

## Chapter 5: Employers' Liability and Vicarious Liability Extra Questions

### Question 1

Critically discuss the nature of the duty owed by employers to employees. What difficulties confront an employee who is trying to bring a claim against an employer for a stress related injury?

### Answer guidance

An important part of this question is defining the terms 'employers' and 'employees' and the duties owed.

Discussion of *Wilson and Clyde Coal Co v English* [1938] AC 57 identified the employer's duty as personal and non-delegable. The basic duty is to take reasonable care for the safety of all employees while acting in the course of their employment; this duty was seen to set out three aspects/ duties that employers had to personally comply with.

Duty includes competent staff, adequate plant and equipment, safe place of work, and safe system of work. Where an employee is injured as a result of another employee's practical joke – *Hudson v Ridge Manufacturing Co* [1957] 2 QB 348. The employer's duty here does cover stress at work, if it were caused negligently and the case of – *Walker v Northumberland CC* [1995] ICR 702, illustrates that and shows that the concept of a safe system INCLUDES avoiding unnecessary stress to employers. This case established the precedent that an employer can be held liable for mental injury to an employee caused by work-related stress. This 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 mental health.

The harm from stress would need to be reasonably foreseeable in relation to the specific employee who is bringing the claim, and be a result of specific breaches of a contractual duty of care towards a victim. The employer would need to know of the employee's condition, or it would need to be reasonably plain enough on the facts that he ought to have known there was a risk.

### Question 2

Ivan is employed for three days a week as a History teacher at Rose School. He is paid on a monthly basis, and if needed his contract is renewed in the summer for the following academic year. Ivan is carrying out an experiment in class when he forgets that two chemicals will combust if put together. Rhea, a pupil in the class, is burnt as a result. Ivan uses his car to drive to work. He drives negligently and knocks down Zeb. Ivan takes a party of children to the History Museum. Against school rules, he gives a lift in the Rose School bus to Jenya, his girlfriend, who works near the Museum. Ivan drives the bus negligently and Jenya is injured. Ivan then invites a female pupil in the final year to his home for extra tuition and sexually assaults her.

Explain how far Rose School are likely to be held responsible for Ivan's actions.

### Answer guidance

You will first need to consider the important question of whether Ivan is an employee before you address the clear question of vicarious liability.

Students should firstly consider if Ivan is an employee. *Ready Mixed Concrete v. Minister of Pensions* [1968] 2 QB 497 should be used here. Students then need to consider if Ivan is in the course of employment i.e. doing something he is employed to do even if carried out badly. Cases e.g. *Century Insurance v. Northern Ireland Road Transport Board* [1942] AC 509 will show that is the case re: the combustible materials. Travelling to and from work see *Smith v Stages* [1989] AC 928. Where he takes a passenger without permission *Twine v Beans Express* (1946) 62 TLR 155 will deny the liability of his employer. Even though he is behaving illegally re the sexual assault, cases such as *Lister v Hesley Hall* [2002] 1 AC 215 illustrate that the tort may be considered to be so closely connected to his employment that his employer should bear responsibility to the claimant.

### Question 3

ASPECT Ltd is a company that specialises in carrying out maintenance jobs. Jin is the managing director. Jin does the accounts, negotiates the jobs and passes them onto Jude, Harish or Marya. The work can consist of going to different premises to decorate, clean, or fix an appliance or mending items on the premises of ASPECT Ltd. Jude always tries to cheer up his colleagues, however, this is a difficult sometimes with Harish as he frequently tells Jude to 'put a sock in it'. Sometimes Harish has complained to Jin about Jude.

One day Jude and Marya are given the job of cleaning the windows of Light Windows Ltd. Unfortunately, they did not take a ladder and so climbed on top of the truck and decided to stand on that to reach and clean the windows. Whilst Marya is cleaning the windows, she moved from one window to another holding onto the windowsill with her feet on the pipes, as it was easier for her to do that, rather than climb down to the truck, drive it over, and then climb up again. Jude saw this and moved the truck out of reach. As he did this, he laughingly called to Marya. Marya looked down, saw the truck had been moved, panicked and lost hold of the windowsill, falling to the ground and breaking her arm in two places.

