AN CHÚIRT UACHTARACH
THE SUPREME COURT

Supreme Court Appeal Numbers: S:AP:IE:2023:000038
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High Court Record Number: 2017/5636 P
[2024] IESC 43

O'Donnell C.J.
O'Malley J.
Woulfe J.
Hogan J.
Murray J.

BETWEEN/

URBAN AND RURAL RECYCLING LIMITED

PLAINTIFF

– AND –

RSA INSURANCE IRELAND DAC

PLAINTIFF/APPELLANT

– AND –

ZURICH INSURANCE PLC

DEFENDANT/RESPONDENT

JUDGMENT of Mr. Justice Brian Murray delivered on the 10th of October 2024

The issue

1. The complex legal issues presented by his case arise from the simplest – and most unfortunate – of events. At their root is an action for damages for personal injuries brought against the first plaintiff ('*URRL*') by one of its employees ('*Mr. Moore'*). The injuries were sustained by Mr. Moore when a truck owned by URRL was stopped at the side of a public road and while he was operating a lift to deposit the contents of a bin into the truck. When the bin was near its emptying position it fell, striking Mr. Moore on the head and seriously injuring him.

2. The central question before this Court is whether s. 56 of the Road Traffic Act 1961, as amended ('*the RTA'*) requires that the vehicle insurance cover mandated by that provision cover the liability (if any) of URRL to Mr. Moore arising from these circumstances ('*the Moore liability'*). If so – and if there is such a liability – it is common case that the defendant ('*Zurich*') is obliged pursuant to provisions in a policy of motor insurance it has underwritten ('*the Zurich motor insurance policy'*) to indemnify URRL against it. If not, a second – and subsidiary – argument arises to the effect that Zurich is nonetheless so liable pursuant to certain other provisions of the policy. But if that argument also fails, then it appears that the second named plaintiff ('*RSA'*) is required to provide an indemnity to URRL under an employer's liability policy it has underwritten for that company ('*the RSA employer's liability policy'*).

3. The High Court (Reynolds J.) found that s. 56 mandated that any liability arising from this claim be insured ([2021] IEHC 661). The Court of Appeal (in a judgment of Allen J. with which Collins J. and Noonan J. agreed) found that s. 56 did not require such cover and that the Zurich policy did not otherwise apply ([2023] IECA 11). Leave to appeal was granted ([2023] IESCDET 63) because the proceedings raised issues as to the ambit of the mandatory motor insurance obligation, as well as potentially novel questions regarding the proper interpretation of Article 12(1) of Directive 2009/103/EC ('*the 2009 Directive'*).[1] The 2009 Directive requires member states to adopt measures to ensure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance. Section 56 of the RTA is one of the provisions relied upon by the State as implementing its obligations under the 2009 Directive.

The facts and the proceedings

4. URRL is engaged in the business of collecting and recycling waste materials. At the relevant time it owned a Scania recycling truck, which it used in the course of that business. The truck had lifting points for six bins, with twin lifts at the passenger side and one lift at the rear. Each of the lifts was capable of holding two bins. The lifting process involved an employee manually moving the bins onto a locking point and then operating the lift to raise and tip their contents into the vehicle.

[1] The 2009 Directive – the Sixth Motor Insurance Directive – is intened to codify the previous Five Motor Insurance Directives (Directive 1972/166/EEC, Directive 1984/5/EC, Directive 90/232/EEC, Directive 2000/26/EC and Directive 2005/146/EC). Since the events giving rise to these proceedings, the 2009 Directive has been amended by Directive 2021/2118.

5. On the day of the accident (19 December 2013), Mr. Moore was assigned to drive the Scania truck on a round of collections. He was accompanied by Mr. Michael Wickham, the principal of URRL. They travelled to Sinnott's Store, Duncormick, County Wexford, where they both alighted from the truck. The truck was stopped at the side of the public road when Mr. Moore loaded the bin, attached it onto one of the passenger-side lifts and operated the mechanism to lift and tip it. When the bin was near its emptying position it fell, striking Mr. Moore. The bin fell on Mr. Moore from a height. The injuries he sustained were extremely serious and, regrettably, life changing in nature.

6. On 24 March 2014, Mr. Moore instituted proceedings against URRL for damages, claiming that the injuries he had sustained had been caused by the negligence, breach of contract, breach of duty and breach of statutory duty of URRL. It was Mr. Moore's case that the accident occurred because the mechanism lifting the container failed, resulting in the bin falling onto him. In his pleadings he alleged that URRL had failed to provide a safe system of work, or adequate plant and equipment, that it provided defective or deficient equipment to the plaintiff and that it failed to comply with a range of statutory duties, including duties imposed by the Safety, Health and Welfare at Work Act 2005 and regulations made thereunder. Specifically, it was claimed that URRL had imposed requirements on the plaintiff that were likely to cause him injury and that it failed to provide him with appropriate material, resources and equipment to enable him to safely carry out the task with which he had been entrusted on the occasion in question. Those proceedings have since settled on the basis of a payment to Mr. Moore of €4.75M (this happening *after* the

decision of the High Court in this case). Accordingly, there has not been (and it appears will never be) a judicial determination of how, exactly, the accident occurred and whether URRL was in any way legally responsible for it.

7. It is clear that URRL has valid and effective insurance in place that entitles it to an indemnity in respect of Mr. Moore's claim. As neither RSA nor Zurich accepted that the claim fell within their respective insurances, the plaintiff instituted the within proceedings claiming declaratory relief with a view to resolving that issue. The parties agreed, and the Court ordered accordingly, that the issues of law thus arising should be determined under Special Case procedure enabled by O. 34 of the Rules of the Superior Courts. The questions were:

(i) Whether the liability (if any) of URRL to Mr. Moore was a liability that was required to be insured under the Road Traffic Acts, and

(ii) Having regard to the answer to question 1, whether URRL was entitled to indemnity in respect of Mr. Moore's claim under (a) the Zurich policy or (b) the RSA policy or (c) both.

8. Three points arising from the Special Case should be noticed. First, as the matter proceeded, the parties have both adopted the position that (ii)(c) did not arise: the liability they said was *either* that of Zurich, or of RSA. Second, the questions are contingent and, as they have been framed, hypothetical. It has never been decided that URRL has any liability to Mr. Moore. However, the Special Case

refers to '*the legal liability of the first Plaintiff to Mr. Moore in respect of his claim in the underlying personal injuries proceedings*', and a full set of the pleadings in that case was appended to the Case. The Special Case, as is usual, proceeded on agreed facts, but those do not propose any evidential basis by reference to which the Court can decide how that liability arose. Finally it should be said that although URRL was a plaintiff in the action it took no part in the hearing of the Special Case, which has proceeded as if an action only between RSA and Zurich.

The policies

9. The RSA employer's liability policy provided indemnity to URRL:

> *'...against legal liability for any damages in respect of Bodily Injury of any Employee within the Territorial Limits caused during any Period of Insurance and arising out of and in the course of employment by the Assured in the Business.'*

10. It excluded:

> *'...any liability as required to be insured by the relevant Sections of the Road Traffic Acts or their equivalent in respect of Requirements in respect of Policies of Insurance relating to compulsory Insurance.'*

11. Clause 4 of the general conditions, under the heading '*Other Insurance*', provided that:

> *'This insurance does not apply in respect of any loss or damage which at the time such loss or damage arises is insured by or would but for the existence of this policy be insured by any other policy or policies.'*

12. The business of the Company was described as:

> *'Glass Bottle Recycling – provide bottle bins approx. 1400 to hotels, pubs, restaurants collect and bring to Rehab Glass Co. Ltd. in Naas, Co. Kildare & up to 5% collecting of aluminium cans, including reselling of recycling glass.'*

13. The Zurich motor insurance policy was described as a '*Motor Fleet Policy*'. Section 1 of the policy is entitled: *'Section 1 – Liability to Third Parties'*. Under the heading *'WHAT IS INSURED'* the Zurich policy provided:

> *'**Indemnity to Insured***
>
> *WE will indemnify YOU against all sums which YOU or YOUR personal representatives become legally liable to pay by way of damages or costs on account of death or bodily injury to any person or damage to property caused by or in connection with any motor vehicle described in the schedule for any one accident or a series of accidents arising out of one event.'*

14. The apparent breadth of this language is cut down by the exclusions that follow. Under the heading 'WHAT IS NOT INSURED' it was provided that:

> *'**Except so far as is necessary to meet the requirements of the Road Traffic Acts Legislation** WE will not be liable for:*
>
> - *death or bodily injury to:*
>
> (i) *any person driving the vehicle or in charge of the vehicle for the purpose of driving.*
>
> (ii) *any passenger being accommodated in or on the vehicle.*
>
> *WE will not be liable for:*
>
> - *death or bodily injury to any person or damage to property caused or arising beyond the limits of any road in connection with:*
>
> (i) *the bringing of the load to any vehicle for loading or*
>
> (ii) *the taking away of the load from any vehicle after unloading*
>
> *by any person other than the driver or attendant of the vehicle.'*

(Emphasis in original)

15. In the general exceptions it was provided that:

> *'**Use/Driving***

WE will not be liable for any loss, damage, liability and/or injury arising out of any event happening:

(i) *while any vehicle is being used for any purpose not permitted by the certificate of motor insurance.*

(ii) *while any vehicle being driven or for the purpose of being driven by or in the charge of any person not authorised by the certificate of motor insurance.'*

16. Condition 3 of the General Conditions is in the following terms:

'*If any other insurance covers the same damage, loss or liability, WE will not be liable to pay more than OUR rateable proportion provided always that nothing in this condition will impose on US any liability from which WE would have been relieved by proviso (i) and (ii) of subsection (2) of Section 1.'*

17. The Zurich motor insurance policy earlier defined the *'Insured Person'* as *'YOU'* and *'the driver'*. *'YOU'* was, in turn, defined as the person, people or company shown in the schedule as the insured: the Company and Mr. Wickham were specified in the Schedule for this purpose. URRL's business was not defined but the schedule showed an excess of €900 for claims for accidental damage and theft to *'the 1994 Scania vehicle that is adapted to take wheelie bins and glass.'*

18. It was accepted by both insurers that the use of the vehicle encompassed loading and unloading along with the use of the lifts as well as driving, and that the liability covered by the Zurich motor insurance policy, and required by the Road Traffic Acts to be insured, included any liability arising from the use of the lifts while the vehicle was stationary. It was also agreed by the parties that Mr. Moore was, at the time of the accident, acting in the course of his employment, and that the vehicle was then in a public place.

