REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-00083

Between

JEREMY BAPTISTE

Claimant

And

PARAMOUNT TRANSPORT & TRADING COMPANY LIMITED

Defendant

Before The Honorable Justice David C. Harris

Appearances:

Ms. Vasanti Maharaj **for the** Claimant

Ms. Amina Maaria Hasnain-Mohammed instructed by Ms. Melissa Sinanan **for the** Defendant

JUDGMENT

INTRODUCTION

1. The claimant was a trailer truck driver in the employ of the defendant, a limited liability company in the business of transport/trucking in January of 2013. On the 8th of January between the hours of 8 am and 9 am the claimant, outfitted in the required safety wear, including boots certified for use in an industrial work place, entered one of the administrative buildings of the company – building 2 – in the usual course of his business, when he slipped on a moist substance on the bamboo laminate floor and fell and injured himself. Thereafter certain processes were invoked pursuant to the company policy with respect to incidents and reports of incidents under the health and safety protocol, culminating in the preparation of an "employee statement"("**Report"**) signed

by the claimant and a "HSSE" officer. The statement itself, filled out by the company upon information provided by the claimant although providing for the slip, did not specifically refer to a moist substance on the floor. The statement referred to the incident as a "near miss", which according to the testimony of Mrs Michele George (ex-health and safety officer with the defendant), is the official company reference, which meant that the incident did not result in an injury. The claimant did not testify to having this understanding of the reference on the company 'employee statement' document ("**Report**"). The claimant had walked this corridor often times in the past and testified he had never encountered moisture on the floor or in any event never slipped before this occasion. On the evidence, it does appear that initially and on the surface, the claimant may not have appeared to have suffered an injury, over mere discomfort. However, he was in fact grievously injured internally.

2. The defendant's alternative explanation for the cause of the claimant's fall is to say that: **(i)** there was no substance on the floor in fact, and supports this contention having regard to their evidence of a proper maintenance routine; absence of reference to a *moist substance* in the employee statement ("**Report**"); observation of the scene after the incident by Mr Caracciolo and further; **(ii)** that the claimant was the author of his own mishap, in that in all the circumstances he failed to watch where he stepped and failed in all the circumstances take adequate care for his own safety.

3. In the end the only person who testified as a 'percipient' witness was the claimant himself. The evidence of the departmental manager, Mr Caracciolo, was after-the-fact. The moist substance upon which the claimant slipped could be a myriad of substances not least of which, common human experience would suggest; could have been common everyday substances such as water, juice etc. or cleaning substances, or could have emanated from the trucks – oil, grease, water and all the various substances associated with the defendant's industry in its operation and maintenance of mechanical vehicles. The evidence from the defendant is that the floor, when cleaned, is so cleaned with a mixture of disinfectant and water. The cleaner testified and effectively acknowledged that her evidence was not specific to the day in question but to the general circumstances, systems and protocol. She testified generally as to her cleaning process, safety

measures and the fact that there are days she is not on the job and days where she has to clean the other building also, if the other cleaner is absent.

ISSUES

4. This is a case in common law negligence. The issues to be resolved are those common to Negligence matters; put loosely as: *duty, breach and damage*. This trial is on liability only so the question of the quantum of damages do not arise here. The defendant admits in their defence that the claimant suffered injury and loss. No party has denied the existence of the duty of an employer to provide a safe place of work or of business for its employees and users.

5. Several issues arise in this matter:

   (i) Whether the claimant slipped on a wet substance;

   (ii) Whether the defendant was negligent

   (iii) Whether the defendant could reasonably have protected against the circumstances that led to the claimant slipping;

   (iii) Whether the claimant was contributorily negligent;

6. Also relevant in the determination of this matter are the sub-set issues of; **(i)** *novus actus interveniens* – whether a new intervening action broke the chain of causation between the negligence of the defendant and the damage sustained by the claimant; **(ii)** the distinction between the omission to do something and the commission of some act and how liability can accrue under one or the other.

