

Court of Appeal considers whether or not Wetherspoons were vicariously liable for an assault committed by security staff employed by a separate company

By [Eaindra Cho](#)

3PB Barristers

[Burger v Risk Solutions BG Limited and J D Wetherspoon PLC \[2026\] EWCA Civ 804](#)

Background

1. During an incident outside a pub operated by JD Wetherspoon Plc ('**JDW**') involving two door supervisors who were employees of Risk Solutions BG Limited ('**Risk Solutions**'), Mr Burger was restrained with such force that he suffered a dislocated hip.
2. Risk Solutions was engaged by JDW to provide security services pursuant to a security services agreement.
3. Mr Burger brought a claim against both Risk Solutions and JDW, saying that they were vicariously liable for the conduct of the door supervisors.
4. In the County Court, JDW was found to be vicariously liable. JDW appealed this decision.
5. In the High Court, JDW was found not to be vicariously liable. Mr Burger then appealed to the Court of Appeal.

The law

6. In **[Various Claimants v Catholic Welfare Society \[2012\] UKSC 56](#)**, Lord Philips said at [19] that whether there is vicarious liability for a tort is to be determined by a two-stage test:
 - a. The first stage requires consideration of the relationship between the tortfeasor and the person said to have vicarious liability; and
 - b. The second stage focuses on how the relationship is linked to the tort.

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7. Lord Philips at [35] then identifies five policy reasons why it is generally fair, just and reasonable to impose vicarious liability:
 - i.) the employer is more likely to have the means to compensate the victim, and can be expected to have insured themselves against liability;
 - ii.) the tort will have been committed as a result of activity being undertaken by an employee on behalf of the employer;
 - iii.) the employee's activity is likely to be part of the business activity of the employer;
 - iv.) the employer, by employing the employee to carry on the activity will have taken on the risk of the tort committed by the employee; and
 - v.) the employee will, to a lesser or greater extent, have been under the control of the employer.

8. Lord Sumption in Woodland v Swimming Teachers Association [2013] UKSC 66 at [3] said,

"The boundaries of vicarious liability have been expanded by recent decisions of the courts to embrace tortfeasors who are not employees of the defendant, but stand in a relationship which is sufficiently analogous to employment: Various Claimants v Catholic Child Welfare Society [2013] 2 AC 1. But it has never extended to the negligence of those who are truly independent contractors, such as Mrs Stopford appears to have been in this case."

9. Baroness Hale in Various Claimants v Barclays Bank plc [2020] UKSC 13, stated at [27],

"The question therefore is, as it has always been, whether the tortfeasor is carrying on business on his own account or whether he is in a relationship akin to employment with the defendant. In doubtful cases, the five 'incidents' identified by Lord Philips may be helpful in identifying a relationship which is sufficiently analogous to employment to make it fair, just and reasonable to impose vicarious liability... But the key... will usually lie in understanding the details of the relationship. Where it is clear that the tortfeasor is carrying on his own independent business it is not necessary to consider the five incidents."

10. In **BXB v Trustees of the Barry Congregation of Jehovah's Witnesses [2013] UKSC 15**, Lord Burrows stated at [58(ii)]:

"The test at stage 1 is whether the relationship between the defendant and the tortfeasor was one of employment or akin to employment... It is important to recognise, as made clear in Barclays Bank, that the 'akin to employment' expansion does not undermine the traditional position that there is no vicarious liability where the tortfeasor is a true independent contractor in relation to the defendant."

11. Mr Burger relied on the case of **Hawley v Luminar Leisure Ltd [2006] EWCA Civ 18**:

- a. In that case, ASE provided security services to a club operator, Luminar.
- b. ASE provided a doorman who committed an assault on the claimant while working at the club.
- c. The Court of Appeal concluded that the trial judge was entitled to find that Luminar was vicariously liable as there had been *"effectively and substantially a transfer of control and responsibility from ASE to Luminar"*.

The Court of Appeal decision

12. Newey LJ, with whom Bean LJ and Jeremy Baker LJ agree, delivered the leading Judgment. He relied on Lord Justice Burrows' last sentence at [58 (ii)] set out at paragraph 10 above.
13. Mr Burger argued that the Court always needed to consider all the features of a relationship when determining whether it was *'akin to employment'* or involved an independent contractor.
14. The Court of Appeal relied on Baroness Hale's Judgement in **Barclays** that it was not necessary to consider Lord Phillips' "five incidents" [paragraph 7 above] if it was clear that a tortfeasor was carrying on his own independent business.
15. At [54], Newey LJ said,

"If there is nothing to indicate a substantial divergence between the contractual position and the reality, it may suffice to look to the terms of the contract with the tortfeasor. It will sometimes be clear from those that the person is an independent contractor."

16. At [60] he goes on to say that the relationship between the defendant and the tortfeasor's employer will be of central importance where the tortfeasor was employed by an independent contractor and the defendant will not usually be vicariously liable in such a case.
17. Newey LJ stated that the present case was factually very different from Hawley. He agreed with the High Court Judge that the degree to which the door supervisors on duty in Hawley were subordinated to the active management of the nightclub's senior manager was considerably greater than the position in the present case. In particular, it was considered to be an important factor that the supervisors were to wear uniforms bearing the logo of Risk Solutions, such that any passersby would consider them to be employed by Risk Solutions and not JDW. Further, Risk Solutions would remain responsible for the direction, management and control of all security staff, and indemnify JDW against any liability resulting from their conduct.
18. The Court of Appeal therefore found that the Judge at first instance ought to have considered at the outset whether Risk Solutions was an independent contractor before proceeding to determine whether JDW was vicariously liable or not. As Risk Solutions was found to be an independent contractor, JDW could not be vicariously liable.
19. Mr Burger's appeal was dismissed.
20. Mr Burger has since lodged an application for Permission to Appeal the Court of Appeal's decision at the Supreme Court.

Commentary

21. This case contains a useful summary of the law dealing with vicarious liability, and is a helpful reminder that the key question to be determined is whether the alleged wrongdoer was an employee, or in a role 'akin to employment', or was a genuine independent contractor.
22. The issue of control remains a central issue, with factors such as who was responsible for matters such as recruitment and training being important, as well as who carried the commercial risk. A point of particular relevance in this case involved how the alleged wrongdoer was presented to the outside world, such that whether or not an individual is required to wear a specific uniform with a company emblem or badge on display can prove crucial.

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Eaindra Cho

Barrister
3PB Barristers

0330 332 2633
Eaindra.cho@3pb.co.uk
3pb.co.uk