IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
[2021] EWHC 1506 (QB)

QA-2020-000186 /
QA-2020-000187

The Royal Courts of Justice
The Strand
London, WC2A 2LL

Thursday, 11 March 2021

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

(1) HARVEY GREENAWAY (by Litigation Friend)
(2) JEROME ROCKS (by Litigation Friend) — Claimants

- and -

(1) WILLIAM PARRISH
(2) COVEA INSURANCE PLC
(3) MOTOR INSURERS BUREAU — Defendants

MR P. MEAD (instructed by Royds Withy King) appeared on behalf of the Claimants.

THE FIRST DEFENDANT was not present and was not represented.

MR P. VINCENT QC, CRESSIDA MAWDESLEY-THOMAS (instructed by Bevan Brittan) appeared on behalf of the Second Defendant.

MR R VINEY (instructed by Weightmans) appeared on behalf of the Third Defendant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

Introduction and Background

1 This is an appeal against a decision of Master McCloud made on 20 August 2020, whereby she refused the second defendant permission to rely on certain expert evidence. The background facts are that the claimant Jerome Rocks was injured in a road traffic accident on 12 May 2018 when the rear seat passenger in a vehicle being driven by his friend and classmate William Parrish. Also in the car were two further friends Harvey Greenaway and Thierry Althorp.

2 The car belonged to Thierry Althorp's father and was covered by a policy of insurance issued by Covea, the second defendant. All the passengers were sixteen years old, and therefore too young to drive. It is to be assumed, for present purposes at any rate, that the claimant when he got in the car knew that it belonged to Thierry's father, that it had been taken without consent, and that William Parrish did not have permission to drive the car and was not himself covered by the contract of insurance.

The Issue and Relevant Provisions

3 Unfortunately the claimant sustained serious injuries in the accident, and his claim is a valuable one. He claims that the second defendant is obliged to provide indemnity by virtue of the provisions of section 151(5) of the Road Traffic Act 1988, which provides:

> "Notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, he must, subject to the provisions of this section, pay the persons entitled to the benefit of the judgment-
>
> (a) as regards liability in respect of death or bodily injury any sum payable under the judgment in respect of the liability, together with any sum which by virtue of any enactment relating to interest on judgments is payable in respect of interest on that sum;
> (b) as regards liability in respect of damage to property any sum required to be paid under subsection (6) below; and
> (c) any amount payable in respect of costs."

4 However, on the face of it, the second defendant has the benefit of section 151(4) of the Road Traffic Act 1988, which provides:

> "In subsection (2)(b) above, 'excluded liability' means a liability in respect of the death of, or bodily injury to, or damage to the property of, any person who, at the time of the use which gave rise to the liability, was allowing himself to be carried in or upon the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken, not being a person who:-
>
> (a) did not know and had no reason to believe that the vehicle had been stolen or unlawfully taken until after the commencement of his journey, and
> (b) could not reasonably have been expected to have alighted from the vehicle."

5 On the face of it, this subsection would allow the defendants, assuming that they can prove the matters which they need to prove, to escape the obligation otherwise imposed by the Act to provide indemnity to the first defendant, William Parrish. However, in answer to this, the claimant asserts that section 151(4) is not compliant with the requirements of Article 13 of Directive 2009/103/ EC in that the subsection includes not just those who knew or had reason to believe that the vehicle had been stolen but also includes the words "or unlawfully taken".

6 It is relevant to quote the terms of the Directive, which provides in Article 3 for compulsory insurance of vehicles:

> "Each member state shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.
>
> The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of the measures referred to in the first paragraph."

7 Article 12 of the Directive refers to special categories of victim, and provides:

> "1. Without prejudice to the second subparagraph of Article 13(1), the insurance referred to in Article 3 shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle."

8 Subparagraph 2 of Article 12 also makes provision for the cover of members of the family of the policyholder or driver or other person liable under civil law. Then we have Article 13 which refers to exclusion clauses, and that provides:

> "1. Each member state shall take all appropriate measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 shall be deemed to be void in respect of claims by third parties who have been victims of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by:
>
> (a) persons who do not have express or implied authorisation to do so;
> (b) persons who do not hold a licence permitting them to drive the vehicle concerned;
> (c) persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned.
>
> However, the provision or clause referred to in point (a) of the first subparagraph may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen."

