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workplace crime, negligence and risk transfer: *Mohamud v William Morrison Supermarkets plc*

Commercial businesses, "not-for-profit" ventures and public sector organisations all invest time, effort and financial resource in trying to minimise risk and to "control the controllables".

The Supreme Court has simplified the often conflicting judicial messages regarding an employer's liability for the actions of its employees. That decision will cause alarm for employers but give reassurance and encouragement to those suffering damage and injury at the hands of an employee committing a criminal or negligent act in their workplace.

Their Lordships have unanimously reversed what was a unanimous decision of the Court of Appeal. In doing so they heighten the potential for some entirely uncontrollable risks inherent within the "crooked timber of Humanity" being fixed on the employer.

At their worst, people can be unpredictable, reactive, hold bigoted opinions, have a tendency towards violence, and be entirely opaque about all of that, in such a way that an employer may have no reasonable expectation that they have employed a "ticking bomb" liable to go off when the wrong circumstances arise. The "wrong circumstances" arose for Mr Mohamud on the morning of Saturday 15 March 2008 when he filled his car with petrol at Morrisons in Small Heath and then asked the kiosk attendant whether he could print some documents from a memory stick.

Despite the attendant being employed to, "see that the petrol pumps and kiosk were kept in good running order and to serve customers", Mr Mohamud got an appalling answer and one which William Morrison would not have foreseen or regarded as any kind of fulfilment of the work that the attendant was being paid to undertake.

The abusive, violent, sustained and entirely unprovoked assault that ensued between the attendant and Mr Mohamud has been well documented. Despite it being obvious that the attendant was motivated by personal racism rather than a desire to benefit the employer's business, the Supreme Court has reaffirmed that wherever a "close connection" (in a broad sense of those words) exists between the tort that has been committed and the "field of activities" assigned to the employee by the employer, then the latter must bear the risk of such atrocities occurring.

A four hundred year old principle of "social justice" has been charted by their Lordships, suggesting their decision is nothing new on the common law landscape. Put very simply, "The employer and the victim are equally innocent but one of them has to bear the loss" and where an employee has "used or misused the position entrusted to him in a way which injured a third party", it will be fair that the loss falls squarely on the employer.

Employers and their insurers will need to give ever more rigorous consideration to:

1. The “field of activities” entrusted to the employee (defining their role in the broadest sense).

2. Whether a sufficiently “close connection” exists between the position in which the employee is employed and the wrongful act.

3. Whether it is then right for the employer to be held liable under the principles of “social justice” referred to above.

The answers to these questions may be difficult to fathom, as difficult as trying to assess where the next “ticking bomb” might be within an organisation, but the Supreme Court has eloquently expressed its appetite for social justice, applying the principle that he who stands to benefit from the enterprise should be ready to compensate the losses sustained by others as a result, even when they flow from the unknown quantity that is the “crooked timber of Humanity”.

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