



2 March 2016

PRESS SUMMARY

Cox (Respondent) v Ministry of Justice (Appellant) [2016] UKSC 10 *On appeal from [2014] EWCA Civ 132*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Dyson, Lord Reed, Lord Toulson

BACKGROUND TO THE APPEAL

The Respondent, Mrs Cox, worked as the catering manager at HM Prison Swansea. She was in charge of all aspects of the catering, including the operation of the kitchen producing meals for prisoners. She supervised prisoners who worked in the kitchen alongside other civilian catering staff. On 10 September 2007 Mrs Cox instructed some prisoners to take some kitchen supplies to the kitchen stores. During the course of this operation, one of the prisoners, Mr Inder, accidentally dropped a sack of rice onto Mrs Cox's back, injuring her. Mrs Cox brought a claim against the Ministry of Justice (MOJ) in the Swansea County Court. His Honour Judge Keyser QC found that Mr Inder was negligent, but dismissed the claim on the basis that the prison service, which is an executive agency of the Ministry of Justice, was not vicariously liable as the relationship between the prison service and Mr Inder was not akin to that between an employer and an employee. The Court of Appeal reversed the decision, finding that the prison service was vicariously liable for Mr Inder's negligence.

The question on the MOJ's appeal to the Supreme Court concerns the sort of relationship which has to exist between an individual and a defendant before the defendant can be made vicariously liable in tort for the conduct of that individual. This case was heard alongside *Mohamud v WM Morrison Supermarkets plc* [2016] UKSC 11 which addresses the question of how the conduct of the individual has to be related to that relationship, in order for vicarious liability to be imposed on the defendant.

JUDGMENT

The Supreme Court unanimously dismisses the Ministry of Justice's appeal. Lord Reed gives the lead judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Lord Reed gives guidance on the sort of relationship which may give rise to vicarious liability. In *Various Claimants v Catholic Child Welfare Society* [2012] UKSC 56, ("the *Christian Brothers* case"), Lord Phillips mentioned five factors which make it fair, just and reasonable to impose vicarious liability on a defendant, where the defendant and the tortfeasor are not bound by a contract of employment [19]. Lord Reed explains that these five factors are not equally significant. The first factor, that the defendant is more likely to have the means to compensate the victim and can be expected to have insured against vicarious liability, is unlikely to be of independent significance in most cases [20]. The fifth factor, that the tortfeasor will have been under the control of the defendant, no longer has the significance it was sometimes considered to have. In modern life, it is not realistic to look for a right to direct how an employee should perform his duties as a necessary element in the employment relationship [21]. The remaining three factors are inter-related. These are (1) the tort will have been committed as a result of activity being taken by the tortfeasor on behalf of the defendant; (2) the tortfeasor's activity is likely to be part of the business activity of the defendant; and (3) the defendant,

by employing the tortfeasor to carry on the activity, will have created the risk of the tort committed by the tortfeasor [22]. A relationship other than one of employment is in principle capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the defendant's business and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to that individual [24].

The general approach described in *Christian Brothers* is not confined to a special category of cases, but provides a basis for identifying the circumstances in which vicarious liability may in principle be imposed outside employment relationships. It extends the scope of vicarious liability beyond the responsibility of an employer for the acts and omissions of its employees in the course of their employment, but not to the extent of imposing such liability where a tortfeasor's activities are entirely attributable to the conduct of a recognisably independent business of his own, or of a third party. This enables the law to maintain previous levels of protection for the victims of torts, despite changes in the legal relationships between enterprises and members of their workforces which may be motivated by factors extraneous to the enterprises' activities or attendant risks [29]. The defendant need not be carrying on activities of a commercial nature. The benefit which it derives from the tortfeasor's activities need not take the form of a profit. It is sufficient that there is a defendant carrying on activities in the furtherance of its own interests. The individual for whose conduct it may be vicariously liable must carry on activities assigned to him by the defendant as an integral part of its operation and for its benefit. The defendant must, by assigning those activities to the tortfeasor, have created a risk of his committing the tort [30]. A wide range of circumstances can satisfy those requirements, and defendants cannot avoid vicarious liability on the basis of arguments about the employment status of the tortfeasor [31].

Prisoners working in kitchens are integrated into the operation of the prison. The activities assigned to them form an integral part of the activities the prison carries on in the furtherance of its aims, in particular the provision of meals to prisoners. The fact that these aims serve the public interest is not a bar to the imposition of vicarious liability. The prison service places these prisoners in a position where there is a risk that they may commit a variety of negligent acts in carrying out assigned activities, which is recognised by the provision of health and safety training. The prisoners work under the direction of prison staff. Mrs Cox was injured as a result of Mr Inder's negligence in carrying on activities assigned to him, and the prison service is therefore vicariously liable to her [32].

The MOJ's arguments that requiring prisoners to work serves the purpose of rehabilitation and that the prisoners have no interest in furthering the objectives of the prison service are rejected. Rehabilitation is not the sole objective. Penal policy also aims to ensure that convicted prisoners contribute to the cost of their upkeep. When prisoners work in the prison kitchen they are integrated into the operation of the prison, and their activities are of direct and immediate benefit to the prison service itself [34]. The fact that a prisoner is required to undertake work for nominal wages binds him into a closer relationship with the prison service than would be the case for an employee, and strengthens the case for imposing vicarious liability [35]. Payment of a wage is not essential for the imposition of vicarious liability [37]. Nor is it necessary for the prison to have an unrestricted pool from which to select a workforce. The prisoners who work in the kitchen are selected with particular care, having regard to the risks involved [38]. In cases where the criteria set out in *Christian Brothers* are satisfied, it should not generally be necessary to re-assess the fairness, justice and reasonableness of the result. The criteria are designed to ensure that vicarious liability is imposed where it is fair, just and reasonable to do so [41].

References in square brackets are to paragraphs in the judgment

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html