CASES AND COMMENTS

THE DRUNKEN DRIVER AND HIS EMPLOYER IN PAPUA NEW GUINEA

Vari Kila, the husband of Largo Gerebi, was killed when a utility truck driven by Joseph Tomonoi and owned by Roka Coffee Estates Pty. Ltd. collided with another truck. The accident occurred six miles from Goroka, the truck's destination, just after sunset. Kila was thrown out of the back of the utility and sustained head injuries from which he later died. The driver, Tomonoi, had been drinking a mixture of whisky, gin and beer on the journey. The passengers in the utility were aware Tomonoi had been drinking and was driving too fast, and asked him to drive more carefully. Joseph Tomonoi had no specific authority to take passengers in the truck which was supposed to be used for coffee buying. Largo Gerebi brought an action under Section 11 of the *Law Reform Miscellaneous Provisions Act 1962* against both the owner of the truck, Joseph Tomonoi, and its owner, Roka Coffee, claiming Tomonoi was their servant or agent.[1]

There are very few Papua New Guinea torts cases which involve consideration of substantive issues. Most are concerned mainly with the computation of damages.[2] In *Roka Coffee Estate Pty. Ltd v Largo Gerebi and Joseph Tomonoi*[3], however, the Full Court had the opportunity to consider a number of important substantive issues. Unfortunately, the court found it unnecessary to do so.

The trial judge, Muirhead A.J., awarded $19,500 to Largo Gerebi and her two children against Joseph Tomonoi and Roka Coffee. Roka Coffee appealed on a number of grounds including:-

1. There had been a misdirection as to the defence of *volenti non fit injuria*.[4] At the hearing

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1. *Largo Gerebi v. Joseph Tomonoi and Roka Coffee Estates* Sup. Ct. (1972) No. 695.

2. Ottley and Millot "Compensation for Economic Loss: The Search for Standards in Papua New Guinea". (1974) 2 Mel. L.J. 178.

3. Full Ct. (1973) no. 49.

4. There was no appeal from the finding that there had been no contributory negligence by the deceased.

counsel for the appellant sought leave to add a further ground of appeal that, because of Tomonoi's intoxication, there was no duty owed by the appellant to the deceased or alternatively there had been no breach of duty. The Full Court heard argument on this point but reserved its decision on whether leave to add this further ground should be granted.

2. The finding that Tomonoi was driving in the course of this employment at the relevant time.

This note will deal only with the Full Court's decision on these two points.

1 *Volenti non fit injuria*

The fullest discussion of this ground of appeal was by Frost S.P.J. (as he then was). Muirhead A.J. had found that Vari Kila had not consented to the risk of driving with Tomonoi whom he knew to be under the influence of alcohol. Frost S.P.J. agreed that there was no defence of *volenti* for two reasons.

First, the deceased had a moral claim to stay in the utility. This ground seems to be the one preferred by the learned judge on the basis of the decision of Dixon J. in *Insurance Commissioner v Joyce*.[5] In that case Dixon J. held that the defence of *volenti* did not apply if the plaintiff had a legal or moral claim to continue riding with a drunken driver.

Second, the deceased had no real practical choice but to continue and he exposed himself to the danger only because of the peculiar situation operating in the Highlands of which the driver must have known. Here Frost S.P.J. was referring to the fact that the passengers were frightened to leave the truck and walk or wait for another truck.

Evidence given by one of the passengers, Leslie Boase, was as follows:[6]

"Q". When you became frightened were you thinking of leaving the vehicle?

A. I was thinking of doing that.

Q. Why didn't you at your subsequent stop?

A. I had no friend or relatives to spend the night with on the road. I was not watching the time at that time...

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5 (1948) 77 C.L.R. 39.

6 Sup. Ct. (1972) no.695, at 13.

Q. Would you be prepared to sleep by yourself on the side of the road?

A. I was frightened - people might come along at night and kill me or they might come and have a fight with me."

Henry Kombil, who was travelling with Vari Kila, had arthritis. He also gave evidence why he did not get off the truck when it stopped at Kamaliki Trade Store:[7]

Q. Looking back what you were prepared to do was to stay on the truck and risk your life rather than wait for another vehicle.

A. No. There are lots of trucks using the road. Most come from Lae and the Highlands Highway and are not allowed to carry passengers. What comes to my mind if I get down and wait for a truck and if I miss a truck where will I sleep. Someone might kill me that night."