19. It is clear that *if* the Moore liability is within the provisions of s. 56(1), RSA are not on cover, as their policy specifically excludes any liability that is required to be insured by the RTA. The Zurich motor insurance policy – the operative part of which is not limited to claims that must be insured under the RTA ('*caused by or in connection with any motor vehicle'*) – will then have to respond. Moreover, it will be seen that the exclusion in the Zurich policy for injury to '*any person driving the vehicle or in charge of the vehicle for the purpose of driving'* only applies insofar as such cover is not necessary to meet the requirements of the RTA. Therefore, *if* Mr. Moore was driving or in charge for the purposes of driving, any liability of URRL to him is *excluded* from the Zurich policy *only* if that liability falls *outside* the scope of s. 56(1). Or to put it another way, if the Moore liability is *outside* the scope of s. 56(1), Zurich will not be liable if Mr. Moore was '*driving or in charge of the vehicle'*.

The 2009 Directive and s. 56(1) and (3) of the RTA

20. For present purposes the critical provision in the 2009 Directive is Article 3. It is as follows:

> '*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.'*
>
> (Emphasis added)

21. Article 5, referred to here, enables certain derogations from this obligation. These are not relevant in this case. Article 12(1) then provides as follows:

> '*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 ….'*
>
> (Emphasis added)

22. Article 12(3) is as follows:

> '*The insurance referred to in Article 3 shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in*

which a motor vehicle is involved, are entitled to compensation in accordance with national civil law.'

23. S. 56(1) of the RTA provides as follows:

*'A person (in this subsection referred to as the **user**) shall not use in a public place a mechanically propelled vehicle unless ... a vehicle insurer ... or an exempted person would be liable for injury caused by the negligent use of the vehicle by him at that time or there is in force at that time...*

*(a) An approved policy of insurance whereby **the user or some other person who would be liable for injury** caused by the negligent use of the vehicle at that time **by the user**, is insured against all sums ... which **the user … shall become liable to pay** to any person ... by way of damages or costs on account of injury to person or property caused by **the negligent use of the vehicle at that time by the user …**'*

(Emphasis added)

24. Section 56(3) makes it a criminal offence to breach the provisions of s. 56(1). The offence may be committed not only by the '*user'* but also by the vehicle '*owner'*. Section 56(3) provides:

'*Where a person contravenes subsection (1) of this section, he and,* ***if he is not the owner of the vehicle, such owner*** *shall* ***each*** *be guilty of an offence …'*

(Emphasis added)

25. The offence is thus committed where a motor vehicle is used in a public place when there is no insurance covering a liability of the kind referred to in s. 56(1)(a) and (b). It is to be noted that the offence is focussed on '*use'*: the owner of a motor vehicle does not as such commit an offence by not insuring, rather the offence is committed only by using, or by permitting the use of, the vehicle when it is not insured. The owner has a defence if it can establish that the vehicle was being used without its consent and that it had taken all reasonable precautions to prevent its being used, or that it was being used by its servant acting in contravention of its orders (s. 56(5)). Conversely, where the person charged with such an offence was the servant of the owner, it is a good defence for that person to show that they were using the vehicle in obedience to the express orders of the owner (s. 56(6)).

26. It is important to observe that while the 2009 Directive harmonises the law of Member States governing insurance for accidents involving motor vehicles, it only imposes an obligation to insure against civil liability for such accidents. It does not purport to harmonise those rules of civil liability – these depend on the laws of the individual member states. Section 56 reflects this, and does not

provide for a general obligation to insure against injuries caused in an accident involving a motor vehicle. Instead, it imposes only an obligation to have insurance in respect of injuries caused by the *negligent* use of the vehicle by the user. It has been held by the High Court in *Mongan v. Mongan* [2020] IEHC 262, [2020] 3 IR 678 that in order to read s. 56(1) so as to conform with the 2009 Directive, '*negligence*' should be interpreted broadly so as to include (as was found to have occurred in that case) the use of a vehicle by a driver to deliberately attack a third party. That conclusion was reached, at least in part, because of the breadth of the obligation imposed by Article 3, which refers to '*civil liability',* not to liability in negligence.[2]

27. It was suggested in the course of argument before this Court in the instant case that reference in s. 56(1) to '*negligence'* should therefore be understood as including any tortious action or, as was at one point said, any action giving rise to civil liability in Irish law. I would observe that in *Mongan v. Mongan* it was neither necessary for MacDonald J. to decide (nor did he decide) that s. 56(1) should be construed so that the reference in that provision to '*negligent use'* meant any use that gave rise to civil liability. Instead, MacDonald J. interpreted the word '*negligence'* as including a deliberate act, a proposition for which there was common law authority quite independently of EU law (see *Hardy v. Motor Insurers' Bureau* [1964] 2 QB 745, *Chief Constable of West Midlands Police v.*

[2] It should be observed that Recital (9) to Directive 2021/2118 notes that Member States should be permitted to continue their practice of excluding damage caused by the use of a motor vehicle as a means of deliberately causing personal injury or damage to property from compulsory motor insurance but that this should only be allowed if a member state ensures that in such cases the injured parties are compensated for such damage in a manner that is as close as possible to how they would be compensated under the 2009 Directive: '*[u]nless the Member State has provided for such alternative compensation mechanism or guarantee … such damage should be covered in accordance with that Directive'*.

Billingham [1979] 1 WLR 747, *Chief Constable of Staffordshire v. Lees* [1981] RTR 506 and *Gardner v. Moore* [1984] 1 AC 548).

28. Given that the arguments advanced tended to focus on Mr. Moore's claim of negligence (although he also suggested other causes of action in the pleadings delivered in his case), it is not necessary for the purposes of this judgment to decide whether s. 56(1) should or can be extended beyond liability in negligence. That said, insofar as I refer throughout this judgment to '*negligence*' when describing the effect of s. 56(1), this is because this is the language used in the provision. I am in no sense to be taken as necessarily excluding the possibility that other forms of civil liability, or at least other forms of tortious liability, fall within the section having regard to the obligation of the Court to give the provision a conforming interpretation.[3] However, it should be stressed that this is far from a straightforward issue. This is not only because of the language of s. 56(1), and not only because of the difficulties in expanding the meaning of a section that creates a criminal liability, but because the provision itself determines the scope of a contractual liability in which context, by definition, the insured and insurer have relied upon the law as promulgated to regulate their legal relations. It may be noted in passing that it was considerations of this kind which led the Court of Appeal to conclude that the provisions of the RTA dealing with the obligation to provide insurance for passengers in a van could not be given such a conforming interpretation: *Smith v. Meade* [2016] IECA 389.

[3] Moreover, it will be observed that there is also at this point in time no issue in this case arising from the fact that s. 56 is limited in its operation to the use of a vehicle in a public place, a requirement which also may be inconsistent with the 2009 Directive, see *Law Society v. Motor Insurers' Bureau of Ireland* [2017] IESC 31 at para. 3.7 per Clarke CJ.

The issues

29. At first glance it might be thought that while the legislative context is quite involved, in actuality this case is a simple one. Mr. Moore was injured on a public roadway when part of a vehicle fell on him. He says that this happened because of the negligence of the owner of the vehicle. It might thus appear that such a claim should be captured by a legislative provision – s. 56(1) – that mandates insurance cover for liabilities arising from the use of the vehicle in a public place. Moreover, while a superficial review of s. 56(1) might lead one to think that there might be an issue as to whether the '*use'* to which the vehicle was being put was within the contemplation of the provision, in fact one of the legal issues in the case on which everyone is agreed, is that the working of the lift was a '*use'* within the meaning of the section.[4]

30. The complications arise because in contending that the Zurich policy covers any liability of URRL to Mr. Moore (and specifically that any liability arising from his claim is captured by the mandatory insuring obligation in s. 56(1)), RSA must establish that the liability to Mr. Moore was one for injury '*caused by the negligent use'* of the Scania truck by '*the user'* which, on its case, must be the

[4] As it happens, a very similar conclusion was reached, by the High Court of Australia in *Government Insurance Office of New South Wales v. RJ Green & Lloyd Pty Ltd* (1965) 114 CLR 437 when it was found that the loading of a hoist onto a stationary truck was a '*use'* within the meaning of similar legislation in New South Wales. While the Court found the accident arose out of the use of a vehicle (this being one of the elements of the statutory provision in issue) the members of the Court expressed some doubt as to whether the resulting liability met the stricter test of proximity which it was found arose from a reference in the relevant legislation to the alternative requirement that the injuries be '*caused'* by use of a motor vehicle.

person he has sued – URRL. In that regard, RSA must overcome three difficulties.

31. First, it faces the general challenge, repeatedly emphasised by Zurich in its submissions, that Mr. Moore's case is the stuff of an employer's liability claim, not one normally associated with a motor insurance policy. The provision of defective equipment, an unsafe workplace, or a failure to train an employee comprise the kind of allegations that are characteristic of a claim arising from a workplace accident. Those underwriting employer's liability policies gather information on the risk presented in a workplace by an employer's plant, equipment and systems that are not commonly taken into account by a motor insurer. It is these factors that lead Zurich to vigorously contend that s. 56 of the RTA, the 2009 Directive and the latter's predecessor provisions were never intended to require compulsory insurance cover for persons injured due to their employer's negligence.

32. Second, RSA must surmount the objection raised by Zurich that in order to bring the liability to Mr. Moore within s. 56(1), it must be established that URRL is liable for negligence (or, if it arises, other civil wrongdoing) and that this cannot be done when there is no evidence of any such negligence or wrongdoing before the Court, no evidence of what the nature of the wrongdoing was and no evidence of who, precisely, was responsible for it.

33. Third, it must in addition establish that URRL – the defendant in Mr. Moore's action – was a '*user'* of the vehicle, even though on one view the only specific

'*use'* that has been identified appears to be Mr. Moore's own actions when he was operating the lifting mechanism.

34. RSA says that the first of these is irrelevant, its response to the second – as I explain in more detail later - is not entirely clear, and in relation to the third it makes what has proven to be a somewhat involved case. URRL, RSA says, was a '*user'* of the vehicle. If there was negligence (or other wrongdoing that falls within s. 56(1)), this was negligence for which URRL was responsible. Therefore, it contends, s. 56(1) requires URRL to have in place insurance to cover liabilities for its negligent use of the vehicle, Mr. Moore's claim being one such liability.

