

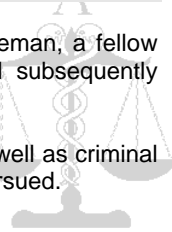
Stress

***Majrowski v Guy's and St Thomas' Trust* [2006] UKHL 34**

Should the employer be vicariously liable for the wrongs committed by the employee? Yes. Even if the wrong is criminal, a limit on vicarious liability would have to be explicitly stated in the statute.

In this case the claimant had been subject to harassment at the hands of Sandra Freeman, a fellow employee, according to an investigation conducted by the Trust. Mrs Freeman had subsequently resigned and in addition the claimant had been dismissed for unrelated reasons.

The claimant sought compensation under the 1997 Protection from Harassment Act. As well as criminal sanctions the Act provides that damages for anxiety and consequential losses may be pursued.



Section 3

(1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

Vicarious liability is a common law principle of strict, no-fault liability. Under this principle a blameless employer is liable for a wrong committed by his employee while the latter is acting in the course of his employment. Foreseeability is not an issue. It is no defence that the employer had taken all reasonable measures to prevent the wrong. The principle is implied in all statutes unless the statute specifically limits it.

There was no evidence that Parliament had intended to limit the scope of the Harassment Act. Quite the reverse, the same Act in Scotland had made reference to such a possible claim.

What is harassment? From the judgement:

18. '(1) A person must not pursue a course of conduct –

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.'

A course of conduct means two occasions or more. [and the same act applied once to two or more people.]

Much was made of the observation that other acts, relating to discrimination, did allow the 'employer's defence'.

The claimant was allowed to proceed on the grounds that vicarious liability was available.

Comment

Much has been made of the potential for this decision to open the floodgates. Their Lordships proposed that

Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2 [of the 1997 Act].

The harassment Act was originally designed to deter individuals and it could be argued that the individual should retain the risk if they choose to break the law. The usual position on illegal activity is that it is against public policy that this could be insured against. In this case though, their Lordships decided the victim of harassment should have access to compensation from the innocent employer.

No action was being taken by the claimant against Mrs Freeman.

