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Liability Update 2024

Sam Shelton and Jack McCracken

4 June 2024



Barristers



Jack McCracken

Barrister



Sam Shelton

Barrister

Michael James v E A Shaw [2023] EWHC 2683

The facts



Michael James v E A Shaw [2023] EWHC 2683

The decision

Key factual dispute:

- C's case was that colleague instructed him to use scaffolding pole over open spanner, which was an unsafe system of work (standing on hand rail, in the wet, attempting to free stuck bolt)
- D's case is colleague expressly told C not to attempt to free bolt, and left to get another tool

The approach to credibility:

- *Muyepa v Ministry of Defence* [2022] EWHC 2648 at [11-20].
- Court accepted C's account, consistent from the start
- Consistent with ambulance record
- Inconsistency with pleaded case did not detract from that
- System of work was unsafe



Michael James v E A Shaw [2023] EWHC 2683

The learning points

1. Importance of contemporaneous documents, in this case ambulance records
2. Change of evidence in the witness box, and new evidence, held against D's witness.
3. Not all work at height cases turn on an Enterprise and Regulatory Reform Act 2013 point
4. No finding of contributory negligence where no training, and Work at Height Regulations applied imposing specific duties on employer for good reason



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Peter Manning v DNATA Catering UK Limited [2023] EWHC 3302

The facts



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Peter Manning v DNATA Catering UK Limited

[2023] EWHC 3302

The decision

The approach to fact finding:

- C's account accepted due to consistency throughout litigation

Evidence from the Defendant:

- Methodology adopted by D haphazard
- Supplies of suitable straps not readily available
- Failure to provide suitable straps a breach of Manual Handling Regulations 1992
- Finding of 25% contributory negligence for failing to complain and request suitable straps



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Peter Manning v DNATA Catering UK Limited

[2023] EWHC 3302

The learning points

1. Importance of contemporaneous documents, in this case Letter of Claim.
2. Defendant criticised for haphazard approach to provision of work equipment and SSOW
3. Evidential difficulties posed by lorry being scrapped before thorough inspection for claim. Not appropriate to draw adverse inference against D, as judge found this was unrelated to claim.



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Carl Bennion v Adventure Parc Snowdonia Limited [2023] EWHC 3334

The facts



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Carl Bennion v Adventure Parc Snowdonia Limited [2023] EWHC 3334

The decision

The approach to the safety of the artificial lagoon:

- Surfing accepted to carry a risk of injury
- Depth of the water the main area of contention
- No directly applicable safety standard for artificial surfing lagoons
- Expert evidence on both sides, C's expert suggesting 1.5 m depth as minimum standard
- Judge found 0.9 m depth was necessary for the creation of waves on evidence of designer [65]
- No breach of OLA 57



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Carl Bennion v Adventure Parc Snowdonia Limited [2023] EWHC 3334

The learning points

1. Importance of evidence from Spanish designer of the lagoon as to depth
2. Court rejected submission that surfing not caught by Occupiers' Liability Act 1957
3. CCTV experts can be used for poor quality footage, but still for Judge to assess the footage [41]



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Anthony Stokes v Ministry of Justice & Amey Community Limited [2024] EWHC 15

The facts



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Anthony Stokes v Ministry of Justice & Amey Community Limited [2024] EWHC 15

The decision

The approach to drawing inferences:

- *Keefe v Isle of Man Steam Packet Co* [2010] EWCA Civ 683.
- Not on all fours here as there was no direct evidence from the Claimant to treat benevolently.
- However, the assertion of the Defendants that the nosing defect was latent should be judged critically.

The evidential burden on the Defendants:

- *Ward v Tesco Stores* [1976] 1 WLR 810.
- *Dawkins v Carnival plc (t/as P and O Cruises)* [2011] EWCA Civ 1237.



Anthony Stokes v Ministry of Justice & Amey Community Limited [2024] EWHC 15

The decision

The lighting:

- Unlikely that the Claimant didn't turn it on at all.
- The Defendants' evidence that staff do not turn on lights so as not to disturb prisoners did not apply.
- The Claimant did turn them on – whilst the top of the steps were "*clearly visible*", the remainder were dark.

The defective nosing:

- The evidence established that the nosing was inadequately fixed.
- The system of inspection was simply not working (here and elsewhere) and defects weren't being reported.

The "*surprising*" evidence of the only witness for the Second Defendant.



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Anthony Stokes v Ministry of Justice & Amey Community Limited [2024] EWHC 15

The decision

The inferences as to the circumstances of the accident:

- The lighting of the top of the stairs made it less likely that it was an inadvertent fall.
- Generally, "*people ordinarily do not fall down stairs. Stairs are a part of everyday life with which we are all very familiar and which we all negotiate without incident*".
- There was "*evidence of a poorly fitted piece of nosing, that was found to be displaced after the accident and a background of a system of reporting defects that was not operating*".
- Accordingly, the proper inference was that the defective nosing (alone) initiated the Claimant's fall.

Liability as between Defendants:

- First Defendant: 40% – permitting the condition and not enforcing the obligation to report.
- Second Defendant: 60% – affixing the nosing inadequately, failing to check and failing to report.