35. Within this latter proposition lie two questions – (a) is a liability *to* a person (Mr. Moore) who was clearly *a* user of the vehicle at the time of the accident, within the contemplation of s. 56(1), and (b) can one person (URRL) be a '*user'* of a vehicle through the actions of another? A third question, related to the second, emerges from the Court of Appeal judgment, namely whether a body corporate can be a *'user'* for the purposes of s. 56(1). It is these questions that have given rise to the series of – at points somewhat metaphysical – complications to which I referred at the outset of this judgment.

The judgments of the High Court and Court of Appeal

36. Reynolds J. expressed the view in her judgment that '*on the basis of agreed facts and documents … the accident is indisputably connected with the vehicle and a*

defect in it'. From that starting point, she reduced to three propositions her conclusion that the liability of URRL to Mr. Moore was required by the Road Traffic Acts to be covered by an approved policy of insurance (at paras. 76-78):

(i) The term '*user'* as it appears in the Road Traffic Acts covers the use of the vehicle that led to the injury to Mr. Moore and the liability in respect thereof.

(ii) Mr. Moore, she said, was not '*in charge of the vehicle for the purpose of driving'* having regard *inter alia* to the fact that (as was common case) the vehicle had been parked and Mr. Moore had alighted therefrom.

(iii) In her view, the manner in which Mr. Moore had constructed his personal injury claim was, on balance, consistent with negligent use of the vehicle whether by virtue of a defect in the vehicle or other negligence.

37. The Court of Appeal was critical of the reliance placed by Reynolds J. on the pleadings in Mr. Moore's personal injury action and, in particular, on the reference in her judgment to a defect in the vehicle which, Allen J. noted, originated in a plea in Mr. Moore's personal injury summons. Allen J. said that the issues put before the High Court and before the Court of Appeal were based on agreed facts and documents, that there was no reference in the Special Case to the presence or absence of any defect in the vehicle and, he said, RSA had

acknowledged in correspondence after the High Court judgment that its case was not predicated on any defect in the vehicle.

38. That being so, Allen J. agreed with Zurich's submission that Reynolds J. had erred insofar as the liability which must be insured under s. 56(1) is the liability to third parties, not a liability '*to'* the user. He explained (at para. 62 of his judgment) that key to understanding the requirements of s. 56 was to recognise that a vehicle could not be in use unless by a '*user'.* The principal liability which had to be insured against was the liability of '*the user'.* The liability of '*the owner*', as he put it, (if they were not the user) was '*a secondary or vicarious liability'.* From there, Allen J. reasoned as follows (at para. 64):

> '*Section 56(1) requires that there should be a policy whereby a vehicle insurer would be liable for injury caused by the negligent use by the user. The liability of the user is one which must be insured against in any event but the obligation of the owner is to ensure that there is insurance in place to cover the owner's liability in respect of the use by an authorised user.'*

39. Ordinarily, he explained, the owner of a mechanically propelled vehicle can be expected to have insurance in respect of his own use of it, but his legal obligation is to ensure that there is insurance in place to answer any legal liability in respect of damages and costs that may arise out of the negligent use of the vehicle. The owner can meet that obligation by ensuring that the user has a policy in place which covers either the primary liability of the user or the secondary liability of

the owner or both. The insurer, if the owner is the insured, will be liable to provide indemnity in respect of the owner's vicarious liability for the damage caused by the negligent use but the primary liability will be that of the user. It followed from all of this, Allen J. said, that in the same way that a user of a mechanically propelled vehicle cannot incur a liability to himself arising out of the negligent use of the vehicle, he could not be a claimant entitled to recover monies from himself. That conclusion was reinforced by some of the provisions of the RTA relied upon in argument by Zurich, in particular ss. 71, 72 and 76 (at para. 66).

40. Noting that Reynolds J. had stressed that while there was no requirement for a user to be insured for injury to himself, Allen J. said it was clear from the facts that Mr. Moore was suing URRL as the owner of the vehicle and that the vehicle '*was in use for the purposes of the business of the company',* Allen J. explained the critical point at which he differed from the trial judge (at para. 74):

> '*The issue as to who was the user – or at least whether the Company was the user – of the vehicle at the time of the accident was central to the parties respective positions. I cannot agree that that issue could be determined by reference to the formulation of Mr. Moore's claim. Moreover, while I agree … that the recycling truck was in use for the purposes of the business of the Company, it by no means follows that the Company was the user of the truck'.*

41. Allen J. was of the view that the negligent user will be liable to indemnify the owner and the owner's insurer, unless the user is separately entitled to indemnity under the policy. Sometimes, Allen J. said, the indemnity which the insurer agrees to provide under a motor policy taken out by the owner will extend to the driver or user, as well as the insured owner, but this is not necessarily so. Allen J. explained later in his judgment (at para. 88):

> '*[t]he use required to be covered is use by the user and the liability required to be covered is any liability for injury caused by the use by the user. The user of a mechanically propelled vehicle unquestionably has a duty to take care but he does not owe a duty of care to himself and cannot become legally liable to pay damages to himself. In this case Mr. Moore was the user. The liability, if any, of the Company required to be covered was its vicarious liability as the owner for the use of the vehicle by Mr. Moore. Since Mr. Moore could not have been legally liable to damages to himself, the Company could not have incurred any vicarious liability.'*

42. RSA sought to address that logic by arguing (a) that it was possible for there to be two users at the same time, and (b) that in this case, both the company *and* Mr. Moore were users. Thus, the argument ran, there could be no difficulty in Mr. Moore's claim against URRL falling within s. 56 because, although he may have been a '*user'*, so was URRL. Allen J. rejected this contention in a passage that defined the central issues in this appeal (at paras. 82 and 83):

'*In the first place, I cannot see how a company could operate a mechanically propelled vehicle. The Company was a legal person incapable of driving or otherwise using the vehicle other than through the agency of actual persons, such as Mr. Moore. Secondly, I cannot see how an absent owner of a vehicle if a natural person might sensibly be said to be the user. The owner has a legal liability to ensure that there is insurance cover in place against negligent use and is liable for damage caused by the negligent use of the vehicle with his or its consent but that liability is vicarious and not direct. Thirdly, even if, for the sake of argument, the Company might have been regarded as a "user" I cannot see how this could have meant that Mr. Moore – who loaded the bin and operated and controlled the lift – was not also the user.*

The use of the lift was part of the normal functioning of the vehicle. So would driving have been. If Mr. Moore had been behind the wheel, I cannot see how the Company might have been said to have been the user. In the same way, I cannot see how the Company might be said to have been the user while Mr. Moore was attaching the bin and operating the lift.'

Section 56(1)

43. In addressing the three questions rising from these findings (whether a liability to a '*user'* falls within s. 56(1); whether a body corporate could be a '*user'*; and

whether one person could, through the actions of another, be a user) it is helpful to quote s. 56(1) again:

> *'A person (in this subsection referred to as the* ***user****) shall not use in a public place a mechanically propelled vehicle unless … a vehicle insurer … or an exempted person would be liable for injury caused by the negligent use of the vehicle by him at that time or there is in force at that time …*
>
> *(a) An approved policy of insurance whereby* ***the user or some other person who would be liable for injury*** *caused by the negligent use of the vehicle at that time* ***by the user****, is insured against all sums … which* ***the user … shall become liable to pay*** *to any person … by way of damages or costs on account of injury to person or property caused by* ***the negligent use of the vehicle at that time by the user …****'*
>
> (Emphasis added)

44. Some features of this provision are clear. First, it imposes an obligation to have insurance that covers sums payable for injury caused by negligent use of a motor vehicle *by the user*. Because this case involves an accident that has happened, and a liability that is alleged to have accrued, it is easy to forget that the obligation in s. 56(1) is essentially forward looking: it is an obligation to have

insurance that covers an event that may never occur. It is, therefore, not necessary for the purposes of these proceedings to know or to decide *precisely* how the accident in issue here happened. What it is necessary to know, however, is whether any liability resulting from that accident is a liability for a negligent use of the vehicle by a user. Needless to say these are closely related (the question of how the accident occurred will obviously dictate whether there is a liability). But determining how an accident occurred for the purposes of resolving a personal injury action, and categorising a liability said to arise from an asserted legal claim for the purposes of deciding whether it falls within or without the provisions of an insurance policy are not, necessarily, the same thing. The first involves the resolution of a specific dispute of fact and/or law, the second – depending on the issue and the point in time at which it falls to be resolved – may require a more general exercise in prediction and characterisation.

45. Second, aside entirely from the intervention of EU law, it is long established that the word '*use'* must be given a broad interpretation when it appears in provisions imposing a requirement for compulsory motor insurance. Thus, the compulsory insurance obligation extends beyond liabilities incurred as a result of the negligent *driving* of the vehicle. It has, for example, been found that a person who left his broken-down vehicle on a public road without a battery or any petrol in the tank could be convicted of the offence of unlawfully using the car without third party insurance (*Elliott v. Grey* [1960] 1 QB 367). Putting to one side the fact that s. 3 of the Road Traffic Act 1961 defines '*use'* as including parking and '*park'* as meaning '*keep or leave stationary'*, there are, as explained

by Lord Hodge in the course of his judgment in *R&S Pilling v. UK Insurance Ltd.* [2019] UKSC 16, [2020] AC 1025 (at para. 34) compelling reasons of policy why the definition of '*use'* should be approached in this way: the purpose of the mandatory insurance obligation is to address the mischief that an uninsured owner may not be able to compensate members of the public who can be expected to be on a public road or at a public place and who suffer damage or injury as a result of the presence of the vehicle at that place. An expansive interpretation of '*use'* which encompasses situations in which the vehicle is not actually being driven, is required to achieve that objective.

