not have had to do had his co-workers been present. Lynch suffered a severe direct kick to the groin from the bullock which resulted in the loss of his right testicle.

In the High Court it was held that the employer was not negligent and that Lynch had, in short, been the 'author of his own misfortune'. Lynch appealed.

Denham J, delivering the lead judgment of the Supreme Court, held that the trial judge had erred in law by concluding that the employer was not vicariously liable for the injuries sustained and allowed the appeal.

Noting that while the other drovers' absence was unauthorised, it was clearly known to the employer that drovers did absent themselves from work on

occasion and no evidence had been shown to support the existence of any system of supervision to ensure against such unauthorised absences. Their absence was so connected with the act they were authorised to do that the employer was vicariously liable for the unsafe system of work.

Fennelly J noted that when his fellow workers left Lynch to the task of getting the animals from the pens unaided they were acting within the course of their employment, and thus committed a breach of the duty of care owed to their colleague, for which the employer was vicariously responsible.

Lynch v Ceva Logistics Limited and S W Lynch Electrical Contractors **[2011]**

Court of Appeal

Independent contractor; safe system of work.

Mark Lynch was a qualified electrician employed by his brother, the second defendant. The first defendant company, Ceva, owned and operated a warehouse. For many years the second defendant had a contract for the maintenance of electrical items at the warehouse. ML regularly visited the warehouse to carry out electrical work. The warehouse was laid out so that in one section there was a series of very narrow aisles which passed between tall storage racks. At one end of the aisles there was a wall or a fire break. Accordingly it was only possible for the aisles to be accessed from the top end. ML visited the warehouse to inspect the lights in the roof and, where necessary, replace them. He drove around the warehouse in a cherry picker parking his cherry picker at the end of an aisle between two racks. When he needed to access the next aisle the safest course would have been to return to the cherry picker and drive forwards a few yards. If he parked his cherry picker at the end of an aisle it gave him the necessary access and, more importantly, it blocked the end of the aisle, so that trucks could not be driven along past where he was working. ML did not take that course. Instead he made his way on foot. Shortly afterwards, he was struck by a truck and suffered serious injuries.

He brought proceedings claiming damages for personal injury against both defendants alleging breach of reg.s 4 and 17 of the Workplace (Health, Safety and Welfare) Regulations 1992. He contended that the defendants had failed to provide a safe system of work. In particular, they had failed to secure a proper separation between pedestrians and vehicles in the warehouse. The judge held that Ceva controlled the warehouse and that control extended to outside contractors, such as the second defendant's employees, who were working in the warehouse. They were in breach of that duty. He held that the second defendant, as employer, owed a duty of care to the claimant and was in breach of that duty of care by failing to provide a safe system of work. Liability was apportioned with Ceva 60% liable and the second defendant 40% liable with ML contributorily negligent to the extent of 25%.

Ceva appealed, submitting that the judge had erred in holding that it was in breach of statutory duty, alternatively in apportioning such a high percentage of

liability. Ceva submitted that their duty under reg. 17 was owed to its own employees, but not to the employees of other contractors working on the site. Accordingly, they owed no statutory duty to the claimant under reg. 17.

The appeal was dismissed. The combined effect of reg.s 4(2) and 17 of the Regulations was that Ceva owed a statutory duty to ML to ensure that there had been a proper separation of vehicles and pedestrians in the warehouse. They had been in breach of that duty. Ceva ought to have instructed ML to block off the end of any aisle before he entered it. They failed so to instruct and, instead, they allowed him to persist in walking down fire routes and entering unprotected aisles. Accordingly, the judge had not erred in finding a breach of statutory duty

The court indicated that it did not readily entertain appeals on apportionment where the trial judge had had all relevant factors in mind and had not been influenced by irrelevant factors. The judge had not made any error of principle in carrying out the apportionment exercise and his decision on liability would stand. The claimant would recover damages for his injuries, less a discount of 25% for contributory negligence. Those damages would be paid as to 60% by Ceva and 40% by the claimant's employer, the second defendant.

MacLellan v Forestry Commission (2004)

Technical and Construction Court

Forestry and trees; negligence.

The tree concerned was under regular though somewhat casual observation. It fell onto a woodland footpath along which Peter MacLellan was walking and, consequently, injured. However, the defect principally held responsible for the collapse of the tree (root decay was considered to have been readily discoverable only on *close* inspection.

Two factors were considered to remove an attachment of liability in this case : 1. the low level of public access along the path, and 2. the absence of any obvious sign on basic inspection that the tree was unsound. The regular surveillance of the injuring tree was held to be adequate.

Mailer v Austin Rover Group Limited [1990]

House of Lords

Fatality; independent contractor; safe system of work.

The respondents' car assembly plant contained a spray painting booth beneath which was a large sump which was used to collect excess paint and thinners. They employed an independent contractor to clean the booth. The contractor's system of work expressly detailed safety precautions. In cleaning the booth one of the contractor's employees entered the sump to clean it while another employee cleaned the booth above. A flash fire occurred and the employee

cleaning it was killed. After the fire it was discovered that the contractor's employee had not been working in a safe manner.

The contractor was prosecuted and convicted of failing to provide a safe system of work for its employees. The respondent car company, as the person in control of the premises, were also prosecuted for failing to take such measures as were reasonable to ensure so far as reasonably practicable that the sump and piped thinners were safe and without risks to health, contrary to section HASAWA. The car company were convicted by the magistrates and fined £2,000. They appealed to the Divisional Court which allowed their appeal. The factory inspector appealed to the House of Lords.

Held : if it was proved that premises which had been made available for use by others *were* unsafe and constituted a risk to health, the onus lay on the defendant to show that, weighing the risk to health against the means, including cost, of eliminating the risk, it was not reasonably practicable for him to take those measures.

If the premises were *not* a reasonably foreseeable cause, it was *not* reasonable to require further measures to be taken to guard against unknown and unexpected events which might imperil their safety. Since it was not reasonable for the respondents to take measures to make the spray painting booth and sump safe against the unanticipated misuse of those premises by the contractor's employees the magistrates had been wrong to convict the respondents. The inspector's appeal would accordingly be dismissed - the respondent occupiers were not guilty.

Marshall v Gotham [1954]

House of Lords

Fatality; reasonably practicable.

This case concerned the collapse of a gypsum mine roof which had been subjected to appropriate tests but which collapsed from a fall of marl caused by a rare geological fault known as 'slickenside'. Although there was a duty under the Metalliferous Mines Regulations Act 1872 and the Metalliferous Mines General Regulations 1938 (repealed) that roofs should be safe, the employers were held to be *not* liable, at first instance, because they had taken some precautions and the trouble and expense involved in taking more precautions would have been prohibitive and even then would not have guaranteed safety.

On appeal it was ruled that if a precaution is practicable it must be taken unless in the whole circumstances it would be unreasonable. The term is now generally interpreted to mean that whatever is technically possible in the light of current knowledge must be carried out. The cost, time and trouble are *not* to be taken into account in arriving at a decision.

Per Lord Reid : ' ... as men's lives may be at stake it should not lightly be held that to take a practicable precaution is unreasonable ... '.

McArdle v Andmac Roofing Co. and others (1967)

Court of Appeal

Independent contractor.

It was held that when an employer engages an independent contractor and assumes the duty of co-ordinating the work the employer is under a duty to see that reasonable safety precautions are taken for the sub-contractor's employees. Pontins employed two firms of sub-contractors, Andmac Roofing and Newtons, to refurbish their holiday camp in Liverpool. McArdle was an employee of Andmac. Whilst laying felt and bitumen, he was badly injured when he fell through a hole left in the roof by employees of Newton whilst they went to lunch. It was held that the main contractor, who had engaged a number of contractors to do different jobs on the site, had the duty of supervising the work of the sub-contractors in a safe manner.

At first instance Andmac were liable for 30% of the compensation, Pontins for 50% and Newtons for 20%. Andmac admitted liability but appealed claiming contributory negligence. Pontins and Newtons disclaimed liability.

The Court of Appeal dismissed any claims of contributory negligence and adjusted the apportionment such that each defendant was one third liable.

McDermid v Nash Dredging and Reclamation Co. Limited [1987]

House of Lords

Employer status.

Jamie McDermid, aged 18 at the time of the accident in 1975, was injured whilst working as a deckhand on a tug working in connection with dredging operations in a Swedish fjord. A system was operated whereby the claimant untied the ropes and gave two knocks on the side of the wheelhouse to indicate to the captain that the ropes were on board. On one occasion the captain, Captain Sas who spoke little English, moved the tug away from the dredger before the claimant had given the signal resulting in the claimant's injury.

The accident was the tugmaster's fault. He worked for the claimant's employer's parent company. McDermid sued his employers who were found liable despite the technicalities of the precise employment contract relationships.

McDonnell v Henry and McDonnell [2005]

Court of Appeal, Northern Ireland

Employer status; independent contractor.

The claimant, Paul, suffered personal injuries in accident at Harry Henry's farm whilst trying to start the farmer's cement mixer. He was preparing cement for a plastering job that he and his father were undertaking in the farm's milking

parlour. Paul rotated the handle of the mixer at speed and it struck him on his left eye causing serious injuries to that eye. He brought proceedings against Mr Henry, claiming that he was employed by the farmer at the material time, alternatively that the farmer was in breach of health and safety legislation and common law obligations. Mr Henry brought third party proceedings against the claimant's father, James, submitting that such duty as was owed to Paul was the responsibility of his father.

The judge found that James brought his son as his assistant to the farm, with the father paying him out of the moneys he received from the farmer. He held that the claimant was *not* an employee of the farmer.

Paul appealed, contending that : 1. he was an employee of the defendant; *or* 2. if he was not an employee, identical duties, by reference to the regulations governing employer / employee relationships, were owed to him by reason of the farmer's status as :

- a main contractor *or*
- the undertaker of construction works *or*
- the owner of the relevant equipment and materials.

He relied upon: the Health and Safety at Work Order (NI) 1978, the Management of Health and Safety at Work Regulations (NI) 1992, the Personal Protective Equipment at Work Regulations (NI) 1993, the Provision and Use of Work Equipment Regulations (NI) 1993 and the Construction (Health, Safety and Welfare) Regulations (NI) 1996.

Held : whether a worker is to be deemed an employee is to be taken on the particular facts of each case considering :

- the nature of the relationship between the parties,
- the type of work,
- the level of control exercised by the party engaging the worker
- who was responsible for the overall safety of the worker

and all other relevant factors. In this case, there was no doubt that the claimant was not an employee of the farmer. Paul (or his father) was in control of the work to be done. Mr Henry gave no instructions as to the manner of doing the work; he merely indicated what he wanted doing. The skills necessary to carry out the work were possessed by the claimant and his father and they were in control of how the work was performed. The supply, by Mr Henry, of cement and the mixer was incidental. Moreover, the relevant 'business' was the activity carried on by the claimant rather than the enterprise for which the work was undertaken. In the present case, the 'business' was plastering, not farming. However the question was approached, the reality of the relationship between the claimant and the defendant was not one of employer / employee. If the claimant was employed by anyone, it was his father.

McGhee v National Coal Board [1972]

House of Lords

Causation; negligence - breach.

James McGhee was employed to clean out brick kilns and developed dermatitis from the accumulation of coal dust on his skin. There were no shower facilities at his workplace and he had to cycle home each day, the perspiration caused by the exertion increasing the risk that he would contract dermatitis. Had his employer provided shower facilities, the coal dust could have been washed off before cycling, reducing the risk.

Due to the limits of scientific knowledge, it was impossible to rule out the possibility that he had not, in fact, contracted dermatitis during the non-wrongful exposure to brick dust while working in the kiln.

He sued his employer for negligence for breaching its duty to provide proper washing facilities. The issue before the court was whether the failure to provide the washing facilities had caused the dermatitis.

The House of Lords, on appeal from the Scottish Court of Session, held that the risk of harm had been materially increased by the prolonged exposure to the dust.

Lord Reid stated : 'The medical evidence is to the effect that the fact that the man had to cycle home caked with grime and sweat added materially to the risk.'

The material increase in risk was treated as equivalent to a material contribution to damage. The implication of the case was significant as it meant that a claimant need not demonstrate that the defendant's actions were the *cause* of the injury, but instead that the defendant's actions *materially increased the risk* of injury, and thus damage.

McKaskie v Cameron (2009)

Preston County Court

Agriculture; Animals Act 1971; fatality; negligence - breach; occupiers' liability.

Shirley McKaskie was very seriously injured by cows, with calves at foot, whilst walking with her Jack Russell across a Cumbrian field through which ran a public footpath.

The farmer, John Cameron, was found liable in the County Court under the Occupiers' Liability Act 1957 for lack of 'reasonable care' and under the Animals Act 1971. The court were particularly swayed by industry guidance (from the National Farmers' Union and the HSE) about the management of cows with calves in fields with public access, i.e. that putting them in such fields should be avoided where possible (and the farm in question did have other fields available)

and that, if it was unavoidable, temporary fencing should be considered. Such guidance will provide the court with an (albeit not binding) idea of what should be done to evidence reasonable care. It might be noted that the expert witness evidence was conflicting on what a threat the cow / calf relationship posed given that they were all at least six months old which, to some, is past the age when maternal aggression is likely to manifest itself.

In July 2009 damages in the region of £1m were awarded. The defendant's insurers were keen to appeal and leave to appeal was granted and scheduled for February 2010 but in January 2010 an out of court settlement was reached.

Health and safety offences were not pursued by the HSE due to the acknowledgement of general good practice and management on the farm and lack of evidence and witnesses to the incident in question.

McLean v University of St Andrews (2004)

Outer House, Court of Session

Negligence - breach

The case sought to ascribe liability in delict (closely related to the English law of tort) with regard to a student at the University of St Andrews. As part of her Russian language course, Erin McLean was required to spend six months in full time education at Odessa University in the Ukraine.

The University of St. Andrews were responsible for ensuring that Odessa University provided a safe and adequate hostel accommodation for any exchange students. When walking back to her hostel one night with her boyfriend, the student alleged that they were assaulted, and she was raped, by a group of Russian seamen. On her return to Scotland, the student raised an action against the University of St. Andrews.

The University admitted that it owed a duty of care towards its student to ensure that she was adequately and safely accommodated at the foreign placement. Given that the alleged crime had happened beyond the campus area controlled by the Odessa University Authorities, the university could *not* be held liable to the student under the circumstances. Importantly, the student had been advised not to walk back to her hostel at night by way of the area where the alleged incident took place. The decision in this case made it clear that had the alleged crime happened within the campus area which had been controlled by the Odessa University Authorities, the university may well have been liable to the student but that, with an adult student, their duty had been fulfilled, even with regard to a city of known higher risks than the UK, by adequate briefing.

McWilliams v Sir William Arrol and Co. Limited [1962]

House of Lords

Causation; fatality; safe system of work.

William McWilliams was an experienced steel erector working on a tower crane at a height of about 70 feet high when he fell and died. His wife, Janet, sued for breach of section 26 of the Factories Act 1937, which required that if a person could fall more than 10 feet, means such as fencing or safety belts should be provided unless adequate foot and hand holds existed. Safety belts had been available until 2 days before the accident but not used and had then been removed to another site.

The House of Lords decided that, although the defendants were in breach of their statutory duty in not providing a belt, they were not liable since, on the evidence presented, McWilliams would not have worn the belt if it had been provided, thus the chain of causation was broken as it was not established that the defendant's breach had caused the death.

This case is generally agreed to be unusually generous to the employer and at that time there was no duty on employers to instruct or exhort employees to wear personal protective equipment. See **Nolan v Dental Manufacturing Co. [1958]**.

Meridian Global Funds Management Asia v Securities Commission [1995]

Privy Council

Individual liability.

This case set out useful statements on the relationship between corporate and personal liability. Note, particularly, the judgment of Lord Hoffman with an exposition of the law of agency and vicarious liability.

Mersey Docks and Harbour Board v Coggins and Griffiths (Liverpool) Limited [1946]

House of Lords

Vicarious liability.

Mersey Docks hired a crane and driver to Coggins, a firm of stevedores. Whilst on hire, Coggins was responsible for paying the driver and could dismiss him but the hire agreement declared the driver to be Mersey Dock's employee. The case hinged on the question of whether the employer/employee relationship had passed from Mersey Docks to Coggins.

It was held that the test was : 'Who had the authority to direct or delegate to the workman the manner in which the vehicle was driven?' Here, in operating the crane, the driver was using his own discretion which had been delegated to him

by his regular employers. If he made a mistake in operating the crane, this was nothing to do with the hirers.

The power to control the method of performing the work was *not* transferred, therefore Mersey Docks was vicariously liable for the driver's negligence.

Micklewright v Surrey County Council [2011]

Court of Appeal

Fatality; forestry and trees; negligence - breach.

Christopher Imison was killed when a branch fell from an oak tree onto the verge of Wick Road, Virginia Water as he was unloading the family bicycles from his car. It was held that there was an inadequate system of tree inspection by the defendant Council but that the tree defects would not have been apparent even if the system had been good, therefore there was no causal link between the lack of care and damage.

Hedley LJ noted : 'It is always discomfoting where a family without any culpability, having suffered catastrophic loss are forced to do so without compensation but this is the inevitable result of a law which ties compensation to proof of negligence. For the reasons I have set out, I have come to the conclusion that this appeal should be dismissed.'

Nolan v Dental Manufacturing Co. [1958]

Manchester Assizes

Safe equipment.

Nolan was an experienced machinist sharpening a tool on a carborundum wheel when a metal splinter flew into his eye. The employers had never issued goggles for Nolan, or any other workers in his position. It was held that they should have been issued and that there should have been systems to ensure they were worn.

