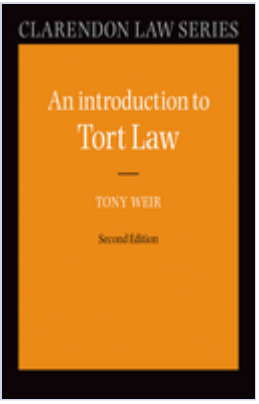

An Introduction to Tort Law (2nd edn)
Tony Weir

6. Vicarious Liability

Tony Weir, Fellow of Trinity College, Cambridge

https://doi.org/10.1093/he/9780199290376.003.0006
Published in print: 07 September 2006
Published online: June 2015

Abstract

Celebrated for their conceptual clarity, titles in the Clarendon Law Series offer concise, accessible overviews of major fields of law and legal thought. This chapter discusses the law on vicarious liability. In principle, a person is not liable in negligence unless he is in breach of a duty owed by him to the claimant. Quite often, however, a person who is not in breach of any duty incumbent on himself is nevertheless liable, and strictly liable, for torts committed by someone else. His liability is then said to be 'vicarious'. The principal instance of vicarious liability is that of the employer for his employees. Persons may also be liable for those engaged in a joint enterprise with them, whether as fellow conspirator or partner in a firm.

Keywords: tort law, vicarious liability, employees, employers, joint enterprise

Although most torts are committed by individuals, almost all damages are paid by companies, usually employers or insurers: individuals are rarely worth suing unless they are either employed or insured. Insurance against liability is compulsory for motorists and also, in respect of injury to their workforce, for employers. This deals with two of the main sources of tort claims, traffic and industrial accidents. Furthermore, people often take out liability-insurance of their own accord and for their own protection: employers generally have insurance against liability to the public, and many householders have policies which cover them and sometimes also the members of their household against liability to third parties. This helps to explain the frequency of claims under the Occupier's Liability Acts. There is one important distinction between employers and insurers as regards their liability: whereas the employer can be sued directly at

common law and his liability is regarded as part of tort law, the victim has no common law claim against the tortfeasor's insurer and has a statutory claim only if he has first obtained judgment against the tortfeasor himself, though there is now an exception, thanks to Brussels, in the case of traffic accidents, when suit may be brought against the motorist's liability insurer right away. In other cases, the tortfeasor's insurer, though conducting the case, is invisible and its role is often overlooked.

Vicarious Liability

We have seen that, in principle, a person is not liable in negligence unless he is in breach of a duty owed by him to the claimant. Quite often, however—indeed very often—a person who is not in breach of any duty incumbent on himself is nevertheless liable, and strictly liable, for torts committed by someone else. His liability is then said to be 'vicarious'. The word is unfortunate in suggesting that this liability is a substitute for that of the person actually at fault; in fact it is additional, and the employee remains liable even if he has made his employer vicariously liable for what he did wrong. A few countries may have begun to absolve the employee of personal liability if the employer is solvent, as public bodies usually are, but this has yet to occur in England, except in certain cases of local government and the health services. In England, indeed, an employer who is held vicariously liable is entitled to sue the careless employee.[1] Where the employee has acted very badly, as where a police constable had harassed and fondled a blameless citizen, the employer's claim for an indemnity is perfectly acceptable.[2]

For many years, indeed, suit was brought against the humble employee rather than his wealthy employer. This occurred when the claimant was a customer of the employer and the contract between them contained a clause which exempted the employer from liability. The courts were too feeble to invalidate such clauses between the parties to the contract and resorted to the rather indecent expedient of allowing suit against the careless employee, who was prevented by the doctrine of privity (!) from invoking the exemption clause in his employer's contract even if it expressly purported to protect him.[3] Now, however, exemptions from liability for personal injuries negligently caused are entirely invalid (Unfair Contract Terms Act 1977), and where property damage is in issue, the employee can usually rely on a reasonable exemption clause in his employer's contract (Contracts (Rights of Third Parties) Act 1999).