46. Third, the case law of the CJEU makes it clear that the obligation imposed by Article 3 of the 2009 Directive is extremely broad: '*the protection which must be guaranteed under that directive extends to anyone who is entitled, under national civil liability law, to compensation for damage caused by motor vehicles'* (*Van Ameyde España SA v. GES, Seguros y Reaseguros SA* Case C-923/19 EU:C:2021:475 at para. 42). Thus, when Article 3 refers to '*use'* it covers '*any use of a vehicle that is consistent with the normal function of that vehicle'* (*Damijan Vnuk v. Zavarovalnica Triglav* Case C-162/13 EU:C:2014:2146 at para. 59 ('*Vnuk*')). However, and at the same time, the mere fact that in relation to a particular vehicle a specific use is '*normal'* does not suffice to bring that use within the contemplation of the Directive: the '*use'* must be connected with the function of the vehicle as a means of transport (*Rodrigues de Andrade v. Proença Salvador* Case C-514/16 EU:C:2017:908 ('*Rodrigues de Andrade'*)). Thus it is that '*use'* stands as an autonomous concept of EU law that is not limited to the driving of vehicles but also includes actions normally

carried out by passengers, such as the opening of the door of the vehicle (*BTA Baltic Insurance Company v. Baltijas Apdrošināšanas Nams* Case C-648/17 EU:C:2018:917 ('*BTA Baltic'*)). The cases also make it clear that '*use'* for these purposes can be static, such as where a vehicle parked in a private garage catches fire causing property damage (*Linea Directa Aseguradora SA v Segurcaixa Sociedad Anónima de Seguros y Reaseguros* Case C-100/18 EU:C:2019:517 ('*Linea Directa'*)), or where a vehicle that was left in a private car park leaked oil on which a third party slipped, injuring herself (*Bueno Ruiz and Zurich Insurance v. Sánchez* Case C-431/18 EU:C:2019:1082 ('*Bueno Ruiz'*)). This follows from the fact that parking of a vehicle and the subsequent period of immobilisation of the vehicle are natural and necessary steps that are an integral part of its use as a means of transport (*Bueno Ruiz* at para. 39). This broad interpretation is also animated by the objective of protecting the victims of accidents caused by vehicles. As RSA puts it in its submissions, the effect of Articles 3 and 12 is that insurance to cover civil liability in respect of the '*use of vehicles'* is compulsory save for express and specific exemptions, which are exhaustively defined (and see *Farrell v. Whitty* Case C-356/05 EU:C:2007:229 at paras. 27-28). Thus the objectives of the Directive, necessarily, require a broad interpretation of *'use'*.

47. Obviously, the Court must insofar as possible interpret s. 56 of the 1961 Act so as to render it compliant with the obligations imposed upon the State by EU law (while s. 56(1) predated the State's accession to the European Community, it is one of the provisions relied upon by the State as implementing the obligations now provided for under the 2009 Directive). However, equally obviously, there

are limits to the extent to which the Court can rewrite the legislation. This is a particularly important consideration in a context in which s. 56(1) creates a criminal offence, and in which the Court must accordingly be astute to avoid the imposition of retrospective criminal liability (see, in particular, the comments of Lord Hodge in *R&S Pilling v. UK Insurance Ltd.* at para. 40).

48. Fourth, within that application of the vehicle for its normal purpose, use has been helpfully defined in one of the English cases as '*an element of controlling, managing or operating the vehicle at the relevant time'* (*Brown v. Roberts* [1965] 1 QB 1 at p. 15 per Megaw LJ). That reflects the definition of '*driving'* in s. 3(1) of the RTA (it is stated to include '*management and controlling*'). That formulation has been approved many times since (and see in particular *R&S Pilling v. UK Insurance Ltd.* at para. 34). The '*relevant time'* is, clearly, the time of the '*negligent use'*.

49. Fifth, the legislation envisages that it will be possible in the case of any given accident to identify a '*user'* of the vehicle, and it is *only* the negligent (or, perhaps, other actionable) actions of that user that will give rise to a liability to which the insuring obligation applies. Following from the preceding paragraph, that '*user'* is the person who is in control of the relevant feature of the vehicle at the point at which the wrongful action occurs. This, as it happens, is a key and – for the purposes of this appeal – critical feature of the provision. In order to come within the compulsory insuring obligation, it is not sufficient for a liability to simply arise from the actions of a '*user'*, the user (and not some other

person) must in addition be negligent, subject to what I have said earlier, more generally a wrongdoer.

50. Sixth, it is possible to have more than one user of the vehicle at the same time. This – the starting point in the construction of s. 56(1) as mandated by s. 18(a) of the Interpretation 2005 – was accepted by the Court of Appeal, which recorded the parties as in agreement on this issue (at para. 71). As Allen J. observed, if Mr. Moore and Mr. Wickham had both been using the lifts they would both have been users, as they would if Mr. Wickham had been using one of the lifts while Mr. Moore was behind the wheel (*id.*). In fact one English case affords a good example, with a person pushing a motor vehicle who, when he had succeeded in starting it, sat in the passenger seat. Both he and the person sitting in the driver's seat were held to have been users as they were '*using the car jointly'* (*Leathley v. Tallon* [1980] RTR 21), and for a case in which there were two drivers see *Tyler v. Whitmore* [1976] RTR 83.[5] Importantly, the cases make it clear that there will be circumstances in which a passenger in a vehicle is a '*user'*, most notably when the owner of a car allows another to drive him: in that situation the owner wants to make the journey, and he is thus using the vehicle to make that journey (Gürses *The Law of Compulsory Motor Vehicle Insurance* (2020) at para. 5.63-5.82). There must thus be insurance for any liability the passenger may have for injury caused to others. Yet at the same time Article 12(1) of the 2009 Directive requires that the insurance mandated

[5] In *Maher v. Great Northern Railway Company (Ireland) and Warren* [1942] IR 206, the majority of this Court was emphatic that there could not be two drivers of a vehicle for the purposes of s. 172 of the Road Traffic Act 1933 (which was similar to s. 118 of the RTA): however it did not consider the position where there were, in fact, two persons contemporaneously in control of different parts of the driving mechanisms, as was the case in *Tyler v. Whitmore*.

by Article 3 of that Directive shall cover liability for personal injuries to '***all passengers***'.

The underlying problem

51. In canvassing the arguments advanced by the parties on the three issues in dispute, the difficulties facing each as they struggled to fit their respective cases into the relevant provisions of the RTA were striking. As it presented its case to this Court, Zurich's argument was heavily dependent on the proposition that a claim brought by a person who was injured while '*using'* a motor vehicle was not subject to the obligation of compulsory insurance, even though neither the RTA nor the Directive so provided, and notwithstanding the oddity that would arise (were that submission well placed) where there are two users, and one is injured as a consequence of the acts or omissions of the other. Moreover, it contended that '*user'* as that term appeared in s. 56(1) referred to the '*actual user'*, with the result that a liability of URRL could never be within the scope of the provision. This was the case even though the element of management and control entailed by the word '*use'* could be carried out through the agency of another person, and notwithstanding the fact that numerous provisions of the RTA use the term '*actual use'* or '*actual user'* when this is what they mean.

52. Similarly, RSA's argument took it to the point of positing that wrongdoing (of, it must again be observed, an unspecified and entirely hypothetical character) that may have been completely removed from the actual operation of the vehicle constituted '*negligent use'* of the truck in circumstances where the only specific

'*use'* identified in the agreed facts was Mr. Moore's operation of the lift mechanism. RSA also had to contend with the fact that its position depended on s. 56(1) encompassing one party (URRL) '*using'* a motor vehicle through the agency of either Mr. Moore himself or another (unidentified) person in a statutory context which makes elaborate provision for the imposition of insuring obligations and indeed civil liability on the '*owner'* of a vehicle arising from the use of that vehicle by another.

53. These difficulties were, I think at least in part, a feature of the fact that when it was introduced, the compulsory insurance obligation imposed by s. 56(1) was not, in all likelihood, understood as capturing negligent use of a motor vehicle of the kind in issue in this case. When the obligation was first imposed by the Road Traffic Act 1933, it was addressed only to the '*driving'* of the vehicle (co-incidentally, s. 56 RTA 1933). It is to be noted that this Court in construing different provisions of the 1933 Act had concluded that '*driving*' meant an action in relation to the handling of the vehicle while it was being mechanically propelled and thus did not include the act of closing the door of a stationary van (*Neill v. Minister for Finance* [1948] IR 88). The 1961 Act then extended driving to include '*use'*, the statutory definition of which strongly suggests it was concerned with parking, although obviously it would also catch the negligent opening or closing of a passenger door and the like. What is far from clear, however, is that the legislation envisaged the compulsory insurance obligation as extending to activities that, while associated with the normal use of the particular vehicle, were disassociated from the vehicle's propulsion or movement.

54. It was the intervention of EU law, and the increasingly broad meaning attributed to the word '*use'* by CJEU (in particular in and and following the decision in *Vnuk* in 2014) that gave the argument advanced by RSA in this case its teeth. While the parties were agreed in this case that Mr. Moore when operating the lifting mechanism was '*using'* the vehicle for the purposes of both the RTA and the 2009 Directive it is important to understand why this is so, and what the limitations on that proposition are.

55. As I have noted earlier, the CJEU has described '*use'* as including any use of a vehicle that is consistent with the normal function of that vehicle. Thus, the parties have agreed here that it is the normal use of a recycling truck that bottles are loaded onto the vehicle and, accordingly, any negligence connected to that function is capable of being a '*negligent use of the vehicle'*. However, and as I have also noted earlier, the use which is said to give rise to the liability must be related to the function of the vehicle as a means of transport: '*only situations of use of the insured vehicle which fall within the use of a vehicle as a means of transport … fall within the concept of "use of vehicles"* (*Ostrowski v. Ubezpieczeniowy Fundusz Gwarancyjny* Case C-383/19 ECLI:EU:C:2021:337 at para. 45). Thus, in *Rodrigues de Andrade*, it was found that the use of a tractor to provide power to drive a spray pump used to apply herbicide was not within the Article 3(2) of the 2009 Directive. The Court (at para. 40) drew a distinction between a vehicle that was being used principally as a means of transport (in which case the Directive applied) and one being used as a machine for carrying out work (in which case it did not). Similarly, in *R&S Pilling v. UK*

Insurance Ltd. it was found that the carrying out of repairs on a vehicle in a garage was not the '*use'* of the vehicle even though the repairs were both necessitated by the use of the vehicle as a means of transport and essential for such use in the future: it was negligence in the carrying out of the repairs and not use as a means of transport that caused the relevant damage.

56. It is easy to see why it was conceded that this case fell on the other side of the line – the bins here were loaded and unloaded *because* their contents were then to be transported: indeed in *BTA Baltic* one of the examples of use suggested by the Court (at para. 36) was the loading or unloading of goods which are to be transported in the vehicle or which have been transported in it. This might not be the case in many other situations in which an accident occurs in a vehicle which is being used for a '*normal*' purpose that has no relationship with its use as a means of transport. The employee who is injured as a result of the negligent handling of a fryer in a food truck or the worker who is injured when electrical equipment in a mobile broadcasting unit may have been damaged by an action which comprises the normal use of the vehicle. However, their circumstances fall outside the scope of Article 3 of the 2009 Directive and/or s. 56 of the RTA because these are a uses which have nothing to do with the operation of the vehicle as a means of transport.

