



Some Might Aver



The third annual festive
Thornley/Laing
Personal Injuries Podcast

Gavin Thornley & Steve Laing



Some Might Aver



“Noel” Thornley & “Liam” Laing



Some Might

*H*aver 



“Noel” Thornley & “Liam” Laing

🎵 “D’You Know What I Mean?” 🎵





The application of res ipsa loquitur

Tracy Thomson v Iceland Foods Ltd
[2024] SAC (Civ) 50

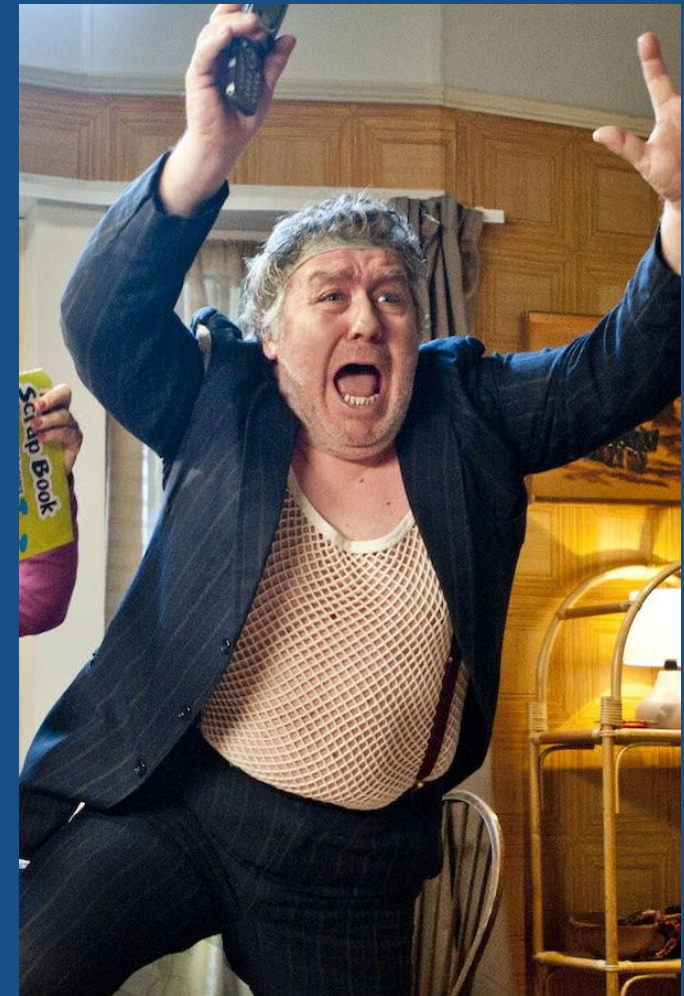
Jack McCormack v SportsDirect.com Fitness Ltd
[2025] SAC (Civ) 15

Tracy Thomson v Iceland Foods Ltd [2024] SAC (Civ) 50

*Supermarket customer tripped on
raised edge of doormat adjacent to
store entrance*

Application of res ipsa loquitur –

- 1. Thing which caused damage
under Defender's management*
- 2. Accident of a type that does not
ordinarily occur if proper care is
taken*



Tracy Thomson v Iceland Foods Ltd

[2024] SAC (Civ) 50

*Defender did not lead any evidence
despite averments of proactive and reactive systems of
maintenance and inspection*

