

COURT OF APPEAL: SOME LEADING CASES IN 2002-2003

Grouped by subject-matter

CONTRACT LAW: MISTAKE

The equitable jurisdiction identified by Denning LJ in *Solle v Butcher* [1950] 1 KB 671 is not good law. The court observed that there was scope for legislation to give greater flexibility to the law of mistake than the common law currently allowed.

[Great Peace Shipping Ltd v Tsavlis \(International\) Ltd](#) [2002] EWCA Civ 1407.

COSTS: CONDITIONAL FEE AGREEMENTS

Guidance was given in matters relating to conditional fee agreements (“CFAs”) which were of importance to the legal profession and liability insurers. *Bailey v IBC Vehicles Ltd* [1998] 3 All ER 570 should be distinguished. A party seeking to rely on a CFA should be put to their election whether to disclose it in costs proceedings. The court also considered the effect on the validity of a CFA when there was non-compliance with section 58 of the Courts and Legal Services Act 1990, as substituted by section 27 of the Access to Justice Act 1999 and regulations made thereunder. Provided that there was no materially adverse effect on the client or the administration of justice the fact that there had been some departure from the requirements of the regulations did not invalidate the CFA.

[Hollins v Russell](#) [2003] EWCA Civ 718.

EMPLOYMENT

Article 6 of the European Convention on Human Rights did not apply in the case of a serving soldier in a claim for racial discrimination arising out of that service.

[Mangera v Ministry of Defence](#) [2003] EWCA Civ 801.

Statutory time limits in bringing proceedings for discrimination were clarified.

[Hendricks v Commissioner of Police for the Metropolis](#) [2002] EWCA Civ 1686.

Guidance on the correct approach to compensation when unlawful discrimination resulted in the loss of the chance of a career and the appropriate level of compensation for non-pecuniary loss such as injury to feelings.

[Vento v Chief Constable of West Yorkshire](#) [2002] EWCA Civ 1871.

Continuity of employment and the effect of a child break scheme in assessing an employee’s entitlement to redundancy pay.

[Curr v Marks & Spencer plc](#) [2002] EWCA Civ 1852.

Whether an employer's refusal to honour national pay awards which had led to deduction of wages was in accordance with written particulars of employment.

[Glendale Managed Services v Graham & Ors](#) [2003] EWCA Civ 773.

Guidance on the interpretation and enforcement of the National Minimum Wage Regulations.

[Walton v Independent Living Organization Ltd](#) [2003] EWCA Civ 199: [Inland Revenue Wales-Midlands v Bebb Travel plc](#) [2003] EWCA Civ 563.

The impact of bankruptcy and whether the right to claim unfair dismissal was a property right or a personal right.

[Grady v HM Prison Service](#) [2003] EWCA Civ 527.

The computation of holiday pay under the provisions of the Working Time Regulations

[Walker v Co-operative Insurance Society](#) [2003] EWCA Civ 632.

The substantive private right of an employee to be paid the full amount of a retirement gratuity validly promised by a public authority employer was safeguarded.

[Nicholls v London Borough of Greenwich](#) [2003] EWCA Civ 416.

The definition of an employee employed through an employment agency.

[Franks v Reuters Ltd & Anor](#) [2003] EWCA Civ 417.

The definition of the normal retiring age: an employee has the right not to be unfairly dismissed when aged 60.

[Jayawardane v HM Customs and Excise](#) [2003] EWCA Civ 1194.

PERSONAL INJURY

No accident within the meaning of Article 17 of the Warsaw Convention was disclosed on the specimen matrix of facts in deep vein thrombosis group litigation.

[The Deep Vein Thrombosis and Air Travel Litigation Group Action](#) [2003] EWCA Civ 1005.

Referees owed a duty of care to players of rugby football, but in assessing the standard of care there must be a high threshold of liability.

[Vowles v Evans & The Welsh Rugby Union Ltd](#) [2003] EWCA Civ 318.

Section 1(3) of the Occupiers Liability Act 1984 was analysed in a case involving a dive late one December night into the harbour at Folkestone.

[Donoghue v Folkestone Properties Ltd](#) [2003] EWCA Civ 231.

A mother was held to be entitled to recover damages for nervous shock in relation to her infant son's 36 hour period of illness leading to death.