It was therefore held that Vari Kila did not voluntarily accept the risks of continuing to travel in the truck driven by Tomonoi. Although he knew Tomonoi had been drinking and was driving fast and dangerously, he stayed on because he was faced with a dilemma. He and the other passengers were afraid to leave the truck. His decision to remain was not made in the exercise of free will, and therefore he did not consent to take the consequences of the risk.

I think the second ground for decision given by Frost S.P.J. is the more convincing one. It is clear from the evidence given by the surviving passengers that they did not stay on the truck because they felt they had a moral claim to stay on but because they were frightened of what would happen if they got off. The decision that the passengers did not accept the risk is a sensible one and one in which allowance has been made for local conditions.

The problems on which the Full Court did not give any decision are perhaps more interesting than the decision itself. Like many Latin tags, *volenti non fit injuria* does not translate into a catchy English phrase. As few law students have any training in Latin, text book writers have been forced to translate the phrase. A common translation is the voluntary assumption of risk or consent.[8] There is some unreality in the translation into consent because in the vast majority of cases the plaintiff does not agree to assume any

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7 Sup. Ct. (1972) no. 695, at 14.

8 See Winfield and Jolowicz on *Tort* (1971).

risk. If the officious by-stander asked a passenger driven by drunken driver, "Do you realise if you're killed, your wife don't be able to claim any compensation from the driver or his insurance company because the law says you agreed to take the risk?" the passenger would probably say, "That's ridiculous. I haven't agreed to that."

The classic formulation of the law in this area was given in *Letang v Ottawa Electric Railway Co.*:[9]

> "If the defendants desire to succeed on the ground that the maxim *volenti non fit injuria* is applicable, they obtain a finding of fact that the plaintiff freely and voluntarily, with full knowledge of the nature and extent of the risk he ran impliedly agreed to incur it."

Emphasis on the idea of consent has led the English courts to take a different view from the Australian idea of *volenti*. In *Woolridge v Sumner*[10] Diplock L.J. said,

> "the maxim in the absence of expressed contract has no application to negligence simpliciter where the duty of care is based solely upon proximity or neighbourship in the Atkinian sense."[11]

In the more recent case of *Nettleship v Weston*[12] Lord Denning M.R. said,

> "Knowledge of the risk of injury is not enpugh. Nor is a willingness to take the risk of injury. Nothing will suffice short of an agreement to waive any claim for negligence. The plaintiff must agree, expressly or impliedly, to waive any claim for injury that may befall him due to lack of reasonable care by the defendant, or, more accurately, due to the failure of the defendant to measure up to the standard of care that the law requires of him."[13]

In the much critized case of *Dann v Hamilton*[14] Asquith J. held that the defence of *volenti* only applies in cases

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9 (1926) A.C. 725 (P.C.) at 731.

10 (1963) 2 Q.B. 43.

11 Ibid., at 69.

12 (1971) 2 Q.B. 691.

13 Ibid., at 701. See also *Burnett v British Waterways Board* (1973) 2 All E.R. 631 at 635.

14 (1939) 1 K.B. 509.

where the drunkenness of the driver is "so extreme and so glaring" that it is like "intermeddling with an unexploded bomb or walking on the edge of an unfenced cliff".[15] In that case Mrs. Dann was able to recover from the estate of Hamilton, who was boisterously drunk and driving too fast, although she knew he was sufficiently under the influence of alcohol to increase the chances of a collision arising from his negligence.

Thus the Australian courts are more likely to infer that the plaintiff consented to the risk.

> "If the plaintiff, with sufficient knowledge, voluntarily accepts the risk of physical injury, then without proof of any further fact concerning a supposed bargain between the parties, the law as it has been developed declares that in that situation and in that relationship the result is that the plaintiff has consented to being without a remedy if injury should occur of the same kind which she knew to be likely because of the condition of the driver."[16]

Although Tomonoi's drunkeness may have been so extreme as to support even the English view, the Full Court held that Vari Kila had no practical choice but to continue, or had a moral claim. Therefore it was not necessary for it to decide which line of authority to follow.