Osborne v Bill Taylor of Huyton Limited [1982]

Divisional Court, QBD

Number of employees.

An employer employed five people in his betting shop, two of whom were relief staff so that only three employees were ever present at any one time.

Section 2(3) HASAWA requires an employer to provide a written policy statement relating to the health and safety of his employees. There was (and remains) an exception to this for employers with fewer than five employees

under the then operative Employers' Health and Safety Policy Statements (Exception) Regulations 1975.

Held, the words 'for the time being' should be construed as meaning 'at any one time'. Accordingly, the exception applied.

***Oudahar v Esporta Group Limited* [2011]**

Employment Appeal Tribunal

Unfair dismissal.

The claimant, Khaled Oudahar, worked as a chef in the kitchens of a health club in Swiss Cottage. He was expected to clean behind fryers but refused to do so as he was concerned that there was a safety problem due to wires hanging from the wall. His manager did not consider that there was a health and safety problem and, after he had been asked repeatedly to clean, he was suspended.

The claimant was dismissed in part by reason of disregard of food hygiene and in part by reason of the failure to obey instructions. Section 100(1)(e) of the Employment Rights Act 1996 says, in short, that one cannot be dismissed for failure to comply with employer instructions if the reason for non-compliance was fear of serious and imminent danger to oneself or others.

The Employment Tribunal found that the claimant's dismissal did not fall within section 100(1)(e) because the employer had investigated the claimant's concerns, through the kitchen manager, about safety and considered that there was no risk. The claimant was therefore dismissed for failing to follow a *reasonable* instruction.

The Employment Appeal Tribunal, however, found that the Employment Tribunal had failed to apply section 100(1)(e) properly.

Firstly, they had to consider whether there were circumstances where the employee reasonably believed there to be a serious and imminent danger and, if so, whether he took appropriate steps to protect himself.

Secondly, if the criteria were made out, the Tribunal should ask whether the employer's sole or principal reason for dismissal was that the employee took or proposed to take such steps.

If that was the reason for dismissal, the dismissal must be regarded as unfair.

The mere fact that an employer disagreed with an employee as to whether there were circumstances of danger, or whether the steps were appropriate, was irrelevant.

Paris v Stepney Borough Council [1951]

House of Lords

Negligence - breach.

Edward Paris only had one eye, having lost the other in the war. He was a fitter in the Council garage and whilst hammering in a workshop a metal particle lodged in his good eye resulting in total blindness. He sued his employer in negligence.

Had they taken 'reasonable care'? The situation in hand must be looked at - a one eyed workman should have been enforced to wear a protective mask more firmly than usual as he was more vulnerable.

The egg shell skull principle was operative - you take your claimant as you find them. It is no defence saying that a someone without the particular incapacity of the claimant would not have been so affected.

Philpfaugh Trust Estate - inquiry into the death of Douglas John Armstrong (2008)

Selkirk Sheriff Court

Fatality; lone working; risk assessment; independent contractor.

The deceased was a part time gardener on the Philpfaugh Estate in the Scottish Borders near Selkirk, employed (in his gardening capacity) by a tenant farmer who also had some estate management duties. The estate was in the hands of trustees who employed a full time gamekeeper.

The gamekeeper arranged for the part-time gardener to carry out his duties whilst he was off sick. The deceased was known to the estate but had never been assessed, trained or supervised as a gamekeeper by the estate, although was known to have carried out some similar duties on a part time basis on a neighbouring estate. He died when out feeding pheasants due, apparently (there were no witnesses) to his quad bike overturning on a steep slope. Key factors were that :

- he was alone
- the homemade grain carrier on his bike was loaded well over the specified limits
- he was off the designated route
- he had been given no map of the relatively long route and had been round it with the regular keeper just once
- he had no mobile phone or other means of communication (there was good reception)
- his expertise on the bike had been assumed but never assessed

- he was on a 450cc bike when the consensus was that he had never driven anything larger than a 350cc bike in the past, certainly not heavily laden
- he had no helmet (although that would not have prevented the particular injuries)
- there was no buddy system or check on when he was due back
- when he did not return to drink his usual mid-morning coffee it was not followed up
- the nature of his engagement for game keeping duties was unclear, as regards employment and lines of responsibility
- particularly tragically, he died early Monday morning and was not searched for until well into Wednesday

In the employer's defence - the deceased was a well-known member of the estate community in his 50s, and a part time teacher on agricultural courses. He was understood to have been familiar with quad bikes, but possibly not such a powerful one. Although a route map was not volunteered, the deceased had asked for a map of the route but then decided he did not need it.

The case was initially brought against the trustees in their capacity as trustees *and* as individuals. They successfully appealed against their prosecutions as individuals (***Aitkenhead, James Alister and Strang Steel, Robert Stanley v Procurator Fiscal [2006]***). The judgment of Lord Drummond Young contains an interesting exploration of a trust as a body corporate. In short, the trust has no separate legal personality in the way of a company, but under the Criminal Procedure (Scotland) Act 1995 the trustees should be prosecuted as a body but not as individuals. This stems from their lack of capacity to act individually (contrast most partnerships). As well as matters of penalty and personal distress this also, of course, affects the individuals' criminal record.

The fatal accident inquiry stressed the extreme importance of risk assessment, of not making assumptions about employees' experience, and about the need to have very clear lone working practices, on which there is much information available from the HSE and a number of other organisations. The Sheriff particularly noted:

- the inadequacy, in terms of risk assessment,
- of making assumptions as to skills, based on general acquaintance,
- of expecting an employee to state their own precautionary measures or equipment, e.g. additional training, maps or mobile phones,
- the lack of good lone working practices - general assertions that many rural workers (based on previous experience with a shepherd near to retirement age) would not use a mobile phone if issued was no defence to that non-issue and non-enforcement of use.

The case is notable in that it covers what can be a very common situation on farms and rural estates : (a) a person well known to the business who is taken

on a casual basis without formal ascertainment of skills or management of work, (b) assumption of skills, and (c) lack of clear employment and/or management structures.

Although there was a critically reviewed catalogue of defects in the circumstances surrounding Mr Armstrong's death, the relatively light penalty of £3,000 for breach of section 2(1) HASAWA reflects the fact that the Court could not conclude that those defects actually *caused* the accident or the death. Perhaps Mr Armstrong was competent on the bike, perhaps he had a momentary lapse in concentration, perhaps he would not have taken a phone out even if issued, perhaps a lone worker buddy or check in system would not have worked, given that the precise time of death is unknown. Or perhaps if someone had acted when his coffee was left going cold, he would have been saved.

Pola, Shah Nawaz v Health and Safety Executive [2009]

Court of Appeal

Employer status.

The appellant was convicted in Bradford Crown Court of an offence under section 33(1)(a) HASAWA for failing to discharge a duty pursuant to section 2(1) of that Act and of contravention of the Work at Height Regulations 2005. The only dispute was whether the appellant was an employer, within the scope of the Act.

If he was, it was not disputed that he was in breach of the relevant provisions of the Act and Regulations.

The appellant arranged the building of an extension to a detached house. A number of unqualified Slovakian nationals were paid between £25 and £30 per day to work at the site. One of them, Dusan Dudi, fell from a raised platform where he was demolishing a wall. When he fell, the wall collapsed and fell on top of him. Tragically, he suffered severe brain injuries, leaving him with permanent disabilities.

The issue was whether the prosecution could prove that the appellant was the employer of any of the Slovakian men within the meaning of the 1974 Act. Per Moses LJ, by section 53 of the 1974 Act '... 'employee' means an individual who works under a contract of employment...and related expressions shall be construed accordingly ...'

The trial judge started his directions of law by correctly telling the jury that it had to be sure that a contract of employment existed between the defendant and some or all of the workers. He then referred to 'mutuality of obligations'. It is true that that was a phrase which readily springs to the lips of the Employment Appeal Tribunal and of the Court of Appeal It is not however a phrase, we imagine, familiar to a Bradford jury ...

The judge accurately explained that it meant that the jury would have to be sure that there should be more than just work provided on the one hand, in exchange for payment on the other. He reminded the jury of the defence submission that the relationship between the Slovaks and the defendant was so casual that it did not amount to the relationship between employer and employee ...

The judge then turned to what he described as the badges or indicators of a contract of employment. He referred to control, selection, supervision, responsibility for payment and what he described as 'continuity of a body of individuals'. But he continued: 'Those are some of the factors. They are not exhaustive and, at the end of the day, it is for you to consider the evidence and decide firstly does it establish that Pola was in charge of the site so as to be responsible for the activities on it and secondly...you must go on to consider whether he was, in fact, the employer of the Slovakian workers...'

Although the appeal court found the trial judge's directions to the jury to be lacking, they upheld the finding that the appellant was an 'employer'.

***Poll v Viscount Asquith of Morley* [2006]**

High Court

Forestry and trees; negligence - breach.

Gary Poll was injured when he drove his motorbike into a fallen tree on the public highway near Frome in Somerset. The estate was liable in negligence as it was held that what was described in court as a level 2 inspector acting properly would have picked up the problem (fungal fruit body and bark inclusions on a multi-stemmed ash tree) whereas only a level 1 inspector was employed to do a 'drive past' inspection. As with many professional negligence cases in a variety of contexts (e.g. doctors or chartered surveyors) weight was put on the fact that a suitably skilled practitioner would have been triggered, by points arising on a preliminary review, to carry out a more detailed investigation.

***Priestley v Fowler* (1837)⁶**

Court of Exchequer

Employer's duty of care.

This case is included for historical interest as the first known reference to an employee suing an employer for work related injuries and for introducing the old rule of common employment (although scholars now trace the true source of the principle to ***Hutchinson v York, Newcastle and Berwick Railway Co. (1850)***). This was the rule that the employer was not liable for injuries caused by one employee to another in the course of their employment. The rule was removed by the Law Reform (Personal Injuries) Act 1948.

⁶ See Ashley Stein, Michael (2003).

Charles Priestley, the claimant, (although technically the case was brought by his father, Brown Priestley, as he was a 19 year old minor) was an employee of Thomas Fowler, a butcher in Market Deeping, Lincolnshire. Fowler had asked Priestley to take mutton to market in his four horse van, driven by another employee, William Beeton. Beeton had protested that the van was overladen at the outset and the horses 'jibbed', i.e. they stopped in their tracks, unable to easily move the wagon forward. Priestley was injured when the van collapsed and he was awarded the then substantial sum of £100 at first instance.

On appeal from Lincoln Assizes, Lord Abinger CB, held that the mere relationship of master and servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do himself. He clearly foresaw that permitting Priestley to recover directly against his master in this novel action would open the floodgates to both direct and vicarious liability, entitling servants injured by their peers to recover against their common masters. Because such an extension would engender consequences of both 'inconvenience' and 'absurdity', general principles were seen to provide 'a sufficient argument against liability.'

He concluded with a last policy argument against upholding the jury's verdict : allowing this action 'would be an encouragement to the servant to omit that diligence and caution which he is in duty bound to exercise on behalf of his master', and which offers much better protection against injuries 'than any recourse against his master for damages could possibly afford.'

It may be noted that the historical context is that, until the Poor Law Amendment Act 1834, the costs of treatment and support of the injured poor were dealt with through Poor Law and parish relief - a community fund to which landed and business people would contribute. The new Poor Law very much curtailed such relief, leaving a gap which began to be filled by, among other things, the development of tort and employment rights.⁷

Puzey v Wellow Trekking (2005)

Bristol County Court

Animals Act 1971; equine.

An experienced rider fell whilst out on a group hack from a riding centre. The group were cantering through a field with hay bales when the claimant's horse shied. The group was being escorted by an unpaid rider who worked around the yard in return for free rides.

1. Was the unpaid escort an employee? On normal principles of employment law looking at a range of factors surrounding the control of the person's activities, it was found that he could *not* be regarded as an employee.

⁷ Simpson, A W Brian (1995).

2. Per section 2(2) (a) Animals Act - was the damage likely to happen, and if it did happen was it likely to be severe? The damage when an adult falls from a large horse travelling at speed 'might well be' severe.
3. Section 2(2) (b) was clearly fulfilled under the ***Mirvahedy v Henley [2003]*** construction - it is normal equine behaviour for a horse to shy when frightened.
4. A defence under section 5(2), that the claimant voluntarily accepted the risk, was *not* made out - the ride was not found to be within the generally accepted risks of riding. The judge took a very narrow view of this defence, requiring clear evidence of specific agreement to the risks of cantering through the field.

Quinn v Bradbury and Bradbury [2012]

High Court of Ireland

Contributory negligence; equine; employer's duty of care; risk assessment.

Robin Quinn was an experienced professional horseman who worked for the defendants' business breeding and training racehorses.

In November 2005, Quinn fell from a horse. He had been instructed by one of the defendants to ride the horse past her residence. The horse was spooked, jumped a metal gate and subsequently fell on top of the claimant who suffered severe personal injuries, in particular to his right arm, which effectively ended his riding career.

The court looked at the Safety, Health and Welfare at Work Act 2005 (Irish legislation) and the duty of care that is owed by an employer to an employee. Of issue in this case was the employer's direction as to how the work was to be carried. The court stated that the aim of the Act must be to make hazardous tasks as safe as is reasonably practicable. The court focused on the nature of the precautions that were required to be taken to avoid an accident and, in particular, the appropriateness of the instruction given by the employer.

Of note in this case is the fact that on the Friday before the accident occurred, the horse was spooked as he was being lead past the same place. The court accepted that the horse had a bad experience that was very likely to have been implanted in his mind from the previous Friday. Therefore the direction by the defendant employer for the employee to ride the horse past the obstacle where the horse had previously been spooked by did not fulfil the duty of care owed to the claimant by his employers. No precautions were put in place to avoid the accident at work, such as another person leading the horse.

The court also assessed the question of contributory negligence. Under section 13(1)(a) of the Act there is a duty on an employee to protect his own safety, health and welfare. The employee is not entitled to completely surrender welfare at work to an employer. The court stated that Quinn had discretion as to

how to proceed with the horse past the obstacle and assessed his contributory negligence at 30%, reducing damages by 30% to €126,410.

R v Associated Octel Co. Limited [1996]

House of Lords

Independent contractor.

The defendant company's large chemical plant had been designated by the HSE as a 'major hazard' site for some years. They engaged some contractors to carry out repairs of a tank during a shutdown period. A contractor took a highly flammable liquid, acetone, into the tank to clean the inner surface, which they did by the light of an electric bulb attached to a lead. When the bulb broke a flash fire was triggered.

The HSE successfully prosecuted Associated Octel who were fined £25,000. They appealed first to the Court of Appeal who upheld the conviction and then the House of Lords, where the conviction was, again, upheld.

The Lords held that if an employer engages a contractor who works on his or her premises then the employer, subject to reasonable practicability, must ensure the contractor's health and safety. The appeal to the House of Lords was concerned with the definition of the term 'undertaking', which effectively includes any work carried out on the employer's premises. They also stressed the need for risk assessments to (a) result in good maintenance and mitigation measures, and (b) to be regularly reviewed regarding both practical implementation and to take into account the current state of scientific and technical knowledge.

There was interesting discussion in this case about the contrast between vicarious liability in tort, based on contractual relationship, where the employer may have done no wrong, and criminal liability under HASAWA, where the obligations are direct. The defendant were not liable *on behalf* of the sub-contractor - they had a direct duty under section 3(1) HASAWA.

R v Aceblade Limited [2001]

Court of Appeal

Sentencing.

The company pleaded guilty to a charge of failing to ensure the health and safety of an employee. A fine of £20,000 was awarded, with costs of £21,648.98, a total of £41,648.98. The defence submitted that the company could afford to discharge the financial penalty at the rate of £1,000 per month. This was accepted by the court; however the level of payment would require the periodic payment to be discharged over a period of 42 months.

The company appealed, maintaining that a financial penalty that endured for more than two and a half years was manifestly excessive. The Court of Appeal

disagreed, stating that very different considerations apply to corporate defendants as against individuals, and therefore a 42 month payment period was not manifestly excessive.

See also ***R v Rollco Screw and Rivet Co. Limited* [1999]**.

***R v B and Q plc* [2005]**

Court of Appeal

Fatality; safe system of work.

Pamela Hinchliffe visited the B and Q store in Poole, Dorset, to purchase cement for her husband. She went into the yard and talked to an employee when another employee reversed a forklift truck into the pair, striking his colleague and fatally crushing the customer against metallic shelving. The defendant was prosecuted under section 2(1) HASAWA in relation to the duties towards employees, and under section 3(1) in relation to the duty owed to non-employees. The jury found the defendant guilty on the counts laid under section 3(1) but not guilty under the counts under section 2(1). They were fined a total of £550,000 and appealed.

The defendant submitted that the jury's verdicts were inconsistent and it had been illogical for them to conclude that there had been a breach of duty in respect of the victim, under section 3(1), but not under section 2(1), when both had arisen from the same accident.

Held : the appeal would be dismissed. The jury had been entitled to come to the verdicts they had, acquitting in respect of the duty to employees but convicting in relation to duties to the public, and the judge could not be criticised in his approach to sentencing. There were a number of factors which applied to employees but not to the public, such as the employee's familiarity with forklift truck operations, health and safety training, and that fact that members of the public included children and required different levels of care.

***R v Balfour Beatty Rail Infrastructure Services Limited* [2006]**

Court of Appeal

Fatality; safe system of work.

The infrastructure of the United Kingdom rail network, including the track, was owned by Railtrack plc. The defendant was responsible for inspecting the track, under a seven year contract with Railtrack worth £368m. Following the Hatfield rail disaster, in which four people died and 102 were injured as a result of the derailment of a train due to the disintegration of parts of the track, the defendant was charged with manslaughter and for failing to discharge their duty under section 3(1) HASAWA, to persons not within their employment.