THE LAW

7. The ingredients of common law negligence are well established and is a prevailing law in Trinidad and Tobago. The allegations in this matter do not lead to the creation of any new category of negligence. The statutory duties and obligations of an employer that are baldly and without particularity referred to the claimant's pleadings(an objected to in the Defendant's written submissions) are set out in the Occupational Safety and Health Act Chap. 88:08 (the "Osh Act") and indeed substantially mirrored the said common law, at its core. Notwithstanding that an Act can create a duty that matures in to a common law duty, as correctly pointed out, in the written

submissions of the Defendant, this matter before this court is not and cannot be sustained as a cause of action in the breach of statutory duty in relation specifically to the Osh Act.[1]

8. The general principles of the law of Negligence were set out in ***Halsbury's Laws of England***:[2]

"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. ……Where there is no such notional duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which it can be reasonably foreseen may cause harm to the claimant's interests in so far as they fall within the scope of the duty" (Emphasis mine)

9. To show how the statutory duty in the Osh Act is closely allied with the circumstances of this case; an employer's duty is set out under the section 6(1) of the said Occupational Safety and Health Act Chap.88.08 and provides that: *"it shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all its employees".*

10. In the instant case the issue of foreseeability looms large.

Foreseeability:

*"Speaking generally, one of the necessary prerequisites for the existence of a duty of care is foresight that carelessness on the part of the defendant may cause damage of a particular kind to the plaintiff. Was it reasonably foreseeable that, failing the exercise of reasonable care, harm of the relevant description might be suffered by the plaintiff or members of a class including the plaintiff? "Might be suffered" embraces a wide range of degrees of possibility, from the highly probable to the possible but highly improbable. Bearing in mind that the underlying concept is fairness and reasonableness, the degree of likelihood needed to satisfy this prerequisite depends upon the circumstances of the case****……. There must be reasonable foreseeability of a risk which a reasonable person would not ignore. The risk must be "real" in the sense that a reasonable person would not brush [it] aside as far-fetched"*** [3] [Emphasis added]

[1] See Wilkinson v Barking Corporation 1948 1 All ER 564 at 567 and paras. 5-9 of the Defendant's written submissions.
[2] Halsbury's Laws of England/Negligence (Volume 78 (2018)) at paras. 1, 2 and 4; Volume 97 (2015) at para. 497.
[3] The Attorney General v Craig Hartwell (British Virgin Islands) [2004] UKPC 12 at para. 21

Omission/commission

11. Then there is the distinction between the omission to act, the commission of an act and in what circumstances liability is imposed by law. The common law does not generally impose liability for a pure omission, save where there is the existence of ***special circumstances***. These special circumstances are set out in the academic works of; ***Tofaris and Steel, "Negligence Liability for Omissions and the Police*** (2016) 75 CLJ 128 ("*Tofaris*") and as also notably at para 34 of the case **Robinson (Appellant) v Chief Constable of West Yorkshire Police (Respondent)** [2018] UKSC 4: "*In the Tort of negligence, a person A is not under a duty to take care to prevent harm occurring to a person B through a source of danger not created by A unless **(i)** A has assumed a responsibility to protect B from that danger, **(ii)** A has done something which prevents another from protecting B from that danger, **(iii)** A has a special level of control over that source of danger; or **(iv)** A's status creates an obligation to protect B from that danger*."

Contributory Negligence[4]

12. This matter introduces the principle of contributory negligence and the pertinent aspects of the law are set out below:

13. As stated in ***Charlesworth & Percy on Negligence, 12th Edition***, (4-03) Contributory negligence 'applies' solely to the conduct of a claimant. It means that there has been some act or omission on the claimant's part which has materially contributed to the damage caused and is of a nature that it may properly be described as negligence. For these purposes, "negligence" is used in the sense of careless conduct rather than in its sense of breach of a duty.