[Walters v North Glamorgan NHS Trust](#) [2002] EWCA Civ 1792.

Future loss of earnings could not be recovered where the claimant, a seaman, had deliberately concealed epilepsy from his employers.

[Hewison v Meridian Shipping Pte & Ors](#) [2002] EWCA Civ 1821.

No common law duty of care was owed by healthcare professionals to the parents of a child in their care where erroneous allegations of parental abuse had been raised. There was also no violation of Article 6 of the European Convention on Human Rights in respect of the parents. The court held, however, that a common law duty of care could be owed to the child, and that the decision of the House of Lords in *X v Bedfordshire County Council* [1995] 2 AC 633 could not survive the Human Rights Act 1998 so far as the child's position was concerned.

[JD v East Berkshire Community NHS Trust](#) [2003] EWCA Civ 1151. Upheld by the [House of Lords](#) [2005] UKHL 23

PRACTICE AND PROCEDURE

Guidance was given on the ability of counsel to cross-examine his own witness.

[Douglas & Anor v Hello! Ltd](#) [2003] EWCA Civ 332.

There is now a range of remedies available to protect the court's processes from being abused by litigants who persist in making applications or instituting actions which are totally devoid of merit. These include: a civil restraint order controlling his activities in particular proceedings; an extended civil restraint order restraining his activities in relation to other proceedings concerned with the same subject-matter; and a general civil restraint order which protects the whole of a court's processes from abuse by the litigant and restricts his right to seek permission to appeal if he can be shown to have persistently abused the process of a court.

[Bhamjee v Forsdick \(No 2\)](#) [2003] EWCA Civ 1113.

The Court of Appeal has jurisdiction to set aside one of its own orders dismissing an appeal by consent of the parties.

[Matlaszek & Anr v Bloom Camillin \(a firm\)](#) [2003] EWCA Civ 154. .

The court concluded that the defendants were not entitled to claim privilege on documents brought into existence in connection with Bingham LJ's inquiry into BCCI and the Bank of England.

[Three Rivers District Council & Ors v The Governor and Company of the Bank of England](#) [2003] EWCA Civ 474. Reversed by the House of Lords [2004] UKHL 48.

PUBLIC LAW

In deciding whether the decision-making process satisfied the test of a fair and public hearing by an independent and impartial tribunal, the real point was whether, given the quality of the first-instance process, the addition of judicial review satisfied Article 6 of the European Convention on Human Rights.

[R \(Beeson\) v Dorset County Council](#) [2002] EWCA Civ 1812.

The Police were entitled to run their affairs concerning operational or management decisions without the intervention of the courts, and therefore those matters, as distinct from disciplinary issues, were not amenable to judicial review.

[R \(Tucker\) v Director-General of the National Crime Squad](#) [2003] EWCA Civ 57.

The Human Fertilization and Embryology Authority had power, in an appropriate case, to grant a licence to permit simultaneous tests to be carried out on an embryo for the purpose of not only identifying genetic defects in the embryo, but also of ascertaining whether the tissue type of the embryo would match that of an existing child.

[R \(Quintavalle\) v Human Fertilization and Embryology Authority](#) [2003] EWCA Civ 667. Upheld by the [House of Lords \[2005\] UKHL 28](#)

A pre-entry clearance immigration control scheme introduced by the United Kingdom Government and operating at Prague Airport did not violate the UK's obligations under the Geneva Convention and Protocol relating to the status of refugees or customary international law, and the scheme did not constitute direct discrimination against Czech Roma seeking to enter the UK.

[R \(European Roma Rights Centre\) v Secretary of State for the Home Department](#) [2003] EWCA Civ 785. Reversed by the House of Lords [2004] UKHL 55.

A decision by the Home Secretary to remove an alien to a country that did not respect his right to freedom of religion as guaranteed by Article 9 of the European Convention on Human Rights would not infringe the Human Rights Act 1998 where the right to practise religion in the receiving state fell short of ill-treatment within Article 3. [R \(Ullah\) v Special Adjudicator](#) [2002] EWCA Civ 1856. Upheld by the House of Lords for different reasons [2004] UKHL 26

A British national captured by United States forces in Afghanistan and held in detention at Guantanamo Bay, Cuba, was not entitled to judicial review to compel the Foreign Office to make representations on his behalf to the United States Government or to take other appropriate action.