57. If this is correct, then it must follow that EU law demands that in a relatively limited range of cases there be compulsory insurance for some risks that are both divorced from the management of the driving function of a vehicle, and that are normally the province of employer's liability insurance. This is

important in a general sense because Zurich's case had at its root the objection that RSA was, in effect, requiring '*RTA insurers'* to become '*employer's liability insurers*'.

58. But even a passing glance at the CJEU cases shows how, unavoidably, claims that might ordinarily fall within the ambit of an employer's liability policy are clearly caught by the 2009 Directive. As it is put in one of the texts '*[t]he exclusion of liability to persons injured, arising out of the inappropriate use of mechanical plant to convey them or to enable them to carry out a function of their employment is not now permissible under compulsory insurance legislation'.*[6] This is an inevitable consequence of the CJEU case law, including the broadening of the meaning of '*use'.* If the person who had slipped on the oil that leaked from the vehicle in issue in *Bueno Ruiz,* for example, had been an employee of the owner acting on his business, his claim in tort against the employer would be within the 2009 Directive. If Mr. Wickham had been injured as a result of Mr. Moore's negligence in operating the lifting mechanism his claim would have been against URRL for the negligence of a fellow employee and might well be more like an employer's liability claim, than one captured by a motor insurance policy. There can be little doubt, however, that it would have fallen within s. 56(1), precisely because it concerns '*use*' of a vehicle within the meaning of Article 3 and indeed Zurich accepted this in the course of its submissions.

[6] Buckley *Insurance Law* (5th Ed. 2022) at para. 15-109. Similarly, that claims arising from the negligent driving of a vehicle at the suit of an employee who was a passenger fall to be covered by motor, rather than employer's liability, insurance seems to have been understood in the market for some time, *id.* at para. 15-24.

59. To return to the point I made earlier, the difficulties that arise in this case are, I think, products of the fact that it must be unlikely that any of these accidents would have been within the contemplation of the compulsory insuring obligation provided for in the 1961 Act. Moreover, as the Court seeks to construe the relevant provisions of the RTA while keeping in focus its obligation to achieve an interpretation that, to the greatest extent possible, gives effect to the State's obligations under EU law, it faces challenges in giving effect to both the legislative intent, and the relevant provisions of EU law as construed by the CJEU, within a context in which, in truth, the legislators in this jurisdiction have been engaged in a constant game of catch-up with the EU law. All of this leaves the surface of s. 56(1) when the word '*use'* is construed in accordance with the CJEU case law, somewhat uneven.

Does s. 56 require insurance in respect of liabilities to a 'user'?

60. Part of the difficulty with the argument advanced by Zurich that liablities to a user were outside the scope of s. 56(1) was that it was consistently merged with the proposition that Mr. Moore, as a negligent user, could not demand that his claim be covered by s. 56(1). Apart from the fact that these were quite distinct propositions, the argument that a negligent user is outside the scope of the provision was in every sense a straw man. There is no evidence whatsoever that Mr. Moore was negligent, and no serious argument could be (or was) advanced to the effect that a person whose negligence was the sole cause of injury to them could ever have been within the contemplation of s. 56(1). An action by such a

person in those circumstances is circuitous and unknown to the law, and therefore there is not and never could be a '*liability'* to them.

61. But Zurich also advanced a broader proposition, which it presented in its submissions as follows:

> '*as Mr. Moore was the "user" of the vehicle, at the time of the accident, there was no requirement for compulsory RTA motor insurance to extend to cover him, as the "user" of the vehicle'.*

62. This statement may well have reflected the intention of the Oireachtas when s. 56 was enacted, as evidenced in particular by the fact that the provision originally excluded from the requirement of compulsory insurance liability, '*excepted persons'*. These were defined by s. 65 as originally enacted as '*any person claiming in respect of injury to person to himself sustained while he was in or on*' a mechanically propelled vehicle, other than vehicles of such classes as may be designated by regulations, those regulations then proceeding to identify classes of vehicle liability to passengers in which could not be excluded.[7] In a context in which the concept of '*use'* might have been understood to be limited to driving-related uses, all of this made a certain sense, the idea obviously being to generally restrict the insurance obligation to claims by third parties such as other road users, pedestrians or certain passengers who had been injured as a consequence of the manner in which the vehicle had been

[7] Road Traffic (Compulsory Insurance) Regulations 1962, SI 14/1962, this being the subject of various amendments thereafter.

operated or managed on the highway. However, the RTA as enacted did not, and today does not, contain any reference to '*third party risks'*. In this regard it noticeably contrasts with the English legislation, which does and which, for this reason, has been found not to include liabilities to the driver at the relevant time (*Cooper v. Motor Insurers' Bureau* [1985] 1 QB 575).

63. The RTA was changed in 2008 (European Communities (Motor Insurance) Regulations 2008, SI 248/2008) to align the law with the requirements first imposed by Directive 90/232/EEC (which had required that the compulsory insurance obligation must extend to all passengers other than the driver) by deleting the exclusion from s. 56 for '*excepted persons'* and making consequential adjustments to the legislation. Once this was removed, there is nothing in s. 56(1) to exempt liabilities to any user from the scope of the insurance obligation.

64. At one point, Zurich focussed on the phrase '*negligent use of the vehicle by him at that time'* in s. 56(1), submitting that this meant that the requirement for compulsory insurance was concerned only to cover injuries caused by the user. The user, it said, could be liable only to a person other than himself, and the provision does not require compulsory insurance to extend to the user's own injury. Similarly, Zurich points to a series of provisions of the RTA (ss. 71, 72, 76 and 118) in which it says sharp distinctions are drawn between '*the owner',* '*the insured'* and '*the user'*. All of this is true. But it is also irrelevant if the accident was caused or contributed to by the negligence or other wrongdoing of *another user*. There is no incongruity in assuming that the claimant and the user

will be different persons (as these provisions do) if one user may seek to recover damages as a result of the negligence of another.

65. At some other points in the course of its argument, Zurich emphasised the fact that liabilities to the driver may be excluded by Article 12(1) of the 2009 Directive and, it is said, Mr. Moore was the driver as he was the person '*controlling, managing and operating the vehicle'*. Article 12(1) was also referred to as supporting the conclusion that liabilities to a '*user'* of a vehicle were outside the scope of the insuring obligation. It is helpful to also quote it again:

> '*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 ….'*
>
> (Emphasis added)

66. There are, I think, two respects in which Article 12(1) might be said to be unclear and regarding which I have considered whether it is necessary to make a reference to the CJEU. The first is whether this provision *mandates* that the driver be excluded from the scope of insurance cover or whether it merely grants the member states the option not to extend mandatory cover to liabilities to the driver.[8] The second is whether the exclusion in Article 12(1) is concerned only

[8] Some of the commentaries (see in particular Merkin *The Law of Motor Insurance* (2nd Ed. 2015) at para. 5-157) and at least one of the English cases (*R. v. Secretary of State for Transport ex parte National*

with claims arising from the driver's actions in driving the vehicle, or whether once a person had been the driver and had alighted from the vehicle he or she was for that reason alone outside the compulsory insuring obligation.

67. While noting that the 2009 Directive is a harmonising measure, for my part, I find it difficult to see what policy is advanced by preventing member states from including claims by the driver within the mandatory insurance obligation (as opposed to allowing them exclude such liabilities) and more importantly given the language used in Article 12(1), I cannot see how the provision can be said to extend to accidents that are completely dissociated from the act of driving. Given that the CJEU has said that '*the effects of certain exclusion clauses should be limited to the relationship between the insurer and* ***the person responsible for the accident'*** (*Candolin v. Vahinkovakuutusosakeyhtiö Pohjola* Case C-537/03 ECLI:EU:C:2005:417 at para. 34), it does not seem consistent with that rationale to extend the exclusion of a driver outside the specific situation in which they were driving the vehicle at the time the accident occurred and thus – at least commonly – responsible for the accident. I think it significant that in *Candolin* it was held that liabilities to a passenger were within the scope of the mandatory insurance obligation, even though that passenger was also the owner of a vehicle and the accident was caused by the wrongful acts of the driver. The conclusion in *Candolin* was reiterated in *Churchill Insurance Co. Ltd. v. Wilkinson* Case C-442/10 ECLI:EU:C:2011:799 where it was found that the predecessor to the 2009 Directive precluded national rules which omitted

Insurance Guarantee Corp. plc Unreported 8 May 1996) proceed on the basis that exclusion of the driver is mandated by Article 12(1).

automatically the requirement that an insurer should compensate a passenger who was a victim of a road traffic accident when that accident was caused by the driver who was not insured, when the victim was insured to drive the vehicle himself, and where he had given permission to the driver to drive it.

68. However, liabilities to the '*driver'* have not been expressly excluded from the scope of s. 56(1),[9] and for my part I can forsee some difficulties in construing the RTA so as to impose such an exclusion. In particular, the apparent absence of any reference in the legislation to '*third party risks'* removes from the Irish scheme the basis on which it was found that liabilities to drivers were excluded from the similar English provisions (*Cooper v. Motor Insurers Bureau*).[10] Whether or not this is so, there is certainly neither warrant for concluding that, nor scope within the language of the provision to interpret it so that, s. 56(1) should be qualified so that a liability to a '*user'* is outside the scope of the provision. In most cases this is not going to cause any particular difficulty: insofar as s. 56(1)(a) provides for a requirement for compulsory motor insurance covering the liability of a '*user'* to '*any person'* the user will not incur a liability to himself, and thus where an accident is wholly caused by negligent driving, the driver will not be in a position to claim that there is a liability to him that must be insured.

[9] Reliance was placed before the Court of Appeal on the fact that the European Communities (Motor Insurance) Regulations 2008 SI 248/2008 included in their explanatory note a statement to the effect that the Regulations specified that all persons, other than the driver, travelling in a mechanically propelled vehicle are passengers for the purposes of third party compulsory insurance. The Court of Appeal observed that the suggestion in the explanatory note that the driver was not included in the compulsory insurance was incorrect (at paras. 45 and 68 of the judgment).

[10] The term appears in s. 74(1), which inserted a new provision into s.1 of the Assurance Companies Act 1909, but in the context of defining the scope of that Act. Even then, it defined *'mechanically propelled vehicle insurance'* as *'including'* but not comprising the insurance of *'third party risks'*.

