

VICARIOUS LIABILITY

PRINCIPLED EXPEDIENCY
SIMON DI ROLLO QC

THE CASES

- *Various Claimants v Catholic Child Welfare Society* [2013] 2 AC 1 (CHRISTIAN BROTHERS)
- *Cox v Ministry of Justice* [2016] AC 660 (COX);
- *Mohamud v Wm Morrison Supermarkets plc* [2016] AC 677 (MOHAMUD);
- *Armes v Nottinghamshire County Council* [2018] AC 355 (ARMES) ;
- *Various Claimants v Wm Morrison Supermarkets plc* [2020] 2 WLR 941 (MORRISON)
- *Various Claimants v Barclays Bank plc* [2020] 2 WLR 960 (BARCLAYS BANK).

REASONS FOR ACTIVITY

- ALLEGATIONS OF HISTORICAL SEXUAL ABUSE IN INSTITUTIONS INVOLVING MEMBERS OF RELIGIOUS ORDERS OR VOLUNTEERS
- SHIFT AWAY FROM CLASSIC EMPLOYMENT RELATIONSHIP

TWO QUESTIONS

- IS THE RELATIONSHIP ONE OF EMPLOYMENT OR SUFFICIENTLY ANALOGOUS TO EMPLOYMENT? (CHRISTIAN BROTHERS, COX, ARMES AND BARCLAYS BANK)
- WHAT IS THE CONNECTION BETWEEN THE IDENTIFIED RELATIONSHIP AND THE WRONGFUL ACT? (MOHAMUD and MORRISON)

FIRST QUESTION

“The result of this approach is that 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 business activities [*NB not necessarily of a commercial nature*] carried on by a defendant 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 the individual in question.

- Cox at paragraph 23

ANALAGOUS TO EMPLOYMENT

- RELIGIOUS ORDER (CHRISTIAN BROTHERS)
- PRISONERS WORKING IN PRISON (COX)
- FOSTER PARENTS (ARMES)

CONTRAST INDEPENDENT CONTRACTOR

- MEDICAL PRACTITIONER IN BARCLAYS
BANK

IN THE COURSE OF 'EMPLOYMENT'

- **“the wrongful conduct must be so closely connected with acts the employee was authorised to do that, for the purposes of the liability of the employer to third parties, it may fairly and properly be regarded as done by the employee while acting in the ordinary course of his employment.”**
- [See *Dubai Aluminium Co Ltd v Salaam* [2003] 2AC 366 at paragraph 23.]

SECOND QUESTION – CLOSENESS OF RELATIONSHIP TO WRONG

COMPARE

MOHAMUD

MORRISON

CONCLUSION

- EMPLOYMENT OR ANALAGOUS TO EMPLOYMENT V INDEPENDENT CONTRACTOR
- CLOSE CONNECTION TO FIELD OF ACTIVITY
- OPEN ENDED CONCEPTS WITH SCOPE FOR DIFFERENCE OF OPINION