The principal instance of vicarious liability is that of the employer for his employees. Various rationales have been offered for this—that he has the kind of control over them which frequently leads to liability (compare the keeper of animals and the occupier of premises); that he profits from them, and perhaps those who profit should bear concomitant losses; that by giving his staff tasks to do he increases the risk of their doing them badly; that he is richer, and so on. There is no point in discussing the matter, for two reasons: (a) the scope of the rule is not determined by the preferred rationale, and (b) all Western legal systems have this rule (though in Germany the employer can escape liability by proving that he did all that could be expected of him by way of selecting, training, and supervising his staff). In any case it is not only employers who have to answer for what others do for them, so the underlying principle, if any, may well be that you are liable for what you get people to do for you unless doing it is actually their own business or someone else's. It may therefore be useful to distinguish between the different classes of helper and the different types of thing they are asked to do.

Employees and Other Contractors

Those who do what someone else asks them to do are either paid for it or they are not. People who do things for pay are in law contractors. Some contractors are in business on their own and are paid a fee for their services, often a one-off job; others slave away for ages in the business of their paymaster, and receive wages or a salary. The former are called 'independent contractors', while the latter are employees. Independent contractors are more often firms than individuals and have lots of customers, while employees are *invariably* human beings who usually have only one employer on whom, one assumes, they are taken to be 'dependent'. The distinction is fundamental for legal purposes, for while the employer is vicariously liable for his employees, the customer/client/ punter is not vicariously liable for his independent contractor or his contractor's employees. Given that while all employees, being human, are usually employed by a firm and that independent services are very commonly provided by firms to individual consumers, this rule has the desirable effect of rendering firms liable for individuals and not vice versa. A further effect is that the employee's victim knows whom to sue, since the tortfeasor has only one employer, whereas a firm has as many customers as it can get. Thus if the driver of a bus carelessly injures a pedestrian, it would be absurd to think of making the passengers liable, even though they are paying to be driven and even put the fare into the driver's hand; the bus company which pays wages to the driver is liable and the passengers who pay fares to the company are not.

Non-Contractors

People who do something for nothing are neither employees nor independent contractors, since they are not contractors at all. Nevertheless, you may well be answerable for the misconduct of those you ask to do you a favour. This was seen when Murphie asked his friend Ormrod to drive Murphie's fancy car to Monte Carlo where Murphie was to take part in the rally, and shortly after setting off Ormrod carelessly drove it into a bus.[4] Ormrod was obviously not Murphie's employee, but he was said to be Murphie's 'agent' in driving the car and this was enough to render Murphie liable for the damage Ormrod carelessly caused while doing what he was asked to do. The use of the word 'agent' in this context is confusing, for it is more commonly used to denote a person who on request does an act-in-law, such as negotiating a contract, rather than an act-in-fact, such as driving an Austin Healey. To illustrate the difference we may say that the airline which flies you to your destination is doing an act-in-fact while the travel-agent does an act-in-law in getting you the ticket.

Agents

An agent in the technical sense, who may not be a contractor at all, since the test is not whether he is paid but whether he was authorised, may be either a firm (and therefore an independent contractor) or an employee. The booking-clerk in a hotel is both agent and employee, and in consequence binds his principal in contract if he takes a booking for the wedding suite (act-in-law) and renders his employer liable in tort if he drops an inkstand on the foot of the bride who is doing the booking (act-in-fact). But note a difference: if the bridal

suite is not provided or the bed in it collapses, the booking clerk is not liable, since it is the hotel through him, and not he himself, that contracted to provide it, whereas he, as a tortfeasor, remains liable for the bride's broken toe and renders the hotel company additionally, though only vicariously, liable.