9 The point at issue in this case is the meaning of the words "they knew the vehicle was stolen". It is immediately apparent that the provision in section 151(4) allows exemption or exception from the obligation to indemnify not only to those who knew that the vehicle was stolen but also those who knew it had been taken without consent; and the question is

whether the use of the word "stolen" in the Directive bears the same meaning as the word "stolen" in the Road Traffic Act, or whether it is a wider concept, and includes taking without consent.

10 The reference in section 151(4) to stolen or taken without consent is in effect a cross-reference to the provisions of the Theft Act whereby theft is defined as the dishonest appropriation of property belonging to another with the intention permanently to deprive the other of it, and where under section 12 of the Act, taking and driving away or taking without consent is a separate offence punishable on indictment with imprisonment of up to three years.

11 The reason for the distinction is that it is often impossible to prove, in the case of somebody who has allowed themselves to be carried or who has taken and driven away a vehicle or taken it without consent, that they had an intention permanently to deprive the owner of the vehicle. Often, the offence of what is sometimes known as "joyriding" involves simply taking the vehicle for a journey, and then leaving it where it can be recovered easily by the owner because of the registration plate.

12 Thus, the verb "to steal" and the concept of theft in the Theft Act 1968 is a technical one or a term of art which may not coincide with the colloquial use of the word "to steal". Thus a person whose vehicle has disappeared from their drive may well report the vehicle to the police as having been “stolen” in the wider sense that it has been removed from the drive by a person or persons who had no permission to do so, and everyone would understand that to be meant, whilst in fact the offence may well be one simply of taking and driving away under section 12 of the Theft Act.

13 Whilst therefore the use of the word "stolen" can and often does encompass a wider sphere of activity than the narrow definition of theft in the Theft Act, the question is whether the use of the word "stolen" in Article 13 is used in this wider sphere of activity which incorporates vehicle-taking as opposed to the narrow definition in English law.

14 Prior to the United Kingdom's exit from the European Union, this question would have been one clearly ripe for referral to the European Court of Justice, which could then have taken submissions from other member states as to the meaning of the word "stolen" as translated from the Directive, and potentially also, although I will come back to this later, how the Directive had been implemented across the European Union. However, since the passing of the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal) Act 2020 it is no longer possible for a reference to be made to the European Court of Justice, that facility having been removed since 1 January 2021.

The decision of Master McCloud

15 The matter came before Master McCloud on 20 August 2020 for directions. At the time of Master McCloud's judgment the United Kingdom was still in negotiation with the European Union as to the final terms upon which the exit from the European Union would be made, and in the interim the provisions of the European Communities Act 1972, which was the statute which incorporated the body of European Law into English domestic law, remained largely in force.

16 On 20 August 2020 Master McCloud made an order for a split trial on liability, and in an annex to her order she provided for the determination of two issues of European Union Law. The first issue which she ordered should be determined was:

"Whether the effect of section 151(4) of the Road Traffic Act 1988 constitutes a failure by the United Kingdom government to implement Direction 2009 / 103;

(b) if so, whether section 151(4) of the Road Traffic Act 1988 is amenable to an interpretation that implements Directive 2009 / 103; and, if so, what that interpretation is;

(c) whether the claimant's claim remains an excluded liability within the meaning of section 151(4) as if necessary interpreted so as to implement Directive 2009 / 103;

(d) if section 151(4) is not amenable to an interpretation that implements Directive 2009 / 103, whether the court has the power to deem void, disapply, strike down or hold to be minor or insignificant any part of that section;

(e) if the court has that power, whether the court should in all the circumstances exercise that power;

(f) whether the claimant can rely upon Article 47 of the Charter of Fundamental Rights of the European Union as a means by which the court can and / or should disapply section 151(4) of the RTA, and whether the claim is barred by the maxim *Ex Turpi Causa* according to the law of England and Wales."

