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BTOverview

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Trolley Dash, Crash and a Fall for Good Measure

'A couple of (relatively) recent decisions in the All Scotland Personal Injury Court have commented on liability and potential Contributory Negligence, in EL and PL claims. The full judgments are available on the Scottish Courts Website here.

Like all the best judgments, they tell a good yarn (there are even pictures!) and provide useful summaries of the submissions from parties, in context.

In *Gavin Prior v Forth Boat Tours* [2021] SCEDIN 19, a crew member from a cruise boat was tasked with stocking up the bar before a sailing. To do so, he required to bring produce and stock in a trolley along a floating pontoon to the vessel, which was moored alongside the pontoon in a marina. The trolley was heavy and the Pursuer found it difficult to control. As the tide was out, the first part of the pontoon was at a slope downwards. The Pursuer attempted to control the trolley's descent by holding its handle and standing downhill of it, allowing it to proceed down the ramp towards him. The trolley had been overloaded and quickly picked up speed. In an attempt to mitigate this acceleration and arrest the progress of the trolley, the Pursuer naturally leapt upon it. However, despite his efforts he was unable to recover control and the trolley fell off the edge of the pontoon into the water. The Pursuer suffered injury in the process.

The Pursuer's case was that he had not been provided with training and instruction as to how he should perform the task. His case proceeded on common law only. No reference was made to regulations informing the common law, such as the Provision and Use of Work Equipment Regulations 1998, or the Manual Handling Operations Regulation 1992. It was shown in evidence that a suitable risk assessment had been undertaken; instruction had been provided to the Pursuer not to overload the trolley; to ask for assistance if he felt he needed it; and to stand uphill of the trolley when proceeding down a slope. Ultimately, Sheriff McGowan considered that he had received sufficient training from the Defender, in whose favour he granted decree of absolvitor. Had he decided that primary liability attached, he would have attributed 50% contributory negligence to the Pursuer.

Forrest v Iceland [2021] SCEDI27 was a PL trip case. The Pursuer tripped on the rising edge of a ramp which afforded access to the entrance level to the store from the car park. The ramp was unmarked and had no handrail or barrier to prevent customers stepping onto or off it from the side. The Pursuer had been to the shop previously and negotiated the ramp before. However, on this occasion she fell and suffered injury. Sheriff Dickson decided that a reasonable occupier in the position of the Defender would have either painted, highlighted or marked the rising edge, or installed a barrier or handrail of some sort. Both of these were inexpensive options that would have shown the occupier as having taken reasonable care in terms of Section 2 of the Occupiers' Liability (Scotland) Act 1960. A deduction of 25% was made for contributory negligence on the basis that the Pursuer was not looking where she was walking. She was either looking at advertising posters within the shop windows, or straight ahead according to her own evidence. It may be considered overly critical of the Pursuer that, having tripped over an unmarked hazard, she was partly to blame.

For more information on the issues raised in this article please contact **Tim Webster**.

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