

*The Chartered Institute
of Loss Adjusters*



Out With the Old and In With the New

by the Liability SIG

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Craig Faulkner, Complex Loss Specialist, Cunningham Lindsey

Martyn Gabbitass, Technical Director, QuestGates



London Chambers
10.12.15

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Case Law Review 2015

Martyn Gabbitass

QuestGates





Liability Specialist Interest Group Case Law Review 2015

Martyn Gabbitass ACII ACILA
QuestGates
December 2015

Products Liability

Aspen Insurance UK Ltd v Adana Construction Ltd (CA 2015)

- Policy Liability
- Meaning of: 'Superstructure'
'Product'
- Insured responsible for installation of concrete base for crane on top of reinforced piles

Policy Liability

Maccaferri Ltd v Zurich Insurance Plc (QBD 2015)

- Notification condition precedent
- Court assesses: 'As soon as possible'
'Likely to give rise to a claim'
- Court also commented on extent of duty of inquiry placed on Insured

Occupiers Liability

Pollock v Cahill & Cahill (QBD 2015)

- Duty under S.2 of OLA 1957
- Concerns blind person falling from open bedroom window

Public Nuisance

Sanderson & Others v Sonae Industria (UK) Ltd (QBD 2015)

- Re: Group litigation
- 16,000+ Claimants
- Claims dismissed as symptoms did not amount to actionable personal injury
- Two of the 16,000+ cases referred to Solicitors Regulation Authority

Unfair Contract Terms Act 1977

St Gobain v Hillmead Joinery (Swindon) Ltd (TCC 2015)

- Limitation of Liability in standard limitation/exclusion clauses
- Discussion on unreasonableness
- NB: all cases involving UCTA reasonable test turn on own facts

Contract Terms (cont.)

Transformers & Rectifiers Ltd v Needs Ltd (TCC 2015)

- Battle of forms
- Longstanding trading history – 20 years
- Claimant's Orders – no reference to terms & conditions on face; reverse including small feint type but supplied on rare occasions
- Defendant aware of Claimant's T&C's
- Defendant never supplied T&C's to Claimant
- Court held binding contract between parties

NEC Contract

SSE Generation Ltd v Hochtief Solutions AG (Scots Law 2015)

- Joint Names Insurance
- Legal/contractual liability
- Contract trumps Policy

Fire & Causation

Graves v Brouwer (CA 2015)

- Escape of fire
- Number of possible causes
- Lack of critical information available to forensics
- Proof of causation
- Defendant careful/not negligent in starting, monitoring & extinguishing fire

Overhanging Trees: Local Authority

- General considerations
- Responsible Authority – ownership of tree vested
- Academic when tree planted
- Nuisance – correct tort
- Tree must obstruct free passage of vehicles/constitute danger to road users
- Not liable unless knew or ought to have known tree posed nuisance
- Capital Asset Value for Amenity Trees

Vicarious Liability

NA v Nottinghamshire County Council (CA 2015)

- Abuse of child by foster parents
- Relationship not akin to employment
- Local Authority do not owe non-delegable duty to child in foster care

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