14. The said ***Charlesworth & Percy*** (4-10) states that, "*Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that*

[4] Substantially reproduced from the Claimant's written submissions

if he did not act as a reasonably prudent man, he might hurt himself; and in his reckonings he must take into account the possibility of others being careless. "

EVIDENCE-ANALYSIS

15. The evidence in this matter falls within a narrow band. The only evidence of the actual incident is that which was given by the claimant himself. I accept his evidence. Indeed there is not much direct evidence to contradict his account of the incident and the circumstantial evidence relied upon by the defendant does not meet the threshold on this issue. An account contrary to the claimant's is simply not sufficiently more plausible than his. I believe it is true to say and certainly an incidence of common human experience, that in the ordinary course of things a man just does not slip and fall unless there is a want of care on the part of some person or persons (including himself – contributory negligence). But, in this case, we have the evidence of the claimant that he slipped on a moist substance. He testified that he had walked that corridor several times to access the departments in there and never encountered this before. In response to a question put to him the claimant said that, he does not at all times *expect the unexpected*. It was not an expected condition and in the court's view, suggests that unlike the prior occasions where the floor was not apparently contaminated with a moist substance, clearly on this occasion; there was no mat, no warning signs and the floor had a substance which caused the claimant to slip. There is in fact no evidence upon which the court can conclude imprudence on the part of the claimant and/or a different scenario to that which the claimant testifies to.

16. On the day in question the claimant had on his company approved and certified boots. The evidence established that there were two 'models' of boots; the 220 and the 720, both approved by the company. The evidence of Mr. Marlon Mohammed, the defendants purchasing officer, was that the claimant was issued with the newer version of the boots, the 720 but that in any event the difference between the 220 and the 720 was cosmetic with the core attributes of the boots, including the non-skid' characteristic remaining unchanged. The records produced by Marlon Mohammed merely showed the claimant was issued with boots but did not specify which model. The claimant does not dispute the fact he was issued with approved boots and indeed had them on at the material time. The claimant never robustly challenged the core attributed of the boots. The court accepts the defendant's testimony that the two models possessed the same attributes,

for among other reasons, the contrary has not been proved and further, it is unlikely a newer model would likely downgrade its quality and fitness for purpose. In any event the court has found that for purposes of this case in any event, it matters not whether the claimant had been issued with either of the approved boots.

17. On the issue of the fitness of the boots for the purpose, the non-skid attribute is of relevance here. The court accepts that the boots were advertised as non-skid. I have no reason to believe that the boots did not have non-skid attributes; certainly there is no evidence of the claimant ever raising any complaints about the inherent inadequacy of this attribute of the brand of boots or the actual issued boots (as opposed to its state of wear and tear for instance).

18. Non-skid boots do not mean that one cannot skid. It surely depends on the nature of a surface or the type and quantity of a substance that may be on the sole of the boots or floor as the case may be or even the manner in which one manoeuvres oneself along a *Way*. The court is satisfied that the boots were of a quality that suggests the defendant did the best that they could be expected in the circumstances in providing boots approved as fit for purpose. In this case, the court is of the view that the boots are not a determining factor in favour of the claimant nor is it necessarily in support of the Defence. Neither party appears to be contending (or disputing) that the fall was caused by the inadequacy of the boots.

19. It would have been in the contemplation of both the company and the claimant, that notwithstanding the approved footwear, care had to be taken to keep the walkways free of substances that can cause slippage and to provide means to guard against that possibility (*suitable floor covering* etc.)[5] and that care had to be taken by users to take adequate care for their own safety. One of the ways in which for instance adequate care is taken for one's own safety is by watching where you step and to observe reasonably observable conditions and another such way is to look out for and heed signs warning of the dangers so as to put the user on que to watch more carefully for the potentially adverse conditions.[6]

[5] Charlesworth & Percy on Negligence 11th Ed. para. 10-02 (para. 66 of the Defendant's written submissions)
[6] Naismith v London Film Productions Ltd [1939] 1 All ER 794 at 798 (para. 67 of the Defendant's written submissions)

20. The defendant gave evidences through Ms. Cobb, the cleaner, of the general protocol for cleaning the defendant's premises, which involved the placement of temporary signs warning of wet floors and so on. It is of course a reasonable inference drawn from this, that wet or otherwise potentially slippery and dangerous substances are used as part of the cleaning protocol that necessitates the company's use of these signs. So is it possible that the floor could have been cleaned and signs not put? Yes it is. Is it possible that floor could have been cleaned, carpets removed for cleaning and in the interim the claimant entered the building? Yes it is. Is it possible that whilst the carpets had been removed and/or while the floor was drying, that the cleaner was in the other building? Yes it is. Whether any of these scenarios took place on that day is neither indirectly or specifically address by the defendant, but what is clear on the evidence is that the claimant did not encounter any carpets or *floor coverings* on the floor or warning signs and further, did in fact slip on a substance and fall to the ground. The claimant's account of the event is not an implausible one in the least.