The prosecution case was that the defendant had failed adequately to inspect the track and failed to appreciate from the results of inspections that were carried out. It was ruled that there was no case to answer in relation to manslaughter and the defendants subsequently pleaded guilty to breach of duty. The judge found that the breach fell at the top of the scale, that no credit would be afforded for the guilty plea and imposed fines of £10m on the defendant and £3.5m on Railtrack, which had been convicted of breach of duty, relating to its failure properly to ensure that the defendant performed their duties under the 1974 Act. The defendant appealed against sentence.

Held : the appeal would be allowed. Where the consequences of an individual's shortcoming had been serious, the fine should reflect that, but it should be smaller by an order of magnitude than the fine for a breach of duty that consisted of a systemic failure. In this case there had been a serious systemic failure on the part of a company whose contractual duties were directed at securing the safety of rail travellers. The consequence was four deaths and over 100 injured passengers. If regard was had to the fact that the defendant was a very substantial company and that its overall remuneration under its contract was £368m, it was hard to say that the fine of £10m was wrong in principle, albeit that it was severe, however the *Sentencing Guidelines* give guidance on reducing a sentence in order to reflect a guilty plea, recommending that a discount of one-third should be made where a defendant pleads guilty at the first opportunity and a reduction of 10% where the guilty plea is only entered at the door of the trial. The guidelines advise that where a not guilty plea is entered and maintained for tactical reasons, a late plea of guilty should attract very little, if any, discount.

The outstanding charges of manslaughter had not precluded the company from pleading guilty to the section 3 offence at the outset and it had not even taken the course, which had been open to it, of offering a plea to the section 3 offence on the condition that the manslaughter charges were not pursued. The judge had been ideally placed to decide whether the defendant deserved any credit in respect of its belated plea of guilty, and his reaction to that issue was one that was properly open to him and it would not be right to interfere with his decision. However, in the light of an objectionable disparity between the fines imposed on the defendant and Railtrack, and given that the fine of £10m was severe, there was scope for a reduction in the interest of proportionality which would still do justice to the relevant principles and the victims of the disaster. Accordingly, the fine of £10m would be reduced to £7.5m.

R v Beckingham, R v Barrow-in-Furness Borough Council (2005 and 2006)

Preston Crown Court

Fatality; individual liability; manslaughter.

Following an outbreak *legionella* (Legionnaire's disease) due to faulty, poorly maintained air conditioning equipment in a Council run arts and leisure centre, which led to seven deaths and 180 reported cases of illness, the Council were acquitted of corporate manslaughter but found guilty of health and safety

offences (£125,000 fine). Mrs Gillian Beckingham, an architect and property manager for the Council, was charged with manslaughter, of which she was acquitted, but she was found guilty under section 7 HASAWA (£15,000 fine).

This case is important in the decision to pursue an individual, rather than just her employer, doubtless due to the situation summed up by Burnten J : 'Your failings were repeated and serious which led to multiple deaths and very serious suffering.'

Per David Bergen, Director for the Centre for Corporate Accountability in a press release (12th February 2004) : '[This case] does not reflect a change in the law, but a change in the way workplace deaths are investigated.'

Mrs Beckingham's conviction was overturned on appeal.

R v Binning, James (2014)

Oxford Crown Court

Employer status.

Costs for improper gross negligence manslaughter charge were awarded to James Binning in March 2014.

In October 2012, Dean Henderson Smith died after falling through a perspex skylight in the roof of a large hangar at a farm. The deceased was employed by the defendant's father and was carrying out repairs to the roof. The defendant ran his own separate business from the farm. On the day of the accident, he helped the deceased gain access to the hangar roof via a telehandler.

The defendant clearly stated from the outset that his father was the deceased's employer, as confirmed in his father's statement. Despite that, the CPS charged both the defendant and his father with manslaughter and section 2 HASAWA on the basis that they were the deceased's employer. The defendant's application to have the charges against him dismissed on the basis that he did not owe an employer's duty of care was accepted by the CPS. He then applied for the CPS pay his costs, incurred as a consequence of the CPS's 'unnecessary and/or improper act' in bringing a prosecution in the absence of any material supporting evidence.

Since 1 October 2012, most successful defendants who are privately funded cannot recover costs from central funds. They may, however, recover costs where the conduct of the CPS is found to be 'improper and/or unnecessary' (s19(1) Prosecution of Offences Act 1985 and Reg. 3 Costs in Criminal Cases (General Regulations) 1986). An interim award of £40,000 towards the defendant's costs was made, the balance to be determined on 29 May 2014.

A finding that the CPS has acted improperly is rare but applications under section 19 are likely to be more common now that successful defendants are restricted in recovering their costs from central funds. In the case against the

defendant's father, the CPS offered no evidence on the manslaughter charge and accepted a plea to section 2 HASAWA on the basis that the breach of duty did not cause the tragic death.

R v Boal [1992]

Court of Appeal

Individual liability.

The appellant, Boal, was the assistant general manager of Foyles bookshop in Charing Cross Road. His primary duty was as chief buyer. He had no managerial training and none in health and safety or fire precautions. He was in charge of the shop while the general manager, Mr Cruickshank was on holiday when an inspection of the shop by the local fire authority showed serious breaches of the fire certificate for the premises. Boal was charged, along with the company which owned the shop, with offences against the Fire Precautions Act 1971 on the basis that he was a 'manager' within section 23(1) of that Act, which provided that where an offence under the Act committed by a body corporate was proved to be attributable to any neglect on the part of the directors (being Christina Foyle and her husband), manager, secretary or other similar officer he was guilty of the offence as well as the body corporate.

At his trial Boal pleaded guilty to three counts on the basis of legal advice that he was incontestably a manager within section 23. He was also convicted on seven other counts and given a suspended sentence. He appealed.

Held : the intended scope of section 23 of the 1971 Act was to fix with criminal liability those who were in a position of authority and who were responsible for putting proper procedures in place, i.e. the decision makers within the company who had the power and responsibility to decide corporate policy and strategy. Boal was only responsible for the day-to-day running of the bookshop rather than enjoying any sort of governing role and the defence that he was not a 'manager' within section 23(1) would have been likely to have succeeded had it been put forward at trial. Consequently, the appeal would be allowed.

The specific job title given to a person, whether 'manager', 'director' or similar, is not evidence of itself - their actual role will be examined.

R v Board of Trustees of the Science Museum [1993]

Court of Appeal

Risk assessment.

An inspection of the Science Museum by health and safety inspectors showed that bacteria which caused legionnaires disease existed in the water of the air cooling system. The appellants were charged with failing to discharge the duty imposed on them by section 3(1) HASAWA to conduct their undertaking in such a way as to ensure as far as reasonably practicable that members of the general

public were not exposed to risks to their health and safety. The appellants were convicted and fined. They appealed against conviction on the ground that it had not been proved that they had exposed the public to any *actual* risk to health from exposure to legionnaires disease because there was no evidence that the bacteria had escaped and that a dangerous state of affairs existed which would constitute a risk to health.

It was held that on a true construction of section 3(1) of the 1974 Act the term 'risk' was to be given its ordinary meaning of denoting the *possibility* of danger rather than *actual* danger. That interpretation was reinforced when section 3(1) was read in context with sections 18, 20, 21 and 22 of the Act which expressed the preventive aim of the statute. Accordingly, it was enough for the prosecution to prove that there was a risk that the legionnaires disease bacteria *might* escape and they were not required to go further and show that the bacteria had in fact emerged into the atmosphere and could be inhaled. Since there was ample evidence of a risk of legionnaires disease escaping from the cooling towers, which was increased by the appellants' failure to maintain an efficient water treatment regime at the material time, they had been properly convicted. The appeal would therefore be dismissed.

Contrast this with the position taken in ***R v Porter [2008]*** and ***R v Chagot [2008]***.

R v British Steel plc [1995]

Court of Appeal

Employers' duty of care.

The basic duty on a business or undertaking is to make sure that their business is operated in such a way that employees and others are not exposed to risks.

R v British Sugar plc (2005)

Bury St Edmunds Crown Court

Fatality; risk assessment; training.

British Sugar plc and transport contractor, VM Plant Limited, were prosecuted by the HSE at Bury St Edmunds Crown Court after 17 year old dispatch clerk, Lorraine Waspe, was killed in February 2003. The 40-year-old British Sugar employee was run over by a shovelling vehicle at the firm's factory in Bury St Edmunds, Suffolk. British Sugar admitted failing to ensure that Lorraine and other workers were not exposed to risks to their safety and thereby breaching sections 2(1) and 3(1) HASAWA. They were fined £300,000 for this breach and a further £100,000 for failing to ensure that workplace transport was operated safely at the site, per Workplace (Health, Safety and Welfare) Regulations 1992, reg. 17(1). In particular, it failed to adequately segregate pedestrians from areas where vehicles were in operation

Cambridge-based contractor VM Plant Limited, which owned and operated the shovelling vehicle involved in the accident was found guilty and fined £250,000 for failing to ensure the health and safety of employees and people not in its employment.

In particular, the court heard that VM Plant failed to carry out a sufficient risk assessment covering the operation of shovel vehicles at the site. This would have identified the need to put in place a safe system of work, such as marked pedestrian routes and fitting fixed mirrors to improve drivers' vision, to prevent the risk of pedestrians coming into contact with the moving vehicles. In addition, VM Plant failed to provide drivers of shovel vehicles with adequate training to ensure they operated the vehicles safely.

Despite a good health and safety record before this accident, within a month another British Sugar employee had been killed in a boiler room explosion at the company's Allscott plant in Shropshire. This prompted a major health and safety review where British Sugar found, in particular, a gap between training and ensuring that processes were actually being followed, and also a reliable and efficient method of data gathering with regard to reported incidents such that management could regularly review and pick up areas for concern.

R v Cardiff City Transport Services [2000]

Court of Appeal

Sentencing

Cardiff City Transport pleaded guilty to a breach of section 2 HASAWA and were ordered £75,000 fine and costs of £9,611.25 in Cardiff Crown Court, to be paid within 3 months.

The incident involved the accidental death of an employee who was hit by a bus in the depot. Although there was found to be a very wide range of method and risk assessments, there had been no specific risk assessment addressed to pedestrian and vehicle movements within the garage. If such an assessment had been carried out it would have revealed three significant failings : 1. The one way system for moving vehicles around the garage was not enforced at all times. 2. That there was a need for high visibility clothing for all those employees who were routinely moving vehicles around or working in the depot and no steps had been taken to ensure all employees had been issued with such clothing. 3. Prior to July 1996, the speed limit at the depot was 5 miles per hour inside the garage and 10 miles per hour outside. This was changed to 10 miles per hour inside in July 1996. The appellant company had decided that the enforcement of 5 miles per hour speed limit was too difficult. It was the inspector's view, however, that a speed limit of 5 miles per hour should have been retained and the effect of the increased speed limit had not been considered properly before it was altered.

The Crown Court accepted that there was no causal connection between the tragic death of Mr Price and the appellant company's admitted breach of section

2(1) of the Act. The death did, however, highlight the unsafe system of work, which increased the risk of such accidents. It was accepted that the appellant company had a good safety record, a well-regarded health and safety programme and no previous convictions. Any breach of the Act or the regulations was an oversight and in no way deliberate. The company in this case had always co-operated with the Health and Safety Inspectorate with their staff and with their insurers in an attempt to ensure the best possible system of work.

It was also noted that buses were moved on the premises millions of times per year, and there had never been a previous collision between a bus and a pedestrian although the company's admitted failings meant that this was an accident waiting to happen.

The company's post tax profit for the year was expected to be the region £560,000. There was no question that any of the company's failings had anything to do with attempts to cut corners and therefore costs.

The Court of Appeal noted the difficulty of sentencing in such cases. On the one hand, it is essential that employers are made acutely aware of the need to ensure the highest possible safety standards and a safe environment for all their workers. Risks cannot be people taken with people's lives. On the other hand, the appellant company had acted very responsibly since the accident and had done everything in its power to prevent such an incident occurring again and expressed sincere regret at the death.

Having balanced the matters carefully it was decided that the fine was excessive. It was accepted that it was inappropriate to link the death to the company's failings in the way it appears to have been done by the size of the fine awarded in the Crown Court. Had the death been caused by the company's breach, a fine considerably more than £75,000 may well have been appropriate. In this case we are satisfied that the appropriate level of fine is £40,000.

R v Chagot Limited and others [2008]

House of Lords

Agriculture; fatality; individual liability; risk assessment.

Where a company was found to be liable under HASAWA with the 'consent, connivance or negligence' of a director or similar officer, then that individual will also be liable (section 37). 31 year old Shaun Riley, an employee of Chagot (1st defendant) was killed when his vehicle overturned and he was buried in soil. He was carrying out earth moving operations on a farm, for the construction of a car park. The construction was being managed by Ruttle Limited (2nd defendant). George Ruttle (3rd defendant) was a director of Chagot and managing director of Ruttle Limited.

The court stressed that the purpose of the legislation was to impose a positive burden on employers to ensure the health and safety of their employees and

others affected by the undertaking, so far as is reasonably practicable, not simply to discipline them for breaches. It was for the prosecution to identify a real risk. Once such risk is established, the defendant then has the burden of proving that they have done all that is reasonably practicable to protect against that risk.

R v Colthrop Board Mills Limited [2002]

Court of Appeal

Sentencing.

The defendant specialised in the manufacture of carton board on a large machine which contained rollers with joins, in over 200 places, called running nips. A health and safety officer issued an improvement notice requiring the company to carry out risk assessment and extended the time to comply. The schedule to the improvement notice stated that where there was a risk of serious personal injury there should be no delay making improvements to prevent injuries and the officer attached a note that where there were significant risk it should be remedied immediately. In a single incident, two victim employees were drawn into a machine and injured. The defendant company had completed an assessment on the machine about five weeks earlier but the incident occurred before remedial action had been taken. The assessment had found that there was a substantial risk of death or personal injury but that that the risk of an accident was only moderate because there had not been an accident in the 40 years during which it was cleaned.

D was charged with section 2(1) HASAWA and an offence contrary to regulation 11 of the Provision and Use of Work Equipment Regulations 1998. The offences were committed by the company having failed to ensure that their systems of work for cleaning the curing dryer nip roller were safe, by for example, installing guards or altering systems of work as soon as they were highlighted by the risk assessment, and had failed to ensure that effective measures were taken to prevent access to the dangerous parts of the machine. The company had two previous convictions for similar offences and had received fines of £6,500 and £3,000. The judge commented that the company had had clear warnings about the dangers involved in cleaning the machines, and considered information that the company would discontinue trading and had assets in the region of £17 million. The company was sentenced to total fines of £350,000 and appealed against sentence on the grounds, *inter alia*, that the judge had taken too high a starting point for the type of offending and/or erred in the basis on which he had sentenced. In particular, he had failed to take account of the fact that the employees might have been injured at a time other than when carrying out cleaning duties and erred in taking account of the company's assets.

The appeal was allowed. D, by neglect, had permitted access to dangerous parts of the machine and the employees' particular purpose in gaining access to the machinery was not relevant. Moreover, the judge had rightly approached the instant case on the basis that the company would be sold for £17 million and had taken into account the payments to shareholders. He was not obliged to deal

with the case on the notional financial basis that the company continued to trade and on the basis of the notional profits. However, the defendant's offences had fortunately not involved the death of an employee and the company had been of a modest rather than large size. In those circumstances, the total financial penalty was manifestly excessive. Accordingly, the defendant's sentence would be quashed and a total fine of £200,000 would be substituted.

R v Cotswold Geotechnical (Holdings) Limited and Peter Eaton [2011]

Court of Appeal

Fatality; corporate manslaughter (1st CM conviction).

This was the first conviction under the Corporate Manslaughter and Corporate Homicide Act 2007 which states, per section 1(1), that an organisation ... is guilty of an offence if the way in which its activities are managed or organised, (a) causes a person's death, and (b) amounts to a gross breach of a relevant duty of care owed ... to the deceased.

A Geologist was killed in a soil trial pit near Stroud, where clear industry guidance had been breached and Winchester Crown Court convicted, with a fine of £385,000.

The fine of £385,000 (being 250% of the annual turnover of £154,000) was appealed as being excessive. It was upheld, regardless of whether the fine was so high that it would be likely to result in the liquidation of the business.

R v Counsell, Geoffrey (2013)

Bristol Crown Court

Fatality; risk assessment.

This case involved seven fatalities on motorway where visibility was severely reduced by fog and smoke from a nearby firework display being held at Taunton Rugby Club. The display manager was charged with manslaughter and under section 3 HASAWA. The manslaughter charge was dropped and the case went to trial for HASAWA offences, resulting in an acquittal.

Simon J noted that : 'The prosecution must show a risk that is more than fanciful and theoretical, one which would require a reasonable person to do something about it. It focuses on the important aspect of foresight without the benefit of hindsight.'

R v Crow (2002)

Birmingham Crown Court

Agriculture; fatality; manslaughter; training.

A 16 year old farmworker, Lee Smith, was killed whilst driving a 7 tonne potato loader with telescopic handler. The Court heard that : ‘... the JCB should not have been under the control of an untrained 16 year old with very limited experience of operating such a large, potentially dangerous piece of equipment’. There was also evidence that a health and safety inspector had given instructions that Lee should not drive the vehicle until he had received training.

The farm was owned and managed by a father and son - the son got a 15 month prison sentence whilst the father’s one year sentence was suspended due to his frail health.

R v DPP ex parte Timothy Jones [2000]

High Court, QBD

Fatality; manslaughter.