Harish is a very experienced handyman as he has professional qualifications in electrics, plumbing and general building work. As a result, much of the work is passed to him first and he has been feeling rather overwhelmed with his job. Jin promised she would get more experienced people in to help him but so far this has not happened. Harish complained bitterly to her and yesterday on hearing what happened to Marya, went off work sick with 'stress'.

Advise ASPECT Ltd Company of any liability they may have towards Harish, and Marya.

### Answer guidance

It is important to identify employers and employees in the question.

Remember that, although there are two claimants, you are advising the defendant.

MARYA - *Wilson and Clyde Coal Co v English* [1938] AC 57 identified the employer's duty as personal and non-delegable. The basic duty is to take reasonable care for the safety of all employees while acting in the course of their employment, this duty was seen to set out three aspects/ duties which employers had to personally comply with. Duty includes competent staff, adequate plant and equipment, safe place of work, and safe system of work. Competent staff, question is whether Jude is competent - *General Cleaning Contractors v Christmas* [1953] AC 180. It can be relied upon though where an employee is injured as a result of another employee's practical joke - *Hudson v Ridge Manufacturing Co Ltd* [1957] 2 QB 348. This is significant, as an injury from such an incident may not fall under vicarious liability.

The lack of a ladder - The employer must take reasonable care in providing all necessary plant and equipment; if injury is caused through the non-provision of an item of equipment, then liability will result if a reasonable employer would have recognized the item to be necessary - *Williams v Birmingham Battery and Metal Co Ltd* [1892] 2 QB 338. The duty applies even where the employer does not have control of the premises - *Wilson v Tyneside Window Cleaning Co Ltd* [1958] 2 QB 110.

Clearly the system they had for cleaning the windows was not safe. It is a question of fact in each case whether the employer should have insisted on how a task was performed, or whether it was fine to let the individual employee decide.

The employer must also take reasonable steps to ensure that any system of work which has been adopted is complied with by employees *General Cleaning Contractors v. Christmas* [1953]. It was stated in the case that: "It is the duty of the employer to consider the situation, to devise a suitable system, to instruct his men on what they must do, and to supply any implement that may be required." Similarly, It is the duty of an employer to give such general safety instructions as a reasonably careful employer, who had considered the problem presented by the work, would give to his workmen."

HARISH - See above. But also the employer's duty here does cover stress at work, if it were caused negligently and the case of - *Walker v Northumberland CC* [1995] ICR 702, illustrates that and shows that the concept of a safe system INCLUDES avoiding unnecessary stress to employers. This case established the precedent that an employer can be held liable for mental injury to an employee caused by work-related stress. This 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 mental health.

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it would need to be reasonably plain enough on the facts that he ought to have known there was a risk.

#### **Question 4**

To what extent do you think that the law of vicarious liability establishes a fair balance between the interests of the employer and those of the victim of negligence?

#### **Answer guidance**

By using the phrase 'fair balance', you should immediately recognise that this question calls for a comparison.

Students need to detail case law and show how over the years the test has expanded to cast greater liability on employers. Now employers are liable where their job puts employees in a position to commit the tort even though it is the very thing they are not permitted to do. Protection of the victim is arguably at the expense of the employer.

It can be argued that recent case law such as *Lister v Hesley Hall* [2002] 1 AC 215 and *Catholic Child Welfare Society and others v Various Claimants (FC) and others* [2012] UKSC 56, [2012] All ER (D) 238 (Nov) make an employer liable where he could do nothing to prevent the tort and actively disallows the conduct the employee has carried out. It is clear the law in these circumstances has made a decision as to who should bear the loss from the employee's conduct between two innocent parties, the employer and the victim and has chosen the employer. It is only because the employee had the job in the first place that the tort took place. It is a pragmatic decision following the principle of 'social convenience and rough justice.' The employer has the greatest resources and also insurance.