' Agency', properly speaking, is mainly dealt with in the contract books, but the extension of the tort of negligence so as to embrace negligent misrepresentations during negotiations for a contract (which in the case of a company are necessarily conducted by agents, since companies cannot speak) has made it necessary to reconcile the rule that employees render their employer liable for what they do in the course and scope of their employment with the (not terribly different) rule that the agent binds his principal only if he is acting within the scope of his authority, actual or apparent.[5] Yet the notion of 'authority' has cropped up in tort cases with unfortunate results. In one case where an enraged bus conductor used his employer's ticket machine to lambaste a passenger, the Privy Council rejected the liability of the bus company on the idiotic ground that 'there was no evidence that would justify the ascription of the act of the conductor to any authority, express or implied, vested in him by his employers'![6] Fortunately the House of Lords has now disavowed the notion of 'authority' in connection with the employer's vicarious liability in tort for the deliberate acts of its employees.[7]

Joint Enterprise/Partnership

Completeness requires us to add that you may be liable for those engaged in a joint enterprise with you, whether as fellow conspirator, partner in a firm, or just someone helping you look for a gas leak with the aid of a candle,[8] but since actual employment is by far the commonest case of vicarious liability in tort, we shall concentrate on it here.

Basic Rules

The twin and complementary rules are that you are liable for your employees and not for your independent contractors. The terminology is tiresome. For no good reason lawyers insist on calling the person who pays an independent contractor his 'employer', although the contractor is certainly not his employee. No plumber would dream of calling his customer his 'employer'—the plumber probably has an employer of his own unless he is in business for himself: the plumber would call his customer his customer, and so should the law, unless it is determined to confuse students, just as it does with its loose usage of the term 'agent'.

The employer's vicarious liability for his employee depends on the connection between (a) the parties themselves, and (b) their actions or activities: the tortfeasor must be the defendant's employee, and the tort must have been committed in the 'course and scope' of his employment.

Who is an Employee?

Whether or not a particular person is an employee is a question which has given the courts (and students) some difficulty. This is rather surprising. After all, most people know whether they are employed or unemployed or freelance (self-employed), whether their remuneration is called wages or salary (the hallmark of employment) or something else. And the taxman certainly knows. Part of the difficulty, indeed, may be that the same question—employee or not?—is raised in quite different contexts, which do not necessarily call for the same answer. For example, an employer owes particular duties to his employees as regards their safety, but there seems to be no good reason why the group entitled to such attention should be precisely the same as the group whose members render the employer liable to third parties for their misdoings. Again, employees have very extensive rights as such, under the Employment Rights Act 1996, for example. Should this necessarily involve that all those so entitled, and only they, render their employer vicariously liable? One case commonly cited for the test of who is an employee concerned the question of whether the alleged employer was entitled to copyright in the works written by the alleged employee—which has nothing to do with vicarious liability.[9] Another arose from an attempt by a cement firm to avoid payroll tax by turning its drivers into independent carriers;[10] the attempt was successful, but does this really mean that if one of the drivers had carelessly tipped his load of cement on to the vehicle behind him, the company, which continued to provide the cement, would escape liability in tort?

As to the relatively rare cases in tort when it is a problem whether an individual is an employee or not (agency workers, the building and catering trades), suffice it to say that it is no longer a question simply of whether the boss controls the way the work is to be done, but that several factors are taken into account in addition to, or despite, what the parties have agreed to call their relationship—whether the human being provides his own equipment, whether he works for several people or just one, whether he determines his own hours, and so on. That policemen are not employees at all is a peculiarity of English law: they are amusingly said to be the servants of the public (as a man of religion may be the servant only of God[11]), but this is immaterial since the Police Act 1996 empowers the Chief Constable to use public funds to pay those whom his lesser constables have torted.

Whose Employee?

