

Viasystems

The Tort of Vicarious Liability.

In July Nineteen Ninety Eight, Viasystems engaged a company Thermal Transfer (Northern) Limited to install air conditioning in their factory.

Thermal Transfer then subcontracted ducting work to S&P Darwell.

S&P then contracted with CAT Metalwork Services to provide fitters, Mr Megson and his mate Darren Strang.

They were installing ductwork under the eye of Mr Horsley, who was working on behalf of S&P.

On the fateful day in question, the men were working in a roof space. Megson needed some fittings and sent Strang to get them. Strang was away for a few minutes, Horsley continued helping Megson with the ducting.

Horsley naturally expected Strang to return by a sensible route, but no! Darren Strang decided to crawl through some unsteady sections of ducting that were already in place.

The ducting moved, striking and fracturing part of the fire protection sprinkler system in the factory causing extensive and expensive flood damage.

The question before the court was whether it was S&P Darwell or CAT

metalworks who were vicariously liable to Viasystems for Darren Strang's foolishness.

Prior to this case, it was the assumption that if a borrowing employer could be held vicariously liable for an employee's tort, then the actual employer could not be.

But could it be the case that both of our defendants are held vicariously liable for Darren Strang's negligence?

The Court of Appeal decided that they both can!

Lord Justice May in the Court of Appeal took the view that the test for employment hinged on the capacity to control. He argued that:

Mr Megson was the fitter in charge of Strang and Mr Horsley was the foreman on the spot.

So they were both entitled and obliged to control Strang's work, including his negligent actions.

Viasystems shows us that dual vicarious liability is allowed. Both an actual employer and a borrowing employer can be held liable for a borrowed employee's tort.