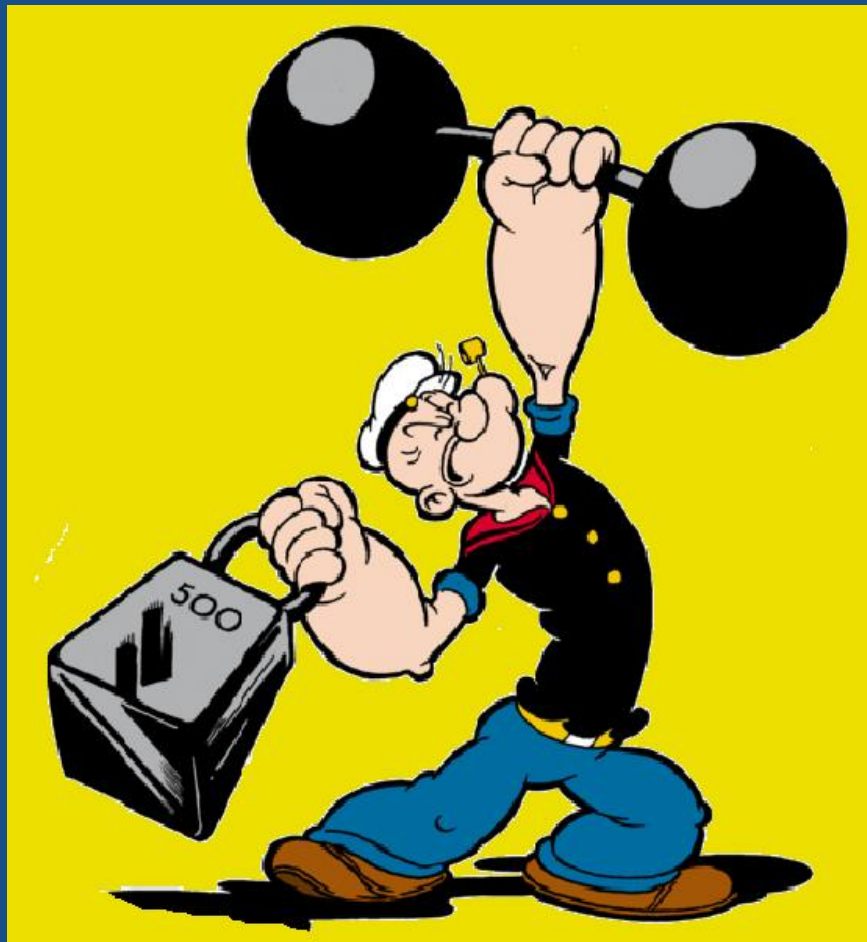
*Inference of negligence if Defender can offer no explanation
consistent with absence of fault*

*Cases of tripping on local authority pavements are not
comparable with tripping on mat in a supermarket store*

*Maxim not apply to every trip in a supermarket?
Defenders not rebut inference "in particular facts of this case"*

Jack McCormack v SportsDirect.com Fitness Ltd

[2025] SAC (Civ) 15



Gym user injured hand on sharp ragged edge of a weight plate when loading it onto a shoulder press machine

Defender led evidence of inspection of weight plate and gym equipment that morning

Jack McCormack v SportsDirect.com Fitness Ltd

[2025] SAC (Civ) 15

Sheriff erred in concentrating on exclusive management and control over premises

*For maxim to apply, Defender had to have exercised exclusive control and management over the weight plate.
Res was the weight.*

Maxim not apply

Would have been open to Sheriff to infer negligence but lack of necessary control to apply res ipsa loquitur