Once it is determined that the tortfeasor is an employee one must ask whether the defendant was his employer. Again this is not difficult. Employees are not traded or handed over like Pokemon© cards, though if an undertaking is transferred the employee may assert as against the transferee his contractual rights against the transferor. Normally you remain the employee of the firm that employed you until you get your P45, and this is true even if in the course of your employment you are doing a job for someone else: after all, the man delivering the pizza does not become the customer's employee. Nor is the person in a firm who can tell you what to do necessarily your employer: contrary to what both of them might think, a secretary is not employed by her boss or line manager—they are both employed by the firm that pays them. Though not many people are employed by more than one employer, it appears that more than one defendant may be liable for an employee's negligence. In a rather surprising rereading of a House of Lords decision in 1947 which had always

been supposed to decide the contrary, the Court of Appeal held in 2005 that where a careless handyman was under the supervision of two persons employed by different employers both employers were liable.[12] But the next year this decision was not followed: instead it was held that where X provided employees as security officers for a nightclub and one of them assaulted a patron, the nightclub was the 'temporary deemed employer' and X was not liable at all![13].

Course of Employment

More difficult and interesting is the question whether the tort committed by the employee was 'in the course and scope' of his employment. Both words, 'course' and 'scope', are quite appropriate. The employer need not pay for what the employee does in his spare time, or, less clearly, for what he does during working hours for his own amusement or profit and against the interests of his employer. In the latter context the charming Victorian words 'frolic' and 'detour' are as useful as any criteria. One could ask 'Was the tortfeasor "on the job" at the time?', bearing in mind that an employee may exploit for his own purposes the time he should be devoting to his job. In one case the employee of a cleaning firm used the customer's telephone to make long distance calls to his friends.[14] The cleaning firm was held not liable, but if the call had been made to ask for more cleaning materials it would have had to pay for the cost. The purpose of the tortfeasor is a relevant consideration here.

The cleaner's act in phoning Yokohama or wherever was deliberate, not negligent. So, too, was the conduct of a school warden who sexually abused the boys in his charge. In holding the school liable, the House of Lords, in a decision which will be discussed again shortly (see p. 112), explicitly altered the test of when conduct is in the 'course of employment. '[15] For over a century the test cited as gospel was that laid down by Sir John Salmond: apart from acts actually authorised by the employer, an act only fell within the course of employment if it was 'a wrongful and unauthorised mode of doing some act authorised by the master'. Now 'attention should be directed to the closeness of the connection between the employee's duties and his wrongdoing and not to verbal formulae' (Lord Millett), and 'The question is whether the warden's torts were so closely connected with his employment that it would be fair and just to hold the employers vicariously liable' (Lord Steyn). In the light of this, it may be a little difficult to maintain the traditional view that an employer is not liable if the employment merely provided the occasion for the tort: what would the decision be if the cleaner case recurs?

An act which has been explicitly forbidden by the employer can hardly fall within the Salmond formula as an unauthorised mode of doing what was authorised, but it has long been clear that an employer does not escape liability simply by forbidding the employee to do the act in question. The case generally cited for this proposition (as well as for the view that the employee's purpose is relevant) is a little odd. Although milk roundsmen had been formally forbidden by their employer to enlist the services of children, Milkman Plenty allowed Master Rose to help him deliver the milk and carelessly injured the boy by driving the milk float too close to the kerb while the boy's foot was dangling over the side.[16] The discussion centred on the question whether, despite the prohibition, Milkman Plenty was in the course of his employment in getting Master Rose to help him in his job. It was held that he was. But enlisting Master Rose was no tort, though it was doubtless a breach of contract justifying instant dismissal, and Master Rose was certainly not complaining of it: the tort

was the careless driving, and that was assuredly in the course of his employment. The problem would not have arisen had it been a motor vehicle rather than a milk-float: the driver would then have been covered by the employer's mandatory liability insurance, and the insurer would have been liable even if the employer were not.