17 There is a second EU law issue which does not arise for consideration.

18 Master McCloud was also faced at the hearing with an application on behalf of the insurer for permission to call expert evidence going to how the Directive has been implemented in EU member states. In response, in a short *extempore* judgment, Master McCloud said this:

"9. … It seems to me that as a matter of constitutional law in this country, after the Brexit period, the transition period, it will be a matter of law for the UK courts to construe domestic law, and that domestic law incorporates the treaties and the directives that we have signed up to during our period in the EU.

10. It does not seem to me to be a matter of foreign law at the moment, and I think it would risk me converting what has become a UK jurisdiction into a sort of species of *quasi* foreign law as at the end of the Brexit transition period, and that would risk prejudging how the law is going to evolve in the light of Brexit. The UK may or may not gradually evolve away from EU law, and that might or might not mean that EU law gains a more 'foreign' flavour over time. I said that this is a difficult and important point, but it is one which is going to necessarily be tested in I am sure various cases, but I am not persuaded at the moment one need treat EU law as a foreign species of law. Here we are dealing of course both with the EU law itself (the Directive in its various languages) but also if Mr McClean proceeds with the argument possibly some consideration of how other states have implemented it, and the adequacy of those implementations.

> 11. As things presently stand, I am not persuaded that expert evidence of foreign law is reasonably required in this case. Rather I regard it as a question of law for the British judge, possibly assisted by translations of other states' implementing laws, if it becomes necessary at all to look at other countries' interpretations, but more likely I suspect to be assisted by being given copies of the foreign language versions of the actual Directive itself, if argument were to be made about linguistic differences, and from that information it would be for the UK court to carry out the exercise the CJEU might have carried out if the case became suitable for a reference which otherwise would have gone to the CJEU. For those reasons I am not going to grant permission for expert evidence, but I do understand the significance of the point. It touches the question whether and to what extent EU law, and how it is implemented elsewhere, will now be wholly foreign law, demanding expert evidence, potentially from each of the EU jurisdictions, by reference to which a comparison is sought to be made with UK law. Such would usually be done more easily by a CJEU reference but not so post Brexit."

19 The second defendant asked for permission to appeal, and in granting such permission Master McCloud gave a short further direction which included the following:

> "14. … In my ruling I have held that the preferable approach to my judgment on a difficult and somewhat unexpected point today is that this should be approached as a matter of domestic law effectively, that it will be for the courts of this country to rule on matters of compliance of European law, and that we do not treat it as a matter for expert evidence, that it is not reasonably required, and indeed constitutionally might rather trespass on the notion that the UK courts now will have the right to make those rulings. Having said that, it is a difficult point. Mr McClean seeks permission to appeal not on the basis that he says I have got it wrong, although I might have done of course, but that it is an important point, and that there is some other good reason for an appeal.
>
> 15. I agree with him, I am going to grant leave to appeal. It seems to me that this does raise an important point of law as to the correct approach to dealing with the matters that are raised. It is something which inevitably would have to be sorted out, and if an appeal were to take place now may well in fact also clarify the way forward in this case if any appeal court were to disagree with me. So, I am going to grant permission to appeal."

The submissions on behalf of the Insurer

20 It is important in the present context to understand the relevant provisions of the European Union (Withdrawal) Act 2018, which governs the law as things presently stand. For the appellant insurer Mr Patrick Vincent QC reminds the court that the trial judge will not be able to make a reference to the European Court of Justice, and he concedes that the Directive continues to confer on the claimant a right in respect of which they can ask the court to find that the right has not been properly implemented by the United Kingdom. He therefore makes reference to the provisions of section 6 of the 2018 Withdrawal Act. This section deals with interpretation of retained EU law, and provides at subsection (3) as follows:

"Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after IP completion day and so far as they are relevant to it-

(a) in accordance with any retained case law and any retained general principles of EU law … "

21 The result is that in effect the English court stands in the shoes of the European Court of Justice, and must decide the issue as to the correct meaning of "stolen" in the Directive in accordance with retained general principles of EU law.

