



Supreme Court hurts employers on vicarious liability

Cox v Ministry of Justice (2016) and *A M Mohamud v WM Morrison Supermarkets plc (2016)*

Two recent Supreme Court decisions endorse existing legal principles on vicarious liability, but illustrate an increasing willingness by the courts to look beyond the traditional view of the employer-employee relationship, and employment activities.

Vicarious liability is the means by which a person may be held liable for the tortious acts of another, because of his relationship with that other and the connection between it and the tortious act in question. The concept most frequently arises in an employment context, whereby an employer is held liable for the negligent act or omission of an employee committed in the course of his duties.

The Supreme Court considered the concept in *Cox v Ministry of Justice* [2016] UKSC 10 and *Mohamud v WM Morrison Supermarkets plc* [2016] UKSC 11. The complementary judgments concerned the types of relationships that might give rise to vicarious liability and the scope of conduct to which it might be applied.

Cox v Ministry of Justice

Mrs Cox was employed as a catering manager at HM Prison Swansea. She was in charge of the operation of the kitchen, supervising four members of staff and roughly twenty prisoners. On 10 September 2007, various kitchen supplies had been delivered to the ground floor of the prison, and Mrs Cox

instructed four prisoners to carry these upstairs for storage. One of the prisoners dropped a sack of rice, bursting it open, and Mrs Cox bent down to prevent the spillage. At that moment, another prisoner lost his balance and dropped a further sack of rice onto Mrs Cox's back. She brought proceedings against the prison service, an executive agency of the Ministry of Justice, seeking compensation for her injury.

The issue was whether, absent any employment relationship, the Ministry could be held liable for the negligent act of a prisoner committed in the course of his activities in the prison kitchen. The Court referred to the five policy reasons that make it fair, just and reasonable to impose vicarious liability in the context of an employment relationship, as set out in *Various Claimants v Catholic Child Welfare Society* [2012] UKSC 56. A relationship that bore those same features might be capable of giving rise to vicarious liability on grounds of it being akin to employment, even where the parties are not strictly bound by a contract of employment. The essential idea was that a person ought to

Any comments or queries?

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be liable for torts that may fairly be regarded as risks of his business activities. This reflected the changing nature of a modern workplace that is no longer exclusively categorised by traditional employment relationships.

The Court then considered whether the negligence in question had occurred in the course of activities that were an integral part of the business of the prison, and that had been carried out for its benefit. The word “business” did not necessarily require the pursuit of commercial activities nor the drive for a profit. It was sufficient that the prison carried on activities in the furtherance of its aims of serving the public interest. A prisoner working in the kitchen was integrated into the operation of the prison, and the Claimant had been injured as a result of his negligence in carrying out the activities that had been assigned to him.

The prison service was, accordingly, vicariously liable for the prisoner’s actions, in spite of the relationship differing in many other respects from one of traditional employment.

Mohamud v WM Morrison Supermarkets

The central issue was whether an employer was vicariously liable for an assault committed by an employee.

The assault occurred at a petrol station owned by the Defendant chain of supermarkets, where Mr Khan was employed to attend to customers and respond to their enquiries. The Claimant visited the petrol station on 15 March 2008, and, whilst there, asked Mr Khan whether it would be possible to print some documents from a USB stick. Mr Khan responded with foul-mouthed, racist and threatening abuse, before ordering the Claimant to leave the premises. He then followed the Claimant onto the forecourt, before subjecting him to a violent attack.

Mr Khan was clearly an employee; the issue was whether there was a sufficient connection between his employment and the assault so as

to make the Defendant vicariously liable. The Claimant’s main argument in this regard was that the established “close connection” test ought to be replaced with a broader test of “representative capacity” – namely, whether a reasonable observer would consider the employee to be acting as a representative of the employer at the time of committing the tort. The Supreme Court rejected this proposition, there being no reason to displace what it described as a perfectly adequate test in favour of one which, at best, represented a mere change in vocabulary, and at worst, was considered to be hopelessly vague.

Despite rejecting this argument, the Court nevertheless allowed the Claimant’s appeal, in doing so reversing both the first instance and Court of Appeal decisions. Both lower courts had found in favour of the employer on the basis that Mr Khan’s actions were outside the scope of his employment.

In doing so, the Court noted that Mr Khan’s job was to respond to enquiries by customers; he had been acting within the field of activities assigned to him in responding to the Claimant in a foul-mouthed way. What happened afterwards was an unbroken sequence of events, whereby Mr Khan followed the Claimant onto the forecourt and violently attacked him. It was not right to regard Mr Khan as having metaphorically taken off his uniform the moment he came out from behind the counter; it was a seamless episode. Mr Khan had been purporting to go about his employer’s business in giving the Claimant an order to stay away from the premises. Mr Khan’s motive for the attack was irrelevant.

Taking all this into account, the Court concluded there was a sufficiently close connection between Mr Khan’s employment and the assault for the Defendant to be held vicariously liable.

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