69. Moreover, even if EU law required the member states to exclude liabilities to drivers from the scope of the compulsory insurance obligations, I cannot see how the word '*driver'* in Article 12(1) of the 2009 Directive could on any version of the law be said to include a person who had been driving but who had ceased that activity, had alighted from the vehicle and injured themselves in the course of a non-driving related use. Everything comes back to the fundamental point I have already made : I can see no basis on which s. 56 could be construed so as to exclude liabilities to a person simply because they were a '*user'*, irrespective of what EU law required. It quite clearly follows from the decision of the CJEU in *Smith v. Meade* Case C-122/17 ECLI:EU:C:2018:631 that in a dispute between private parties where a national court is not in a position to disapply national law so as to render it compliant with EU law, that court is not obliged to disapply those provisions of national law or a clause to be found, as a consequence of those provisions of national law, in an insurance contract. In those circumstances, there is no point in referring these issues to the CJEU.

70. So, and in summary, while Mr. Moore could not maintain an action for damages for injuries wholly caused by his own negligence, the legislation does not exclude the possibility of two users of a motor vehicle and, in that context, there is nothing in the text of s. 56(1) to justify the conclusion that where one user is injured as a result of the negligence of another user, the resulting liability will fall outside the terms of s. 56(1) of the RTA if the conditions otherwise provided for in that provision are met. I cannot see how Mr. Moore could be described as '*the driver*' of the vehicle at the time of the accident giving rise to these proceedings, and the terms of s. 56(1) are such that even if Article 12(1)

mandated that a liability to a *'user'* be excluded from the compulsory insuring obligation, the Court could not construe the provision so as to exclude a liability to Mr. Moore from its terms.

A body corporate as a 'user'

71. S. 56(1) is directed to '*[a] person (in this subsection referred to as the user*)'. The combined effect of ss. 4 and 18(c) of the Interpretation Act 2005 is that the word '*person'* where it appears in an enactment should be construed as including a body corporate *unless* the contrary appears in the enactment itself. In deciding whether the contrary appears in an enactment for this purpose, the Court is not confined to identifying an express disapplication of s. 18(c), but should have regard to the overall substance and tenor of the statute in question with a view to determining whether the application of the provision in issue to a body corporate would be consistent with the parliamentary intent as evident from the legislation as a whole (*Friends of the Irish Environment v. The Legal Aid Board* [2023] IECA 19).

72. It will be seen from my earlier consideration of the judgment of Allen J. that the Court of Appeal was strongly influenced in its conclusion that a '*user'* did not include a body corporate by the fact that a company, as a legal person, was incapable of driving or otherwise using a vehicle other than through the agency of a human person. However, as I have earlier explained, the word '*user'* as it appears in the legislation must be construed broadly, and includes not merely driving but any act of control, management or operation. There is no particular

reason why a company may not control, manage or operate a vehicle. The fact that – as with any activity – it may only do so via the agency of a natural person does not in itself afford a basis for concluding that the substance or tenor of the legislation suggests that the Oireachtas intended that only a natural person could be a user for the purposes of s. 56. That is the conclusion that has been reached in other jurisdictions (see for example *John T. Ellis v. Hinds* [1947] 1 KB 475, *Briggs v. Gibson's Bakery Ltd.* [1948] NI 165 and *Turnbull v. MNT Transportt (2006) Ltd.* [2010] CSOH 163, [2011] SLT 650).

73. The real issue, it seems to me, is not as much whether a body corporate can be a '*user'* as whether any person (legal or natural) can be a '*user'* through the agency of another. If the answer to that question is in the negative, then a body corporate is not within s. 56(1) because a legal person can, obviously and by definition, only act through the agency of a natural person. But if the answer to that question is that in at least some circumstances the actions of a person who is (to adopt a word appearing in a number of provisions of RTA and stressed by Zurich) '*actually'* using a vehicle can through legal theories of attribution or agency render another person a '*user*', then the fact that the user by attribution is a body corporate is neither here nor there. To take this case, had URRL otherwise been a user of the vehicle for the purposes of s. 56 because, for example, the acts of its employees where undertaken in the course of their employment were attributed to it, it would be strange if it was not a user because it was a body corporate, but would have been a user had it been a sole trader or partnership. Viewed this way, the '*body corporate'* issue was a somewhat confusing diversion. The question was not whether a body corporate could be

a user through the intervention of s. 18(c) of the Interpretation Act 2005, but whether '*use'* could arise through the actions of another. If it could, URRL could be a '*user'*, while if '*use'* could never arise vicariously or by attribution, a body corporate could never be a user. To frame that issue by reference to whether a body corporate could be a user, was to put the question the wrong way.

An employer as 'user'

74. The question, in turn, of whether one person can, under the RTA, be a '*user'* not through their own actions but through those of another was the most closely debated issue in the course of argument in this case. There are two ways of looking at the question. Viewed one way (and this, essentially, was Zurich's argument and the view adopted by the Court of Appeal), '*use'* as the term is employed in the RTA is focussed on the actions or omissions of a person who themselves are in personal control of the vehicle – the '*actual'* user. Zurich pointed to – and derived considerable support from – various provisions of the RTA which strongly suggest that the legislature drew a distinction between a '*user'* and the '*owner',* a '*user'* and '*the insured'*, and a '*user'* and '*some other person who would be liable for the injury caused'*. Those distinctions, it was said, supported the proposition that s. 56(1) focussed on the '*use'* of the '*actual user'* with other provisions being specifically tailored so as to ensure that the insuring obligation, liability for wrongdoing and ability to recover against an insurer, were operative in respect other persons on whose behalf the vehicle was being used. To these textual considerations might be added the fact that s. 56(1)

describes the elements of a criminal offence that, of course, a provision imposing criminal liability will in ordinary course be construed strictly and that (or at least so it might be contended) if one person is to face criminal liability for the acts of another in '*using'* a motor vehicle, that is something that should be stated with clarity.

75. However, if '*use'* in s. 56(1) has the meaning suggested by Zurich, it seems to me to be quite clear that the provision does not fully implement the 2009 Directive. This follows from the expanded meaning afforded to '*use'* by the CJEU, the fact that s. 56(1) only requires that there be insurance to cover negligence (or, perhaps, other wrongdoing) by a '*user*' and the consideration that there are civil liabilities arising from the '*use'* of a motor vehicle that may arise where the '*actual'* user is not negligent or involved in any type of wrongdoing at all. The facts of this case show how this might happen. If Mr. Moore was not himself negligent in the manner in which the lifting mechanism was operated, if the failure of the mechanism was attributable to negligence on the part of another employee of URRL who was not actually using the vehicle, and if a pedestrian had been injured as a result of the mechanism collapsing, then on Zurich's construction, there would have been no compulsorily insurable liability in play. There would have been a non-wrongdoing user (Mr. Moore), and a wrongdoing non-user (URRL or the other employee), but no person wrongfully using the vehicle in the manner provided for in s. 56(1). Similar examples can be imagined: an employee who drives a vehicle unaware that it suffers from a defect may themselves not commit a wrong even if the defect in the vehicle results in an accident in which a third party is injured, but if another

employee who is not a user created or is aware of the defect their common employer is a wrongdoer. If s. 56(1) does not allow the '*use*' of the employee to be attributed to the employer, liabilities of this kind are outside s. 56(1) because the user is not themselves a wrongdoer. This is the case even though they may result in injury for which there is civil liability.

76. The resulting difficulty can be avoided if s. 56(1) is read so that '*use'* can be attributed from employee to employer. Then, the employer is the user through their employee where the latter is acting in the course of his employment, and is within the scope of the provision on the theory that the employer was '*using'* the vehicle through the various employees who were operationally in charge of it and was negligent because through the attributed knowledge of those employees or other employees it knew or ought to have known that it was unsafe to use the vehicle in that way. This means that s. 56(1) must be construed so that '*use'* of a motor vehicle can be either actual, or can be attributed to an employer by the actions of their employee. While it is accordingly unnecessary to delve into whether, but for the breadth of the insuring obligation imposed by EU law, s. 56(1) would be properly construed as having this effect, the following shows both the strength of the argument against Zurich's interpretation of s. 56(1), and why this construction is not *contra legem*.

77. First, this does not do any violence to the language of s. 56(1) itself. Given that '*use'* involves '*controlling, managing or operating'* a vehicle, and given that by definition an employee who is driving a motor vehicle in the course of their employment is under the control of their employer, it seems reasonable to

propose that this latter element of '*control'* will satisfy the requirement of '*use'*. This is the view taken in one of the texts quoted in the Court of Appeal judgment: not merely is it the case, it is said, that the word use '*implies an element of controlling, managing or operating the vehicle'* but it does not include '*use'* as a passenger '*unless the latter owns the vehicle, or is the driver's employer or is controlling and enjoying the use of the vehicle for his own purposes'*.[11]

78. Having regard to the references throughout the Court of Appeal judgment to *vicarious* liabilities it should be stressed that treating an employee's use of a vehicle as the use of the employer where undertaken in the course of their employment does not involve any '*vicarious'* element. Vicarious liability arises where an employee's *liability* is also imposed upon the employer who thereby comes under what Allen J. correctly described as a '*secondary'* liability to the victim of the wrong. What happens here is quite different: as explained in one of the texts in the similar context of a non-driving owner in English law: '*[t]his is not a case in which the owner is using the vehicle vicariously through someone else who is driving it, because he is regarded as using the vehicle directly'* (Gürses *The Law of Compulsory Motor Vehicle Insurance* at para. 5.63). The fact that any *liability* of the employer may be vicarious, does not exclude the prospect that the employer is viewed in law as using the vehicle through the actions of his employee. This is thus a straightforward issue of attribution according to the law of agency – of one person's actions being attributed to, and treated in law as the actions of, another for the purposes of a

[11] Buckley *Insurance Law* (5th Ed. 2022) at para. 15-112.

statutory provision which prohibits a certain action ('*use'*) in certain circumstances (when the vehicle is not insured), where the employer may not have personal involvement in the former, but will have control over the latter. The question of whether the actions of an agent should be treated as those of the principal depend on the rule in issue and, where that rule derives from a legislative provision, '*the question is one of construction rather than metaphysics'* (*Meridian Global Funds Management Asia Ltd. v. Securities Commission* [1995] 3 All ER 918 at p. 927 per Lord Hoffmann). Understood in this way the issue is not complicated and demands only a conventional exercise in statutory interpretation.

79. The English cases show how similar provisions have been construed in precisely that way. The law in that jurisdiction is summarised in Merkin *The Law of Motor Insurance* (2nd Ed. 2015) at para. 5-69:

> '*The general effect of the authorities is that the employer of the driver is to be regarded as the user of the vehicle as long as the employee is acting in the ordinary course of his employment even though he may at the relevant time be acting in breach of his employer's instructions.'*

80. The reason for this is explained in *Wilkinson's Road Traffic Offences* (29th Ed. 2019) at para. 10-49:

> '*An employer, whether or not in a vehicle as a passenger, would normally retain control, management or operation of the vehicle when*

it was being used on his business with his permission and would therefore be using it for the purposes of s. 143 as well as the driver.'