Anthony Stokes v Ministry of Justice & Amey Community Limited [2024] EWHC 15

The learning points

1. The Court can draw inferences from the evidence in appropriate circumstances.
2. The Claimant can still succeed without any real evidence from them – much here turned on the Defendants' evidence.
3. For witnesses: make sure they have seen everything before preparing their statement and make sure they comment on the important points.



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Veronica Smith & Dale Parson v Alan Clarke

[2024] EWHC 322

The facts



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Veronica Smith & Dale Parson v Alan Clarke

[2024] EWHC 322

The decision

The duty of care:

"It is ... common ground that the duty owed is one to take reasonable care to ensure that a vehicle being used on the public road is roadworthy and not likely to cause damage or injury to others."

The standard of care and MOTs:

"the MOT testing framework does not relieve the owner of any personal obligation imposed upon him by the common law."



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Veronica Smith & Dale Parson v Alan Clarke

[2024] EWHC 322

The decision

The standard of care in respect of the bolts of the coupling system:

"Whilst the extent of the basic duty of a vehicle owner is agreed, in cases of negligence the standard of care which is considered "reasonable" depends on the nature and extent of the risk. In this case, the risk resulting from a failure to ensure that the bolts were kept tightened to the correct torque setting throughout their period of use was that the bolts would eventually fail as a result of metal fatigue, as happened in this case. It is plain from the warnings in the manufacturer's instructions that the risk of the bolts failing was a risk which should have been known to any user of such a coupling.

...

I am satisfied that the standard of care required of the owner of a vehicle to which a Shocklink device and universal coupling was attached was to take reasonable steps to ensure that the manufacturer's instructions were followed at the time of its installation and during its ongoing use, including regular torque testing of the bolts, so as to reduce the risk of the bolts becoming insufficiently tightened and therefore being vulnerable to metal fatigue over time."



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Veronica Smith & Dale Parson v Alan Clarke

[2024] EWHC 322

The decision

The Defendant was in breach of duty in respect of the loose bolts:

- (a) He himself simply did not check their tightness;
- (b) The fact that the looseness was not identifiable on a visual inspection was not relevant given that a visual inspection was never going to be sufficient; and
- (c) The MOT was irrelevant in the circumstances given that it too would only have involved a visual inspection.

The Defendant was also in breach of duty in respect of overloading in circumstances where the Judge found it was, in fact, previously overloaded.



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Veronica Smith & Dale Parson v Alan Clarke

[2024] EWHC 322

The learning points

1. Helpful reminder of the duty and standard of care owed by vehicle owners.
2. As ever: fact specific.
3. Important to consider in detail the nature and extent of an MOT in cases where the fact of it having been undertaken is relied upon.



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Daryl Owens v Ross Lewis [2024] EWHC 609

The facts



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Daryl Owens v Ross Lewis [2024] EWHC 609

The decision

Restatement of the law:

- Law Reform (Contributory Negligence) Act 1945.
- *Jackson v Murray* [2015] UKSC 5:

"it is necessary when applying section 1(1) of the 1945 Act to take account both of the blameworthiness of the parties and the causative potency of their acts.

...

it follows that the apportionment of responsibility is inevitably a somewhat rough and ready exercise ..., and that a variety of possible answers can legitimately be given. That is consistent with the requirement under section 1(1) to arrive at a result which the court considers 'just and equitable'."



Daryl Owens v Ross Lewis [2024] EWHC 609

The decision

The overall balancing act:

"the two components of the assessment under section 1(1) are not separated by watertight compartments; the decision as to what is "just and equitable" must rest on a holistic consideration having regard to all matters regarding both components."

The Defendant's fault:

- The admitted negligence of the Defendant:

"The carrying of passengers was particularly negligent in circumstances where (a) each passenger would have at least one hand full with a dog, (b) no passenger was properly secured to the quad bike, and those on the rear rack were perched with at least one leg over the side and only the bar on the rack to hold onto with one hand, (c) no passenger had a helmet, and (d) the quad bike was to be driven on the public highway."

- The Defendant was also found to be driving at excessive speed in the circumstances.



Daryl Owens v Ross Lewis [2024] EWHC 609

The decision

The Claimant's fault – the three allegations were factors of one bad decision:

"the one decision was bad in a threefold way: it was unsafe to take a ride on the quad bike at all, but especially when he would be doing so when seated on the rack and holding on with only one hand and when he would not have a helmet."

Age was considered but made no material difference (to either party).

Overall, the preponderance of fault lay with the Defendant – 30% contributory negligence applied.



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Daryl Owens v Ross Lewis [2024] EWHC 609

The learning points

1. Helpful and detailed reminder of the law on contributory negligence.
2. As ever: fact specific.
3. Emphasises that the assessment of contributory negligence requires a holistic approach.



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Break



Contact



Jack McCracken

jackmccracken@ropewalk.co.uk



Samuel Shelton

samuelselton@ropewalk.co.uk

Thank You

24 The Ropewalk, Nottingham, NG1 5EF

Tel: +44 (0) 115 947 2581

Email: clerks@ropewalk.co.uk

Web: www.ropewalk.co.uk/knowledge-sharing



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