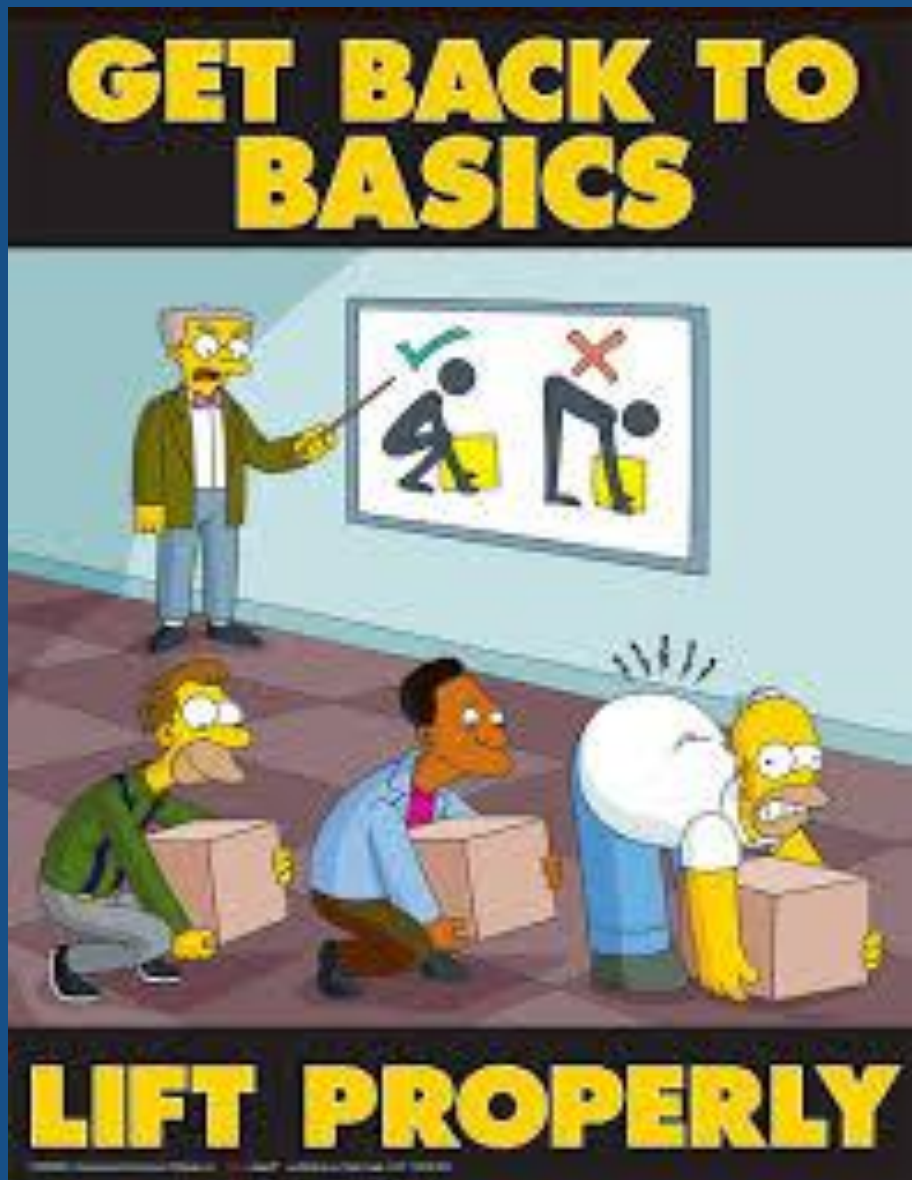


Risk assessments and use of liability experts

Agnieszka Swierzko v Mathiesons Bakery Ltd
[2024] SC EDIN 43

Radoslav Pashamov v Leon Taylor
& Edward Vinson Ltd
[2025] EWHC 1035

Agnieszka Swierzko v Mathiesons Bakery Ltd [2024] SC EDIN 43



Factory worker sustained acute back strain whilst lifting heavy trays from waist height to shoulder height

Pursuer only led a consultant orthopaedic surgeon

He could give “only the most general evidence about foreseeability of the risk of injury”

Agnieszka Swierzko v Mathiesons Bakery Ltd
[2024] SC EDIN 43

Health and safety regulations are not the source of individual common law duties

The content of employer's duty of reasonable care in any given case is an evidential matter

No meaningful evidence on risk of injury

No evidence of relative significance of component parts to the lifting operation, such as from an ergonomist or expert in biomechanics

Radoslav Pashamov v Leon Taylor & Edward Vinson Ltd [2025] EWHC 1035

*Pursuer working in fields picking fruit;
took employers' bus back to
accommodation provided by employer;*