81. As counsel for RSA stressed in the course of his argument, the provisions with which the English cases were concerned contained two prohibitions – '*use*', and '*causing or permitting use'* (and indeed employees are in that jurisdiction – except when they are passengers – expressly excluded from the road traffic insuring obligation, there being separate obligations there to have employer's liability insurance in place[12]). However, these differences are not material to the conclusion that an employer can use a vehicle through the actions of their employee.

82. While there are earlier decisions in which an employee's use was either said or held to be that of his employer (see for example *John T. Ellis Ltd. v. Walter T. Hinds* [1947] KB 475 at p. 484, and *James and Son Ltd. v. Smee* [1955] 1 QB 78), *Windle v. Dunning & Son Ltd.* [1968] 1 WLR 552, upon which RSA placed some reliance, is the focal point for the modern law in the United Kingdom. There, Lord Parker CJ said that the word '*using' 'may also cover the driver's employer if he, the driver, is about his master's business'*. The subsequent repetition of that statement in *Carmichael and Sons Ltd v. Cottle* [1971] RTR 11 resulted in this being accepted as the law in *Crawford v. Haughton* [1972] 1 WLR 572 at p. 576 where it was decided that the principle was limited to a

[12] Section 36(1)(b) of the Roads Act 1930 expressly provided that a policy was not required to cover liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment, and see *Lees v. Motor Insurers' Bureau* [1952] 2 All ER 511.

driver and owner in an employer/employer relationship and could not be extended to a person who drives on foot of a specific direction from the owner. The reason for this conclusion is presented shortly in the English cases: in common parlance, Parker J. said in *James & Son Ltd. v. Smee* a master uses a vehicle if his servant does so on his business (at p. 90). The English cases, I think it fair to say, operate on the basis that this is a self-evident proposition.

83. Second, while statutory provisions creating criminal liability must be strictly construed, in a context in which the offence provided for under s. 56(1) involves not merely use, but also the failure to obtain insurance to cover *and* use, there is no particular injustice entailed by construing the provision so that it covers an employer who has not insured a vehicle which is used by an employee in the course of the employer's business. The offence, it is to be noted, is viewed as one of absolute liability, subject to the statutory defences to which I have referred (*Morris v. Williams* (1952) 50 LGR 308, *R (Chaplin) v. Wood Green Crown Court* [2012] EWHC 3773). While I have observed that the provisions under consideration in the English cases I have noted differ from s. 56(1), the rationale adopted in those cases transfers easily over to s. 56(1): if use involves management and control, where an employee – who is by definition under the control of their employer when working for that employer – is using a vehicle in the course of their employment for and on behalf of their employer, then the employer is using the vehicle.

84. Third, the scheme of the RTA is not inconsistent with this conclusion. Zurich pointed to other provisions of the RTA which, it was said, implied that one

person's driving could not be another's '*use',* emphasising in particular the distinction drawn in a number of provisions between the *owner* of a vehicle, and the *user.* However, Zurich fell into error in this regard in failing to distinguish between the *statutory* vicarious liability of the *owner* of a vehicle for the acts of a person driving it, and the *common law* vicarious liability of an *employer* for the actions of its employee (which may include driving a vehicle owned by the employer). This difference is key: an employer is liable in law for the acts and omissions of an employee if undertaken in the course of their employment, but the owner of a motor vehicle is not, by reason of ownership alone, liable at common law for the negligent driving of the vehicle, even if the driver has been permitted by the owner to use the vehicle. It is for that very reason that the English courts have found themselves drawing a not entirely happy distinction between an owner who is a passenger in a vehicle who has, as the cases I have referred to earlier show, been treated as a user, and an owner who does not have the same close connection to the management of the vehicle.

85. Fourth, it is for this reason that the legislature has intervened through various provisions of the RTA to render the owner liable for the negligence of a driver they have authorised to use the vehicle and from there, has compelled the owner to insure against negligent driving in these circumstances. I have noted earlier that s. 56(3) states:

> '*Where a person contravenes subsection (1) of this section, he and,* ***if he is not the owner of the vehicle, such owner*** *shall* ***each*** *be guilty of an offence …'*

(Emphasis added)

86. Section 56(1) thus prohibits use without insurance subject to the conditions identified there, while s. 56(3) prescribes that an offence is committed by the *user* and by the *owner* of a vehicle where that prohibition is breached. Both provisions fall to be understood by reference to s. 56(5):

> '*Where a person charged with an offence under this section is the owner of the vehicle, it shall be a good defence to the charge for the person to show that the vehicle was being used without his consent and either that he had taken all reasonable precautions to prevent its being used or that it was being used by his servant acting in contravention of his orders.'*

87. The combined effect of these provisions is (i) that the person who uses a mechanically propelled vehicle without the required insurance commits an offence if the conditions otherwise specified in s. 56(1) are present, (ii) that the person who owns the vehicle also commits such an offence, but (iii) that it is a defence to a charge for the latter offence for the owner to establish that the vehicle was being used without his authority. This ties in to s. 118 which attributes the actions of a user to the owner:

> '*Where a person (in this section referred to as the user) uses a mechanically propelled vehicle with the consent of the owner of the vehicle, the user shall, for the purposes of determining the liability or*

non-liability of the owner for injury caused by the negligent use of the vehicle by the user, and for the purposes of determining the liability or non-liability of any other person for injury to the vehicle or persons or property therein caused by negligence occurring while the vehicle is being used by the user, be deemed to use the vehicle as the servant of the owner, but only in so far as the user acts in accordance with the terms of such consent'.

88. Zurich argued that these provisions showed that the legislature had differentiated between the owner of a vehicle on the one hand, and the user, on the other, the point being that the liabilities of each were separately provided for. While this is true as between '*owner'* and user, and while this distinguishes the legal regime here from that in England as considered in a number of the authorities from that jurisdiction to which I have earlier referred – the position of an employer is different. If an employer is a '*user'* it is because it controls the vehicle at the relevant time through its employee who is acting as its agent and on its behalf. That cannot be said to follow in the same way in the case of an owner. Thus, while fully acknowledging that the employer will often (but not necessarily always) be the owner of the vehicle being driven by an employee in the course of their employment, these provisions are not dispositive of the legislative intent insofar as relevant here. It makes sense that the Oireachtas would wish to specifically render the owner of a vehicle liable for the negligent driving of that vehicle by a person they have authorised to use it but the fact that it did this expressly does not necessarily mean that an employer whose employee uses the vehicle is not themselves a user by virtue of the control they

exert over the employee while acting in the course of their employment and the capacity in which the employee acts on behalf of their employer.

89. Finally, I think it of some importance that there there are a number of provisions in RTA which refer to an '*actual user'* (s. 19(1)(a) and s. 69(1)(a)) or '*actually using'* (s. 69(2)(a), s. 72(1), s. 72A and s. 107(4)(a), (b) and (c)) when the legislature wishes to address the person who was, at any particular point in time, personally managing or controlling the vehicle. While Zurich was inclined to refer to some of these to support the argument that in fact *all* references to '*user'* (or at least the references in s. 56(1)) were to the person '*actually using'* the vehicle, they seem to me to point to the opposite conclusion. At the very least, they show that s. 56(1) is capable of accommodating use by attribution, and use by an employer through the actions of its employees in the course of their employment is a quintessential example of this. There is nothing in the legislation to suggest that the Oireachtas intended to outrule this.

The negligence, and the cause of the accident

90. These conclusions highlight a difficulty in this case to which I have alluded earlier: the Special Case does not identify any basis on which the Court can decide if URRL was in fact negligent or, insofar as it arises under s. 56, otherwise a wrongdoer under a liability to Mr. Moore. The Court only has the claim as formulated by Mr. Moore. If that claim were to be established in full, then it would seem to follow from the analysis earlier in this judgment that URRL's liability to Mr. Moore could fall within s. 56(1). It was URRL's

employees who caused or permitted Mr. Moore to operate the bin and it is Mr. Moore's claim that they did this when it was not safe and/or when some feature of the training or equipment provided to him was defective or deficient. That, if established, would appear to have been a negligent use of the vehicle by URRL.

91. At the hearing of this appeal, Zurich adopted the position that it was a matter for RSA to prove that the injuries to Mr. Moore were caused by negligence within the meaning of s. 56(1), stressing that there was no evidence to that effect before the Court. However, if the Special Case did not disclose any basis on which it could be determined if there was a liability, it is hard to see what legal issues fell to be determined by the Court: s. 56(1) assumes an identifiable liability and the Special Case procedure is only available to decide issues of law, not to adjudicate upon contested questions of primary fact. Moreover, Zurich also affirmatively asserted that the injuries were caused by Mr. Moore's own negligence, although there was no evidence of any kind before the Court to support that claim either. Zurich put the matter in its submissions as follows:

> *'Logic dictates that absent a defect in the vehicle (and it is accepted that there is no such defect) that the accident to Mr. Moore probably had been caused as a result of his own negligence; or, alternatively, by reason of Urban's failure, as his employer, to properly train him in the lifting operation and/or to comply with the voluminous statutory documentation which is required by the Health and Safety legislation and/or a combination of both types of negligence'*.

92. Although it was suggested to RSA's counsel in the course of the hearing before this Court that the matter should be approached on the basis of the liability as Mr. Moore alleged it to be, he expressly stated that he did not '*necessarily go so far as to say that Mr. Moore's pleadings determine the issue'*. Moreover, although those pleadings at the very least leave open the prospect that Mr. Moore was asserting that the loading device was defective, RSA has specifically disavowed any such allegation: in its written submissions to this Court, RSA said that its case '*is not predicated on a finding that there was a defect in the Recycling Truck (as opposed to, say, the Bin*)'. The basis for this distinction between a defect in the truck and a defect in the bin is unclear: in its submissions RSA suggested that the fall of the bin '*might be attributable to, say, defect in or damage to, the Bin'*, although why this – but not the possibility that the vehicle was defective – was being proposed, is not obvious.