21. The defendant led evidence of carpets located at the entrance of the building. Photographs of them were exhibited in this matter. It was admitted they were not taken at the time of the incident but all the same represent the layout and makeup of the subject area. Jennifer Cobb, cleaner, testified to the existence of these carpets, however her evidence was not specific to the day and time in question but rather was a general reference to what pertains in the usual course of things. Mr. Caracciolo – Operations and Logistics manager - made at best a tangential reference to it in testifying as to the fitness of the building and his observations after the incident; that he did not see any hazard in the subject area that would cause the fall alleged by the claimant. A peculiar set of facts to recall in the context of his evidence that not only did he not ask the claimant at the time what caused his fall, but further, he did not observe any injury on or concern over the claimant, which in the court's view would have excited his attentiveness to such detail such as the presence or absence of the mats and so on.

22. In any event, even if the carpets had been in place, that would protect against the claimant slipping on substances carried and brought in under the soles of the pedestrian's/claimant's shoes at the point of entry. The mats do not protect against slippery substances already on the floor after the mats. There is no evidence from either party that the claimant did pick up on his shoes, the slippery substance, from anywhere else on the defendant's compound, although the possibilities abound.

Further still, it was testified to, that it was not raining that morning. The photos exhibited in the matter also show what appears to be a well maintained, clean and somewhat pristine concrete approach to the first entrance mat and steps of the building. If there was going to be a slippery substance causing this slip, is more likely than not that it would have already been on the floor of the corridor in which the claimant slipped. The claimant in his 'particulars of negligence' raised the issue of the defendant's failure to 'cover the surface with suitable floor coverings'. However it was the defendant that raised the existence of the 'mats' specifically. There is no evidence of course as to the adequacy of those mats to protect against the subject misfortune. We are left to just assume that the presence of the mats, whatever their make-up (including the nature of the material), are fit for some relevant purpose.

23. Much was made of exactly whom the claimant made his report to and the official job title of the person. Nothing much turns on that in my view. The evidence from the claimant, and it was not contended otherwise, is that persons/employees were generally known and referred to by a number. So Narad, who helped him up after the fall, was known as # 20 and 'Sharmila' was # 8. Further, the claimant testified that the health and safety officers were generally referred to as "safeties". To restate the obvious; this case is about what caused the fall and not to whom the report was made.

24. In relation to the report that was exhibited in the trial; it was signed by the claimant and apparently by a Mrs. Colthurst. The claimant recalled the report being taken by someone else. The defendant indicated that although a report was taken from him, he did not recall that he signed the report. The significance of this to me is that he signed off perhaps on something the contents of which he was not entirely cognizant off having placed reliance on the person taking and making the note. The claimant testified that notwithstanding the date on the report he did not sign it on the same day. The claimant was very forthright and accepted however, that the document contained his signature. I accept that he signed the said report. I did not get the impression that the claimant attempted in any way to conceal or deny the provenance of the document. I accept the evidence that that report is what it is. It bears a signature that appears to be a Mrs. Colthurst. She did not give evidence and neither did anyone else that testified to being familiar with her signature. Again, whether the claimant recalls her as being the one or not, is not entirely relevant. That persons came on to the scene after the fact and that a report was made to what the claimant refers to as

a *safety*, is not really in dispute. The court's view of the veracity of the claimant's evidence is unaffected by his possibly incorrect identification of the name and office of the persons to whom he reported, whether it be Mrs. Colthurst or Natalie Ramdass or any other.

25. Ms. Michelle George, an ex-health and safety officer of the defendant, gave evidence for the defendant. She was not the one who signed off on the report nor did she witness or was otherwise involved in the incident. She testified as to the system process from injury to report etc. She identified in cross examination certain small irregularities in the format and content of the form. She observed that the form did not contain a sketch, which was provided for, nor did it contain an endorsement as to whether or not any safety issue had been identified arising out of the incident. This endorsement is usually contained on the form. She noted that the incident was referred to as a '*near miss'* which includes a slip and fall incident and where there is no injury. In the end however, Ms. George testified that following the incident the relevant OSH Act protocols were in her view followed. However, the claimant indicated that the form although signed and dated, was not actually signed on that date. No one else gave oral testimony as to the actual date of signing. I do not see that this form in any event is designed or sufficient to solicit and capture all details and nuances of any incident recorded therein.