James Martell, the managing director of Euromin Limited, had arranged for a dockside crane to be adapted, so that with the jaws of the grab bucket open bags could be attached to hooks fitted within the bucket. 24 year old Sussex University student, Simon Jones, a temporary worker sent from an agency and on his first day at the site, was in the hold of a ship loading bags onto the hooks when the jaws of the bucket closed and he was decapitated, the only blessing of the horrific incident being that death was virtually instantaneous. In deciding not to prosecute the managing director and the company for gross negligence, the lack of *subjective* recklessness on Mr Martell’s part was operative.

On application by the deceased’s brother, it was held that where the accused is subjectively reckless then, clearly, that may be taken into account by the jury as a strong factor demonstrating that his negligence was criminal, but negligence will still be criminal in the absence of any such recklessness if on an *objective* basis the risk was ‘obvious’.

R v ESB Hotels Limited [2005]

Court of Appeal

Sentencing.

The Court of Appeal highlighted that it was desirable for a court to have regard to the pre-tax profits of a company rather than its turnover. In this case it was considered that inadequate weight had been given to the company’s position and fines totalling £400,000 were reduced on appeal to £250,000.

Note : there are Sentencing Advisory Panel review in progress whereby turnover rather than profits would be given more importance.

R v F Howe and Sons (Engineers) Limited [1999]

Court of Appeal

Fatality; sentencing.

This case followed the fatal electrocution of 20 year old Giles Smith which resulted in a prosecution for breach of section 2(1) HASAWA, reg. 4(2) of the Electricity at Work Regulations 1989 and reg. 3 of the Management of Health and Safety at Work Regulations 1992.

Following concern that the level of fines imposed for offences contrary to HASAWA was too low, and in view of the increasing recognition of the seriousness of such offences, the court outlined some of the factors which should be considered by judges and magistrates when imposing such penalties. It was emphasised that it was impossible to lay down any tariff or to say that the fine should bear any specific relationship to the turnover or net profit of the defendant company, and that each case had to be dealt with according to its own particular circumstances. It was often a matter of chance whether death or serious injury resulted from even a serious breach. The offence, and the penalty, should reflect the fact that the standard of care imposed by the legislation was the same regardless of the size of the company or its financial strength. Smaller organisations which did not have their own in-house expertise in health and safety matters could obtain it, if necessary by seeking assistance from the Health and Safety Executive.

Matters that might be relevant to sentence were :

- how far short of the appropriate standard the defendant had fallen in failing to meet the test of what was reasonably practicable
- the degree of risk and extent of the danger created by the offence
- the extent of the breach or breaches, e.g. whether it was an isolated incident or had continued over a period
- the defendant's resources and the effect of the fine on its business
- a failure to heed warnings
- deliberate financial profit from a failure to take necessary health and safety steps a risk run specifically to save money.

Particular mitigating features would include :

- prompt admission of responsibility and a timely plea of guilty
- steps to remedy deficiencies after they had been drawn to the defendant's attention
- a good safety record.

Any fine should reflect not only the gravity of the offence but also the means of the offender, and that applied as much to corporate defendants as to any other.

If a defendant company wished to make any submission to the court about its ability to pay a fine it should supply copies of its accounts and any other financial information on which it intended to rely in good time before the hearing, both to the court and to the prosecution. Where such accounts or information were deliberately not supplied, the court would be entitled to conclude that the company was in a position to pay any financial penalty it was minded to impose, and where the relevant information was supplied late it might be desirable for sentence to be adjourned, if necessary at the defendant's expense.

The objective of prosecutions for health and safety offences in the work place was to achieve a safe environment for those who worked there and for other members of the public who might be affected. A fine needed to be large enough to bring that message home not only to those who managed the company but also to its shareholders. Whilst in general a fine should not be so large as to imperil the earnings of employees or create a risk of bankruptcy, there might be cases where the offences were so serious that the defendant ought not to be in business. With regard to costs, where a defendant was in a position to pay the whole of the prosecution costs in addition to the fine, there was no reason in principle for the court not to make an order accordingly.

R v Fresha Bakeries Limited and Harvestine Limited [2003]

Court of Appeal

Fatality; sentencing

The appellant companies pleaded guilty to HASAWA offences when two employees died after being trapped in a bread oven. Three directors were also prosecuted. Bread was made at two locations each owned by a different group company. It was agreed between the prosecution, the trial judge and the defence that the judge should fix an overall financial penalty in fines and costs as if a single defendant company were involved and then apportion the fine and costs element between the companies. The Crown identified five principal aggravating features. These were :

- (i) The system devised fell far below a reasonably safe system of work. Death or really serious bodily harm was all but inevitable;
- (ii) The loss of two lives;
- (iii) No risk assessment. An assessment would have revealed the very many inadequacies which were built into the system proposed;
- (iv) Lack of appropriate training, planning, monitoring and supervision at all levels; and

(v) Health and safety not given sufficiently high priority.

The Court of Appeal agreed that these were indeed aggravating features. The companies had pre-tax profits of £650,000. Fines totalling £350,000 were upheld as not being excessive.

R v Friskies Petcare UK Limited [2000]

Court of Appeal

Code of Practice, etc.; fatality; sentencing.

Bryan Wilkins was electrocuted at work when arc welding in a pet food processing silo. His employer was fined £600,000 for breaches of section 2(1) HASAWA and reg. 3 of the Management of Health and Safety at Work Regulations 1992. They appealed against sentence.

It was found, on appeal, that the trial judge had been correct in his findings that, given the difficult conditions of welding in a hot, damp, confined space there had been no proper assessment of risk and no steps to avoid or mitigate those risks. However, the trial judge also regarded it as a case of 'putting profit before safety' - an emotive statement which formed a key element of the employer's appeal. There had been no discussion of this in the trial or opportunity to respond to the claim, it was a matter mentioned in the judge's sentencing remarks.

The Court of Appeal discounted that this was such a case. It was not a case where anyone '... consciously sits down and works out the expense of shutting a particular section down for a period of time as against safety considerations.' It was simply a situation '...where no attention is paid, no risk assessment is made and people get on with the job and do it.'

So, in sentencing, the aggravating factors were :

- that there had been a fatality,
- the position of the electricity 'off' switch being too inaccessible if anything went wrong,
- the fact that the breaches had been going on for some time,
- the fact that no employee had his attention drawn to the relevant HSE pamphlets entitled *Electricity Safety in Arc Welding and Health and Safety and Welding and Allied Processes*,
- the fact that the employer conducted no risk assessment and that this was a serious and obvious breach of their duty under the regulations.
- The trial judge's statement that : 'The appellants fell a long way short of doing what was reasonable and practical.' was agreed with.

The mitigating factors, however, were :

- the employer's prompt admission and pleas of guilty,
- their good health and safety record over the years,
- the steps taken since the accident to improve safety, all done in liaison with the HSE who agreed that the appellants now had 'a high level of commitment to safety'.

It was found that, at the time, fines over £500,000 had been reserved for instances of major public disaster. Fines in the private sector only got towards that in cases where, for example, health and safety practices were in 'the Dark Ages'. The fine was, consequently, reduced to £250,000.

R v Gateway Foodmarkets Limited [1997]

Court of Appeal

Fatality; independent contractors.

Gateway employed a firm of lift contractors to maintain lifts in all of its stores. Unknown to the company's head office, and in contradiction of express instructions, one store developed a practice of manually rectifying a recurring defect to its lift without calling out the lift contractors.

In April 1993 the duty manager fell down the lift shaft and was killed after the trapdoor in the control room floor had been left open by the lift contractors during routine maintenance. The company were prosecuted for failing to discharge their duty under section 2(1) HASAWA to ensure, so far as was reasonably practicable, the health, safety and welfare at work of all their employees. At the trial, the judge made a preliminary ruling that the offence under section 2(1) was one of strict liability. The company pleaded guilty and were fined £10,000.

There was an appeal against conviction on the ground that the judge's ruling was wrong in law. Held : subject to reasonable practicability, section 2(1) of the 1974 Act imposed strict liability on an employer to ensure his employees' health, safety and welfare at work. In the case of a corporate employer, the company was similarly liable, unless all reasonable precautions had been taken by it or on its behalf by its servants and agents. Since, in this case, there had been a failure to take reasonable precautions at store level, the company could be liable for the offence charged under section 2(1), notwithstanding that all reasonable precautions to avoid risk of injury to the duty manager had been taken at senior management or head office level. The appeal against conviction would therefore be dismissed.

See, however, the later case of ***R v HTM Limited [2006]***.

R v Hall Hunter Partnership (Farming) Limited (2005)

Reading Crown Court

Agriculture; fatality; risk assessment; safe equipment; training.

Two Polish agricultural workers were killed on a soft fruit operation when they became entangled in farm machinery used to coil rope for the erection of 'polytunnels'. The two men, Adam Borowik, 27, and 21-year-old Sebastian Skorupski, died after they became entangled between rope and a rotating shaft, using a tractor-mounted fleece winder machine, which was not suitable for rope winding as it did not have an automatic cut off in the event of entanglement. Also, they had not been adequately trained, nor made aware of the dangers posed by the task. A fine of £80,000 was imposed.

The HSE Inspector observed that : 'This was a tragic and preventable accident which resulted in the loss of two lives. In terms of injuries, it is the worst I have seen in 30 years as an inspector.

The farming industry has one of the highest accident rates in the country. Farmers must ensure they take into account how machines should be operated when deciding safe working practices and if they want to use a machine for a purpose for which it was not designed, they should check with the manufacturer before doing so. Farmers must also ensure that workers are trained for the tasks they are asked to do and made aware of any dangers.

This case also highlights the necessity of carrying out a proper risk assessment, which would have shown the serious risk of entanglement. HSE has developed software to help farmers carry out a comprehensive health and safety assessment of their farms and this is available free from the HSE website. The HSE's approach to migrant workers is the same as for British workers. All workers are afforded the same protection by law.'

Playford, J : 'In relation to Hall Hunter Partnership, no adequate risk assessment had been carried out and it was particular to the partnership to address this problem because they had 300 workers, many of whom were students and many from abroad who may not have had full understanding of safe working practices.'

R v Holtom [2010]

Court of Appeal

Agriculture; fatality; manslaughter; sentencing.

The case involved a 15 year old, Adam Gosling, killed when a wall collapsed whilst he was doing landscaping work for a sub-contractor, resulting in three year's imprisonment. The judgment referred to other cases of gross negligence manslaughter in an employment context where lighter sentences were given, such as ***R v Crow [2002]***. It also indicated that the *Corporate Manslaughter*

and Health and Safety Offences Causing Death - Definitive Guideline released in February 2010 could usefully be referred to in a case where the defendant was an individual. There were particular aggravating circumstances of the case, notably the victim's age (although there was evidence that the victim may have lied about his age in order to work on the site with his 18 year old brother).

R v HTM Limited [2006]

Court of Appeal

Fatality; reasonably practicable.

The defendants were charged with failing to discharge their duty under HASAWA, a fatal accident having occurred with two employees being killed when a mobile telescopic tower made contact with overhead power cables carrying 20,000 volts. The employees did not lower the tower to move it as they had been instructed to do.

The defendant argued that they had taken all reasonably practicable steps to ensure the safety of their employees by training and instruction, that the accident was a result of what had been done by the employees themselves, and that it could not have been foreseen that they would have acted in that way or that any further precautionary measures were required.

The trial judge ruled : (1) that evidence of foreseeability was relevant to the case alleged against the defendant, particularly with regard to the reasonably practicability of their ensuring that the health, safety and welfare of their employees; and that (2) reg. 21 of the Management of Health and Safety at Work Regulations 1999 (which sets out a duty of care without the qualification of 'reasonable practicability') duty of did not preclude the defendant company from relying upon any act or default of their employees in their defence, thus the employer was not liable.

The prosecution appealed.

Held : the appeal would be dismissed.

1. In cases concerned with a statutory duty qualified with the words 'so far as was reasonably practicable', the risk of accident had to be weighed against the measures necessary to eliminate the risk, including cost. Where, for example, a defendant established that the risk was small, but that the measures necessary to eliminate it were great, he might be held to be exonerated from taking steps to eliminate the risk, on the ground that it was not reasonably practicable for him to do so (per the old ***Edward v National Coal Board [1949]*** principle). The phrase 'reasonably practicable' qualified the word 'ensure' in section 2 of the 1974 Act. A defendant to a charge under section 2, or indeed sections 3 or 4 could bring evidence as to the likelihood of the incidence of the relevant risk in support of its case that it had taken all reasonable means to eliminate it.

2. Whilst the effect of section 40 of the 1974 Act had resulted in judges referring to the duty under section 2 as being subject to a *defence* of reasonable practicability, the duty on the defendant under section 2 was the 'duty to ensure, so far as was reasonably practicable' the health, safety and welfare of persons at work, and it followed that it was breach of that duty which would give rise to an offence. Accordingly, the phrase 'so far as reasonably practicable' was *not* a defence (which would be to say that the offence had been committed but that there was lawful excuse) but rather, it was evidence that the offence had not been committed in the first place. It followed that reg. 21 did not apply.

The defendants would be entitled to put before the jury evidence to show that what had happened was purely the fault of the employees, and, were the jury to be persuaded that everything had been done by the defendant to prevent the accident from happening, it would be entitled to be acquitted.

R v Jarvis Facilities Limited [2005]

Court of Appeal

Sentencing.

The Court of Appeal held that, in assessing the appropriate fine for a breach of health and safety regulations, public service cases will often be treated more seriously than where the breaches in the private sector, even where there is comparability between the gravity of the breach and the economic strength of the defendant.

An appeal was allowed by Jarvis Facilities Limited against a fine of £400,000 imposed at Sheffield Crown Court on their plea of guilty to an offence contrary to sections 3(1) and 33 HASAWA.

The prosecution arose out of a railway accident, when a train was derailed because railway repairs had been carried out inadequately by the appellant company. However, the train remained upright and there was neither significant injury nor damage.

Consistency of fine, although not irrelevant, was not a primary objective. The court was entitled to take a more severe view where there was a significant public element. Nevertheless, this fine was significantly too high and even allowing for a legitimate element of deterrence and expression of public outrage, it should not have exceeded £275,000.

R v J M W Farms Limited [2012]

Belfast Laganside Crown Court

Agriculture; fatality; corporate manslaughter (2nd CM conviction).

This case involved the death of 45 year old, Robert Wilson, working on a pig farm in Co. Armagh when a feed bin, balanced on the prongs of a fork lift truck,

fell on to him. The fork lift prongs did not fit the sleeves of the feed bin to secure it safely as the usual truck was out of action. A charged under s2(1) HASAWA could have been expected but the company was convicted of corporate manslaughter.

Burgess, J commented : ‘...yet against the court is faced with an incident where common sense would have shown that a simple, reasonable and effective solution would have been available to prevent this tragedy.’

‘This is ... a serious matter which requires a substantial fine to be imposed to reflect the culpability of the Company, but also to send a message to all employers that their duty to their employees is daily and constant and any failure to discharge that duty will be met with condign punishment.’

In considering sentence the judge considered any aggravating circumstances, which would have increased the fine :

- more than one death
- failure to heed prior warnings (internal or external)
- deliberate cost cutting
- deliberate flouting of law, e.g. failure to obtain licences
- vulnerable persons

None were found.

He then considered mitigating circumstances :

- prompt acceptance of responsibility
- high level of co-operation with investigation
- genuine efforts to remedy the defect
- a good health and safety record and responsible attitude

All mitigating factors were found (more or less). With post-tax profits of £1.4 million and a declared dividend £200,000 the fine was £187,500 + £13,000 costs with 6 months to pay. This incorporated a 25% reduction for guilty plea. This falls way below the suggested £500,000 minimum in the *Sentencing Guidelines** but reflects the size of the business - as with ***R v Cotswold Geotechnical***, not the sort of business one would expect to see charged with corporate manslaughter.

* The Sentencing Council *Definitive Guidelines for Corporate Manslaughter and Health and Safety Offences Causing Death* are not technically applicable in Northern Ireland but the judge found them to be useful and saw no reason not to utilise them.

R v J Murray and Sons Limited [2013]

Downpatrick Crown Court

Fatality; corporate manslaughter (4th CM conviction).

In October 2013 an animal feed mixing company in Ballygowan, Co. Down was convicted of corporate manslaughter as a result of health and safety failings which led to the tragic death of an employee, Norman Porter, in February 2012. Mr Porter fell, or was dragged by his clothing, into an animal feed mixing machine; there were no witnesses to the incident.

The HSE identified that the machine had been operating without safety guards for three years to allow ingredients to be added more easily. Charges were originally brought against a director of the company but were not proceeded with. The court allowed the company to pay the penalty of £100,000 over 5 years, Judge Weir noting that the company's was 'not in a healthy [financial] position', to avoid jobs being lost.

R v John Pointon and Sons Limited [2008]

Court of Appeal

Fatality; sentencing.

An animal rendering firm was fined £650,000 in Stafford Crown Court after Glynn Thompson, aged 45, died in August 2004 trying to help a colleague in the slurry pit, when he slipped and fell in.

John Pointon and Sons of Cheddleton, Staffordshire was convicted on four counts of breaching health and safety laws. Director Carl Pointon was cleared of manslaughter.

Tonking J said the company's safety structure was 'flimsy and ineffective. ... The system to clear blockage of equipment had obvious and inherent dangers in a slippery environment. Also inherent in this system was another deadly danger - the gases given off from animal waste. There was serious dereliction of duty which fell short of what should have been done.'

On Appeal against the fine it was acknowledged that the trial judge had made reference to Gibbs J in ***R v Colthrop Board Mills Limited [2002]*** where he stated that a sum of £500,000 in a case involving the death of an employee was not set in stone or to be taken as a maximum. The court in this case noted that it is neither the ceiling nor the floor but does, however, seem more appropriate to cases of where there has been a disaster. Other authorities suggest a somewhat lower figure.