[R \(Abbasi & Anr\) v Secretary of State for Foreign and Commonwealth Affairs & Anr](#) [2002] EWCA Civ 1598.

The Home Secretary's power to detain without charge non-national suspected terrorists who could not be deported because of fears for their safety was not incompatible with the United Kingdom's human rights obligations since it was objectively justified during a time of public emergency and was proportionate

[A & Ors v Secretary of State for the Home Department](#) [2002] EWCA Civ 1502.

Reversed by the House of Lords [2004] UKHL 56.

The new fast track procedure for determining asylum claims was held to afford adequate opportunity for asylum claimants to demonstrate that they had an arguable case.

[R \(ZL and VL\) v Secretary of State for the Home Department](#) [2003] EWCA Civ 25.

The Home Secretary's decision-making process in relation to refusing support to asylum-seekers breached Article 6 of the European Convention on Human Rights, but improvements to that process, combined with judicial review, would remedy this. The Home Secretary has no duty under Article 3 to provide support save where it is clear that charitable support has not been provided and the individual is not capable of fending for himself

[R \(Q & Ors\) v Secretary of State for the Home Department](#) [2003] EWCA Civ 364.

The statutory ban on the infliction of corporal punishment in schools did not interfere with the freedom of teachers or parents of children at independent schools to provide a Christian education based on biblical observance to manifest their religion.

[R \(Williamson & Ors\) v Secretary of State for Education and Employment](#) [2002] EWCA Civ 1926. Upheld by the House of Lords [2005] UKHL 15.

Affordability in the sense of choosing between competing priorities as to whether National Health Service funds should be allocated was a political decision to be taken by government.

[R \(Pfizer Ltd\) v Secretary of State for Health](#) [2002] EWCA Civ 1566.

It was sufficient for the Millennium Commission, in giving reasons for deciding not to make a capital grant under Section 1 of the National Lottery Act 1993, to say simply that other applications were preferred.

[R \(Asha Foundation\) v Millennium Commission](#) [2003] EWCA Civ 88.

When considering applications for planning permission for development which, but for remedial measures, could or would have significant environmental effects, the Secretary of State was not inevitably required to cause an environmental impact assessment to be conducted where prospective remedial measures were already plainly established and plainly uncontroversial.

[R \(Gillespie\) v First Secretary of State](#) [2003] EWCA Civ 400.

Where a mental patient refused consent to treatment, the court would not give permission unless medical necessity was clearly shown.

[R \(N\) v Dr M & Ors](#) [2002] EWCA Civ 1789.

Guidance was given in relation to the seclusion of detained mental patients.

Hospitals should observe the relevant Code of Practice to avoid contravening patients' rights under Articles 3 and 8 of the European Convention on Human Rights. The use of seclusion did not breach Article 5.

[R\(Munjaz\) v Mersey Care National Health Service Trust & Ors; R \(S\) v Airedale National Health Service Trust & Ors](#) [2003] EWCA Civ 1036.

Customs Officers could in appropriate circumstances use information from profiles and trends to establish that they had reasonable grounds to suspect that a person in the United Kingdom had with him any dutiable alcohol or tobacco products chargeable with unpaid excise duty and liable to forfeiture.

[R \(Hoverspeed Ltd & Ors\) v Commissioners of Customs & Excise](#) [2002] EWCA Civ 1804.

SOCIAL SECURITY

Neither the exclusion of a pensioner resident abroad from the UK's annual uprating of the state pension nor the payment of a different rate of jobseeker's allowance to a person aged under 25 years were in breach of the European Convention on Human Rights.

[R \(Carson\) v Secretary of State for Work and Pensions; R \(Reynolds\) v Secretary of State for Work and Pensions](#) [2003] EWCA Civ 797.

TAX/VAT

Restoration proceedings before the VAT and duties tribunal in relation to goods seized by Customs and Excise did not involve the determination of a criminal charge within the meaning of Article 6 of the European Convention on Human Rights.

[Gora & Ors v Commissioners of Customs and Excise; Dannat v Commissioners of Customs and Excise](#) [2003] EWCA Civ 525.

Proceedings held in the magistrates' courts for the condemnation of goods seized by customs officers should be classified as civil rather than criminal.

[R \(Mudie & Ors\) v Dover Magistrates' Court & Ors](#) [2003] EWCA Civ 237.