HCR Law's 'Quick Crib Sheet' on Contributory Negligence in Public Liability Matters

INTRODUCTION

This note sets out examples of contributory negligence arising in public and occupiers' liability claims. The cases illustrate:

A. Failures by occupiers to properly assess, manage, or guard against foreseeable risks to lawful visitors;
B. Cases where the Claimants contributed to their injuries through risk-taking, intoxication, failure to follow instructions, or lack of reasonable care (including children); and
C. An example where contributory negligence was not established, despite exposure to an obvious risk and limited opportunity to react.

Contributory negligence cannot amount to 100%, as this would negate any breach of duty on the part of the Defendant.

1. ASHTON V CITY OF LIVERPOOL YMCA [2003] EWHC 707 KB

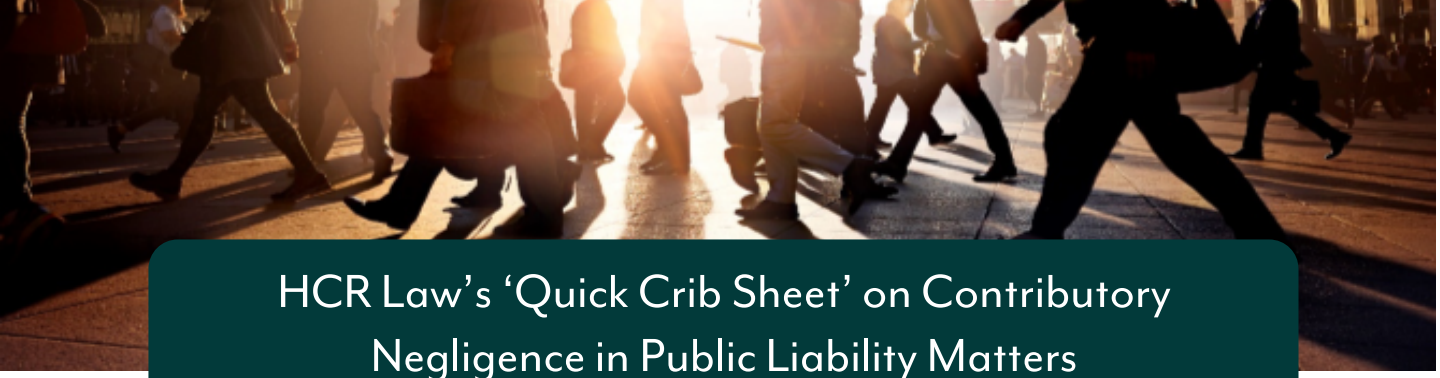
CIRCUMSTANCES: The Defendant was a not-for-profit organisation that provided accommodation to vulnerable adults. The Claimant fell from a fourth-floor window in her room whilst attempting to retrieve washing placed on internal handles of the window. The Claimant suffered significant head and spinal injuries. The window did not feature functioning restrictors.

DEFENDANT'S LIABILITY: The Defendant was held primarily liable. It was held that the condition of the window gave rise to a foreseeable risk of injury, which meant the Defendant had breached its duty to the Claimant.

CLAIMANT'S LIABILITY: The Claimant held 35% contributorily negligent. Despite being intoxicated and knowing that her window had no or non-functioning restrictors she still decided to retrieve her washing. Had she been sober, she could have appreciated the risks better.

2. WHITE LION HOTEL (A PARTNERSHIP) V JAMES [2021] EWCA CIV 31

CIRCUMSTANCES: A guest fell to his death from the Defendant's hotel window in circumstances that were not clear. The window was lower than modern standards by as much as 350mm. The guest's widow ("The Claimant") brought a claim under the Occupiers' Liability Act 1957 on the basis that the window sash was faulty and there was an absence of an opening restrictor.



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DEFENDANT'S LIABILITY: The Defendant was liable for failing to appreciate the risk properly. Had a proper and adequate risk assessment been carried out, an opening restrictor would have been installed at very low cost and prevented the incident in the first place.
The Defendant appealed, stating that it did not have a duty to warn guests of obvious risks. This was rejected by the Court of Appeal, who found that there had been no benefit in not placing restrictors in the windows. Further, while the risk was obvious, it still did not negate its duty to provide a sufficient warning.

CLAIMANT'S LIABILITY: The deceased had consciously taken a precarious position and was able to foresee the danger of his own actions. The deceased was held 60% contributory negligent.