The emphasis of the English courts on consent makes *volenti* too difficult to use and ignores the fact that there is a moralising element in the courts' attitude to it. There is a natural reluctance by the courts to allow it as a defence because it is an absolute defence and therefore if it is proved, no damages are payable. There are circumstances where even without an express agreement to waive damages the plaintiff should not be allowed to recover. In situations like *Miller v Decker*,[17] for example, where both plaintiff and defendant indulged in a drinking spree together there should be no recovery. In *I.C.I. Ltd. v Shatwell*[18] the two brothers worked together in not obeying the safety rules, and it was held that they should not recover. The plaintiffs in those cases were more blameworthy than the young man in *Bennett v. Tugwell*[19] who continued to ride in

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15 *Ibid.*, at 510.

16 *Sara v Government Insurance Office of New South Wales* (1969) 89 W.N. (Pt.1) (N.S.W.) 203 per Walsh J.A. at 207.

17 (1955) 16 W.W.R. 97.

18 (1965) A.C. 656.

19 (1971) 2 Q.B. 267.

a car with a notice "Passengers travel at their own risk". It was held that he could not recover. He thought the notice did not affect the liability of the driver's insurers.

To conclude, the English view is too rigid and is not realistic: consent express or even implied to waive damages may not exist even in cases where it would be wrong for the plaintiff to recover. The Australian cases show an over-eagerness to imply consent to the risk of injury. The courts in Papua New Guinea should adopt a more flexible approach. A possible new formula would be to ask: would it be wrong to allow the plaintiff to recover any damages because he knew of and understood the risk, and willingly accepted it either expressly or impliedly? This formula is not very different from the one in *Letany v Ottawa Electric Railway Co.*[20] Emphasis on the idea of the culpability of the plaintiff as well as his acceptance of any risk means that *volenti* may not always be used as a complete bar in drunken driving situations. The use of either express or implied acceptance means that the English idea of formal consent is not necessary. It should be borne in mind that a complete bar to recovery may not be appropriate in many cases. Use of the more flexible defence of contributory negligence to reduce the plaintiff's damages may lead to the most just results.

An additional problem in relation to the defence of *volenti* was raised by Frost S.P.J. which again raises a difference in attitude between the English and Australian courts. In the case of *Insurance Commissioner v Joyce*,[21] a case involving a drunken driver, Dixon J. set out three ways of approaching the problem of defence when the plaintiff knew of the disabilities of the defendant. The defence could be either that there was no breach of duty, or that *volenti* applied or that there was contributory negligence. He preferred to use the first form of defence. In *Nettleship v Weston* [22] the majority of the Court of Appeal took the view that the same duty of care and standard of care is owed by the defendant even if the plaintiff knew of his disability. Frost S.P.J. suggested that the *Nettleship* approach may be the one best suited to people of various language groups and backgrounds. Therefore without deciding the matter he preferred *Nettleship*. In *Joyce* Dixon J. gave his reasons for preferring to hold that there was no breach of duty:

> "It appears to me that the circumstances in which the defendant accepts the plaintiff as a passenger and in which the plaintiff accepts the accommodation in the conveyance should determine the measure of duty and that is a more satisfactory manner of ascertaining their respective rights than by opposing to a fixed measure of duty exculpatory considerations, such as the voluntary assumption of risk or contributory negligence."[23]

If the views of Dixon J. are accepted, there will be no

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20 (1926) A.C. 725 (P.C.)

21 (1948) 77 C.L.R. 39, followed by the Supreme Court of Papua New Guinea in *Taylor v Quigg* (1957) No. 153.

22 (1971) 2 Q.B. 691.

23 (1948) 77 C.L.R. 39, at 59.

damages payable because the elements of negligence have not been made out.

In *Nettleship v. Weston*,[24] Salmon L.J. in a strong dissenting judgment said.

> "The position, however, is totally different when, to the knowledge of the passenger, the driver is so drunk as to be incapable of driving safely.... The duty of care springs from relationships. The specific relationship which the passenger has created by accepting a lift in the circumstances postulated surely cannot entitle him to expect the driver to discharge a duty of care or skill which ex hypothesi the passenger knows the driver is incapable of discharging... no duty is owed by the driver to the passenger to drive safely, and therefore no question of *volenti non fit injuria* can arise."[25]

Salmon L.J. expressly agreed with Dixon J. but he used the argument that there was no duty owed whereas Dixon J. had referred to the measure or standard of duty owed. I think the argument that there was no duty owed is faulty. If one takes a watch to be repaired by a car mechanic, he cannot be expected to do a professional watch-mender's job. If he accepts the job, the mechanic still owes a duty of care, for example not to open the watch with a tyre iron, but the standard of care owed is a limited one.