22 Mr Vincent refers to the definition in section 6(7) as follows:

"In this Act—
'retained case law' means-
(a) retained domestic case law, and
(b) retained EU case law;

'retained domestic case law' means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before IP completion day and so far as they-
(a) relate to anything to which section 2, 3 or 4 applies, and
(b) are not excluded by section 5 or Schedule 1,
…
'retained EU case law' means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before IP completion day and so far as they—
(a) relate to anything to which section 2, 3 or 4 applies, and
(b) are not excluded by section 5 or Schedule 1,
…
'retained EU law' means anything which, on or after IP completion day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time);

'retained general principles of EU law' means the general principles of EU law, as they have effect in EU law immediately before IP completion day and so far as they-
(a) relate to anything to which section 2, 3 or 4 applies, and
(b) are not excluded by section 5 or Schedule 1 … "

23 Drawing on those definitions Mr Vincent submits that one of the general principles of EU law is that when considering the meaning of a Directive, that consideration necessarily encompasses what it means in all its language forms. He relies upon the decision of the European Court of Justice in *Cilfit v Ministero Della Sanita* [1982] C283 / 81 ECR 3417, and *R v The Commissioners of Customs and Excise, ex parte EMU Tabac* [1998] C296 / 95 ECR 1629.

24 At page 3420 of the decision in the *Cilfit* case, the European court considered questions concerning interpretation and questions concerning application. The court said:

> "The plaintiffs observed that the EEC treaty is concerned only with questions of interpretation, therefore the courts referred to in the third paragraph of Article 177 are required to make a reference for a preliminary ruling only in respect of such questions. Thus, it is for those courts to determine beforehand whether the question raised before them is concerned with interpretation or rather with application. However, in disputes brought before them, national courts must apply Community law, and it is for that purpose that they may refer questions concerning its interpretation to the Court of Justice. Thus, any doubts concerning the application of Community law relate above all to its interpretation, with the result that the court would have to look beyond the external appearance of the question raised by the parties regarding the application of Community law, and discover the underlying question of interpretation."

25 At [18] of its decision the court said:

> "To begin with it must be borne in mind that Community legislation is drafted in several languages, and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.
>
> [19] It must also be born in mind even where the different language versions are entirely in accord with one another, the Community law uses terminology which is peculiar to it. Furthermore it must be emphasised that legal concepts do not necessarily have the same meaning in Community law and in the law of the various member states."

26 Thus, Mr Vincent submits that it would be superficial to assume that the use of the word "stolen" in the Directive bears necessarily the same meaning as the word "stolen" in English domestic law, and in particular in the Theft Act and in the Road Traffic Act. He submits that just as the European court would have done on a reference, so the domestic court now, standing in the European court's shoes, needs to consider the different language versions of the implementation or translation of the Directive in order to discern the true meaning of the word "stolen".

27 Thus, the meaning of a word like "stolen" in the Directive is not simply to be derived from interpreting the word as used but is to be derived from the translations of the Directive in all its different languages throughout the EU, which together provide a *corpus* of interpretation which informs the court and previously the European court of the true meaning of the word. This interpretation is in particular borne out and emphasised in the *Tabac* case. The facts are most easily derived from the opinion of the Advocate General, who stated:

> "2. The Court of Appeal wishes to know in which country the excise duty is chargeable when an individual purchases for his own use goods subject to duty, specifically tobacco products if the purchase takes place in State B from which the goods are transported to State A, where the individual concerned lives, and both operations involve an agent acting for him.
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> 3. That is the position in this case in which, as graphically stated by the national court, 'The appellants have set up and participated in a scheme which enables a UK resident without leaving the comfort of his armchair to obtain in this country tobacco which he has purchased in a shop in

> Luxembourg'. In that way he avoids payment of the excise duty applicable in the United Kingdom which is heavier than that payable in Luxembourg."