3. *HOGARTH V MARSTONS PLC [2021] 3 WLUK 229*

CIRCUMSTANCES: The Claimant (a child) had visited the Defendant's public house with her family when she slipped and fell on oil or grease by the rotisserie area, sustaining personal injury.

DEFENDANT'S LIABILITY: The positioning of the rotisserie created a potential and ongoing hazard of accidental burns or slips on grease. The Defendant's cleaning regime was inadequate. The Defendant had breached its duty of care to the Claimant.

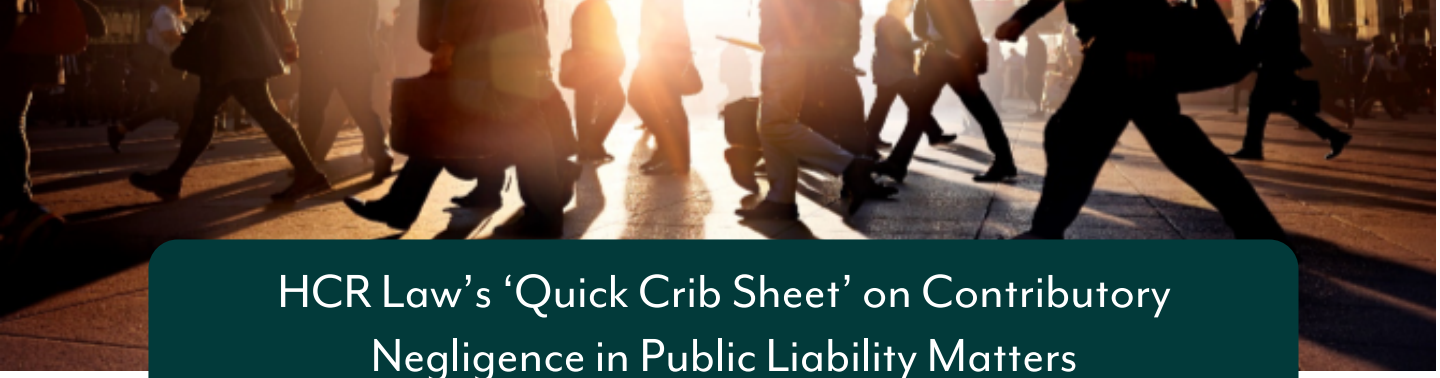
CLAIMANT'S LIABILITY: The Claimant was held to be 50% contributory negligent, notwithstanding her age. She had been running at the time of the incident, and her parents had failed to properly supervise her.

4. *ANDERSON V IMRIE [2018] CSIH 14 (SCOTTISH CASE)*

CIRCUMSTANCES: The Claimant (aged 8 at the time of the incident) was playing at the farm occupied by the Defendant. The Defendant was supervising the Claimant and her own son, and had instructed both boys not to play in certain parts of the farm. She had left the boys unattended for a short time and the Claimant had climbed over a closed gate into an area that he was not supposed to enter, where a heavy gate fell on him.

DEFENDANT'S LIABILITY: The Defendant was primarily liable for breach of the Occupiers' Liability (Scotland) Act 1960 s.2(1), in that the pursuer's injury was caused by a danger due to the state of the premises or to something done or omitted on them, and the Defendant, as occupier, failed to take such care as was reasonable in all the circumstances to prevent such injury.

CLAIMANT'S LIABILITY: The Claimant was found to be 25% contributory negligent for failing to comply with the Defendant's instructions not to play in certain parts of the farm. The Claimant had been aware that it had been dangerous to climb onto and interfere with the gate.



HCR Law's 'Quick Crib Sheet' on Contributory Negligence in Public Liability Matters

5. *PHEE V GORDON [2013] CSIH 18 (SCOTTISH CASE)*

CIRCUMSTANCES: The Claimant was injured and thereafter lost his left eye after being struck by a golf ball hit by Defendant 1 whilst at Niddry Castle golf course (Defendant 2). Defendant 1 had shouted to warn the Claimant of the incoming ball, but only after he had hit the bad shot. The Claimant did not crouch down low like his friends after hearing the shout, but instead he leant forward, placed his left hand in front of his face and looked to see where the ball was coming.

DEFENDANT'S LIABILITY: Defendant 1 had failed in his duty of care to the Claimant by driving his ball at the time when he did (when the Claimant and his friends were well within Defendant 1's range and not far off his target line). Having failed to ensure that, before he played his shot, the Claimant and his friends were aware of his intention to drive (by giving a warning shout or something similar), Defendant 1 had failed to exercise reasonable care.

