



Compass Chambers

# LIABILILTY UPDATE

Gavin Thornley, Advocate

SECTION 69 ENTERPRISE AND  
REGULATORY REFORM ACT

2013



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5 YEARS LATER .....



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# Gheorghe Dehenes v T Bourne and Son

## 02/05/19 Sheriff Reith QC



- So the main issues were
- how she approached the issue of the applicable law;
- whether the risk assessment was suitable and sufficient; and
- whether the accident would have occurred had a hydraulic lift been used; and
- whether the accident was caused by the defenders fault and negligence at common law



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**KEEP  
CALM  
AND  
CARRY OUT A  
RISK ASSESSMENT**



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# Cockerill v CXK Limited and Artwise Community Partnership [2018] EWHC 1155 (QB)

# Kennedy v Cordia

- And the very important guidance it contained about the common law duty of an employer
- Namely the following propositions:
- A reasonably prudent employer will conduct a risk assessment in connection with its operations so that it can take suitable precautions to avoid injury to its employees.



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# Cassells and others v David W Allan and another [2019] CSOH 14





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# Horgan v Alexander [2019] SC EDIN 9 Sheriff Weir QC 13/02/19



- Strict liability – is this the end ?
- Reg 5 Work Equipment Regulations 1998
- What do you do about cases involving work equipment that breaks or malfunctions causing injury?
- Inspection and maintenance case?

# Employers Liability (Defective Equipment) Act 1969

- **1.— Extension of employer's liability for defective equipment.**
- (1) Where after the commencement of this Act—
- (a) an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purposes of the employer's business; and
- (b) the defect is attributable wholly or partly to the fault of a third party (whether identified or not),



- the injury shall be deemed to be also attributable to negligence on the part of the employer (whether or not he is liable in respect of the injury apart from this subsection), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.