The issue concerned Article 8 of Directive 92 / 12 EEC, in respect of which to apply, a number of conditions had to be satisfied. The goods on which excise duty was chargeable had to have been acquired by private individuals for their own use, and transported by them. Those conditions had to make it possible that goods on which duty is chargeable, and which are required in one state, and then transported to another, are held for strictly personal purposes. At [27] the court said:

> "The applicants in the main proceedings submit, first, that that provision should be applied in a situation such as this, where the purchase of the goods chargeable to excise duty was effected through an agent who also arranged for their transportation.
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> [28] In support of their submission, the applicants in the main proceedings argue that the maxim of Roman law *qui facit per alium facit per se*, meaning that a person acting through an agent must be treated as if he himself were so acting, constitutes a general principle in a number of legal systems, in particular in English law, and must be applied in this case, *a fortiori* since neither the English version of the Directive nor the French, Italian, Spanish, German, Dutch or Portuguese versions exclude the possibility of using an agent.
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> [29] That argument cannot be upheld.
>
> [30] First, it is clear from the case-law of the Court that the Community legal order does not, in principle, aim to define concepts on the basis of one or more national legal systems unless there is express provision to that effect …
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> [33] As far as Article 8 is concerned, it is evident that none of the language versions expressly provides for such involvement and that, on the contrary, the Danish and Greek versions indicate particularly clearly that, for excise duty to be payable in the country of purchase, transportation must be effected personally by the purchaser of the products subject to duty.
>
> [34] The applicants in the main proceedings accept that those two language versions preclude the involvement of an agent. They submit, however, that if those versions are not consistent with the other versions they are to be disregarded, on the ground that, at the time when the Directive was adopted, those two member states represented in total only 5 per cent of the population of the twelve member states and their languages are not easily understood by the nationals of the other member states.
>
> [35] In that regard it must be observed that the contradiction between the Danish and Greek versions on the one hand and the other language versions on the other only arises if the argument put forward by the applicants in the main proceedings is accepted.
>
> [36] Furthermore, to discount two language versions, as the applicants in the main proceedings suggest, would run counter to the Court's settled case-law

> to the effect that the need for a uniform interpretation of Community regulations makes it impossible for the text of a provision to be considered in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (see, in particular, Case 9/79 *Koschniske* [1979] ECR 2717, paragraph 6). Lastly, all the language versions must, in principle, be recognised as having the same weight and thus cannot vary according to the size of the population of the member states using the language in question."

28 Before leaving that case it is relevant to observe that in his opinion for the court the Advocate General was able to present for the court submissions about the way in which the Directive, which used the word "transport", had been translated into the various foreign languages of the then member states. Thus, he said:

> "32. The expression used in Article 8 of the Directive ('products acquired by private individuals and transported by them') has been translated in various ways in the various languages of the member states which made up the Community when it was adopted.
>
> 33. Certain language versions coincide in using the expression 'transported by them' without any additional words, as in the case of the Spanish and English versions. Others however reinforce the pronoun 'them' with an additional term, that is so in the French, Portuguese, Italian, Dutch and German versions. Finally the Greek and Danish versions lay even greater stress on the personal aspect by using terms equivalent to 'transport in person'."

29 In footnotes to that paragraph the Advocate General sets out the actual translations used in each of the member states referred to, including the translation in Greek at footnote 12, and the translation into Danish at footnote 13.

30 Returning to Mr Vincent's submissions, he addresses the difficulty the court is faced, having left the European Union and therefore no longer having the ability to make a reference to the European Court, of having potentially twenty-seven different versions (although in fact it would be fewer because some member states use the same language, for example Luxembourg and France both using French) in an adversarial process. He submits that in accordance with the cases to which I have referred the defendant should be allowed to adduce evidence of the way in which the word "stolen" has been translated in member states to inform the court as to the correct interpretation of the word "stolen".

31 He goes further and submits that given that the word "stolen" is in effect a term of art, or more particularly a term of legal art, it is also relevant for the court to know not just the way in which the word "stolen" has been translated but the import of that translation in the member state in question. That is what the word signifies for the purposes of that legal system.