26. The claimant testified that he knew there was a slippery substance on the ground because when he fell he felt a moist substance on his hands. Counsel for the defendant put it to the claimant that in that report no mention was made of a moist substance as he now alleges. Further, in her submissions, counsel for the defendant notes that the claimant did not indicate what the substance that he slipped on was. The court poses the question: why must he know what the substance was? In the absence of a scientific lab analysis one really cannot know exactly what a substance was. It is sufficient to say that it was a substance that ought not to have been on the floor and it was sufficient to cause the slip. In any event, it seems to me that common human experience suggests that just about any moist substance, including simple H_2O, is capable of rendering a smooth surface (see photos; see testimony), slippery.

27. The accident report contains an account of the incident and fall. The report allegedly narrates that the claimant: "…*feet went forward and I fell*…" The evidence is that he provided the information that was entered on the form that he ultimately signed. There is no evidence from the defendant

(or anyone else) that the claimant was asked for further detail or clarification/explanation. The fact that further detail of the cause of the slip being a substance on the ground is not provided in the report, in my view, in the context of all the evidence and the circumstances, does not amount now to a recent fabrication. No doubt, if that first report were made to his counsel for instance, all the pertinent facts may well have been elicited. The core incident was in fact a *slip and fall*. That the claimant should have been astute to the potential for litigation and the scrutiny of the words used in the document describing what he must well have considered as a given, is not reasonable. The claimant was a truck driver who slipped and fell and was asked to provide a report which was recorded by a company employee. The claimant complied and reported what in essence is that that he slipped and fell. I note, that as correctly noted by defence counsel, the claimant did not refer to the wet substance in the report recorded by the claimant's employees. However, I note also that neither was the report endorsed with an entry of details of a cause that can explain the slip/fall to support the defendant's apparent allegation that the claimant was entirely or contributorily at fault. Can it be said, that in the context of the whole of the evidence, that the absence of an endorsement on the report in favour of the defendant's allegations and defence for instance, necessarily rules out any finding of fact by the court that the claimant was the architect of his own misfortune? The claimant is – an properly so - being held to account for the absence of a specific explanation in the report, a relatively contemporaneous document; but a document in which it appears that the defendant did not themselves have to note their own conclusions, 'detailed' observations and descriptions, such as now appear in their defence and their respective witness statements.

28. The claimant accepted that his colleague, Narad, would also have been wearing the same boots as he in that said corridor. It was suggested that the evidence of this moisture/slippery substance, was a fabrication. The claimant maintained his allegation. It is the court's finding that several persons must have used the corridor that morning. On the evidence, the staff at the two departments who the claimant himself recognized as present when he made his initial oral complaints would likely have traversed the same part of the corridor and certainly it would seem, including those who were in the Dispatchers Dept., including Mr. Caracciolo. The claimant also forthrightly accepted that he and others used that corridor frequently in the course of their employment and he had not ever slipped. He did not testify to knowing of anyone else slipping in

that corridor. I accept this evidence. This fact suggests that the claimant, in his *'reckoning*", would not expect to encounter a slippery surface in the corridor.

29. What is the significance of this revelation? Simply, it means nothing more than the fact that no one else had ever complained of slipping in that corridor. It does not necessarily go to directly establishing that the claimant did not slip. It is a factor that the court considers in-the-round, in assessing the weight of the claimant's evidence and veracity of his case and indeed the defence. However, there is no evidence of a history of falls, imprudent conduct or complaints on the part of the claimant in the work place. It is not suggested that he has a habit of entering and traversing the subject corridor carelessly, imprudently and in such a manner as would lead to an incident of the kind alleged. In relation to the incident itself, the defendant has led no evidence of the manner of the claimant's movement over the area suggestive of or in support of the allegation that he failed to take proper care to protect himself[7]. Whatever safety boots the claimant had on; whatever cleaning protocol the defendant had in place, the undisputable fact is that the claimant walked into the corridor and slipped on a moist substance on the floor and fell. I accept this evidence as true. Further still, he so fell in such circumstances that could not in my view be explained by any other cause than that which he has alleged – a moist substance on the floor. This effect of this conclusion would have been even further strengthened and illuminated in the context and application of the doctrine of *Res ipsa locquitur*, had it been pleaded. To be clear, it was not pleaded.