93. In the High Court, Reynolds J. attached importance to the manner in which Mr. Moore had framed his claim, while in the Court of Appeal Allen J. was of the view that the pleadings in Mr. Moore's case were of little relevance. However, the parties agreed to append these pleadings to the Special Case: Order 34 Rule 1 makes it clear that once so appended the parties are at liberty to refer to the whole contents of such documents and '*the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether or fact or law, which might have been drawn therefrom if proved at trial'.* Moreover, while the parties did not put any evidence before the Court that would have allowed it to determine how, as a matter of fact, the injuries sustained by Mr. Moore were caused, on at least one construction the Special

Case asked the Court to determine the legal issues identified there on the basis of what Mr. Moore claimed had happened ('*in respect of his claim in the underlying personal injuries proceedings'*). It is to be recalled that s. 56(1) requires insurance only in respect of specified liabilities, and it might be thought that the parties could not properly have proceeded by way of a Special Case at all if their proceedings required a determination of how the accident occurred, this of course being heavily dependant on questions of fact.

94. Notwithstanding the foregoing, the parties were in a position to identify the essential issues of law between them and the Court has been in a position to resolve those issues insofar as relevant to the questions framed in the Special Case. *If* Mr. Moore's injuries were caused wholly by his own negligence or other wrongdoing, s. 56(1) is not engaged for the simple reason that URRL faces no liability of any kind in that situation. Nonetheless, URRL was a '*user'* of the vehicle at the time the injuries were sustained by Mr. Moore insofar as the vehicle was being used on its behalf and on its business by its employees. The accident occurred in the course of that use. *If* Mr. Moore's injuries were caused by the negligence of URRL or of any person for whose acts or omissions URRL was liable, and *if* that wrongdoing rendered URRL's use of the vehicle at the time of the accident '*negligent'*, then URRL's liability to Mr. Moore was captured by s. 56 of the RTA. Having thus answered those legal questions in favour of RSA and against Zurich, it is a matter for the parties to proceed to agitate in these proceedings the application of those findings to their respective policies of insurance as they think appropriate.

The second alleged basis for Zurich's liability

95. The operative part of the Zurich policy is framed broadly and provides an indemnity for liabilities on account of death or bodily injury to any person or damage to property '*caused by or in connection with any motor vehicle described in the schedule for any one accident or a series of accidents arising out of one event*.' On its face, this is sufficiently wide to meet a liability of Zurich for Mr. Moore's claim, as he has presented it. However, excluded from this is a liability for bodily injury to any person '*driving the vehicle or in charge of the vehicle for the purposes of driving*' or '*any passenger being accommodated in or on the vehicle'* those exclusions in turn being subject to a exception: '*except so far as is necessary to meet the requirements of the Road Traffic Acts*'. Mr. Moore could not be said to have been '*driving the vehicle'* at the time of the accident: the language clearly, and it must be assumed deliberately, framed the exclusion by reference to an activity, not a status, and Mr. Moore was not engaged in the activity of driving at the relevant time. A reference to a person driving is to one who had control over the driving mechanisms of the truck, the term properly describing the use of the driver's controls to direct the movement of the vehicle (see *R. v. MacDonagh* [1974] QB 448). This, as it happens, mirrors the conclusion I have suggested earlier as to the proper construction of Article 12(1) of the 2009 Directive.

96. Allen J., without expressing a view as to whether Mr. Moore had been driving the vehicle, found that he was '*in charge for the purposes of driving'* at the time of the accident. A substantial body of case law has developed here and in the

United Kingdom around the meaning of this phrase, which appears in certain provisions of the road traffic legislation in both jurisdictions. While noting that some of these decisions have arisen from provisions creating criminal offences, I think that the following can be said:

(i) The question of whether a person is '*in charge of'* a motor vehicle for the purposes of driving is a question of fact and degree, the phrase having a connotation of possession or control over that vehicle or being in a position to exercise such possession or control (*Director of Public Prosecutions v. Byrne* [2001] IESC 97, [2002] 2 IR 397 at p. 405).

(ii) Whether or not there is such possession or control in a given case is ultimately dependent upon the extent of the connection at a particular point in time between the person in question and the vehicle (*Director of Public Prosecutions v. Watkins* [1989] RTR 324 at p. 329). This will normally involve a close temporal and geographic connection between the driver and the vehicle (and see *Director of Public Prosecutions v. Stewart* [2001] IEHC 62, [2001] 3 IR 103).

(iii) Generally, a person who has been driving a vehicle will remain in charge for the purposes of driving until they have either put the vehicle in the charge of another person, or relinquished their charge over the vehicle (*Director of Public Prosecutions v. Watkins* at p. 331).

(iv) In deciding whether a person has relinquished charge for these purposes, the Court should address whether the person ceased to be in actual control and whether there is a realistic prospect of his or her resuming actual control (see the approval by Murray J. (as he then was) in *Director of Public Prosecutions v. Byrne* of *Director of Public Prosecutions v. Watkins*).

97. For present purposes, it can be said that in the case of a person such as Mr. Moore who had, undeniably, been at one point in charge of the vehicle, one of two things has happened. Either they remained in charge absent someone else assuming charge, or they have so removed themselves in time and place from the vehicle that they are no longer in charge.

98. I agree with the conclusion reached by Allen J. that on the facts included in the Special Case, Mr. Moore remained in charge for the purposes of driving. This, it must again be stressed that it did not mean that he was the driver – which, as I have explained, he was not. It is a consequence of two principal considerations. First, Mr. Moore was, clearly, in charge while he was driving and there is no evidence that he relinquished that charge to anyone else. Second, he remained in close proximity to the vehicle being – as everyone agreed – a user of it.

99. Insofar as RSA relied upon the decision of Costello P. in *Lynch v. Lynch* [1995] 3 IR 496 that was, I think, clearly distinguishable. There, the plaintiff had been driving in her father's car which she parked, applying the handbrake. She left

the car, and was injured when the vehicle moved, pinning her to the wall of a building. In rejecting the submission that the plaintiff had been the person in charge of the vehicle for the purposes of driving (and thus excepted from the insurance obligation as the law then stood), Costello P. stressed that the plaintiff had left the vehicle and was, at the time of the accident, no longer in charge of it. However, putting to one side the fact that Costello P. was concerned with a specific statutory provision in a particular factual context which involved a defect in the vehicle, in that case the plaintiff did not maintain any superintendence over the vehicle at the time of the accident: she had exited, parked and moved away from the car. In this case, by contrast, Mr. Moore moved from one use of the vehicle (driving it) to another (operating the lift mechanism). He remained '*in charge'* in a context where he was using the vehicle, and remained '*in charge for the purposes of driving'* in circumstances where he had immediately before the accident been driving the vehicle and in which it was never suggested that anyone else was going to drive the truck when the lifting operation had ceased.

Conclusion

100. I have found in this judgment that Zurich's contentions as to the proper construction of s. 56 RTA are not well-founded. The mere fact that a person is the user of a motor vehicle does not mean that a liability to them arising from the use of the vehicle by another user is outside the scope of the insuring obligation provided for in s. 56 RTA. URRL as a body corporate is not for that reason alone incapable of being a user of such a vehicle. And it is possible for

an employer – in this case URRL – to '*use'* a vehicle through the actions of its employee undertaken in the course of that employee's employment.

101. It has accordingly been possible to resolve these issues of law by reference to ordinary principles of statutory construction found in our domestic law. While I am conscious that the potential influence of the 2009 Directive has never been far from this case, it has nonetheless not been necessary for me to rely on its terms for the conclusions which I have reached in this particular case by reference to these particular facts.

102. This means that it has been possible to resolve those issues of law without making a reference to the Court of Justice of the European Union. I am, of course, conscious in this regard of the particular obligations of the Court in the light of Article 267(3) TFEU having regard to the decision in the *Consorzio Italian Management and Catania Multiservize* Case C-561/19 ECLI:EU:C:2021:799 (and more recently *Commission v. United Kingdom* Case C-516/22 ECLI:EU:C:2024:231). To that extent it should be observed that there are significant issues around the extent to which s. 56 faithfully implements the relevant EU obligations, including the requirement it seems to impose that the use to which it refers occur in a public place and its apparent limitation to liabilities in negligence. Moreover, it is notable that while the Directive allows (and on one view at least, requires) member states to exclude liabilities to a driver from compulsory motor insurance, s. 56(1) does not expressly so provide. However, it has been possible to resolve the issues of law arising in this case without deciding these questions, and the Court having construed s. 56 as it has,

it is now a matter for the parties to apply that construction as they see fit in the plenary action in which this Special Case was formulated.

103. That said, it seems appropriate to draw the attention of the legislators to the fact that if s. 56 does not properly implement EU law in the field of compulsory motor insurance and if it is not possible to construe the section so as to align it with those obligations, the effect may be to expose the taxpayer to the cost of compensating the victim of an accident in circumstances in which that cost was intended to be, and might be said to properly be, the obligation of a motor insurer. This is the consequence of the decision in *Smith v. Meade* to which I have earlier referred. It might be thought that the difficulties in implementation to which I have referred in this judgment, and indeed the manifold issues that have surfaced over the past three decades with the State's compliance with its EU obligations in the field of compulsory motor insurance arise, at least in part, because the State has relied in purportedly discharging those obligations on statutory provisions that did not have EU law in view when enacted. It might also be thought that continuous piecemeal changes to those provisions increase the risk of further non-compliance, and that a complete and coherent legislative overhaul of the compulsory motor insurance obligation, is long overdue. Unless and until this happens, the taxpayer will remain exposed to the risk of findings of non-compliance with the State's obligations under EU law, and to a wholly avoidable exposure to claims for damages arising from losses that might be viewed as properly the responsibility of those who have underwritten policies of motor or other insurance.

104. I also think it important to observe that when they sought to invoke the Special Case procedure provided for in Order 34 of the Rules of the Superior Courts, the parties could not have expected the Court to resolve disputed issues of fact. Here, I have answered those questions of law that appear to me arise from the agreed facts. Those findings of law are necessarily contingent. *If* Mr. Moore's injuries were caused wholly by his own negligence or other wrongdoing, s. 56(1) is not engaged for the simple reason that URRL faces no liability of any kind in that situation. Nonetheless, URRL was a '*user'* of the vehicle at the time the injuries were sustained by Mr. Moore insofar as the vehicle was being used on its behalf and on its business by its employees. It is clear that the accident occurred in the course of that use. *If* Mr. Moore's injuries were caused by the negligence of URRL or of any person for whose acts or omissions URRL was liable, and *if* that wrongdoing rendered URRL's use of the vehicle at the time of the accident '*negligent'*, then URRL's liability to Mr. Moore was captured by s. 56 of the RTA. Having thus answered those legal questions in favour of RSA and against Zurich, it is a matter for the parties to proceed to agitate the application of those findings of law in these proceedings as they think appropriate.