It was concluded that the fine was greater than it ought to have been and despite the careful attention the judge paid to the way in which he calculated the figure, it was found to be manifestly excessive. The fine was reduced to £460,000.

R v Lion Steel Equipment Limited [2012]

Manchester Crown Court

Fatality; corporate manslaughter (3rd CM conviction).

This case involved the fatal fall of 45 year old Stephen Berry through a fragile roof. His corporate employer was convicted for manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007, and for breach of section 2(1) HASAWA. In addition, three directors of the company were prosecuted for gross negligence manslaughter and for breach of section 37 HASAWA. These charges were dropped. It was intimated that such charges were brought by the CPS as a negotiating tool to gain a guilty plea for corporate manslaughter in return for dropping the individual charges and the length of time it took to bring and drop charges against the individual directors was criticised by the trial judge, Gilbert, J.

With an annual turnover of around £1m and profits of up to £317,000, the fine was £480,000 (payable over 4 years) with costs of £84,000 (payable within 2 years).

It is interesting to note that in only the third conviction under the 2007 Act (the first being ***R v Cotswold Geotechnical Holdings Limited [2011]*** and the second ***R v J M W Farms Limited [2012]***), although the business has over 100 employees, it is certainly not bringing the sort of issues which the Act was introduced to address, i.e. a large, unwieldy organisation (such as those involved in major rail, ferry or oil rig disasters) where no direct line of individual responsibility could be traced.

R v Mark and Nationwide Heating Services Limited [2004]

Court of Appeal

Fatality; manslaughter.

Alan Mark was the managing director of Nationwide Heating Services, a company specialising in mechanical engineering installation and repairs. The company had a contract to clean a resin storage tank and 20 year old Benjamin Pinkham (the deceased), an apprentice engineer, did the job with another apprentice. It involved working in a confined space using acetone. The other apprentice knocked over a halogen lamp, causing an explosion, thereby killing Ben Pinkham.

The first and second defendants were tried for gross negligence manslaughter. The judge directed the jury, in line with current principles, that the defendants' awareness of the risk of death was to be assessed on an *objective* rather than a subjective basis, and the defendant was convicted. Thereafter, the defendants sought leave to appeal against conviction, submitting that, *actual* awareness of a risk of death was required to found a conviction for gross negligence manslaughter.

It was held that actual foresight of risk was *not* essential to an offence of gross negligence manslaughter. In this case, the judge at first instance had followed the law correctly in the summing up and the court was not persuaded that the law was in need of revision. Accordingly, leave to appeal against conviction would be refused.

R v Milford Haven Port Authority [2000]

Court of Appeal

Sentencing.

In 1996, the *Sea Empress*, an oil tanker, ran aground as it was being navigated into the port of Milford Haven. A pilot employed by a Port Authority (PA) owned company was in charge of the tanker. The PA was a statutory body which had specific duties to prevent the discharge of oil and to provide pilots where appropriate. The accident was caused by serious pilot error and a great deal of oil was spilled with serious consequences for the natural habitat and commercial ventures.

The Environment Agency brought charges and the PA pleaded guilty to pollution charges under section 85(1) of the Water Resources Act 1991, an offence of strict liability. The PA, while pleading guilty, did not accept that it was at fault, or had committed a breach of duty or had been reckless or negligent. It was sentenced in the Crown Court to a £4m fine with £825,000 costs. When sentencing, the judge noted that the credit he would give for the plea would be modest, as it had been tendered at a late stage, coupled with it being a crime of strict liability. He considered the assets of the PA, to be in the region of £30m. He was aware that the PA was less well-endowed than a commercial enterprise and did not want to jeopardise its future. However that had to be set off against the extent of the damage. The PA appealed against sentence, contending, *inter alia*, that it was manifestly excessive and that the judge had given inadequate recognition of the relative level of culpability and the plea of guilty.

The appeal was allowed. There was a general perception that sentencing in health and safety and environmental offences were too low. The court would not frame a guideline pursuant to section 80(2) of the Crime and Disorder Act 1998 but there were a number of material factors to be considered including :

- whether a death had occurred
- cost cutting
- deliberate breach of duty
- the extent of that breach
- admission of guilt
- the taking of prompt measures
- compliance with the authorities
- the gravity of the offence
- the means of the offender

In this case, the PA should have been given full credit for the guilty plea. The basis of no admission of fault had not initially been acceptable to the Crown : this was not fair. Moreover, the judge should have taken into account the PA's status, although accepting that public bodies were not immune from financial penalties. Furthermore, it appeared that the judge had misunderstood the PA's financial position. The sentence was found manifestly excessive and was reduced to £750,000.

R v MNS Mining Limited (2014)

Swansea Crown Court

Corporate manslaughter; fatality.

Four miners lost their lives at the Gleision Colliery at Cilybebyll, near Port Talbot in South Wales, when they were trapped in a flooding mine in September 2011. In evidence to date it has been purported that the mine manager failed to implement a standard Protection Against Inrushes (PAI) scheme and failed to inform HM Mines Inspectorate (an agency of the HSE) of plans to operate near old workings.

A surveyor gave evidence that he left his job the year before the accident due to being constructively prevented from producing accurate maps of the current and past mine workings.

The company has been charged with corporate manslaughter and the manager charged with gross negligence manslaughter, both pleaded not guilty.

R v Mobile Sweepers Limited (2014)

Winchester Crown Court

Corporate manslaughter; fatality (6th CM conviction).

Casual worker, 56 year old Malcolm Hinton, sustained fatal crush injuries when he removed a hydraulic hose which caused the back of a road-sweeping truck to fall on him. The accident was easily avoidable by ensuring the hopper was adequately propped.

The company, based in Headley, Hampshire, was charged with corporate manslaughter, and the sole director charged with gross negligence manslaughter and section 37 HASAWA. Charges were also brought under section 2 HASAWA and reg. 5(1) Provision and Use of Work Equipment Regulations against the company and the director.

Judge Guy Boney QC said that the business had been 'run on a shoestring with minimal, if any regard for health and safety and no regard for maintaining the machines, or for any training in operating them ... the motivating factor seems to be an active policy of sacrificing repairs to maximise profit ... the conduct of the company and Mr Owens [the sole director] were indivisible, Mr Owens was the

company.’ The corporate manslaughter conviction in March 2014 resulted in an £8,000 fine (and £4,000 costs) and publicity order, there being very limited assets. The sole director was fined £183,000 and disqualified from being a director for five years.

HSE records show that 22 fatalities have occurred in the ten years since 2003 due to inadequate propping when working beneath vehicles, or vehicle bodies. See, for example, ***Inquiry into the circumstances of the death of William Watt under section 6 Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976*** heard at Livingston Sheriff Court, 27th January 2014 for a report of an agricultural engineer crushed on farm whilst repairing a van held up on wooden blocks.

R v Morris, Marshall and Poole (2011)

Mold Crown Court, sitting at Chester Crown Court

Code of Practice, etc.; fatality; risk assessment; sentencing; independent contractor.

A firm of letting agents had one of their employee agents assess the maintenance work required on a residential letting. After visiting the property the agent engaged one of the firm’s regular handymen. The work involved going onto a car port roof. The handyman, Mr Roger Jary, was aged 79 but still agile. He fell through the roof with fatal consequences.

In considering the conviction under section 3(1) HASAWA the judge noted that :

- no assessment, or adequate assessment, of the job was carried out,
- contractors were not required to provide copies of method statements or risk assessments, details of their insurance cover or any other information that would have been helpful to the defendant in assessing a particular contractor’s competence,
- readily available written guidance regarding the danger of working at height and especially upon fragile roofs and guidance about small jobs where minor roof maintenance is required was not consulted, or not sufficiently consulted.

The firm’s immediate admittance of guilt, clear action to implement better health and safety systems and general co-operation were commended. In arriving at a fine of £75,000 (plus costs) the judge consulted the guiding case of ***R v F Howe and Son [1999]*** and the Sentencing Guidelines Council document *Corporate Manslaughter and Health and Safety Offences Causing Death*. He had reference to the seriousness of the case, but also to the turnover and profits of the firm, stressing that, per the Sentencing Guidelines, in a case involving a fatality a fine of less than £100,000 would be unusual.

R v OLL Limited and Peter Kite [1994]

Winchester Crown Court

Fatality; manslaughter.

The only successful prosecution of a corporation (as opposed to an individual) for the common law crime of gross negligence manslaughter (before the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007) involved a 'one man' company.

Peter Kite, owner of OLL Limited, was jailed for three years, and his company fined £60,000 following the 1993 Lyme Bay canoeing tragedy in which four teenagers died. Mr Kite was found guilty because he was directly in charge of the activity centre where the children were staying. Joseph Stoddart, manager of the St Alban's Centre in Lyme Regis, was found not guilty of the same charges after the jury failed to reach a verdict.

R v P Limited and others [2007]

Court of Appeal

Fatality; individual liability.

This case was consequent upon the death of a six year old boy who had been riding on a fork lift truck in the London docks.

The second defendant was the managing director of the first defendant company. The company was charged with offences under HASAWA. The second defendant was charged under section 37(1) of the Act in that it was alleged that the offence committed by the company was committed with the consent or connivance of or to have been attributable to any neglect on his part. At a preparatory hearing, the judge ruled that, where neglect was relied upon under section 37 of the Act, the prosecution had to prove, among other things, that the defendant had had a duty to inform himself of the facts giving rise to the breach *and had known of the material facts*, and that the defendant had been neglectful of his duty because he had either known or should have known, but had shut his eyes to, the facts.

The prosecution appealed against the judges' ruling insofar as he had ruled that it had to establish that the defendant had *known* of the material facts.

Held : the appeal would be allowed. In considering whether there had been neglect within the meaning of section 37(1) it had to be discovered whether the accused had failed to take some steps to prevent the commission of an offence if the taking of those steps had either expressly fallen or have fallen within the scope of the functions of the office which he had held. Section 37 did not refer to 'wilful neglect' and neither did it involve a determination of whether the defendant had 'turned a blind eye'. That would equate the test of neglect with that to be applied to connivance, whereas Parliament had clearly chosen to apply a distinction between the words consent, connivance and neglect.

The question was whether, if there had not been *actual knowledge* of the relevant state of facts, the officer should have, by reason of the surrounding circumstances, been put on enquiry as to whether or not the appropriate safety procedures were in place. That would depend on the evidence in every case.

The functions of the office of a person charged would be highly relevant. The word 'neglect' in its natural meaning pre-supposed the existence of some obligation or duty of the person charged. Where that word appeared in section 37(1) of the Act, it was associated with certain specified officers of a corporate body or with persons purporting to act in any such capacity. It was *any* neglect on their part to which an offence was attributable which attracted the penalty.

Clearly, section 37 was concerned with providing a penal sanction against those persons charged with functions of management who could be shown to have been responsible for the commission of an offence by an artificial persona. It followed that the contested part of the judge's ruling was too prescriptive and that part of the ruling would be quashed.

R v P and O European Ferries (Dover) Limited [1991]

Central Criminal Court (The Old Bailey)

Fatality; manslaughter.

Following an accident which befell the vessel *Herald of Free Enterprise* in Zeebrugge harbour and the consequent loss of life which ensued, charges of manslaughter were brought against eight defendants, including P and O European Ferries (Dover) Limited as owner of the vessel. The company contended that the four counts of manslaughter in the indictment should be quashed on the basis, not only that English law did not recognise the offence of corporate manslaughter such that manslaughter could only be committed when one natural person killed another natural person.

Held : if it was to be accepted that manslaughter in English law was the unlawful killing of one human being by another human being (which had to include both direct and indirect acts) and that a person, who was the embodiment of a corporation and acting for the purposes of the corporation, was doing the act or omission which caused the death, the corporation as well as the person might be found guilty of manslaughter. It followed that the indictment could properly be held to lie against the company.

Despite that finding of principle, in fact the prosecution failed through lack of evidence.

R v Princes Sporting Club Limited (2013)

Southwark Crown Court

Corporate manslaughter; fatality (5th CM conviction).

An 11 year old girl, Mari-Simon Cronje, was killed in a fall from an inflatable boat ride on lake during a friend's birthday party outing in London. The driver of the speedboat had no recognised qualifications and there was no competent supervising adult to warn the speedboat driver if anyone fell into the water. The driver undertook 'unnecessary' turning in tight angles and the colour of the outfits worn by the children made them difficult to spot in the water. It was stated that there was an overall 'lax' attitude to health and safety.

Corporate manslaughter and section 3 HASAWA charges were brought. The section 37 charge against the director was dropped when a guilty plea to corporate manslaughter was given. The corporate manslaughter conviction resulted in a fine of £34,579.69 - the company's entire assets - and a publicity order. Judge Alistair McCreath commented on sentencing : 'I propose to fine the company every penny that it has. I have no greater power to do anything other than impose a fine and I cannot impose a greater fine than all of its assets.' This case was the first to utilise the penalty of a publicity order.

R v PS and JE Ward Limited (2014)

Norwich Crown Court

Corporate manslaughter; fatality.

The company was charged with corporate manslaughter in relation to the death of an employee, 26 year old Polish worker, Grzegorz Pieton, at Belmont Nursery in Terrington St Clement, Norfolk in 2010. The employee was electrocuted when the metal hydraulic lift trailer (cherry picker) he was towing touched an overhead power line.

The company pleaded not guilty to the corporate manslaughter charge and were acquitted at trial. It was found guilty of breaches of section 2 HASAWA.

R v Porter [2008]

Court of Appeal

Fatality; foreseeability; risk assessment.

The victim was a three year old pupil at the school of which the defendant was headmaster. The victim jumped down some steps in the playground, sustained a head injury and later died from a hospital acquired infection. On the evidence, his death would not have occurred from the head injury, from which he would reasonably have been expected to recover.

Clearly a duty was imposed on James Porter, the defendant, as headmaster, under HASAWA. The prosecution was based on a failure to protect against the risk to safety of 'falling on a flight of steps'. In the 29 years before the accident, during which the defendant and his wife had run the school, there had never been a health and safety complaint. There had been no previous accident on the steps in question. It was stated by an expert witness that, in carrying out risk assessments, insignificant risks could be ignored, such as routine activities associated with life in general. His view was that the steps did not create a foreseeable risk of possible danger. The defendant was, nevertheless, convicted in Mold Crown Court. He appealed.

Held : the appeal would be allowed. The risk that the prosecution had to prove should be real, as opposed to fanciful or hypothetical. There was no objective standard or test by which a line could be drawn which would be applicable to every case. However, most cases would have important indicia or factors which the jury should take into account in deciding whether the risk was real or fanciful. None were determinative, but many were of importance. Where the risk was truly part of the incident of everyday life, it was less likely that it could be said that a person was exposed to unacceptable risk by the conduct of the operations in question. Such a risk was a simple fact of life.

Unless it could be said that the victim had been exposed to real risk by the conduct of the school, no question of reasonable practicability of measures designed to avoid that risk arose. On the evidence, the judge should have stopped the case at the conclusion of all the evidence, as, at that stage, no reasonable jury could conclude that there had been a risk of the type identified by section 3 of the Act.

Very usefully, for employers, this case draws back from the stringent 'possibility of danger', rather than actual danger, stance taken in ***R v Board of Trustees of the Science Museum [1993]***.

R v Rollco Screw and Rivet Co. Limited [1999]

Court of Appeal

Sentencing.

This case supported the principles from ***R v F Howe and Son (Engineers) Limited [1999]***. In relation to the period over which a fine might properly be ordered to be paid, it appeared to be acceptable on proper facts and circumstances for a fine to be payable by a company over a substantially longer period than in the case of an individual.

For smaller companies, the court must be alert to make sure that it is not in effect imposing a double punishment. The proper approach would be as follows :

i) to decide what financial penalty the offence would merit, and

ii) to decide what financial penalty the offender (corporate or personal) could reasonably be ordered to meet.

See also ***R v Aceblade Limited [2001]***.

R v Sellafield Limited and R v Network Rail Infrastructure Limited [2014]

Court of Appeal

Sentencing.

Sellafield Limited was fined £700,000 in Carlisle Crown Court for environmental infringements regarding the disposal of radioactive waste which caused no actual harm but which had catastrophic potential.

Network Rail was fined £500,000 at Ipswich Crown Court after 10 year old James How was left with life-changing injuries after being struck by a train on Wright's railway crossing in North Suffolk, between Beccles and Oulton Broads South stations. James had been out with his farmer grandfather who had taken him to count cattle.

Both appeals against sentencing level were dismissed and the court considered the guidelines and the impact of looking at a range of financial measures including turnover, profitability and directors' remuneration.

R v Swan Hunter Shipbuilders Limited and another [1982]

Court of Appeal

Fatality; safe system of work.

A fire broke out on board *HMS Glasgow* which was under construction by Swan Hunter Limited in Newcastle-upon-Tyne. The fire was particularly intense because the atmosphere inside the vessel had become oxygen enriched and eight men were killed. The oxygen had escaped from a hose left by an employee of a firm of sub-contractors, Telemeters Limited. Swan Hunter had distributed a book of rules to their own employees for the safe use of oxygen equipment, but this was not distributed to sub-contractors' employees, except on request.

Swan Hunter Limited were prosecuted under HASAWA for 'failure to provide a safe system of work' (contrary to section 2(2)(a)), 'failure to provide information and instruction to ensure the safety of their employees' (contrary to section 2(2)(c)) and 'failure to ensure that persons not in their employment were not exposed to risk' (contrary to section 3(1)).