32 He submits that the decision of Master McCloud at paragraph 11, to which I have referred, concedes the relevance of the various translations of the word but the problem with the Master's decision is that it is not enough simply for the foreign translations to be put before the court. The court is in no position to understand or in some cases even read the words in question (I refer, for exa,ple, to the Greek version and possibly the Polish version), never mind understand their import. Thus, for the principles of EU law to be applied properly, it

is necessary for the domestic court to have additional evidence, and that evidence can only be provided through experts. In fact, Mr Vincent goes further and submits that it would also be of assistance to the court to know how the Directive has been implemented in member states of the EU. He submits that this would be part of the wider context assisting the court in its interpretation of the word "stolen" in the Directive. And this would be consistent with the general principle that interpretation of EU Directives is not confined to interpretation of pure language but incorporates the purpose and intent of the Directive.

33 Mr Viney, who has appeared on behalf of the Motor Insurers' Bureau, has taken an essentially neutral position in that he does not make any separate application to rely on his own expert evidence, but in general he supports the position of Mr Vincent in relation to the need of the court to have expert evidence to explain the translation and interpretation of the way in which "stolen" has been translated in various languages.

The submissions on behalf of the Claimant

34 For the claimant Mr Mead reminded the court of the terms of the Directive to which I have referred and submitted that it is the claimant's case that section 151(4) is not compliant with the Directive. He correctly submitted that as at the date of this accident, although the referendum had occurred, the European Communities Act 1972 remained in force, and therefore the claimant's rights included the full impact of the European Union jurisprudence. It is thus the duty of the court now to interpret that which already existed, and national law, including section 151(4), is to be interpreted purposively in accordance with the principles of EU law.

35 He submits that the defendants' argument in this case fails to distinguish between the role of EU law and domestic law in the interpretation of Directives. He refers to the consolidated version of the Treaty on the functioning of the European law, and in particular Article 288 which provides: "A Directive shall be binding as to the result to be achieved upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and methods".

36 He submits that the error in the submissions made on behalf of the second defendant is that what is sought is something which trespasses into form and methods but the choice of form and methods by individual member states of the European Union cannot determine the substantive scope of the directive in question and, in particular, its meaning. Thus the meaning of the word "stolen" in the Sixth Directive, to which we have been referring, cannot be determined, he submits, by reference to the way in which that Directive has been implemented in any particular member state.

37 He too referred to the *Tabac* case, and submitted that it is clear from that decision that it was concerned purely with the language of the Directive as reflected in the various translations, and referred to by the Advocate General in his opinion, but said nothing to suggest that the implementation of the Directive as to form and methods was relevant to the interpretation. Referring to [33] of the Advocate General's opinion Mr Mead pointed out, again in my view correctly, that what the Advocate General was doing was conducting a comparative exercise of the different linguistic versions of the Directive, and this is permissible only by reference to the different language versions, not by reference to what the different member states had chosen to do by way of implementation.

38 Mr Mead also, and in particular, referred to and relied on the decision of the European Court in *Vnuk* C162 / 13, which concerned an accident to the Slovenian claimant when the ladder

he was on was struck by a tractor on private farm premises, causing him injury. He submitted that the provisions of Article 3(1) of Council Directive 72/166/EEC relating to the compulsory insurance of motor vehicles should be interpreted as extending to the use of motor vehicles on private land, and that the definition of motor vehicles should include tractors as opposed to being confined to the use of motor vehicles such as motor cars on public roads, for example.

