

Employers and vicarious liability after recent Supreme Court decisions

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In the *Morrisons* case, an employee of the supermarket's petrol station assaulted a customer. In legal circles there was some surprise that the supermarket was held to be vicariously liable for this. The decision was a borderline one on its facts with one Law Lord in the Court of Appeal saying that if *Morrisons* were liable then in practically every case where an employee was required to engage with the public his employer would be liable for any assault which followed, which appeared to be a step too far.

In the *Barclays* case, the issue for the court was whether *Barclays* was liable for sexual assaults committed by a doctor the bank instructed to examine new employees. Whilst recent case law has developed to impose vicarious liability in most cases, *Barclays* argued that it was not fair, just and reasonable to impose liability for the doctor's sexual assaults.

One of the key questions for the court to decide was whether the doctor was carrying on business on his own account or whether he had a relationship with the bank akin to employment. The Supreme Court decided that the doctor was carrying on his own business, the bank being one of his clients. In such circumstances, no vicarious liability arose.

The court overturned the decision in the *Morrisons* case as well, finding that the supermarket was not liable for the assault.

Part of the judgment, discussed workers in the "gig" economy. Whether gig workers are employees is the crucial question to be answered when deciding whether vicarious liability applies. The status of gig economy workers was also discussed in the Court of Appeal which upheld the Employment Appeal Tribunal's decision that Uber drivers are workers not self-employed. Uber is appealing this decision to the Supreme Court.

These two recent decisions show that a common sense and pragmatic approach will be taken. If an individual is carrying on business on their own account, as the doctor was, no vicarious liability applies. In those cases where this is doubtful, until there is clearer Government guidance, recourse to previous cases and a "searching enquiry" looking at the detailed features of the relationship should be made.

To find out more, please contact [Angela Williams](#).

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