Other Grounds of Employer's Liability

The defendant will not, in his capacity as employer, be vicariously liable if either the tortfeasor was not his employee or, if he was, was not acting in the course and scope of his employment. But this does not mean that the employer is not liable at all, for he may well be liable vicariously on some other ground or personally liable because he is in breach of a duty owed by himself. As to the first possibility, if, during a rail strike, an employer asks employee Bill to drive employee Ben to work and Bill injures Ben by bad driving en route, Bill is not in the course of his employment (for driving to work is not normally in the course of employment), but the employer will nevertheless be liable on the basis that he had asked Bill to do him a favour, and thereby made Bill his 'agent' in addition to being his employee.[17] The same would be true where a boss asks his secretary to do something special for him outside her normal duties, like buying presents for his mistress.

The second possibility is exemplified by a case where a notorious prankster who kept tripping up his fellow-employees thereby caused an injury to the crippled plaintiff. As the prankster was doubtless 'frolicking', their employer was not *vicariously* liable, but he was held *personally* liable for breach of his own duty to the plaintiff employee to provide a safe system of work.[18] For this, however, the claimant has to prove fault in the employer, for though vicarious liability is strict, the employer's personal duty is one of reasonable care, as was shown in an even nastier case: two apprentices used their employer's compressed air to blow up a colleague during working hours, and the employer was held not liable at all since he had no reason to suppose that such a thing might occur.[19]

Although the duty of the employer to his workforce is expressed in terms of reasonable care, it is a high duty of the non-delegable variety. In this it is paralleled by the duty of the bailee (warehouseman, borrower, hirer) to the owner of the chattel in his possession. If one of the bailee's employees steals the goods, the thief cannot easily be said to be in the course of his employment, but if he was the very employee to whom the bailee had entrusted the goods, that is, delegated his own personal duty to take care of them, then his employer will be liable for breach of his own duty as bailee.[20] That this is the correct analysis is indicated by the fact that the bailee would be liable even if the delegate were an independent contractor, such as a security firm.[21] By contrast, the occupier of premises is not answerable to his visitors for the harm done by his independent contractors unless he should have been aware of the danger they had caused. Thus in order to determine whether a defendant is put in breach of his duty by the misconduct of another, one must consider the relationship between claimant and defendant personally as well as the relationship between tortfeasor and defendant, which is all-important where claimant and defendant are total strangers.

The difficulty in these cases arises from the fact that three parties are involved. Legal obligations are usually bipolar, with just one relationship in issue, but where there are three parties there are three relationships, here claimant/defendant, claimant/tortfeasor and tortfeasor/defendant. The claimant may be saying to the

defendant 'You owed me a duty and you were put in breach of that duty by X to whom you delegated its performance' or he may be saying 'X torted me so you are liable, since he is your employee and he was acting in the course and scope of his employment'. There are, after all, two ways round a triangle, and the situation here is triangular.

These distinct analyses were not kept properly apart in an important decision of the House of Lords, reversing the Court of Appeal, that a school for difficult boys was liable when the warden it employed to manage its hostel serially abused them.[22] Here of course the tort was not just negligence but a trespass to the person of a criminal nature, but this is not important in itself since vicarious liability applies to all torts, including defamation. While the speech of Lord Steyn stated that what was involved was vicarious and not personal liability (the school not being at fault), he nevertheless invoked the bailment cases (which are clearly cases of delegation) and observed that here 'the employers entrusted the care of the children…to the warden'. It seems evident (as should have been the case where the bus conductor assaulted the passenger) that the special relationship between the claimant boys and the school which employed the warden was an important factor. Yet while making mention of the employer's duty towards the victim and indicating that the employee must have been the employer's delegate, the speeches also stress the connection between the employee's conduct and the job he was employed to do. But what is it that the employer can have delegated? Surely only the performance of his duty towards the victim. But if so, the delegate's misconduct will place the employer in breach of his own duty to the victim, and his liability will not be purely vicarious at all. Lord Hobhouse alone puts his finger on it, in saying that this 'is a situation where the employer has assumed a relationship to the plaintiff which imposes specific duties in tort upon the employer and the role of the employee (or servant) is that he is the person to whom the employer has entrusted the performance of that duty'.[23] This explains why, if the gardener had seized the opportunity of the boys' proximity to abuse them, or if the warden had brought a boy off the street and abused him at the school during working hours, the employer would not be liable. Likewise if the nurse poisons the patient, the hospital will be liable, not if the cleaner does so, though it would be liable if the cleaner carelessly pulled the plug on the drip in order to attach the vacuum cleaner.