The trial judge ruled that all the above sections of the Act imposed a duty to inform or instruct employees *other* than Swan Hunter's own, with regard to all relevant safety matters. Swan Hunter Limited appealed.

The Court of Appeal dismissed the appeal and upheld the trial judge's ruling. If, to ensure a safe system of work for an employer's own employees, it was necessary to provide to persons other than his employees with information and instruction as to potential dangers, then he was under a duty to provide such information.

R v Tangerine Confectionery Limited and Veolia ES (UK) Limited [2011]

Court of Appeal

Causation; fatality; foreseeability.

Tangerine involved a fatality in a sweet factory. A worker became trapped and was asphyxiated in a machine attempting to remove trays in order to clear a regularly occurring blockage. *Tangerine* was convicted of a breach of section 2 HASAWA and a regulatory offence and was fined £300,000.

Veolia involved the death of an agency worker and injury to a Veolia employee during litter picking on the A228. *Veolia* was convicted of breaching both sections 2 and 3 and was fined £225,000.

The following questions were considered :

1. The 'general duties' - what is the relationship between s2 'safety' and s3 'risk' (to safety)?

Section 2 of HASAWA 1974 provides that : 'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.'

Section 3 provides that : 'It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health and safety.'

Although there is a subtle difference between sections 2 and 3, in that section 2 refers to ensuring safety and section 3 refers to an absence of risk to safety, the Court of Appeal confirmed that the two concepts are the same, apart from where the allegation includes employee welfare. This makes sense when considering *Veolia* in that an employee was working with an agency worker, undertaking the same job of litter picking. It could not have been the intention of HASAWA 1974 for *Veolia* to owe a greater duty to one than the other. Section 40 of the Act operates to the effect that once it has been proved that the accused exposed their employees, or others, to risk, the burden shifts onto the accused to discharge the burden of proof, on the balance of probabilities, that it was not reasonably practicable to do more than was done or that there was no better practicable means to be used to satisfy the relevant duty.

The risk - in *R v Chargot Ltd [2008]*, concerning the death of a dumper truck driver, the judge stated that : 'What the prosecution must prove is that the result

that those provisions (sections 2 and 3) describe was not achieved or prevented. Once that is done a *prima facie* case of breach is established. The onus then passes to the defendant to make good the defence which section 40 provides.' Lord Hope further said that : 'In cases such as the present, where a person sustains injury at work, the facts will speak for themselves. *Prima facie*, his employer or the person by whose undertaking he was liable to be affected, has failed to ensure his health and safety. Otherwise there would have been no accident.'

These comments have been interpreted to mean that 'once there has been an injury then *ipso facto* there was a relevant risk'. However, in qualifying 'risk', Lord Hope had approved ***R v Porter* [2008]**, in which a school pupil jumped from a step and was fatally injured. It was held that there was no evidence that the child had been exposed to a real risk due to the conduct of the school and that the risk was one of everyday life, thereby not requiring reasonably practicable measures. *Tangerine and Veolia's* judgment stated that the context of Lord Hope's speech made it clear that he was merely saying that the fact of the injury is evidence of the existence of the risk. The 'risk', however, must be material and this was taken from ***Chargot*** to mean 'not trivial or fanciful'.

2. Causation - where there has been an injury, is the Crown required to prove that the offence caused it?

The Court of Appeal also confirmed that it is not necessary for the prosecution to establish that the defendant caused the injury for there to be an offence under either section 2 or 3. Hughes LJ : 'These offences are not primarily concerned with ascribing responsibility for the cause of injury. Indeed, they are primarily concerned with avoiding injury. The offences can just as well be committed when there has been no injury as when there has... Causation of the injury is not an ingredient of either offence.' Causation is a matter for sentencing rather than conviction, to be considered by the judge not the jury. On this point, LJ Hughes referred to section 143 Criminal Justice Act 2003 and the requirement for all sentencing courts to have regard to the harm done.

3. Foreseeability - what, if anything, is the relevance to these offences of foreseeability of injury or of an accident which has in fact happened?

Further to ***Chargot, Baker v Quantum Clothing* [2011]** concerning a civil claim for personal injury compensation arising from alleged industrial deafness, raised questions on the relevance of foreseeability, particularly when considering the criminal offences created by sections 2 and 3 of HASAWA 1974. In that case, the Supreme Court held that foreseeability was relevant in assessing risk or lack of safety.

In *Tangerine*, it was argued that the risk established by the accident was the risk of an employee making an inexplicable decision not to follow instruction and isolate the machine before entering it. The risk that he was then exposed to was not foreseeable by his employer who, it was suggested, could not have been expected to guard against it. It was concluded in *Tangerine and Veolia* that ***Baker*** did apply to sections 2 and 3. Hughes LJ : 'Foreseeability of risk

(strictly foreseeability of danger) is indeed relevant to the question whether a risk to safety exists... None of this, however, means that in a prosecution under either section it is incumbent on the Crown to prove that the accident which occurred was foreseeable. That would convert the sections into ones creating offences of failing to take reasonable care to avoid a specific incident. ... 'The sections do not command an enquiry into the likelihood (or foreseeability) of the events which have in fact occurred. They command an enquiry into the possibility of injury. They are not limited, in the risks to which they apply, to risks which are obvious. They impose, in effect, a duty on employers to think deliberately about things which are not obvious.'

4. Derivation - to what extent must the Crown prove that the risk 'derives' from the defendant's activities?

It was held in *Tangerine and Veolia* that the risks towards which both sections 2 and 3 are directed are those which are materially related to the activities of the defendant. The defence for Veolia argued that the risk and the accident arose from the ordinary use of the road from the negligent driving of a member of the public rather than from the defendant's activities, not being something over which the company had any control. The Court of Appeal rejected this. Hughes LJ: 'Whilst we agree that it will sometimes be necessary to address the source of a risk, we suggest that the introduction of a separate test of 'derivation' is more likely to confuse than to illuminate.'

The Court of Appeal rejected the appeals of *Tangerine and Veolia* so it appears that sections 2 and 3 remain, in most respects, as before. There may, however, have been a slight shift in favour of the defence concerning the issue of foreseeability, having accepted *Baker*. At the least, the judgment of *Tangerine and Veolia* has provided a detailed analysis of the law following recent cases that had led to much debate over fundamental health and safety principles

R v Total (UK) Limited, Hertfordshire Oil Storage Limited, Motherwell Control Systems (2003) Limited, Tav Eng. Limited, and British Pipeline Agency Limited (2010)

St Albans Crown Court

Safe system of work.

Total bore a £3 million fine for health and safety breaches and £600,000 fine for environmental offences, and there were significant fines for other companies, after the Buncefield oil explosion in Hertfordshire in 2005 which injured 43 people, when a 250,000 litre oil leakage ignited.

R v Turnbull, Allan and Taylor, Christopher (2013)

Newcastle-upon-Tyne Crown Court

Fatality; manslaughter; working at height.

53 year old Kenneth Joyce died when unstable steelwork knocked over the cherry picker he was working in. He fell some 10 metres to the ground and further steelwork then fell on top of him. He was carrying out dismantling work at the old Swan Hunter shipyard, a site controlled by North Eastern Maritime Offshore Cluster Limited (NEMOC). There was no suitably qualified or experienced person in charge at the time and there was an inadequate method statement which had not been scrutinised by an appropriate person.

Allan Turnbull was sentenced to three years' imprisonment for gross negligence manslaughter. He was also convicted under sections 2(1) and 3(1) HASAWA. No separate penalty was given for these offences. An aggravating feature of the case was that Mr Turnbull had been convicted under HASAWA after an employee steelworker was seriously injured after a fall from height in 2005.

Christopher Taylor, one of two directors of NEMOC, was convicted under sections 2(1) and 3(1) HASAWA and was fined £30,000 with £50,000 costs. NEMOC was found guilty under the HASAWA. Because the company was in liquidation the fine was a nominal £1 for each offence.

R v Velcourt (2011)

Salisbury Crown Court

Agriculture; fatality; safe system of work.

The deceased, a 21 year old harvest worker, was electrocuted when the extended grain spout of his combine harvester contacted an 11,000 volts overhead power line. The HSE spokesman reported that their investigation found that Velcourt Limited had failed to adequately inspect, monitor, supervise or audit health and safety management at the farm or to ensure that the farm manager received adequate health and safety training.

The HSE Inspector said : 'Velcourt chose to give Edward Pybus one of the largest and tallest machines on the market on his first ever commercial harvest operating a combine. No consideration was given at all to whether it could reach the overhead lines in the fields where he was electrocuted, or anywhere else for that matter.'

The court ordered a £120,000 fine for breach of section 3(1) HASAWA.

R v Watkin Jones and Son Ltd [2013]

Court of Appeal

Fatality; independent contractors.

On 4 October 2012 Mold Crown Court ordered Watkin Jones and Son Ltd of Bangor to pay a £450,000 fine (and £98,000 costs) following the death in May 2007 of 21 year old Thomas Whitmarsh, a roofing contractor working at the Menai Shopping Centre in North Wales. The site was being managed by principal contractors, Watkin Jones and Son Ltd.

Watkin Jones and Son instructed Mr Whitmarsh, along with a colleague, to remove the scaffolding protection from around the void so that they could fit a rubber membrane to a flat concrete roof. They then covered the void with an unsecured piece of wood but this did not prevent Mr Whitmarsh falling through the roof six metres to the floor below.

Mr Whitmarsh suffered severe injuries including significant brain damage. For several months following the accident he gradually recovered in hospital but contracted acute meningitis and died in December 2009.

Mr Whitmarsh did not have any experience of working on a roof and had not received any training or instruction. There had also been a serious breakdown in the chain of command which led to a failure to consider who was capable of carrying out the work.

D were prosecuted for a breach of section 3(1) HASAWA which is the general duty of an employer to ensure, so far as is reasonably practicable, that non-employees are not exposed to risks to their health or safety.

Following the successful prosecution they were fined £450,000. The company subsequently appealed the level of the fine but the Court of Appeal dismissed the appeal, observing that the risks involved were 'huge', that the fall had been 'an accident waiting to happen', and endorsing the Crown Court's judgment that there had been a serious breakdown in the chain of command.

R v Wilson and Mainprize [2004]

Court of Appeal

Fatality; sentencing

The appellants were concerned in providing a recreational diving course at an island diving site. They pleaded guilty for breaches of the Diving at Work Regulations 1997 for failing to conduct the undertaking in such a way as to ensure the safety of persons involved. There was no connection between the death of a trainee lady diver and shortcomings of the defendants. However, the diving operations jeopardised what one might describe as the general safety aspects of a hazardous occupation. In the absence of there being a cavalier

attitude or total disregard of safety the Court of Appeal fined both appellants £1,500 each, and ordered them to pay costs.

Reid v Equiworld Club Ltd (2010)

Aberdeen Sheriff Court

Equine; negligence - breach.

Vicky Reid was an experience rider and a member of the Robert Gordon University show-jumping team. She claimed that the horse she was riding, a 16.2 dark bay gelding called Roma, bucked at jump due to injury previously sustained by slipping on ice, and that Equiworld were negligent. On the facts, the injury to horse doubted, or doubted as to extent. The duties of care of the riding club with regard to the fitness of its horses were clear and included:

- the duty to maintain their horses in good health
- the duty to instruct any necessary veterinary and physiotherapy treatment
- the duty to assess fitness to jump before any session.

It was held that none of these duties had been breach and it is likely that the buck was due to 'rider error' and her excessive use of the whip (which she had been expressly told not to use on this particular horse), and lack of a 'proper hold' on the reins.

Richard Thomas and Baldwins Co. Limited v Cummings [1955]

Court of Appeal

Machinery guarding.

William Cummings, the claimant, acted as a fitter at the defendant's works in Ebbw Vale. He was injured as the grinder on which he was working was not adequately fenced. At the time of the accident it was not operating as a grinder powered by its motor, but was being manipulated by hand for maintenance purposes.

It was held that where the Factories Act required machinery to have guarding in place when 'in motion or use', the phrase related to motion and use when being operated in the manner for which it was intended (i.e. power driven) not motion, for example, by hand, i.e. the purposive rather than literal approach to statutory interpretation.

Robb v Salamis (M and I) Limited [2006]

House of Lords

Safe equipment.

Robert Robb was working on the fitting out of a production platform in the Moray Firth. The accommodation provided for the men was equipped with bunks with suspended ladders. Without testing whether the ladder was secure Robb attempted to descend from the top bunk and he and the ladder fell to the floor and he was injured.

Reg. 4(1) of the Provision and Use of Work Equipment Regulations 1998 provides : 'Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided.'

Reg. 4(4) provides that in reg. 4 'suitable' means suitable in any respect which it is reasonably foreseeable will affect the health and safety of any person.

Reg. 20 provides : 'Every employer shall ensure that work equipment or any part of work equipment is stabilised by clamping or otherwise where necessary for purposes of health or safety.'

Robb claimed damages for personal injuries on the basis of a breach of reg.s 4 and 20. The Sheriff Court found that the ladders were frequently removed and replaced, that the person replacing them might not replace them properly, and that if a ladder was not properly engaged it might become dislodged and might fall when being used, *but* he nevertheless held that the defenders were not in breach of either regulation because there was no evidence about previous accidents : it was not reasonably foreseeable by the defenders that the ladder would not have been replaced. And, in addition, the accident had been caused wholly by the pursuer's own fault. Robb appealed and the Inner House of the Court of Session, broadly, concurred with the sheriff.

On appeal to the House of Lords the result was reversed. It was held that the aim of reg.s 4 and 20 of the 1998 regulations was to ensure that work equipment could be used without impairment to safety or health. The obligation was to anticipate situations which might give rise to accidents. In this case the suspended ladders could be removed and then would have to be replaced. Carelessness in their replacement was one of the risks that should be anticipated and addressed before the defenders could be satisfied that the suspended ladders were suitable and that fixing of the ladders to the bunks by clamping or otherwise was unnecessary. It was plain from the sheriff's findings of fact that the ladders were *not* suitable for the purpose for which they were provided because of the risk that workers would be injured if they were not replaced properly. Accordingly, the accident had been caused by the defenders' breaches of reg.s 4(1) and 20. Robb was, accordingly, entitled to damages, subject to 50% contributory negligence.

Rose v Plenty [1976]

Court of Appeal

Vicarious liability.

A milkman took 13 year old Leslie Rose, to help him on his round, as was typical at the time, although contrary to express instruction. The boy was injured through the milkman's negligent driving. The boy sued both the milkman and the dairy co-operative who employed him. The trial judge found that the co-operative was not liable. The claimant appealed.

The Court of Appeal held that the milkman was doing an authorised act, delivering milk, albeit in an unauthorised way and thus found the dairy vicariously liable for the claimant's injuries. The boy was actually helping to deliver the milk, and so the driver's action was an unauthorised way of performing his duties. This was contrary to **Twine v Bean's Express Limited [1946]** and **Conway v George Wimpey and Co Limited [1951]** which Lords Denning and Scarman felt could be distinguished, although Lawton LJ (dissenting) disagreed.

Ross v Tennant Caledonian Breweries Limited (1983)

Court of Session

Safe system of work.

That a system has been in place for a considerable period of time without incident does not, of itself, demonstrate that it is a safe system.

Rylands v Fletcher (1868)⁸

House of Lords

Strict liability / Rylands v Fletcher.

The rule in this case expresses a situation where strict, no fault, liability may apply. It states that where an occupier of land brings onto that land anything, not being a natural use of land, likely to do damage if it escapes the occupier will be liable for any damage caused by an escape.

John Rylands (at one time the largest private employer in the UK with 12,000 workers in 17 mills) employed competent contractors to build a reservoir on his land, off the A58 Bury to Bolton road in Lancashire. During the work, the contractors discovered an old mine whose shafts and passages connected with another mine on neighbouring land owned by Thomas Fletcher. The contractors did not adequately block up the shafts. On 11th December 1860 the reservoir was filled with water and the water 'escaped' into Fletcher's mine thereby causing damage.

⁸ See Simpson, A W Brian (1995).

Fletcher sued Rylands on the grounds of Rylands' negligence, trespass and nuisance. (He also sued the reservoir manager, Jehu Horrocks). Rylands himself had not been negligent as he had no knowledge of the existence of the shafts. He was not vicariously liable for the actions of the contractors as they were not his employees. There was found to be no trespass as the action was indirect and nuisance was discounted as there normally needs to be a continuance of action for such a claim.

The House of Lords upheld Blackburn J's ruling in the Court of Exchequer that Rylands was liable in tort. It was stated that : 'We think the true rule of law is that the person who for his own purposes brings onto his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do so, is *prima facie* liable for all the damage which is the natural consequence of its escape'.

During the appeal Lord Cairns, in agreeing with the above statement, added the qualification that the rule only applied to a 'non-natural' use of the land, and not to circumstances where a substance accumulated naturally on land. The word 'natural' has since been extended to mean 'ordinary'.

Schwalb v H Fass and Son Limited [1946]

High Court, KBD

Reasonably practicable.

Where a statutory duty or obligation is qualified solely by the word 'practicable' this implies a higher level of duty than one qualified by the phrase 'reasonably practicable'. It must be done irrespective of cost or difficulty. But 'practicable' means something other than physically possible; it means that the measures must be possible in the light of current knowledge and invention.

Selwyn-Smith v Gompels (2009)

Swindon County Court

Forestry and trees; negligence.

A 28 metre tall Austrian pine tree belonging to the defendant, Mr Sam Gompels, at Great Hinton, near Trowbridge, fell onto Philip Selwyn-Smith's shed causing him severe injuries, as well as extensive damage to the building and contents. The claim came under two limbs : the first was a failure on the part of the defendant to have the tree inspected, and the second was that, having already lost two similar specimens, he ought to have been aware that it could only have been a matter of time for the third tree to become unstable and/or fall. In fact, the tree was only occasionally looked at with the defendant indicating that he 'observed it standing up to winds, seemingly without trouble.'

