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A View from the Bridge

The Newsletter from
The Conway Accident Law Practice



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Accident Law Practice

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INSIDE THIS ISSUE



MOBILE PHONES AND THE LAW

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CASEWATCH 2018

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Mobile Phones and The Law

John Lewis have stopped selling Satnavs due to lack of demand. Everyone now has a smartphone.

On a survey carried out by the RAC in 2015, one third of us admitted using a hand-held device whilst driving.

In 2016, the last date when figures are available, there were 36 mobile phone related fatalities.

The penalty for mobile phone use when driving was increased in March 2017 to 6 points, and a minimum fine of £200.

It is estimated that around £14.6 million in fines are handed down each year.

Theresa May has vowed to make mobile phone use by drivers as socially unacceptable as drink driving.

South Wales police have set up a SNAP initiative whereby drivers can online report other drivers for mobile phone use. They are particularly keen on witnesses who can provide dashcam evidence.

Throughout the UK, you will start to see road signs which will electronically detect and warn drivers where mobile phones are in use in the vehicle. The sign will detect when signals are being transmitted by a mobile phone inside a car, and then flash a symbol of a mobile phone with a line through it, to remind drivers not to use a handset. The scanner can pick up both mobile phone radio signals and Bluetooth signals. Those using Bluetooth for handsfree connection will not be warned by the sign.



The Road Vehicles (Construction and Use) (Amendment number 4) Regulations 2003 came into force in December 2003. They insert Regulation 110 into the Road Vehicles (Construction and Use Regulations) 1986. Regulation 110 prohibits a person from driving or causing or permitting a person to drive a motor vehicle on a road if the driver is using a handheld mobile phone or handheld device. It also prohibits a person from using a handheld mobile phone or handheld device whilst supervising a learner driver who is driving.

The term "mobile phone" covers cell phones and smart phones. A phone or device is to be treated as handheld if it is or must be held at some point during the course of making or receiving a call or performing any other interactive communication function. A phone or device will be treated as "in use", where it is making or receiving a call, or performing any other interactive communication function whether with another person or not. The particular use to which the phone must be

Welcome to the seventh newsletter of
The Conway Accident Law Practice.

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put is not defined as an element of the offence. The prosecution must simply prove that the phone or the other device was handheld by the person at some point during its use when the person was driving a vehicle on the road. Under existing caselaw, a person may be regarded as driving whilst the engine is running, even though the vehicle is stationary. It is only legal to use a mobile phone when safely parked or in a 999 emergency.

The Conway Commute

1. Each morning I switch on the ignition and my iPhone at the same time. Unthinkingly I press the “I’m driving” message because the vehicle is still stationary.

OFFENCE: 6 penalty points and £200 fine.

2. The iPhone is mounted on a cradle on the windscreen. It’s not on Bluetooth. I receive a call in the course of the journey. I don’t want to be disturbed whilst driving and press “Decline” on the phone.

OFFENCE: 6 penalty points and £200 fine.

3. I receive a phone call during the course of the journey. The phone is now on Bluetooth and I take the call handsfree using the controls on the steering wheel.

NO OFFENCE

4. I am stopped at the lights at the M74 Tradeston offramp. These lights are notoriously slow. I have at least 3 minutes waiting time. I have the handbrake on, but the engine is running. I pick up the phone and open the Spotify app. I am going to have a difficult day on the naughty step in All Scotland Personal Injury Court, and I psych myself up with “Best of Metallica” at high volume. It transpires that I have been filmed on a front facing dashcam and then reported by the driver behind me, whose attention has been drawn by my head rocking as in “Wayne’s World”.

OFFENCE: 6 penalty points and £200 fine.

5. The suction pad on the windscreen fails and the phone drops to the floor, interfering with the clutch. I move it with

my foot, (probably no offence committed) but then pick it up and put it in the glove compartment.

OFFENCE: 6 penalty points and £200 fine. *The Telegraph* writer Fraser Nelson was convicted of exactly this offence.

6. I pick up the phone and dictate an urgent reminder message to myself using the voice dictation function – Offence? When the well-known tax avoider and comedian Jimmy Carr picked up his mobile phone and dictated a joke reminder to himself, he was found not guilty. He had not been using the phone for communication purposes. This is almost certainly wrong.

OFFENCE: 6 penalty points and £200 fine.

By the time I have reached the office, I have amassed 30 penalty points and a £1,200 fine.

Where’s that Uber? ■

 2018


CASEWATCH

Dryden & Others -v- Johnson Matthey PLC [2018] UKSC 18)

The three claimants had worked in factories making catalytic converters. Platinum salts were used in the production process. The employer was in breach of both common law and statute by failing to ensure that the factories were properly cleaned. As a result; the claimants were exposed to platinum salts, and in turn they developed platinum salt sensitisation.

They were no longer permitted to work in areas where they might be further exposed and might develop allergic symptoms.

As a result; two of the claimants had their employment terminated and the third had secured a different role at a greatly reduced rate of pay.

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They lost at first instance. They had sustained no actionable personal injury and in truth their claim was for pure economic loss, for which they could not recover in tort.

The Court of Appeal agreed.

Negligence and breach of duty are not actionable alone - it was common ground that there must be some damage to constitute actionable injury. The two key cases were House of Lords cases of *Cartledge v E Jopling & Sons Ltd* (when is lung disease actionable) and *Rothwell v Chemical & Insulating Co Ltd* (pleural plaques are not an injury at common law). There was agreement that if a platinum salt allergy had developed as opposed simply to a sensitisation then there would be an actionable personal injury.

The Supreme Court judgment held that the pursuers' bodily capacity for work had been impaired and they were significantly worse off. They had suffered actionable bodily damage, which, given its impact on their lives was more than negligible.

It was important to focus on the actual physiological change and the significant employment impact.

📁 **Kaizer v Scottish Ministers [2018] CSIH 36**

Causation is at the heart of this appeal. In July 2009 Mr Porter had attempted to murder a fellow inmate in a racist attack, carried out in the prison gym.

The pursuer's contention, which was accepted by the Lord Ordinary, was that the attack upon him was in implementation of a threat made by Mr Porter occurring a week prior to the assault.

The pursuer had reported the threat to prison officer Mr Lumsden who was on duty at the time. The officer did not make any report about the incident, as a result of which no further action was taken.

It was accepted that Mr Lumsden had been negligent, and that his employers were vicariously liable. The question was whether the assault would have taken place but for that negligence.

The defender's position was in many ways remarkable. They tried to argue that nothing effective could have been done by the prison authorities that the attack was inevitable and would have happened in any event.

The court held that it was unable to accept that "unattractive position".

"Where negligence is established, as it is here, and thus the existence of a risk of injury is demonstrated in the context of a prison setting, in which the prison authorities control the movements of all those involved, the court is entitled to make the reasonable assumption that the prison authorities will not only do something about that risk, but that the something will reduce the risk to such a level that it will, in all probability far less on a mere balance, not occur."

It was held that causation must be taken to be established in the absence of some extraordinary factor which made the incident otherwise inevitable despite the taking of reasonable precautions.

An expert witness had given evidence that it was much less likely that the assault would have happened if close supervision had been in place and the Lord Ordinary had indicated he agreed with that. His evidence was that if there had been a serious threat made it would go to senior management for a determination on what to do. It would have enabled officers close to the actual incident, to take positive steps to deal with any threat.

The reclaiming motion was refused. ■