Despite the logic of the point of view put forward by both Dixon J. and Salmon L.J. the two other judges in *Nettleship*[26] took the opposite point of view. The case involved a claim by Mr. Nettleship, who was teaching a friend, Mrs. Weston, to drive. He was injured when the car went out of control (at walking pace) and hit a lamp post. Megaw L.J. said:

> "Theoretically the principle as thus expounded is attractive. But with very great respect, I venture to think that the theoretical attraction should lead to practical consideration."[27]

He felt that the certain of a general standard is preferable to the vagaries of a fluctuating standard. Megaw L.J. and Lord Denning M.R. agreed that the law is that the driver must attain the same

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24 (1971) 2 Q.B. 691

25 Ibid., at 704.

26 Ibid.

27 Ibid., at 707.

standard of care for passengers as for pedestrians. The passenger's knowledge of the driver's disability may show that he was contributorily negligent and thus reduce his damages but the same duty of care and standard of care is owed by all drivers.

The same problem arises in Papua New Guinea: which line of decision should be followed? Under the Constitution the *Nettleship*[28] approach as part of the common law of England could be followed as received law. I agree with Frost S.P.J. that it is more appropriate to Papua New Guinea. The *Nettleship* approach allows more flexibility: although the same standard is owed by all, damages can be reduced if the plaintiff has been contributorily negligent. The law can deal with the drunk driver and passenger or pedestrian, or learner doctor and patient, without varying the standard or the duty of care. Although the approach of Dixon J. is more logical, it is also harsher because it means the instructor of a learner driver gets no damages because he cannot prove all the elements of negligence. The *Nettleship* approach may be more in line with custom. According to custom in some areas contributory negligence is not a complete defence and in many cases it is not a defence at all. There is a form of strict liability in the case of motor vehicles and other dangerous things. The recent *Motor Vehicle (Third Party Insurance) (Basic Protection Compensation) Act 1974* has recognised the need for a limited degree of no-fault liability in the case of death caused by motor vehicles. The Act provides that in the case of death caused directly or indirectly by a motor vehicle the dependant wife or child of the deceased are entitled to claim up to K2,00[29] from the Motor Vehicles Third Party Insurance Trust Fund without having to show fault. Payment of compensation from the fund should be within three weeks of a request made to an assessment officer (usually a District Court Magistrate). This legislation is only applicable in the case of death caused by a motor vehicle. A crippling injury suffered in a car accident is not covered, therefore negligence must be proved. There is therefore still a need for a flexible approach to the question of liability. If common law concepts are to be kept as part of the law in Papua New Guinea, I think the view of common law which is the most adaptable is the one to be followed. I therefore prefer the view of the majority in *Nettleship v. Weston*.

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28 Ibid

29 If the deceased left no wife or child, the head of his customary kin group may claim up to K1,500 on behalf of the group.

11. *Vicarious Liability*

The appeal from the Supreme Court succeeded on the ground that Roka Coffee was not vicariously liable to pay damages to Largo Gerebi because at the time of the accident Joseph Tomonoi was not acting within the course of his employment. The Full Court held that although it may have been within the scope of his authority to take one stray passenger it was not within the scope of his authority to take ten. The risk of large sums of damages having to be paid by the master in the case of an accident meant that it would be wrong to infer that taking ten passengers could be within Tomonoi's authority. In the accident three people were killed and five injured. Roka Coffee were liable as owners to pay the statutory amount of $8,000 under the *Motor Vehicle (Third Party Insurance) Act*. The Act provided that the owner was liable up to the statuory limits if fault was proved by the driver even though the owner had not given consent to the driver's use of the vehicle.

