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Employers' Liability Risk Fuelled by Petrol Station Blow-Up

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Back in 2014, ***UK*** Court of Appeal's decided ***Mohamud v. WM Morrison Supermarkets Plc*** . This case involved a customer Mr Mohamud who, while at a Morrisons supermarket petrol station, asked an employee, Mr Khan whether it would be possible to print some documents from his USB stick. Mr Khan, whose job was to see that the petrol pumps and the kiosk were kept in good running order and to serve customers, replied to this request using "foul, racist and threatening language" and ordered Mr Mohamud to leave. Mr Mohamud walked out of the petrol station but was followed by Mr Khan, who after telling Mr Mohamud never to come back, punched him in the head and knocked him to the ground. He followed this by subjecting Mr Mohamud to a "serious attack, involving punches and kicks" whist Mr Mohamud lay curled up on the floor. In carrying out the attack, Mr Khan ignored his supervisor who tried to stop the assault.

To the understandable chagrin of Mr Mohamud but the relief of employers everywhere, the Court of Appeal upheld the trial Judge's decision that Morrisons were not vicariously liable for Mr Khan's attack. It concluded that the fact that Mr Khan's employment involved interaction with customers was not enough to make his employer liable for his violence towards Mr Mohamud. However, this relief was short-lived. This month the Supreme Court overturned this decision and allowed Mr Mohamud's appeal, holding the employer vicariously liable for the attack after all, a mere 8 years after it took place. This is a more detailed update.

Mr Mohamud's representatives argued that the "close connection" test should no longer be applied and instead that "the time has come for a new test of vicarious liability". However, the Supreme Court rejected this argument and stated that it had to consider two matters:

1) what "field of activities" had been entrusted by the employer to the employee, or, in everyday language, what was the nature of Mr Khan's job? This question must be addressed broadly, it said; and

2) was there a sufficiently close connection between the position in which Mr Khan was employed and his wrongful conduct to make it right for his employer to be held liable?

Answering these questions, the Supreme Court held that Mr Khan's job was to attend to customers and respond to their inquiries. His conduct in answering Mr Mohamud's request, although inexcusable, was within the "field of activities" assigned to him and what happened thereafter was an "unbroken series of events".

Morrisons' representatives argued that when Mr Khan followed Mr Mohamud out of the booth at the petrol station, the significant connection between Mr Khan's employment and his behaviour towards Mr Mohamud ceased. However, the Court disagreed with this. In its opinion, it was not right to no longer regard Mr Khan as an employee the moment he stepped out of the cashiers' booth. Further, telling Mr Mohamud never to come back to the petrol station was an order to keep away from his employer's premises. This was a gross abuse of his position, but was in connection with the business in which he was employed to serve customers. As a result the Supreme Court concluded that Morrisons had entrusted Mr Khan with his position and so they should be responsible for his abuse of it. So what does this mean for vicarious liability?

Although the Court insisted that it was merely applying the well-established "close connection" test, this decision appears to widen significantly the range of circumstances in which this test will be satisfied, so making more employers liable for wrongdoing by their employees.

Until this decision, previous cases in which employers have been held vicariously liable have involved employments where there was a risk of conflict or dispute by the very nature of the role, for example, a nightclub bouncer attacking a customer or a carer abusing vulnerable adults. But Mr Khan was not given duties involving clear possibility of confrontation or placed in a situation where an outbreak of violence was likely. Therefore, the mere fact that his employment involved interaction with customers would not be enough on the existing law to make his employer vicariously liable.

However, it appears that following this new case, this *would* be enough and the overt scope for possible confrontation or violence is not needed. So long as interaction with a customer is within the "field of activities" assigned to the employee and the wrongdoing is part of an "unbroken sequence of events" that arises out of this interaction, the employer will be liable. This case also demonstrates that this could involve wrongdoing in a location outside the workplace if the conduct bears a sufficiently close connection with the job. Unfortunately the phrase "sufficiently close" now appears to mean "pretty much any".

This decision is significant for employers with employees in customer-facing roles, whether on the shop floor or hosting at an event. For these employees, interaction with a customer will likely be within the field of activities assigned, making their employer vicariously liable for almost any wrongdoing committed by them as part of this interaction with customers. So for any employer considering extra customer service training for its employees, now may be a good time! But remember that on these principles the determining question is the connection between the job and the wrongdoing. That seems not to leave any room for the employer to escape liability by training or warning the employee about that sort of behaviour.

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