Defendant 2 had breached its duty to the Claimant by failing to provide warning notices to tell golfers to take care when moving between tees, and to provide instructions on how to move around the course.

Defendant 1 – 20% liable
Defendant 2 – 80% liable

CLAIMANT'S LIABILITY: The Claimant was held not contributorily negligent. It would have taken at most 5 seconds for Defendant 1's ball to travel and strike the Claimant. The Claimant had less time to react to the warning shouts, which would only have come after it was clear Defendant 1 had mishit the ball. The Claimant did not know where the shout was coming from, nor, as a beginner, did he know how to properly respond to the danger.

HCR Law's 'Quick Crib Sheet' on Contributory Negligence in Employers' Liability Matters

INTRODUCTION

This note details examples of contributory negligence for:

A. Failing to abide by training / employer's procedures;
B. Failing to look out for one's own safety / creation of a dangerous situation;
C. An example where contributory negligence was not established.

It must also be remembered that you cannot have 100% contributory negligence.

A. FAILURE TO ABIDE BY TRAINING / EMPLOYER'S PROCEDURES

1. MANNING v DNATA CATERING UK LTD [2023] EWHC (KB)

FACTS: The Claimant fell from height while tightening a strap around a lorry whilst at work, due to the strap suddenly coming loose. The Claimant suffered a fractured vertebra. The Claimant had been using unsuitable equipment due to a lack of proper straps for this particular lorry.

DEFENDANT'S LIABILITY: The Defendant was held primarily liable for failing to provide an adequate system of work and suitable safety equipment and for not complying fully with its obligations under health and safety regulations.

CONTRIBUTORY NEGLIGENCE ALLEGATION: The Claimant failed to follow the training provided by his employer and failed to act in accordance with his own experience.

CONTRIBUTORY NEGLIGENCE FINDING: The Claimant was held to be 25% contributorily negligent for failing to follow a safer procedure. The court considered that he could and should have raised the lack of suitable straps with his employer and avoided using unsuitable equipment. As an experienced employee, he bore some responsibility for his own safety in the circumstances.

2. SONMEZ v KEBABERRY [2008] EWHC 3366 (QB)

FACTS: The Claimant had been cleaning a meat mixing machine when his arm was caught by the revolving mixing arm, resulting in his right arm being amputated at the shoulder. The Claimant had overridden the protective interlock to allow the machine to turn whilst he was cleaning it.

DEFENDANT'S LIABILITY: The Defendant failed to take sufficient steps to prevent the interlock being overridden, such as engineering controls, supervision, or disciplinary procedures to deter unsafe practices.

HCR Law's 'Quick Crib Sheet' on Contributory Negligence in Employers' Liability Matters

CONTRIBUTORY NEGLIGENCE ALLEGATION: The Claimant deliberately overrode the interlock device which he knew, or ought reasonably to have known, was there for his own safety.

CONTRIBUTORY NEGLIGENCE FINDING: The employee was 20% contributorily negligent for overriding the protective interlock, which he knew was for his safety as he was required to clean it while it was stationary.

3. SMITH v CHESTERFIELD AND DISTRICT CO-OPERATIVE SOCIETY LTD [1953] 1 ALL ER 447

FACTS: A worker put their hand under the guard of a pastry machine in contravention of their training.

DEFENDANT'S LIABILITY: The Defendant had failed to appropriately guard the machine part contrary to s.14 Factories Act 1937.

CONTRIBUTORY NEGLIGENCE ALLEGATION: The Claimant failed to follow instructions and put herself into danger.

CONTRIBUTORY NEGLIGENCE FINDING: The Claimant was found 60% responsible for the accident. This high apportionment is historically notable and should be treated with caution in modern litigation, where statutory duties and safer systems are more stringently applied.

4. BUX v SLOUGH METALS [1973] 1 W.L.R. 1358

FACTS: The Claimant had been issued with goggles but stopped wearing them because they became misted and management did not insist on their use. The Claimant suffered injury when molten metal came into contact with his unprotected eye.

DEFENDANT'S LIABILITY: Management knew the goggles were being rejected as ineffective yet took no reasonable steps to replace them or insist on their use. The Claimant told his superintendent the goggles were useless and ceased wearing them; no manager intervened.

CONTRIBUTORY NEGLIGENCE ALLEGATION: Failure to use PPE.

CONTRIBUTORY NEGLIGENCE FINDING: Damages were reduced by 40% for contributory negligence as the Claimant failed to make full and proper use of the goggles provided.

