

Deliberate or Reckless Acts?

Burnett or Grant (Respondent) v International Insurance Company of Hanover Ltd (Appellant) (Scotland) 2021 [UKSC] 12.

The widow of a man who was killed after being ejected from a public bar has had her right to claim damages from the insurers of the doorman's employers confirmed by the Supreme Court. A Link to the judgment can be found [here](#).



The action arose after Craig Grant was ejected from the Tonik bar in Aberdeen on 9 August 2013 by Jonas Marcius, a door steward working on the premises. An altercation occurred following Mr Grant's ejection from the bar, during which Mr Marcius applied a neck hold to Mr Grant, who was later pronounced dead at the scene. The cause of death was mechanical asphyxia, caused by the application of the neck hold. Mr Marcius was charged with Mr Grant's murder, but a jury found him guilty of the lesser charge of assault. The sentencing judge accepted that Mr Marcius' actions were "badly executed, not badly motivated".

Mr Grant's widow and surviving child subsequently raised an action for damages against Mr Marcius' employers, Prospect Security. By the time the action was raised, the employers had gone out of business and so Mrs Grant argued that the insurers, the International Insurance Company of Hanover, ought to indemnify the company under the public liability insurance policy.

Within the insurance policy, there was a clause stating that "*liability arising out of deliberate acts*" of an employee was excluded from the policy's coverage. The insurers sought to argue that the actions of Mr Marcius were deliberate and thus fell under the exclusion relating to deliberate acts and so they were not liable to indemnify.

Furthermore, it was argued that any liability to indemnify arose under Extension 3 of the policy, which provided that coverage for public liability for wrongful arrest was limited to £100,000.

Mrs Grant was successful when her case was first heard before the Outer House of the Court of Session. The insurers appealed that decision to the Inner House, which rejected the appeal. The insurers then appealed to the Supreme Court which has unanimously dismissed the insurer's appeal.

With regard to the "deliberate acts" exclusion, the Court explained that the contract was to be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean. Whether the injury was "accidental", the Court explained was to be considered from the perspective of the employer, as opposed to the doorman. Given that the employers were in the business of door stewarding, there was said to be a clear risk that the stewards would use force.

Going on from that, the Court considered what was meant by "deliberate acts" and explained that the natural meaning of "deliberate" acts was the conscious performance of an act intending its consequences. The Court emphasised that this involves a different state of mind to recklessness. If, the words "deliberate" were intended to include recklessness, it should have been made clear what that means in this context.

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Of significance, in considering the arguments relating to recklessness, was that there was no finding by the lower Courts of an intention to injure, or even recklessness. The conviction for assault did not establish any intention beyond an intention to perform the act of assault, namely the neck hold. The sentencing judge's conclusion that what was done was "badly executed, not badly motivated" is inconsistent with such an intention. Even if "deliberate acts" included recklessness, the Court held that the same conclusion would follow due to the sentencing judge's conclusion.

Whilst it was not necessary for the Court to determine the second issue on the limitation of liability for wrongful arrest, the Court stated that it agreed with the reasoning and conclusion of the Court of Session that the losses claimed do not relate to wrongful arrest and so the factual basis for such a claim was not made out.

The decision emphasises that, where there is ambiguity around the proper interpretation of a word, the Court will look to apply the natural meaning of the word.

For more information, please contact:

Jennifer Mackenzie, Associate: jmk@bto.co.uk / 0141 221 8012