39 At [41] onwards of the judgment the court said this:

> "[41] As regards whether the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn is to be regarded as being covered by the concept of 'use of vehicles' referred to in that provision, it must be pointed out at the outset that that concept cannot be left to the assessment of each member state.
>
> [42] Indeed neither Article 1 of the First Directive, Article 3(1) of that directive nor any other provision of that directive or of the other directives relating to compulsory insurance refer to the law of the member states as regards that concept. According to the Court's settled case-law, the need for a uniform application of European Union law and the principle of equality require the terms of a provision of European Union law which makes no express reference to the law of the member states for the purpose of determining its meaning and scope normally to be given an independent and uniform interpretation throughout the European Union; that interpretation must take into account not only its wording but also its context and the objectives pursued by the rules of which it is part …
>
> [43] As regards, in the first place, the terms used in Article 3(1) of the First Directive, it is apparent from a comparative examination of the different language versions of that provision that it exhibits differences as regards the type of situation covered by the insurance obligation for which it provides, differences which are, moreover, to be found in the actual title of that directive, in particular in its English and French language versions.
>
> [44] Accordingly, in the French language version, as in the Spanish, Greek, Italian, Dutch, Polish and Portuguese language versions, Article 3(1) refers to the obligation to insure against civil liability in respect of the 'circulation' of vehicles, thus suggesting that that insurance obligation relates only to accidents caused in the context of road use, as submitted by the German Government and Ireland.
>
> [45] However, the English language version and also the Bulgarian, Czech, Estonian, Latvian, Maltese, Slovakian, Slovenian and Finnish language versions of the same provision refer to the concept of 'use' of vehicles, without providing any further details, whereas the Danish, German, Lithuanian, Hungarian, Romanian, and Swedish language versions of that provision refer, even more generally, to the obligation to take out insurance against civil liability in respect of vehicles and thus appear to impose the obligation to insure against civil liability in respect of the use or operation of a vehicle, irrespective of whether that use or operation takes place in the context of a situation involving road use or not.

[46] According to settled case-law, a purely literal interpretation of one or more language versions of a multilingual text of European Union law, to the exclusion of the others, cannot, however, prevail since the uniform application of European Union rules requires that they be interpreted, *inter alia*, in the light of the versions drawn up in all the languages …

[47] It is therefore necessary, in the second place, to refer to the general scheme and purpose of the European Union legislation concerning compulsory insurance, of which Article 3(1) of the First Directive forms part.

[48] In that regard, it is important to point out that none of the directives relating to compulsory insurance contains a definition of what is meant by the concepts of 'accident', 'use' or even 'use of vehicles' for the purposes of those directives.

[49] However, those concepts must be understood in the light of the dual objective of protecting the victims of accidents caused by motor vehicles and of liberalising the movement of persons and goods with a view to achieving the internal market pursued by those directives.

[50] The First Directive is therefore part of a series of directives which came progressively to define the obligations of member states concerning civil liability in respect of the use of vehicles. Although the Court has repeatedly held that it is apparent from the recitals in the preambles to the First and Second Directives that the aim of those directives is to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles, it has also repeatedly held that they also have the objective of guaranteeing that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred … "

40 Furthermore, at [53] the court went on to say this:

" … Accordingly, Article 1 of the Second Directive required the insurance referred to in Article 3(1) of the First Directive to cover both damage to property and personal injuries. It also required the member states to set up bodies with the task of providing compensation for damage caused by unidentified vehicles or vehicles for which the insurance obligation had not been satisfied and established the minimum amounts of compensation to be guaranteed. Article 2 of that directive restricted the scope of certain exclusion clauses provided for by legislation or in contracts in respect of claims by third parties who were victims of an accident caused as a result of the use or driving of the insured vehicle by certain persons. Article 3 of that directive extended the benefit of insurance in respect of personal injuries to the members of the family of the insured person, driver or any other person who is liable for the accident

…

[56] In the light of all of those factors, and in particular of the objective of protection pursued by the First to Third Directives, the view cannot be taken that the European Union legislature wished to exclude from the protection granted by those directives injured parties to an accident caused by a vehicle

in the course of its use, if that use is consistent with the normal function of that vehicle."

41 Drawing on that decision, Mr Mead submits that the function of the court in interpreting the use of the word "stolen" in the Sixth Directive is to look not just at the wording but also at the context and the objectives of the Directive. The court at the trial will, he submits, be influenced by the fact that the fundamental purpose of the Directives is to provide compensation for those injured as a result of accidents involving vehicles, and to ensure that insurance cover is provided, and that the proviso and the exception to the general principle should be strictly and narrowly interpreted because it derogates from the general principle of compensation and insurance cover.

42 He submits that the European court looks at the words of a Directive only as a starting point, and that when the words are put in the context of the objectives and purpose of the Directive, that leads to a common standard which can be applicable throughout the Community, as defined by EU law, and effectively transcends the way in which the Directive is implemented in any particular member state.

