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PERSONAL INJURY IRREGULAR

Court of Appeal Special

Discount Rate

Liz Truss has announced the long overdue reduction of the Discount Rate to minus 0.75%. It has been welcomed by Cs and condemned by Ds. One waits to see whether it will result in an increased appetite on the part of Ds for periodical payments, as an alternative to a lump sum.

No redress for child of incest

In a very difficult case, CA has held that Criminal Injuries Compensation Scheme does not, properly construed, confer any right to compensation on the genetically disabled child of an incestuous rape. The child did not exist at the time of the crime. He has no redress at common law. The CICA only confers rights on a relative of the victim who is alive at the time of the crime. This leaves the child of a rapist (incestuous or otherwise) without personal redress. His mother is likewise without redress under the scheme. Their Lordships dropped what looks like a strong hint that the legislature should remedy this, **CICA v Y** *[2017] EWCA Cv 139.*

NB: Congenital Disabilities (Civil Liability) Act 1976 *gives a limited right of recovery to a child born with disabilities as a result of a wrongful act occurring before his birth or even conception. However, common law and statutory remedies against a criminal are of limited value in the case of most sexual offences. If neither mother nor child can recover the significant cost of care from the CICA, it means that some of the most pitiable victims are left without adequate redress.*

Injured Fare-Dodgers Lose Appeal

Cs jumped from a taxi to avoid paying the fare. Taxi drove on, as they did so, in attempt to prevent them. D was negligent in driving on with open door, knowing Cs were not restrained. But real cause of injury was Cs' own criminal act. Appeal failed, **Beaumont v Ferrer** *[2016] EWCA Civ 768.*

Asbestos 2.3% contribution enough

An employer whose contribution to C's total exposure to asbestos was 2.3% was liable. The 2.3% may not have caused C any identifiable symptoms but it increased the severity of his asbestosis to a small, albeit not measurable extent. That was a material contribution to the disease.

Carder v University Of Exeter *[2016] EWCA Civ 790*

Holidays – Food Poisoning

Guests don't expect hotel food to make them ill. Does it make a difference whether the hotel or someone else is to blame? No. Provided you can prove it was the food (a potentially tricky point) at fault, such food is not of "satisfactory quality" contrary to S4(2) Supply of Goods and Services Act 1982 (now Consumer Rights Act 2015). It makes no difference whether food is served at table or collected from a buffet. A spirited attempt to argue that property in the food had not transferred to the consumer was rejected. **Wood v Tui Travel PLC** *[2017] EWCA Civ 11.*

OLA 2 - no recovery for obvious danger

D's land contained an ornamental bridge with low parapet over a rocky stream. It was a danger from the state of the premises within the OLA 1957. But the danger was obvious to users. D is not obliged to warn against obvious dangers. Lack of formal risk assessment did not lessen the risk. Barriers were disproportionate. It had been there for 100 years without accident, **Sutton LBC v Edwards** *[2016] EWCA Civ 1005*

OLA 2 – real danger required

A small lump of concrete protruded from the base of a traffic bollard. It did not pose a real danger to pedestrians. Foreseeability of harm alone is not enough. It is enough if visitor is reasonably safe. The balance between risk and cost of elimination must be struck, **Dean & Chapter of Rochester Cathedral v Debell** *[2016] EWCA Civ 1094*

No compensation for criminals

The CICS excludes awards of compensation to claimants who have unspent convictions which resulted in custodial or community service sentences. The exclusion is not a disproportionate interference with their human rights. A spirited attempt to convince the court that the inchoate entitlement to statutory compensation is a "possession" (under Art 1 of Protocol 1) for the purposes of eligibility for the statutory scheme failed. Although it was probably discrimination on the grounds of "other status" under Art 14, the scheme was not without reasonable justification, namely, that taxpayer funded expressions of sympathy should not be directed towards those who cost society money through their offending. Two of the applicants had been trafficked, and their offences, burglary and theft, were committed in that context. That did not alter the position. All victims of trafficking had access to consideration under the scheme. The state was not required to compensate all of them, whatsoever the circumstances. **R (on the application of McNiece) v CICA** *[2017] EWHC 2 (Admin)*

Ex turpi causa - manslaughter

C suffered from paranoid schizophrenia. She suffered a psychotic episode owing to D's negligence. During the episode she killed her mother. At sentencing, on a plea of guilty to manslaughter, the judge held she had no significant personal responsibility for her actions. Nevertheless, her claim against D failed for ex turpi causa and public policy. Her guilty plea precluded absolving her from any responsibility under the M'Naughton rules, **Henderson v Dorset Healthcare University NHS Foundation Trust** *[2016] EWHC 3275 (QB)*

No Bereavement for Co-habitees

The statutory award for bereavement under the Fatal Accidents Act 1976 does not extend to co-habitees of less than 2 years, as drafted. The wording of S1(3)(b) allows no scope for interpretive cure. However, the distinction between married couples and civil partners or co-habitees of less than 2 years cannot be justified and reform is needed, **Smith v Lancashire Teaching Hospitals NHS Trust** *[2016] EWHC 2208 (QB)*

Injuries on team-building exercises

C injured his leg on a work team-building exercise in France. C's employer contracted with a travel company, D1, for the package holiday. French law makes the travel organizer strictly liable to the traveller for any injury suffered on a package holiday. English law requires lack of reasonable skill and care. The nations differ on their interpretation of Directive 90/314. Parties agreed that C had no claim against D1 in English law. Held: a claim against the travel company was contractual. Rome I therefore applied. The English choice of law clause governed the contract. Claim failed. **Committeri v Club Mediterannee and others** *[2016] EWHC 1510 (QB).*