





**HEALTH & SAFETY LEGAL UPDATE**  
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## Some Bad News.....

- Campbell v Gordon [2016] UKSC 38
  - Serious injuries sustained in electric saw machine.
  - Insurance did not cover the operation of such machinery
  - Employer effectively uninsured and also went bust and was dissolved.
  - IP sought to sue on basis that civil liability should attach to Director for Company's failure to have adequate insurance.

Page 2



## Campbell v Gordon (2)

- Insurance required by Employers' Liability (Compulsory Insurance) Act 1969.
  - S5 – an offence not to properly insure.
- HELD (by majority of 3 :2);
  - No liability should attach to the Director. This was not the intention of parliament in the 69 Act and further legislation would be required for liability to attach. (A campaign issue?)

Page 3



## Better News- Vicarious Liability

- The extent to which an employer/ company can be held liable for the actions or omissions of their employees or workers under their control;
- Cox Ministry of Justice
  - Prison officer injured during kitchen loading operations. Prisoner accidentally dropped large bag of rice on her back.

Page 4



## Cox v MoJ (2)

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- Proceeded to the Supreme Court;
  - Was the activity which the prisoner was engaged in work in respect of which vicarious liability could be attached.
  - HELD: such liability did apply, the work done by the prisoner was under the control of the employer.

Page 5

## Mohamud v WM Morrison

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- Another case on vicarious liability
- M was customer at Morrisons in Birmingham. Attended petrol station asking to use copy facilities.
- M was Somalian, staff was Pakistani. Staff engaged in unprovoked verbal/ racial abuse. M Left the store and attempted to get in his car and leave.

Page 6

## Mohamud v Morrison (2)

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- Staff member followed him out, continued verbal abuse.
- Then got into M's car and physically assaulted him (twice).
- The assault was not obviously connected to the role of the staff involved- done for personal, racially motivated reasons.
- HELD:
  - The initial verbal outburst had been connected to the job of the assailant (dealing with customer enquires).
  - The events thereafter were one unbroken sequence and included demands for M to leave the premises.
  - So – sufficiently close to duties entrusted to employee, so vicarious liability DID apply.

Page 7

## Unclear News

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- Deregulation Act 2015
  - This amends s3 of the Health and Safety at Work Act 1974, in that it removes from certain self-employed persons the duty to conduct their business in a way that ensures, as far as is reasonably practicable, that they and others are not exposed to risks to their health and safety.
- So what does this mean in practice?

Page 8

## Deregulation Act (2)

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- HSE estimates that around 1.7 million workers will no longer have any obligations under health and safety law.
- Self-employed workers still have a duty if they are involved in an activity in the prescribed list:
  - This includes, agriculture, forestry, asbestos, construction (inc contractors and designers), gas, railways and genetically modified organisms.

Page 9

## Deregulation Act (3)

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- The list is vague and open to interpretation by those who may not understand H&S anyway.
- Creates a worrying impression of an “opt-in” system
- Does not promote standardised/consistent approaches to H&S and best practices will not develop.
- CLARITY – a campaign issue?

Page 10

## ENTERPRISE AND REGULATORY REFORM ACT 2013 - UPDATE

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- Potentially a seismic change in H&S law.
- Breach of regulations no longer gave rise to any civil liability
- All claims now have to be established in negligence. Evidential burden on C higher.
- No Appeal Court decisions as yet.
- Being raised but not pleaded. Are cases being dropped before Court ?

Page 11

## Slowey v Caspian Uk

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- Scotland – Sheriff’s Court Case
  - Non-binding comment that the Act did create a “revolution”. In particular, where the employer’s duty is qualified by reasonable practicability, the onus now rests on the Claimant to show what reasonably practicable steps the employer failed to take.

Page 12

### Third Parties (Rights Against Insurers) Act 2010

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- Had been gathering dust, comes into force 1 August 2016.
- Potentially helpful where the employer has been dissolved or entered into a formal insolvency process. Or where there is an insured Defendant who has died insolvent.
- If liability arose on or after 1/8/16, no longer need to restore company and can sue insurer directly

Page 13

### SOCIAL ACTION RESPONSIBILITY AND HEROISM ACT

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- The brainchild of Grayling
- Was ridiculed when it was going through parliament and although passed into law, it has not seen the light of day.
- It suggests that there may be a Defence to claims against an employer who can demonstrate a generally responsible and effective approach to H&S. (they have a "Joker" card to use in defence?)
- Liability will not be found if it will deter rescuers or socially beneficial activities.

Page 14

### More Unclear News - Brexit

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- H&S was never mentioned by either side in the referendum campaign.
- It has not been mentioned since.
- All EU originating laws continue to apply and that will be the case until alternative legislation is passed.
- Trade negotiations with EU likely to have some requirements for H&S.
- H&S less of a concern for non-EU trade partners?

Page 15

### Other issues of Concern

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- "App" economy – employee rights eg: Deliveroo/ Uber
- Fundamental dishonesty "defence"
- ACOPs
- ELIB ??
- Fixed costs/ small claims limit
- Exclusions for certain injuries??

Page 16

## ANY QUESTIONS?

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