Frost S.P.J. raised another question of principle without deciding the matter. One view of vicarious liability is that the master is liable for the breach of the duty of care owed by his servant.[30] It is not necessary to show that the master was negligent or that he owed a duty of care to the plaintiff. It is true vicarious liability: liability for the acts of another without necessarily being at fault oneself. On the other hand, in *Twine v. Bean's Express*[31] and *Darling Island Stevedoring Co. v. Long*[32] the courts looked at the *master's* duty to the injured party.[33]

Frost S.P.J. was content to avoid deciding on this "fundamental point of principle" because the case could be decided on the basis of the scope of Tomonoi's duty alone. It is difficult to see what the other two judges thought. Clarkson J. agreed that it was not within the scope of Tomonoi's authority to take the ten passengers. He then discussed whether the owner, Roka Coffee, owed Vari Kila a duty of care when he got on the truck. He said, "at that stage, the obvious risk of injury and dilemma in which the deceased found himself had been caused by the continued and excessive drinking of the driver in the presence of the deceased but of which clearly the owner had no knowledge." He continued "if one then accepts as I do the ratio of *Twine's* case[34], the claim against the appellant

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30 See *Staveley Iron Coy Ltd v. Jones* (1956) A.C. 527. (I shall call this the traditional view.

31 (1946) 1 All E.R. 202.

32 (1957) 97 C.L.R. 36.

33 See Williams, "Vicarious Liability: Tort of the Master of the Servant" (1956) 72 L.Q.R. 522. (I shall call this the modern view.)

34 (1946) 1 All E.R. 202.

fails except to the extent of the statutory liability of $8,000."[35] Thus Clarkson J. appears to support the modern view because he discusses the duty of the owner and also supports the ratio of *Twine's* case. It is not entirely clear that this interpretation is what the learned judge meant because the reference to the owner may not be to the owner as master but to the liability of the owner under the Third Party legislation, or even to the owner as principal.[36] Minogue C.J. agreed with Frost S.P.J. and Clarkson J. that the appeal should be allowed on the ground that it was not shown that any duty of care was owed by the appellant to the deceased Vari Kila. His judgment gives the clearest support for the modern view.[37]

What attitude should the courts in Papua New Guinea adopt in the future? Using the traditional view, they ask: Did the servant owe a duty of care? Was he in breach of it? Were the damages foreseeable? Was he, the servant, acting in the scope of his employment? If the answers to all these questions are 'Yes' then the master is liable. In contrast, the modern view would have them ask: Did the master owe a duty of care? Was he in breach of it? Were the damages foreseeable? If all the answers are 'Yes', then the master is liable. In most cases there will be little difference in the end result whichever test is used because the question of scope of employment is covered in the modern view in the question: Did the master owe a duty of care?

Most cases involving forbidden passengers have held that the passenger cannot recover from the master. The basis for these decisions is either that the servant has gone outside the scope of his employment or that the passenger is a trespasser. *Twine's* case was decided on the basis that the master owed no duty to the passenger. The forbidden passenger cases are treated in a different way by the courts from other cases involving prohibition by the master. In most cases it is very difficult for the master to avoid liability just because he has forbidden the servant's wrongful act, for example, speeding or racing buses, or driving without insurance.[38] Usually the master can escape liability only if the servant does a different kind of thing, for example, dumps rubbish on completely the wrong piece of land.[39]

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35 Full Ct. (1973) no. 49 at 20.

36 The use of the agency principle to make the owner liable (usually because he is insured) in cases where there is no master and servant relationship but there may be casual delegation received a set-back in *Morgans v. Launchbury* (1972) 2 W.L.R. 1217.

37 Full Ct. (1973) no. 49 at 21.

38 *C.P.R. v. Lockhart* (1942) A.C. 591 (P.C.)

39 *Rand v. Craig* (1919) 1 Ch. 1.

There are four main problems with the modern approach. The first is illustrated by the judgment of Clarkson J:[40] the master did not owe a duty partly because he had no knowledge of the situation. If by looking at the master's duty we must then look at his knowledge, the whole basis of vicarious liability is defeated. Apart from the passenger cases, the courts have not focussed on the master's knowledge. It may be fairer to look at the problem from the master's point of view. Nevertheless many cases have been conspicuous in their lack of fairness to the master. The basis of vicarious liability have began with command theory but today "the deepest pocket rule"[41] has taken over. Vicarious liability is not necessarily a logical solution but it is a practical one. It may be that in Papua New Guinea the western idea of vicarious liability is not as necessary as it is in Australia or England because by means of group responsibility and pooling of resources compensation may be paid. The idea of vicarious liability does exist in custom.[42] It is rare in Papua New Guinea for individuals to take out liability insurance policies (unless it is with a householder's policy) whereas big business or the Government have adequate coverage.