43 He submits that the *Vnuk* case is a good example of the European court, whilst looking at the words, not being too, as he put it, "hung up" by the language, and that the way in which the courts resolve conflicts in respect of different translations is to look at the objectives and purpose of the Directive, adopting a purposive approach. He therefore submits that the court would not be assisted by having evidence as to the way the Directive has been implemented in other jurisdictions.

Decision

44 The *Vnuk* case illustrates the nightmare position in which the court has effectively been put by the European Union (Withdrawal) Act 2018. If it is to take into account, in interpreting European Union directives, the EU principle whereby the correct interpretation incorporates and encompasses all the various language versions of the directive, the nightmare relates to the concept of the court being faced with translations of the directive into French, Spanish, Greek, Italian, Dutch, Polish, Portuguese, Bulgarian, Czech, Estonian, Latvian, Maltese, Slovakian, Slovenian, Finnish, Danish, German, Lithuanian, Hungarian, Romanian and Swedish.

45 Whilst the European Court of Justice, with the assistance of the Advocate General, might have useful information about the various language versions, and the member states are invited to make submissions as to the issue of the interpretation of the directive which encompasses the translations of the particular countries in question, none of that information is readily available to an English domestic court now faced with the same issue to determine. Effectively what the English court is being asked to do is put itself in the position of the European Court of Justice with one or both hands tied behind its back in not having the access which the European Court of Justice uniquely has by virtue of its now twenty-seven members.

46 On one view what the English court is now being asked to do is impossible. Certainly, as recognised by Mr Vincent, it would make litigation of this kind quite unmanageable were there to be twenty-seven expert reports on each side opining as to the meaning and interpretation and implementation of the word "stolen" as used in the Directive.

47 Nevertheless in my judgment within the bounds of proportionality and the need to pursue the overriding objective, the court will require some assistance as to whether the use of the word "stolen" in the Directive is or is not to be considered narrowly as meaning the same as the use of the word "stolen" in the Theft Act and the Road Traffic Act.

48 As a starting point it would assist the court to know whether the translation of the word "stolen" in at least some of the other jurisdictions has led to the use of a word which encompasses a meaning wider than the technical term of art in the criminal law but rather the wider use to which I referred when I used the example of a person whose car has disappeared from their driveway reporting to the police that their car had been “stolen”.

49 In my judgment effectively Mr Vincent is right: subject to limitations, the only way in which the court can consider the correct interpretation of the word "stolen" is by having some assistance of the kind which comes automatically to the European Court through the Advocate General and the submissions of the member states. In particular, simply to put before the court the foreign terms used is of no use at all because the English court is not to be taken to be familiar with the various foreign languages to which I have referred.

50 At the least, and I think this was effectively conceded by Mr Mead, a translation would be needed. In my judgment, though, a pure translation is insufficient to assist the court in relation to a term of legal art such as "stolen". What is needed is an explanation to the court of how the word is used and interpreted in the particular member state in order to inform the court as to the potential correct interpretation of the word in the Directive. Of course the translation of the word in any particular State will not be conclusive, and Mr Mead is right that in the end the court will use not just the language but also the wider purposive concepts which lie behind the Directive in deciding whether this exception to the general rule is to be interpreted narrowly or more widely. But given that the language is the starting point, it seems to me that the court would be assisted by the kind of evidence which Mr Vincent seeks to put before the court as to the use of the language in certain foreign jurisdictions. Furthermore, without at all conceding that this will be regarded by the trial judge as relevant or useful, I do not exclude Mr Vincent or the second defendant putting before the court some evidence of how the Directive has been implemented in order to illustrate and explain the use of the translation, the word used, in the particular jurisdiction to convey the concept of the word "stolen".

51 The appeal is therefore allowed, and I will grant permission to the second defendant to rely on expert evidence of the kind to which I have referred. The application is confined to four experts, and I consider that to be proportionate in the context of these claims which involve serious injuries where the damages are liable to be measured in millions and given the importance of the issue to be determined.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.