



Supreme Court rules Morrisons vicariously liable for employee's violent attack

18 April 2016

In the recent case of *Mohamud v WM Morrison Supermarkets plc [2016] UKSC 11*, the Supreme Court held Morrisons supermarket vicariously liable for its employee's violent attack of a customer.

Background

A two-stage test is applied to establish whether an employer should be held vicariously liable for a tort committed by an employee in the course of his employment.

First, what is the nature of the employee's job? This will be viewed broadly.

Second, is there sufficient connection between the nature of the employment and the employee's wrongful act to make it fair and just to hold the employer liable?

The second part of this test, known as the "close connection" test, was set out in the leading case of *Lister v Hesley Hall Ltd [2001] UKHL 22*. In that case, the House of Lords held the employer of a warden, who had sexually assaulted boys at a boarding school, vicariously liable for their employee's actions.

Facts

The facts of *Mohamud* are as follows.

On 15 March 2008, Mr Mohamud stopped at a petrol station owned by Morrisons. He entered the kiosk and asked if he could print off some documents from a USB stick he had with him. The kiosk was manned by Mr Khan, a Morrisons employee, and two other members of staff. Mr Khan refused Mr Mohamud's request using an expletive. Mr Mohamud objected to being sworn at by Mr Khan. Mr Khan responded in foul, racist and threatening language and ordered Mr Mohamud to leave.

Mr Mohamud left the kiosk and returned to his car. Mr Khan followed him, opened the car's front passenger door and told Mr Mohamud never to return to the petrol station. Mr Mohamud told Mr Khan to get out of his car. In response, Mr Khan punched Mr Mohamud on the left temple. Mr Mohamud got out of the car and walked round to close the passenger door when Mr Khan attacked Mr Mohamud again, punching and kicking Mr Mohamud to the ground.

Mr Mohamud brought a personal injury claim against Morrisons, arguing that Morrisons was vicariously responsible for the actions of its employee Mr Khan. The trial judge dismissed the claim and the Court of Appeal upheld the judge's decision, on the basis that the close connection test was not met.

Mr Mohamud appealed to the Supreme Court, arguing for a new test of vicarious liability, the "representative capacity" test. The test should be whether a reasonable observer would consider the employee to be acting in the capacity of a representative of the employer at the time of committing the tort.

Decision

The Supreme Court unanimously allowed the appeal holding Morrisons vicariously liable for Mr Khan's violent acts against Mr Mohamud.

The Court rejected the idea of a "representative capacity" test. Although the close connection test is inevitably imprecise due to the requirement to evaluate proximity of connection based on the particular facts of a case, it remains good law and is the correct test to apply.

Applying the first question of the two-stage test outlined above to the facts, the Court determined that it was Mr Khan's job to attend to customers and respond to their enquiries.

Applying the second question, the close connection test, to the facts, the Court held that Mr Khan's attack on Mr Mohamud was sufficiently connected to the nature of his employment as the violence occurred whilst Mr Khan was interacting with a customer.

The argument put forward by Morrisons that, by leaving the kiosk, Mr Khan had broken the close connection with his duties, was not accepted. Firstly, Mr Khan had not metaphorically removed his uniform by leaving the kiosk, rather he was following up on what he had said to Mr Mohamud in the kiosk. Secondly, when Mr Khan followed Mr Mohamud to his car and ordered him not to come back to the petrol station, that was not a personal order, but an order given on his employer's behalf to keep away from his employer's premises.

Finally, it was just that Morrisons be held responsible for their employee's actions.

Comment

This case has reaffirmed the close connection test from *Lister*. Despite acknowledging the inherent imprecision of the close connection test, the Supreme Court rejected the introduction of a new "representative capacity" test, arguing that this would not bring substantive change.

Employers should note that the Court considered it irrelevant that Mr Khan was motivated by personal racism rather than by a desire to benefit his employer's business. It is the employee's duties and activities, not his or her motivation, that will determine whether a sufficient connection exists between the employment and the tort committed. This case confirms that the Courts will take a broad approach when determining the nature of an employee's job.

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For further advice, please contact Isobel Symonds Solicitor in the Corporate Department by email or on 020 7465 4300 at Payne Hicks Beach.