If one is to look at the master's knowledge, possible problems could arise in the case of a large company like Bougainville Copper. Whose knowledge do the courts look at - the servant's immediate supervisor or someone closer to the top? The problems of drunk drivers and forbidden passengers can be covered flexibly under the traditional view by reference to the scope of the servant's employment. Thus knowledge of the master is not directly an important factor but it may lead to the conclusion that the servant is not acting within the course or scope of his employment.

The second problem is that of deciding whether or not the master owed a duty of care to the injured party. In the ordinary situation, for example where the servant runs over a pedestrian, it is clear that the servant owes a duty of care to persons using the road. But what of the *Bourhill v. Young*[43] situation, where the a pregnant fish wife claimed damages because of the nervous shock she suffered after hearing an accident and later seeing blood on the road? It was held by the House of Lords that she could not recover because she was an unforeseeable plaintiff. Does the master owe a duty of care to all people using the road where his servant might drive? Or is his duty to others

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40 Full Ct. (1973) no. 49 at 20.

41 Baty, *Vicarions Liability*, at 154.

42 Cases on compensation and customary wrongs collected by local magistrate trainees at the Adminstrative College of Papua New Guinea.

43 (1943) A.C. 448.

limited in the same way his servant's duty is? In *Glasgow Corporation v. Muir*[44] the House of Lords had to decide a new question of liability which involved foreseeability. Their Lordships looked at the foreseeability question from the point of view of the servant to see if the plaintiff could recover from the master, Glasgow Corporation. In the strange and rare cases where foreseeability is stretched to the limit, it may well be straining the imagination of both student and academic to then refer to the master's duty. If we must look at the more complex problems from the servant's point of view, why not use the traditional approach which has the merit of simplicity and can be used in all cases?

In the recent Australian case of *Ramsay v. Pigram*[45] the master's duty view led to a very strange result. Mr Pigram was involved in a collision with a N.S.W. government vehicle driven by a policeman, Thrift. Thrift sued Pigram in the District Court which decided in his favour. Pigram sued Thrift and his employer, the Government of N.S.W. through Ramsay, the nominal defendant. When the District Court decided in favour of Thrift, Pigram dropped the action against Thrift but continued his action against Ramsay who raised issue estoppel. It was held by the High Court that the question of the master's duty had not been decided and therefore Pigram could continue. There is obviously a risk of extra litigation, which could be vexatious, if the master's duty view is taken.

The most convincing argument is that the traditional view can accommodate different torts. The court can ask: Did the servant commit a tort? Was it in the course of his employment? The master's duty approach would obviously not be appropriate for assault[46] cases, fraud[47] or defamation[48] cases if 'duty' is used in the Atkinian sense.

The provisions of the recent *Motor Vehicles (Third Party Insurance) Act 1974* means that in cases involving a motor vehicle the Motor Vehicles Insurance (P.N.G.) Trust will pay

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44 (1943) A.C. 448.

45 (1967) 118 C.L.R. 271

46 *Poland v. John Parr & Sons* (1927) 1 K.B. 236.

47 *Lloyd v. Grace, Smith & Co.* (1912) A.C. 716.

48 Colonial Mutual Life Ass. v Producer's Co. of Australia. (1931) 46 C.L.R. 41.

up to the statutory limits[49] to a person injured or to his estate if he is killed by a motor vehicle whether or not the vehicle is insured or whether or not the driver had permission from the owner to drive it. Thus the principles of vicarious liability are not as important in third party personal injury claims as they are in other cases, for example, those arising out of accidents in boats or canoes, factory accidents, or motor vehicle cases not covered by the third party legislation.

The traditional view is to be preferred. It is simpler to apply to new situations especially those involving foreseeability. The question of the scope of the servant's employment adequately deals with the prohibition cases. Unless a decision is made to change the emphasis of the law relating to vicarious liability, reference to the master's knowledge to test his liability will cause difficulty with earlier cases. The modern view may lead to further litigation to allow for the two liabilities. It also is not appropriate for the other torts the servant may commit where discussion of 'duty' is not necessary.

- Diana Kincaid.

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49 The statutory limits have recently been increased to K100,000 for any one person, and K500,000 for claims arising out of any one accident. Fault must be proved for claims under this legislation. Payment without showing fault can be made in cases of death under the *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974*.