

# OSH Principles in Case Law Precedents

# Still to do

- Check croner for case law and include info on damages
- Find case law on vicarious liability
- Check local cases and match to UK cases; check courts website for full Boyce case; include more recent cases

# English Case Law

- Wilsons & Clyde Coal Co Ltd vs English – Duty of Care; Vicarious Liability
- Edwards vs National Coal Board – Reasonably Practicable
- ?? - Vicarious Liability
  - Lynch vs Binnacle

## **Duty of Care –**

### **Wilsons and Clyde Coal Ltd vs English (1938) -**

Mr English was employed at Wilsons & Clyde Coal Co Ltd's coal mine. He was repairing an airway. While he was going to the pit bottom, the haulage plant was put in motion. He tried to escape through one of the manholes, but was caught by a rake of hutches and crushed between it and the side of the road.

His family claimed damages. The company claimed that Mr English's own negligence contributed to his death, because he should have told the person in charge of the machinery, or taken an alternative route.

# Duty of Care - Judgement

House of Lords held unanimously that an employer has a non delegable duty to create a safe system of work. Even if an employer gives that duty to another person, they still remain responsible for workplace safety.

The House of Lords held that the employer must provide:

- proper and safe plant and equipment
- safe systems of work, with adequate supervision and instruction
- safe premises, including safe access and egress
- safe and competent employees.

# **Reasonably Practicable - Edwards v National Coal Board (1949)**

Mr Edwards was killed when a section of underground roadway in a mine collapsed onto him while he was walking along it. The National Coal Board (NCB) held that the cost of shoring up the roadway would have been prohibitive and was therefore not justified.



The plaintiff was Edwards' widow. The case ended up in the Court of Appeal, which had to consider whether or not the NCB had discharged its duties under the Coal Mines Act 1911.

# Reasonably Practicable - Judgment

If it can be shown that there is a gross disproportion between them - that the risk is insignificant in relation to the sacrifice - then, and only then, will the defendants (in this case, the NCB) have discharged the duties imposed on them.

The quantum of risk test is a balancing act, with the degree of risk being placed on one side of the scales and the sacrifice involved in the control measures needed to avert the risk - that is, time, money and trouble - placed on the other side.

The Court of Appeal found for the widow, considering that the defendants had failed to establish their defence, as the risk far outweighed the sacrifice.

## Duty of care (*Donohue v Stevenson*)



Lord Atkin's :

“ You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then is law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my acts that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question.”

# Marshall vs Gotham

# Local cases