The importance of the relationship between claimant and defendant can be seen in *Williams v Hemphill*?.[24] The defendants agreed to transport a party of boys back to Glasgow from their summer camp in Benderloch in Argyllshire. Their driver should have followed the direct Western route but at the instigation of the boys went East instead, and was well off the proper route and still going in the wrong direction when there was an accident owing to his negligence and one of the boys was badly injured. The defendant was held liable, and rightly so, but not on the ground given, that the driver was in the course of his employment (which was the sole ground argued), but because the driver was the defendant carrier's delegate. If the lorry carrying the boys had run into a pedestrian on a 'detour' so far off the driver's proper route, his employer would not have been liable (though his insurer would be).

Notwithstanding (or perhaps because of) the confusion in the *Hesley Hall* case between vicarious liability and personal liability for breach by a delegate of a non-delegable duty, the actual decision is clearly having an effect in extending liability, especially for the deliberate acts of a subordinate. Take club bouncers, for example. In 1962 it was held that though the club would be liable if the bouncer ejected a patron with undue force it would not have to pay if he chased the ejected patron down the street in a rage and thumped him

again.[25] But in *Mattis v Pollock (t/a Flamingo's Nightclub)* in 2003 the Court of Appeal, reversing the trial judge, held the club liable when its bouncer, after an altercation with a patron, went home to fetch a knife and stabbed him with it.[26]

Exclusion of Vicarious Liability?

Given that the relationship between the victim and the employer can extend the latter's liability for the misdoings of his delegates and employees, can it equally exclude the employer's vicarious liability? One obvious case is where the claimant has a contract with the defendant which exempts him from liability for harm negligently caused. Such a clause is invalid as regards personal injury and death, but may be valid, if reasonable, as to property damage. If so, it is clear that the defendant will not be responsible even if his employee negligently caused the damage in the course and scope of his employment. Indeed, after the Contracts (Rights of Third Parties) Act 1999 a properly drafted clause can protect the employee himself. This is satisfactory, especially since much of the property for which the employee might otherwise be liable will be covered by the owner's insurance, and it would be intolerable to let the insurer, by subrogation, sue an uninsured workman, as was once permitted by the House of Lords: when a workman allegedly ran over his father at work, his employer's insurer paid the father and was allowed to sue the son, on the ground that the employer could have done so (though of course he wouldn't).[27] The question may also arise where property belonging to a trespasser on the defendant's land is injured owing to what would be normal negligence on the part of an employee: the occupier's 'no duty' under the 1984 Act should not be sidelined by arguments of vicarious liability.

The dubious view that vicarious liability is a principle of invariable application has led to an oddity in the vexed area of the liability of public authorities for faulty exercise of their discretionary powers. Although it had been held and was accepted that an education authority owed no duty to a pupil as regards the exercise of its discretionary powers, the House of Lords has held that it is vicariously liable for the torts of the personnel it employs or retains to exercise its powers: 'Since the authority can only act through its employees or agents, and if they are negligent vicarious liability will arise, it may rarely be necessary to invoke a claim for direct liability'.[28] Yet if it is not fair, just, and reasonable to make the authority directly liable, it can hardly be so to render it vicariously liable for those through whom alone it can exercise its powers.

Does the Liability of the Employer Entail That of the Employee?