*Bus stopped at non-designated pick up
point, on opposite side of road to
entrance to fields, to collect other
workers.*

*Pursuer got out of bus and crossed road
to let other workers know bus arrived*

Hit by car as crossed road



Radoslav Pashamov v Leon Taylor & Edward Vinson Ltd [2025] EWHC 1035

*Employer's own risk assessment –
high risk if not collect from designated
pick up point*

*Employee was engaged in activities
incidental to his employment
Expected to cross a 60mph road with no
designated safe crossing place*

*Accident foreseeable
Employer 65% liable; 35% contributory
negligence; no liability on car driver*



♪ “What’s The Story
(Employee Glory)?” ♪

*The development of the law on
vicarious liability*



JD Wetherspoon plc v
Stephenus Burger & Risk
Solutions BG Ltd
[2025] EWHC 1259 (KB)

JD Wetherspoon plc v Stephenus Burger & Risk
Solutions BG Ltd
[2025] EWHC 1259 (KB)

*Claimant restrained by 2 door supervisors in Wetherspoons pub
with such force that suffered a dislocated hip*

Unprovoked and excessive attack.

*Door supervisors employed by Risk Solutions, contracted by pub
to provide door security on certain nights, pursuant to a
“security services agreement”*



JD Wetherspoon plc v Stephenus Burger & Risk
Solutions BG Ltd
[2025] EWHC 1259 (KB)

Door supervisors in a relationship “akin to employment” with pub?

Starting point was contract between pub and RS – which was for security from an independent third party.

*Fact that security integral to pub’s functioning not transform relationship into one akin to employment;
it only explained why service was necessary*

Contract explicitly stated that RS retained control over its employees, including training, hiring and supervising.

Pub had no authority over their operations other than its contractual entitlement to hold them to services contracted for



“Champagne Super(nova) Tierney”





Stop Crying Your Heart Out..... over uplifts in expenses



Pursuers' Offers

Risk/Benefit Analysis
for
(i) Pursuers
(ii) Defenders

The Balmoral “Poznan”





“Acquiescence”



*Recovering outlays for costs of treatment and
care*



XX v Whittington Hospital NHS Trust
2020 UKSC 14

XX v Whittington Hospital NHS Trust
2020 UKSC 14

Claimant became infertile due to delay in diagnosis of cervical cancer

Her eggs were cryopreserved

*Sought costs of commercial surrogacy arrangements in USA
Such an arrangement unlawful in UK*

Majority held that costs recoverable as no longer being contrary to public policy;

provided costs were reasonable (including that the foreign country had a system to safeguard all interests, including the child)

XX v Whittington Hospital NHS Trust

2020 UKSC 14

Why no longer contrary to public policy?

Assisted reproduction was now accepted and widespread within society; UK courts striven to recognise the relationship created by surrogacy

Lord Carnwarth dissented

- *broader principle of coherence between civil and criminal law at stake*
- *Need consistency and coherence between criminal and civil law*
- *Contrary to that principle for civil courts to award damages which, if undertaken in UK, would offend its criminal law*

Recovering outlays for costs of treatment



*Traditional recommended
medication,
such as over-the-counter
painkillers
CBD oil treatments?*

*But difference between allowing
costs of CBD oil
and costs of cannabis??*

Recovering outlays for costs of care

Where do you draw the line??



1. *Family member – section 8 claim*



2. *Support worker*



3. *“Escort” providing non-sexual services*



4. *Prostitute*

Pre-order “Compass” Merchandise



Ideal stocking filler

*One size (XL)....
as all lawyers have
big heads*

£20 fixed fee

No deferred payments

*As modelled by Jamie “Bonehead” Black,
Compass Deputy Clerk*



🎵 “Cigarettes & Alcohol” 🎵



♪ “Cigarettes & Alcohol” ♪



♪ “Roll With It” ♪



There will be no encores.....