Giving judgment for the defendant, the Recorder Adrian Palmer QC set out the relevant standards of care applicable to the 'reasonable prudent landowner'. He

stated that there was 'no ground for holding that the owner is to become an insurer of nature, or that default is to be imputed to him until it appears or would appear upon proper inspection that nature can no longer be relied upon', adding 'He is not bound to call in an expert to examine the trees unless he has reason to believe that they may be unsafe.'

The next 'grade' of owner is the reasonable and prudent landlord, whose degree of knowledge must 'necessarily fall short of the knowledge possessed by scientific arboriculturalists but which must surely be greater than the knowledge possessed by the ordinary urban observer of trees'.

Shirvell v Hackwood Estates Co Ltd [1938]

Court of Appeal

Fatality; forestry and trees; negligence.

Cornelius Shirvell, the plaintiff, had leased a farm from the defendants, Lord Camrose's company. On adjacent land, also held by Hackwood Estates, there was a partly dead beech tree, a dead branch of which overhung the plaintiff's land. One of the plaintiff's farm workers, William Robinson, was killed by the falling of this dead branch. His widow obtained an award against the plaintiff under the Workmen's Compensation Act 1925. The plaintiff tenant sought to be indemnified by the defendant landlord under the Workmen's Compensation Act, s 30. It was proved that the defendants had only recently acquired the estate in question, which was in a neglected condition with many dead trees. They instructed a forestry expert to advise them and he had made a preliminary report. Pending his second report, the defendants had engaged two fellers to cut down certain trees.

It was held that (i) the plaintiff had taken the farm as it existed at the time of the lease, and the defendants were under no duty to him, a tenant, to see that any overhanging trees were not in a dangerous condition.

(ii) as the plaintiff himself could not have recovered from the defendants had he been injured by a falling branch, neither the workman nor his widow could have recovered, and the plaintiff was therefore not entitled to an indemnity.

(iii) (Bennett J dissenting) on the facts of the present case, the defendants had taken reasonable steps to deal with the dead trees, and could not be said to have been negligent. The action therefore failed.

Smith v Charles Baker and Sons [1891]

House of Lords

Volenti non fit injuria.

The claimant, Joseph Smith, worked for railway contractors, drilling in the rock face of a cutting. While he did this a crane worked overhead and both he and

his employers knew that there was a risk of the rock falling from the crane. The claimant was not warned when the crane would operate. A rock fell and injured the claimant.

The House of Lords held that although the claimant knew of the risk, the defence, potentially available both under the common law and the Employers' Liability Act 1880 (repealed), that he voluntarily assumed the risk (*volenti non fit injuria*) was not proven because he was threatened with dismissal if he objected to the crane working overhead, this he was not *voluntarily* accepting the risk.

Lord Hershell set out that : 'It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to ... carry on his operations as not to subject those employed by him to unnecessary risk.'

***Spalding v University of East Anglia* [2011]**

High Court, QBD

Negligence - breach; PPE; risk assessment.

John Spalding, an experienced plumber, worked as a maintenance man for the defendant university. He was asked to attend to a leaking radiator in the university library. When he assessed the job, he saw that the radiator was dripping, but not pouring out water. It was situated under a desk which was screwed to the wall. The carpet was soaking wet and he thought he might be lying on it for a considerable time, so he took along some plastic bin bags to lie on to avoid getting his clothes wet. Having completed the repair, he tried to get up but he slipped on one of the bin liners, and fell heavily. He sustained cuts to his face, damage to three teeth and a minor whiplash injury.

The claimant contended that he should have been provided with waterproof clothing which would have avoided the need for him to rely on the makeshift waterproof protection of the bin bags. That was pleaded as a breach of the Personal Protective Equipment Regulations 1992. The trial judge found that breach proved. The judge also found breach of the general duty under reg. 3(1)(a) of the Management of Health and Safety at Work Regulations 1999 in that the defendants had failed to make a suitable and sufficient assessment of the risks to the health and safety of the claimant whilst at work. The judge found the claimant to be 50% contributorily negligent.

The defendant appealed. The appeal was dismissed : on the facts, the judge was perfectly entitled to look at the matter in a broad, common-sense way, as he had, and to conclude that no employer could properly expose an employee to the obvious risk of some adverse effect on his health through having to remain in sodden clothing for a period of several hours. The judge had been entitled to find in the claimant's favour.

Square D Limited v Cook [1992]

Court of Appeal

Safe premises.

Square D employed Cook as a field service electronics engineer. He was sent out to a client in Saudi Arabia to work on computer control systems. He was injured due to the poor state of the premises in Saudi. His employers were not liable as they had no control over his conditions of work.

Per Farquharson LJ : ‘... the suggestion that the home-based employer has any responsibility for the daily events of a site in Saudi Arabia has an air of unreality.’

It was, however, stressed that each case must be considered on its facts - it is not to be taken as a precedent that at UK based employer will *never* have any responsibility for overseas situations.

Stark v The Post Office [2000]

Court of Appeal

European law compliance; safe equipment.

A postman, David Stark, was injured when a part of the front brake of his delivery bicycle broke. The Post Office was found to be in breach of its statutory duty. It was held that reg. 6(1) of the Provision and Use of Work Equipment Regulations 1992, which provided : ‘Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair’ imposed an absolute duty.

There was found to be nothing in the Use of Work Equipment Directive 89/655 to discourage a member state from imposing more stringent duties than the minimum requirement the directive introduced.

Waller, LR relied in particular on **Galashiels Gas Co Limited v Millar [1949]** and **Hamilton v National Coal Board [1960]** and made reference to *Redgrave's Health and Safety* (3rd edition, paragraphs 2.5, 2.19 and 2.20).

Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Limited [1968]

Birmingham Assizes

Fatality; negligence - breach of duty; newly emerging dangers.

For fifteen years until April 1965, Sidney Stokes was employed as a tool-setter at the defendant's factory. His work involved leaning over machines bringing his lower stomach to the top of his thighs into contact with mineral oil, suturing his clothing. He died in February 1966, aged 43, from cancer of the scrotum induced, on the balance of probabilities, by his exposure oil at work.

From 1941 the defendants employed a medical officer with special knowledge of occupational medicine and industrial hygiene. Since 1941 medical scientists had made recommendations that there should be warnings given and periodical medical inspections of workers exposed to the cancer risk of regular exposure to carcinogenic oils, and in 1960 the Factory Inspectorate issued a leaflet describing warts on the scrotum as being potentially cancerous and recommending that workers should avail themselves of any periodical medical examinations by works' doctors.

The defendant's medical officer differed from those recommendations because he considered periodical examinations disproportionate to the risk and that specific warnings of the risk of cancer might frighten workers, with the result that warnings were not given and the leaflet was not circulated at that time. After the death of another tool-setter in 1963 he gave a talk to the factory works council about the dangers of cancer but it was unlikely on the evidence that any warning of symptoms ever reached the deceased. It was alleged that defendants were negligent in that they knew or ought to have known that contact with mineral oil gave rise to a cancer risk and failed to warn the deceased of the dangers to which he was exposed, failed to instruct him in the precautions to be taken to detect and report the effects of the oil and failed to provide six-monthly medical examinations.

It was held :

(1) an employer did not fall below the standard to be properly expected of a reasonable and prudent employer if he followed a recognised practice, unless it was clearly bad, but he must keep reasonably abreast of developing knowledge, and not be too slow to apply it; where an employer had greater than average knowledge of risks he might be obliged to take more than the average precautions; and he should weigh up the risk in terms of the likelihood of injury occurring and the potential consequences and balance that against the effectiveness, expense and inconvenience of the precautions;

(2) where a task requiring special skill or art was delegated to a servant, the servant must be judged by standards pertaining to that skill or art in so far as he was possessed of or exercising it; that a medical officer was expected to give his employers advice based partly on medical and partly on economic and administrative considerations and where the advice was based on such mixed considerations, the special tests normally applicable to a doctor only applied to the medical aspect and the economic and administrative objects would be covered by more general principles;

(3) applying those tests of the reasonably prudent employer and the competent doctor, the doctor was negligent in failing to institute six monthly medical examinations of workers exposed to the risk of cancer, and in failing to issue a notice calling attention to that risk, describing the symptoms and recommending reference to a doctor; and defendants were liable for that negligence.

Sutherland v Hatton; Barber v Somerset County Council; Jones v Sandwell Metropolitan District Council; Bishop v Baker Refractories Limited [2002]

Court of Appeal

Foreseeability; stress / psychiatric illness.

The cases of four separate claimants were heard together in the Court of Appeal. Three out of the four claimants were stripped of the damages they had been awarded in the first instance, and the CA laid down 16 'practical propositions' to be considered in injury claims arising from work-related stress. Two main questions were addressed : first, the scope of duty owed by the employer; and second, whether the employer had breached that duty.

Penelope Hatton

Mrs Hatton was a secondary school French teacher who suffered from depression and a nervous breakdown and was initially awarded £90,765. The CA found that Hatton gave the school she worked for no notice that she was growing unable to cope with her work. She had suffered some distressing events outside of work, which the school could reasonably have attributed her absence to, particularly as other staff did not suffer from health problems as a result of restructuring in the school, and the fact that she did not complain. The court held that as teaching cannot be regarded as intrinsically stressful, the school had done all they could reasonably be expected to do. It was unnecessary to have in place systems to overcome the reluctance of people to voluntarily seek help.

Alan Barber

This case involved another teacher, employed by Somerset Council a secondary school head of Mathematics. In the first instance, Barber was awarded £101,042 damages, after reorganisation of the school increased his workload and led to his suffering from depressive symptoms and taking early retirement. CA noted that Barber was not the only teacher to have an increased workload, nor did he inform his employer of his depressive symptoms. It was held that the school did not breach its duty of care.

Melvyn Bishop

The claimant worked in a factory for 18 years, and was initially awarded £7,000 damages after suffering from a mental breakdown and attempting suicide. In revoking the award, the CA noted that Bishop could not cope with the restructuring of the company, while all his workmates could. Again, the claimant did not make his employers aware of his condition, or that his GP had advised him to change jobs. It was held that the work demands were not excessive, but that he was 'set in his ways' and wanted his old job back.

Olwen Jones

The claimant, an administrative assistant employed by the Sandwell Metropolitan Borough Council, was awarded £157,541 in the first instance, having suffered from anxiety and depression after a period of extreme overwork. Unlike the claimants in the above three cases, she had complained of her excessive

workload to her manager, but she received no help. The CA did not revoke her award, on the grounds that her employer knew of her excessive workload and it was reasonable to conclude that it was foreseeable that harm would result from the stress and from the employer's breach of duty.

Following these principles, three of the employer's appeals were allowed. Sandwell MDC's appeal was dismissed.

The guidelines set up by the CA are as follows:

1. There are no special control mechanisms relating to work-related stress injury claims; ordinary principles of employers' liability apply.
2. The 'threshold' question is whether this kind of harm to this particular employee was reasonably foreseeable.
3. Foreseeability depends on what the employer knows or should know about the individual employee. Unless aware of a particular problem or vulnerability, the employer can usually assume that the employee can withstand the normal pressures of the job.
4. The test is the same for all occupations; no occupation is to be regarded as intrinsically dangerous to mental health.
5. Reasonable foreseeability of harm includes consideration of :
 - i. the nature and extent of the work
 - ii. whether the workload is much greater than normal
 - iii. whether the work is particularly intellectually or emotionally demanding for that employee
 - iv. whether unreasonable demands are being made of the employee
 - v. whether others doing this job are suffering harmful levels of stress
 - vi. whether there is an abnormal level of sickness or absenteeism in the same job or department. The employer can take what the employee tells it at face value, unless it has good reason not to, and need not make searching enquiries of the employee or his or her medical advisors.
6. The employer can take what the employee tells it at face value, unless it has good reason not to and need not make searching enquiries of the employee or his / her medical advisors.
7. The duty to take steps is triggered by indications of impending harm to health, which must be plain enough for any reasonable employer to realise it has to act.
8. There is a breach of duty only if the employer has failed to take steps that are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of that harm, the costs and practicability of preventing it and the justifications for running the risk.

9. The employer's size, scope, resources and demands on it are relevant in deciding what is reasonable (including the need to treat other employees fairly, for example in any redistribution of duties).
10. An employer need only take steps that are likely to do some good; the court will need expert evidence on this.
11. An employer that offers a confidential advice service, with appropriate counselling or treatment services, is unlikely to be found in breach of duty.
12. If the only reasonable and effective way to prevent the injury would be to dismiss or demote the employee, the employer will not be in breach in allowing a willing employee to continue working.
13. In all cases, it is necessary to identify the steps that the employer could and should have taken before finding it in breach of duty of care.
14. The claimant must show that the breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress caused the harm; it must be linked with the breach.
15. Where the harm suffered has more than one cause, the employer should only pay for that part caused by its wrongdoing, unless the harm is indivisible.
16. Assessment of damages will take account of pre-existing disorders or vulnerability and the chance that the claimant would have suffered a stress-related disorder in any event.

Tesco Supermarkets Limited v Natrass [1971]

House of Lords

Due diligence.

Tesco had set up a comprehensive and careful system to supervise employees in the labelling of goods in their stores to avoid offending against the Trade Descriptions Act. A store manager failed to check the work of his staff and as a result goods offered under a 'Special Offer' poster for 2s 11d were not available and customers were given the old price of 3s 11d. Tesco were prosecuted and stated in their defence that the offence was 'due to the default of another person' (albeit an employee).

On conviction, Tesco appealed to the House of Lords. The conviction was quashed on the grounds that their defence was valid as they had done everything reasonably possible to prevent offences being committed. This is known as a due diligence defence and senior managers may be able to avail themselves of it where junior members of staff or other persons commit offences. Note the use of the word may! This will not be operative with regard to strict

liability and non-delegable duties. The Tesco case involved the interpretation of the Trade Descriptions Act and not health and safety at work legislation but has been widely utilised in reference to the general principle.

Thompson and others v Smiths Shiprepairers (North Shields) Limited
[1984]

High Court, QBD

Newly emerging dangers.

The claimants had been employed in the shipyards from the 1940s to the 1970s, exposed to high levels of noise. In their earlier years of employment there was little knowledge and no employer guidance as to the dangers.

Where a danger or improved way of combating old threats has only recently emerged, the courts will have to decide at what point a reasonable, but not necessarily 'extraordinarily solicitous', employer should have been aware and changed their working practices.

Per Mustill J : 'The employer is not liable for the consequences of [apparently inescapable] risks, although subsequent changes in social awareness or improvements in knowledge and technology, may transfer the risk into the category of those against which the employer can and should take care. It is unnecessary, and perhaps impossible, to give a comprehensive formula for identifying the line between the acceptable and the unacceptable. Nonetheless, the line does exist ...'

Threlfall v Hull City Council [2010]

Court of Appeal

Negligence - breach; personal protective equipment; risk assessment.

Steven Threlfall worked on the maintenance of the gardens of unoccupied local authority houses. This largely involved grass cutting, but that often involved the preliminary removal of rubbish and debris. Often there were black plastic bags of rubbish in the gardens which had to be lifted by hand. Whilst handling one such bag, the claimant suffered an injury to his left hand. Details of how the injury occurred were unclear but, self-evidently, the gloves provided by his employers had not protected him.

The gloves were standard issue, and were described by the manufacturer as being of a simple design for 'minimal risks only'. They were made partly of cloth and partly of leather which felt like soft brushed suede. They were not 'cut-resistant'. The claimant brought an action in the County Court alleging that his injury had been due to the negligence or breach of statutory duty of the authority in failing to provide him with suitable protective gloves. The judge dismissed the claim on the ground that the claimant had been the author of his own

misfortune. He considered the issue as to whether the gloves provided constituted a breach of the Personal Protective Equipment at Work Regulations 1992. He held that there was no duty to provide highly protective gloves and that the gloves had been adequate in the circumstances.

On appeal to the High Court, the judge held that the trial judge had been right to conclude that the claimant had failed to establish that his injury was caused by the breach of the Regulations because at the end of the trial it remained unclear how his finger came to be cut, and apart from the fact that the injury had occurred, there was no evidence to suggest a risk assessment revealed that the gloves were unsuitable.

The claimant appealed. The claimant submitted that both judges had been in error. The Court of Appeal considered the assessment of the suitability of the gloves. The appeal would be allowed (with no finding of contributory negligence). In the circumstances, the gloves provided by the employer had been unsuitable and their provision amounted to a breach of PPE Regulations. That breach had been causative of the claimant's injury and his employer was therefore liable.

Transco plc v HM Advocate [2004]

High Court of Justiciary, Scotland

Fatality; safe system of work.

Transco was fined a total of £15m at the High Court of Justiciary in Edinburgh, under section 3 HASAWA after a family of four were killed in a gas explosion.

The conviction sent a message to all operators of hazardous plant of the need to keep accurate records, operate effective management systems and properly maintain pipelines and equipment.

Although not successful on that ground, it was the first case in Scotland where the court indicated that it was possible to try a company, as opposed to an individual, for culpable homicide - what would be called gross negligence manslaughter in England and Wales.

The matter would now be dealt with under the Corporate Manslaughter and Corporate Homicide Act 2007.

Turnbull v Warrener [2012]

Court of Appeal

Animals Act; equine; negligence – breach.