Most breaches of contract by a company (and companies are the commonest contractors) are due to some fault on the part of some individual on the company payroll. If physical damage results, the employee's liability under *Donoghue v Stevenson* is clear in principle, but the extension of liability in negligence to cover the case where purely economic harm is due to failure to act (the typical breach of contract) has highlighted the question of the liability of an employee whose laziness or incompetence puts his employer in breach of contract with the claimant. This is especially important where the employer is now insolvent. In one case, already considered, plaintiffs who wanted to run a health food store bought a franchise from a company after

receiving from it certain representations as to probable profits which proved unreasonably optimistic. When the franchising company became insolvent, the plaintiffs sued the individual who had in fact drafted the advice in question, actually the managing director. It was held that the managing director was not liable, since the plaintiffs had not relied on any undertaking of responsibility by him: the forecast of profits had been on the company's headed paper.[29] This valuable decision will protect negligent secretaries whose mistyping, uncor-rected by a superior, causes a damaging misrepresentation to go forth to a client from the company office. In a subsequent case, however, when an employed (and uninsured) surveyor drew up an overoptimistic report on a dwelling for the mortgage company which had commissioned it from his employer, he was held liable to the purchaser of the house although the purchaser had had no dealings whatever with the defendant personally and had not even seen his report. The authority of the franchising case was disregarded in a rather cavalier manner by the majority of the Court of Appeal—surely no distinction could be made on the basis that the franchisees had a contract with the defendant's employer whereas the purchaser of the house did not?—but in any case the House of Lords refused leave to appeal.[30]

Notes

1 *Lister v Romford Ice and Cold Storage Co* [1957] 1 All ER 125.

2 *KD v Chief Constable of Hampshire* (Tugendhat J, 23 November 2005).

3 *Adler v Dickson* [1955] 1 QB 158.

4 *Ormrod v Crosville Motor Services* [1953] 2 All ER 753.

5 *The Ocean Frost* [1986] 2 All ER 385.

6 *Keppel Bus Co v Sa 'ad bin Ahmad* [1974] 3 All ER 700.

7 *Lister v Hesley Hall* [2001] 2 All ER 769.

8 *Brooke v Bool* [1928] 2 KB 578.

9 *Stevenson Jordan & Harrison v Macdonald and Evans* [1952] 1 TLR ioi.

10 *Ready Mixed Concrete (South East) v Minister of Pensions and National Insurance* [1968] 1 All ER 433.

11 Doubted in *Percy v Church of Scotland* [2005] UKHL 73.

12 *Viasystems (Tyneside) v Thermal Transfer (Northern)* [2005] EWCA Civ 1151.

13 *Hawley v Luminar Leisure* [2006] EWCA Civ 18.

14 *Heasmans v Clarity Cleaning* [1987] IRLR 286.

15 *Lister v Hesley Hall* [2001] UKHL 22.

16 *Rose v Plenty* [1976] 1 All ER 97.

17 *Vandyke v Fender* [1970] 2 All ER 335.

18 *Hudson v Ridge Manufacturing Co* [1957] 2 All ER 229.

19 *Smith v Crossley Bros* (1951) 95 SJ 655.

20 *Morris v Martin and Sons* [1965] 2 All ER 725.

21 *British Road Services v Crutchley* [1967] 2 All ER 792.

22 *Lister v Hesley Hall* [2001] 2 All ER 769.

23 *Lister v Hesley Hall* [2001] 2 All ER 769, 789.

24 [1966] 2 Lloyd's Rep 101.

25 *Daniels v Whetstone Entertainments* [1962] 2 Lloyd's Rep i.

26 [2003] EWCA Civ 887.

27 *Lister v Romford Ice and Cold Storage Co* [1957] 1 All ER 125.

28 *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504 at 522 per Lord Slynn.

29 *Williams v Natural Life Health Foods* [1998] 2 All ER 577.

30 *Merrett v Babb* [2001] QB 1174.