30. The evidence does not disclose (directly or by inference) any act or omission on the part of the claimant, including a failure on his part for instance, that in his reckoning he failed to take into account the possibility of others, including Mrs. Bobb the cleaner, being careless in the performance of their functions or use of the hallway. Indeed in considering the issue of contributory negligence, there is no primary evidence of carelessness and/or imprudence of the defendant. The court notes further, that just as the claimant has not pleaded *'res',* neither has the defendant.

[7] See Ian Gonzales and Scaffolding Manufactures (Trinidad) Limited and others CV2009-03527 cited at para. 8 of the Claimant's written submissions

31. The evidence shows up the defendant as a general complier with health and safety standards. I was impressed by this frankly. However, that does not preclude the prospect from defaulting in a manner that renders them culpable. The nature of their business would necessarily attract the prospect of such occurrences as in this case, more so than many other types of businesses/organizations (e.g. accounting firm; Inland Revenue Dept.; pharmacy; purely office/admin type business operations etc.). In this case the defendant has not provided any reason to explain the presence of the moisture on a smooth floor where no one would expect such moisture, having regard to their history of use of this corridor. On all the evidence there is simply no plausible evidence of an alternative cause of the presence of the moisture on the floor or the slipping of the defendant, that is more likely than that which was provided by the claimant.

32. Further still, the general evidence of the system and protocols for cleaning and maintaining the building does not establish in the circumstances of this case, that the defendant did all that could reasonably have been expected of them, to guard against this probable eventuality[8]. Keeping in mind that it is not every eventuality that an employer can be expected to anticipate; still several questions were left unanswered by the defendant's evidence. I note that the cleaning routine and the placement of mats were motivated, one would think, in no small part by the anticipation of the very incident that took place. It cannot be reasonably contended that the eventuality was not anticipated. Clearly the nature of the business, assortment of the 'traffic' through that building and even the type of floor surface, excited some concern of the defendant company, hence the door mats and cleaning protocols. The company saw the need to guard against it, albeit unsuccessfully in this case. There certainly was no evidence of what actually transpired that morning in relation to the cleaning routine. The evidence from Ms Cobb left it open that there was moisture on the ground; that there were no carpets on the ground at the relevant time as contended by the claimant; that there was cleaning substances on the ground. We have no conclusive evidence as to what time the cleaning commences; where it commences (in the back of the departments moving out finally to the entrance for instance); how long the substances used on the floor take to dry; and whether on that day the replacement of the mats, cleaning and drying had already taken place at the time the hapless claimant entered the premises.

[8] Harris v Bright Asphalt Contractors (1953) 1 QB 617 at 626 (para. 68 of the Defendant's written submissions)

DISPOSITION

33. In closing, it is apposite I think, to refer to the defendant counsel's submission, in effect; that it is an *illusion that for every misfortune there is a remedy*[9] to be found in a court house. To be clear, the court accepts that absolutely. However, there is no *illusion* on the facts of this case. The claimant has made out the ingredients of his cause of action including the resulting damage, the nature and extent of which is to be determined before a Master. The claimant is entitled to his remedy.

34. For the reasons provided above, **IT IS HEREBY ORDERED**:

    i. Judgment for the Claimant against the Defendant in negligence for the injuries sustained as a result of the fall alleged in the statement of case;
    ii. Statutory interest and Costs payable to the claimant from the defendant;
    iii. Damages to be assessed before the Master in chambers at a date to be fixed by the court office.

DAVID C HARRIS
HIGH COURT JUDGE
JULY 30, 2019

[9] Gorringe v Calderdale Metropolitan BC [2004] UKHL 15 at para. 2