Ms Nadine Turnbull and Mrs Rebecca Warrener were both experienced horsewomen. Ms Turnbull regularly rode Mrs Warrener's horse, Gem, particularly after Mrs Warrener became pregnant. On the occasion of the

accident. she rode with a bitless bridle due to Gem's recent dental work. After trying this in a school without any problems, she took the horse for a canter in an open field where the horse threw her. She failed on her claim negligence and under Animals Act 1971. The section 5(2) defence operated and Ms Turnbull was said to have voluntarily accepted the risk.

Twine v Bean's Express Limited [1946]

Court of Appeal

Fatality; vicarious liability.

Harrison, an employee of Bean's Express, was hired out with a van to the Post Office Saving's Bank. Contrary to express instruction, Harrison gave a lift to Twine, a bank mail porter. Twine was fatally injured due to Harrison's fault. Twine's widow claimed compensation under the Fatal Accidents Acts 1846 to 1908.

The employer was not vicariously liable as the employee was acting totally outside the scope of his employment.

Uddin v Associated Portland Cement Manufacturers Limited [1965]

Court of Appeal

Contributory negligence; foreseeability; machinery guarding.

A machinery attendant, Khandker Jamal Uddin, in attempting to remove a pigeon, climbed up a steel ladder to a platform and then climbed on a cabinet which housed an unguarded revolving steel shaft (contrary to section 14(1) of the Factories Act 1961). As he leant over the shaft his clothes became entangled.

Although it was not foreseeable that an employee would get caught in the machine whilst chasing pigeons, it was foreseeable that a maintenance man would fail to turn off the machine when carrying out maintenance. The occupiers were, consequently, in breach of section 14(1). The Act protected 'every person employed or working on the premises', not just employees. The claimant was entitled to protection even though not working or acting within the scope of his employment. He was, however, found to be 80% contributory negligent.

Note : this section of the Factories Act has been replaced by the Provision and Use of Work Equipment Regulations 1998.

Uren v Corporate Leisure (UK) Limited and Ministry of Defence [2011]

Court of Appeal

Foreseeability; independent contractor; risk assessment.

Robert Uren, was 21 years old when rendered tetraplegic whilst taking part in an 'It's a Knockout' style 'Health and Fun Day' at his RAF base, organised by Corporate Leisure (UK) Limited. The game he was playing when injured involved entering a shallow inflatable pool to retrieve plastic toys. He had dived into the pool head first, breaking his neck.

The question was whether adequate risk assessment had been carried out. The claimant's case was that if such risk assessment had been carried out then head first entry of pool would not have been permitted and he would not have been injured.

At first instance it was held that risk assessment of the game was inadequate and that both defendants were in breach of their duty of care in this respect but that there was no liability as the game was 'reasonably safe' when balanced against social utility. On appeal, this was said to be the wrong approach - having found risk assessments to be inadequate, the judge should have considered what the result of adequate risk assessments would have been. It was accepted that no specific instructions or safety guidance was given other than to 'take care and use common sense.'

The RAF were, of course, required carry out their own risk assessment. It was stressed that it was not permissible for the RAF to delegate their duty to CL. Where a sub-contractor is carrying out specialist work then the sub-contractor may be carrying out a more detailed risk assessment than the contractor but in that instance, the employer would be required to satisfy themselves that the sub-contractors was doing so.

On appeal the role of risk assessments was addressed. Smith LJ observed that : '... risk assessments are an important feature of the health and safety landscape. At their best, they can provide an opportunity for intelligent and well-informed appraisal of risk and can form a blueprint for action leading to improved safety standards. It must, however, be admitted that they are not a panacea. ... there were in this game so many variables ... it would be virtually impossible to give separate consideration to every possible variable of what might be attempted ... risk assessors should 'keep it simple'. ... It seems to me that formal risk assessments are probably more effective in relation to static conditions or activities which are often repeated in a fairly routine way. They may well be a less effective tool where a lot of variables may come into play.'

The artificial, 'tick box' style of many risk assessments was considered. Although acknowledged to be developed to give clear guidance it was felt to be a blunt instrument : '... it seems to me that the use of a template can never fully replace the reasoning processes of an intelligent and well-informed mind. I hope that is not too much to hope for.'

The trial judge felt that a small risk of injury was acceptable under the particular circumstances. Interestingly, the point that the men were young and fit, as a justification for the activity was also raised in the alternative in that it was foreseeable that young, fit servicemen might take part with undue competitiveness and lack of care.

Smith LJ made a number of useful observations about expert witness evidence :

- that a general use of statistics could not be applied to a specific activity without qualification or context
- that when an expert makes a bad point it undermines his or her authority in areas which might be sound
- that a trial judge should offer some discussion or justification for taking one expert against another not 'a mere assertion' that he prefers one view, i.e. a sufficient analysis of conflicting expert opinion should be made
- the relative youth or inexperience of an expert cannot, of itself, amount to a sufficient reason for rejecting their evidence

The trial judge was also criticised for finding spectator views to be a 'very little relevance'. Given that no-one from CL or the RAF had seen the game played with head-first entry before, the impressions of by-standers, several of whom had physical education expertise, could have been important.

The combined effect of the above issues lead to a concern about the soundness of the trial judge's conclusion. It was stressed that the judgment may not have been wrong, let alone *clearly* wrong, but that the *reasoning* was not sound.

In short, the trial judge held that there was a *small* risk of injury and, because that risk was small it was acceptable to take it, given the social value of the game. On appeal, it was held that the judge's basis for deciding that the risk was small was flawed and the case was remitted for retrial.

Walker v Northumberland County Council [1995]

High Court, QBD

Stress / psychiatric illness.

John Walker, a social services manager with a high proportion of child care case management, suffered a breakdown through overwork and was off for three months. He returned to work only after his employers gave him specific promises of extra assistance. This assistance was not forthcoming and a second breakdown permanently disabled him from working.

The case was the first to establish that an employer can be held liable for psychological injury to an employee caused by work related stress. The judgment underlined the employer's duty of care to provide safe systems of work in respect of occupational stress as well as other hazards, and to take steps to protect employees from foreseeable risks to their mental, as well as physical, health.

Wallace v Newton [1982]

High Court, QBD

Animals Act 1971; equine.

Elaine Wallace was employed by Ursula Newton as a groom at Church Farm, Melton Mowbray. Wallace was injured in trying to load a show jumper, Lord Justice, which was known to be difficult and unpredictable. Although experienced, the claimant was not considered capable of riding the particular horse.

Under the Animals Act 1971 the employer was liable to the employee. The owners of the horse were also liable with reference to the first part of section 2(2) (b) such that the particular horse, although not a member of a dangerous species, was known to be unusually difficult / dangerous.

Ward v Tesco Stores Limited [1976]

Court of Appeal

Res ipsa loquitur.

May Ward, a customer, slipped on some spilled yoghurt in a supermarket and was injured. The Court of Appeal upheld the original award of damages; the principle of *res ipsa loquitur* (the facts speak for themselves) applied and in the absence of any satisfactory explanation from the defendants the presumption was that they had not taken all reasonable precautions. The burden of proof was on the defendant to establish that they *had* taken all reasonable care.

Whitehead v Trustees of the Chatsworth Settlement [2012]

Court of Appeal

Negligence - breach; safe equipment.

Mark Whitehead was water bailiff and gamekeeper at the Bolton Abbey Estate. He shot himself in the leg whilst climbing over a wall, which collapsed. The gun he was carrying was broken but loaded. He claimed in negligence and for breach of the Provision and Use of Work Equipment Regulations 1998.

It was found that he had experienced various training with firearms, both from his military days, on a deerstalker course and that his employer had engaged a health and safety consultant some years earlier expressly to appraise the gamekeepers on the law and best practice. It was established, as a matter of fact, that the gamekeepers had received verbal and written instructions on best practice.

The keeper also indicated that although he normally did keep his gun ready loaded for speed and convenience when out shooting vermin, had senior

members of staff been present he would have likely to have been more vigilant as to 'best practice'.

The employer was held to be *not* liable - they could clearly evidence that instruction and information had been provided and regularly reviewed and reminded of .

On a technical point, the judgment includes interesting consideration of the nuanced differences between 'strict' and 'absolute' liability.

***Wilson and Clyde Coal Co. Limited v English* [1938]**

House of Lords

Competent staff; employer's duty of care; fatality; safe equipment; safe premises; safe system of work.

The common law duties of an employer to his employees were identified in general terms in this case to give a framework of employers' liability. In this case the employers were liable for injuries caused to a miner, Mr English, in the Glencraig Colliery in Fife as a result of an unsafe system of work.

The miner was working underground near the pit bottom at the end of his shift when the haulage equipment was switched on and the claimant was crushed to death between the equipment and the wall of the mine. The defendant claimed that English could have got out of the pit by a different route or could have called to the operator of the haulage equipment telling him of his presence, thus he was to blame for the incident.

The House of Lords unanimously held that the employer owes a duty of care to his employee which is four fold :

- a safe place of work (including safe access and egress);
- safe equipment;
- a safe system of work
- provision of competent co-employees.

This obligation is fulfilled by the exercise of due care and skill.

The case was also important because it stated that those duties were owed personally by the employer to each employee and were non-delegable, that is to say the performance of those duties could be delegated but the responsibility for their correct discharge could not.

Lord Thankerton drew particularly on Lord Aitchison's judgment in ***Bain v Fife Coal* [1935]**.

Working Bibliography

These references will provide further detail and guidance to practitioners in understanding and implementing the law of health, safety and welfare.

Barrett, Brenda and Howells, Richard (2000) *Occupational Health and Safety Law : Cases and Materials*. 2nd ed. London : Cavendish Publishing.

Crown Prosecution Service (2010) *Work Related Deaths : a protocol for liaison*. www.cps.gov.uk/publications/agencies/wrdprotocol.html.

Crown Prosecution Service (2011) *Corporate Manslaughter : the legal guidance*. www.cps.gov.uk/legal/a_to_c/corporate_manslaughter/index.html.

Crown Prosecution Service (2011) *Work Related Deaths : the legal guidance*. www.cps.gov.uk/legal/v_to_z/work_related_deaths/index.html.

Health and Safety Executive. HSE Enforcement Guide (England and Wales). www.hse.gov.uk/enforce/enforcementguide/index.htm

Institute of Directors and Health and Safety Commission (2007) *Leading Health and Safety at Work : leadership actions for directors and board members*. Sudbury : HSE Books.

Ministry of Justice (2007) 'Understanding the Corporate Manslaughter and Corporate Homicide Act 2007'. www.justice.gov.uk/downloads/publications/bills-acts/manslaughter-homicide/manslaughter-homicide-act-2007.pdf.

RICS (2011) *Surveying Safely*. [available to RICS members only.] www.rics.org/site/scripts/downloads.aspx?categoryID=534

Sentencing Council (2010) *Corporate Manslaughter and Health and Safety Offences Causing Death : Definitive Guideline*. http://sentencingcouncil.judiciary.gov.uk/docs/web_guideline_on_corporate_manslaughter_accessible.pdf.

Stranks, Jeremy (2005) *Health and Safety Law*. 5th ed. Harlow : Pearson Prentice Hall.

Welham, Michael (2008) *Corporate Manslaughter and Corporate Homicide : a manager's guide to legal compliance*. Hayward's Heath : Tottel Publishing

Agriculture

Health and Safety Executive (2011) *Farmwise : your essential guide to health and safety in agriculture*. www.hse.gov.uk/pubns/indg427.pdf .

Health and Safety Executive (annual) *Fatal Injuries in farming, forestry, horticulture and associated industries* - annual report.

Equestrian

Paviour, Harry (2005) *Guidelines for Fire Safety in Equine and Agricultural Premises*. Stoneleigh : British Horse Society.

Sinclair-Williams, Mike and **Sinclair-Williams, Karen** (2006) *Health and Safety Guidance for Inspections of Horse Riding Establishments and Livery Yards*. Chartered Institute of Environmental Health.
www.cieh.org/policy/inspections_horse_livery.html.

Forestry and Trees

Forestry Commission (2000) *Hazards from Trees : A General Guide*.
www.hse.gov.uk/treework/

Health and Safety Executive (2003) *Managing Health and Safety in Forestry*.
www.hse.gov.uk/pubns/indg294.pdf.

Health and Safety Executive (2013) *Management of the risk from falling trees or branches*. http://www.hse.gov.uk/foi/internalops/sims/ag_food/010705.htm

National Tree Safety Group (2011) *Commonsense Risk Management of Trees*. [www.forestry.gov.uk/pdf/FCMS024.pdf/\\$file/FCMS024.pdf](http://www.forestry.gov.uk/pdf/FCMS024.pdf/$file/FCMS024.pdf)

National Tree Safety Group (2011) Landowner summary of the above guide.
[www.forestry.gov.uk/PDF/FCMS025.pdf/\\$FILE/FCMS025.pdf](http://www.forestry.gov.uk/PDF/FCMS025.pdf/$FILE/FCMS025.pdf)

Extended Bibliography

As a companion to the more practical listing above, these references provide further reading for those seeking more detail or an academic, philosophical or policy driven analysis of the development and application of both health and safety law and civil liability for personal injury.

Clarkson, C M V (2006) 'Kicking corporate bodies and damning their souls (1996) 59 *Modern Law Review* 557.

Clough, J and Mulhern, C (2002) *The Prosecution of Corporations* (Oxford: Oxford University Press.

Craig, R W and Barnes, W C (2006) 'Professional employees' exposure to risk of negligence claims from the client.' *Construction Management and Economics* (July 2007) 25, pp 811-819.

Cullen, Lord (1996) 'The Development of Safety Legislation.' Royal Academy of Engineering and Royal Society of Edinburgh Lecture.

de Silva, C S (2006 - 2011) Papers presented at the *RICS ROOTS Rural Research Conferences* and the *RICS National Rural Conference* of relevance to this area. See www.rics.org/site/scripts/documents_info.aspx?documentID=445 to download, or contact author for further details. Key areas of the papers are :

- 2006 - *Rylands v Fletcher*
- 2007 - Animals Act 1971
- 2008 - Compensation Act 2006
- 2009 - workplace accidents in agriculture and *Philiphaugh* case
- 2010 - livestock and public access and *McKaskie v Cameron*
- 2011 - risk assessment and expert witnesses and *Uren* case

de Smith, S A (1949) 'Misfeasance and Non-Feasance.' *The Modern Law Review*, Vol. 12, No. 1 (Jan 1949), pp. 96-97.

Epstein, Richard A (1982) 'The social consequences of common law rules.' 95 *Harvard Law Review* 1717.

Ford, Michael and Clarke, Jonathan (2010) *Redgrave's Health and Safety*. 7th ed. London : LexisNexis Butterworths.

Foster, Neil (2009) 'Recent Developments in Personal Liability of Company Officers for Workplace Safety Breaches - Australian and UK Decisions.' Working Paper 63, National Research Centre for Occupational Health and Safety Regulation, Australian National University, Canberra.

Friedman, David D (2001) *What Economics Has to Do with Law and Why It Matters*. Princeton, New Jersey : Princeton University Press.

Gobert, J (2005) 'The Politics of Corporate Manslaughter - The British Experience' 8 *Flinders Journal of Law Reform* 1

Gumbel, QC Elizabeth-Anne and Fairgrieve, Duncan (2006) 'Who regulates the regulators? Liability of regulators in tort claims.' 1 Crown Office Row Chambers.

[www.1cor.com/1155/records/1083/Who%20Regulates%20the%20Regulators%20Paper%20\(EG%20-%20DF\)%20\(2\).pdf](http://www.1cor.com/1155/records/1083/Who%20Regulates%20the%20Regulators%20Paper%20(EG%20-%20DF)%20(2).pdf)

Hodder, E (1886) *The Life and Times of the Seventh Earl of Shaftesbury KG*. London : Cassell.

Howes, Victoria (2009) 'Duties and Liabilities under the Health and Safety at Work Act 1974 : A Step Forward?' *Industrial Law Journal*, vol .38, no. 3, September 2009, pp 306-316.

Kelsey, John (2006) 'Corporate manslaughter, regulation and seeking to profit.' RICS COBRA Construction and Building Research Conference, London.

Law Commission (1954) *Occupiers' Liability to Invitees, Licensees and Trespassers*. Cmd. 9305.

Law Commission (1976) *Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability*. Cmnd. 6428.

Law Commission (1996) *Legislating the Criminal Code : Involuntary Manslaughter*. No. 237.

Law Commission (1998) *Liability for Psychiatric Illness*. No. 249.

Law Reform Commission / An Coimisiún Um Athchóiriú An Dí (1982) *Report on Civil Liability for Animals*. Dublin.

Löfstedt, Prof. Ragnar E (2011) *Reclaiming health and safety for all : an independent review of health and safety legislation*. Cm 8219. London : HMSO. www.dwp.gov.uk/docs/lofstedt-report.pdf

Matthews, Richard and Ageros, James (2010) *Health and Safety Enforcement : Law and Practice*. 3rd ed. Oxford : Oxford University Press.

Owens, D, ed. (1995) *Philosophical Foundations of Tort Law*. Oxford : Clarendon Press.

Posner, Richard A (1977) *Economic Analysis of Law*. 6th ed. New York : Aspen Publisher.

Robens Report (1972) *Report of the Robens Committee on Safety and Health at Work*, Cmnd 5034. London : HMSO.

Rowe, Jean Elting and **Silver, Theodore** (1995) 'Jurisprudence of Action and Inaction in the Law of Tort : Solving the Puzzle of Nonfeasance and Misfeasance from the Fifteenth through the Twentieth Centuries.' 33 *Duquesne Law Review*, Summer 1995, 807.

Simpson, A W Brian (1995) *Leading Cases in the Common Law*. Oxford : Oxford University Press.

Stein, Michael Ashley (2003) 'Priestley v Fowler (1837) and the Emerging Tort of Negligence.' 44 *Boston College Law Review*, 689.

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