



Hawley v Luminar Leisure Ltd (2006)

- Engineer wrote a book; based it on his practical and theoretically accumulated knowledge
- Died before the book was published
- It held that the engineer was the author of the work, but that specific material that he acquired whilst he was an employee fell within the Copyright Act 1911 and should be excluded from the publication

Master of ship, hauffer, staff newspaper reporter = employees

Pilot docking ship onto a port; taxi drivers, freelance writers = not employees

Ready Mix Concrete v Minister of Pensions (1968)

- NIN contributions
- Driver contracted with a mixed concrete company for the delivery of concrete
- The contract declared him an "independent contractor" and set out wages and expenses
- Driver was to purchase his own vehicle, yet with a requirement that the vehicle be painted in company colours
- He was to drive the vehicle himself but under compliance with certain company's rules including the manner of vehicle repairs and payments
- Independent contractor, not an employee as employment under a contract of service exists when
- (1) a person agrees to perform a service for a company in exchange for remuneration; and
- (2) a person agrees, expressly or impliedly, to subject himself to the control of the company to a sufficient degree to render the company his "master," including control over the task's performance, means, time; and
- (3) the contractual provisions are consistent with ordinary contracts of service

Hawley v Luminar Leisure Ltd (2006)

- Bouncer assaulted a customer in front of D's club
- Supplier went into liquidation
- Injured C sued the club
- Club exercised so much control over the bouncer in how he should do his work => VL for his actions

Control test = employee is a worker told what to do and how to do it

Integration test = employee is closely involved with the main business of the employer

Multiple test = court considers the overall picture and decides whether the worker is closer to an employee or a contractor

5 There are 3 tests to prove who is a worker

Vicarious liability

6

A tort must be committed; torts include negligence, nuisance, occupiers' liability, Rylands v Fletcher rule, economic loss, psychiatric harm

3

It needs to be proven that **the person, who committed the act was an employee, who committed a tort in the course of employment.**

2

VL is a strict liability offence (awareness only of the AR); it aims to protect C and the employee (lack of funds for the compensation) and improve the safety standards

1

'Vicarious' means something performed, suffered, exercised or received by another; 'liability' means responsible for person's actions to another => a third person has legal responsibility for the unlawful actions of another, e.g. employer-employee (but they can also have joint liability); VL the employer is the defendant

Jones v tower Boot Co (1997)

- Racism occurred between employers at the workplace
- Phrase 'in the course of employment' interpreted => employer was liable for his employee's racist remarks

8 Remedy is damages; only a single payment; employer can legally recover any compensation paid out from the employee under the Civil Liability (Contribution) Act 1978

7

Tort in the course of employment is committed when:

An employee commits an act on a 'frolic' of his own

Hilton v Thomas Burton (Rhodes) Ltd (1961)

Contrasting case: Smith v Sturges (1989)

An employee acts against orders

Limpus v London General (1862)

Twine v Beans Express (1946)

Beard v London General Omnibus Co (1900)

An employee commits a criminal act

Mattis v Pollock (2003)

An employee commits a negligent act

Century Insurance Co Ltd v Northern Ireland Transport Board (1940)

Recent developments

A number of cases have reached the appeal courts in recent years that test whether or not the tortfeasor was an employee. There was often no traditional employment relationship and it had to be decided whether the employer should be vicariously liable. Several cases involved claims of historic abuse.

Case	Principle
<u>E v English Province of Our Lady Charity (2012)</u>	Court has to look for <ol style="list-style-type: none"> 1. A relationship similar to employment 2. which was established by a sufficiently close connection so that 3. it was fair and just to impose liability on D
<u>JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust (2012)</u>	Being an office holder, as opposed to an employee, could make the church VL for the actions of a priest as the priest's relationship with the church was sufficiently close to one of employment and it was fair and just to hold the church VL
<u>The Catholic Child Welfare Society v Various Claimants (FC) and the Institute of the Brothers of the Christian Schools (2012)</u>	Relationship between the Institute and its members was akin to an employer-employee relationship; sexual abuse connected to that relationship gave rise to VL
<u>Mohamud v WM Morrison Supermarkets plc (2016)</u>	As the employee was acting within the field of his employment – it was at work and within working hours, and there was a close connection between what he did and what he was required to do in his job = employer was VL
<u>Cox v Ministry of Justice (2016)</u>	If a person is carrying on activities as an integral part of the business activities carried on by D and for its benefit => business will be VL

END.