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B. FAILING TO LOOK OUT FOR THEIR OWN SAFETY

1. *HOADLEY v SIEMENS [2022] EWHC 3169 (ADMLTY)*

FACTS: The Claimant was working (as instructed) on a mechanism which carried an obvious risk of entrapment due to a rotating turbine. The Claimant returned from lunch and assumed that the rotator lock was still engaged and that the power was off. He did not check. He inserted his arm to check a lock pin and whilst he was doing so, the rotator was moving and amputated his left arm.

DEFENDANT'S LIABILITY: The Defendant's employees removed the rotator locks and restored power without reinstating the chain and warning sign, and left the turbine door open, creating the false impression that the system was isolated and safe to access.

CONTRIBUTORY NEGLIGENCE ALLEGATION: Working alone despite having a radio to call for assistance or contact the installation lead, failing to verify power isolation and assuming it was safe without checking.

CONTRIBUTORY NEGLIGENCE FINDING: The above allegations were made out and the Claimant was 33% liable for the accident.

2. *WALSH v CP HART & SONS LTD [2020] EWHC 37 (QB)*

FACTS: The Claimant fell off the back of a van whilst making deliveries. The tail lift on the vehicle had been lowered by the Claimant and shortly afterwards, he stepped backwards or lost his footing and fell to the ground striking his head and sustaining head injuries.

DEFENDANT'S LIABILITY: The Defendant had failed to implement the straightforward measure of keeping the tailgate raised when not in use. This was reasonably practicable, had been implemented after the incident, and should have been in place beforehand.

CONTRIBUTORY NEGLIGENCE ALLEGATION: The Claimant had lowered the tail lift and so was aware that it was in the lowered position and should have been aware that there was therefore a drop from the back of the vehicle.

CONTRIBUTORY NEGLIGENCE FINDING: The Claimant was held 50% responsible for stepping back from the load area without ensuring a safe footing, given his knowledge that the tail lift was lowered.

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3. *SHARP v TOP FLIGHT SCAFFOLDING LTD [2013] EWHC 479 (QB)*

FACTS: The Claimant was an experienced scaffolder and had worked in the industry for over 20 years. Scaffolding was erected. Once the Claimant was standing on the top, he and his friend both realised that the long ladder (which would provide external access to the scaffold) could not be brought through the house by one man alone. The Claimant was stranded on the top of the scaffold. The Claimant sent his friend (who was not up the scaffold) to call the office for help. He then tried to climb down and fell suffering serious injury.

DEFENDANT'S LIABILITY: The Defendant had failed to train the Claimant adequately and had not prepared a site-specific risk assessment or method statement addressing access and egress. Had there been a site-specific risk assessment and a method statement, the Claimant would probably have incorporated the use of internal ladders in the construction of the scaffold so that the accident could have been avoided.

CONTRIBUTORY NEGLIGENCE ALLEGATION: The Defendant submitted that the Claimant was entirely the author of his own misfortune.

CONTRIBUTORY NEGLIGENCE FINDING: The decision to attempt a solo descent without safe means of access was inherently dangerous; accordingly, the Claimant was 60% liable.

4. *TIBBATTS v BRITISH AIRWAYS [2009] EWHC 815 (QB)*

FACTS: The Claimant (a baggage-handler) lifted a bag which he knew should have been lifted by two people.

DEFENDANT'S LIABILITY: The Defendant admitted primary liability for failing to provide and enforce a safe system of work for manual handling.

CONTRIBUTORY NEGLIGENCE ALLEGATION: The Claimant was wholly or partly to blame as he knew the bag ought to have been lifted by 2 people.

CONTRIBUTORY NEGLIGENCE FINDING: The Claimant was found 33% to blame for choosing to lift the bag unaided despite his training.

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C. EXAMPLES OF NO CONTRIBUTORY NEGLIGENCE

1. *JAMES v SHAW [2023] EWHC 2683*

FACTS: The Claimant assisted the Defendant to dismantle a fairground ride. Both were working at height, standing on a wet metal handrail and pushing on a wrench which had been extended by a scaffolding pole to provide more torque. When the bolt rotated, the Claimant lost his balance and fell, suffering injury.

The Claimant had been working for the Defendant for five months and had been 'learning on the job'. The Claimant was not provided with a harness. While the Defendant wore a harness, he was not clipped on to any anchorage.

DEFENDANT'S LIABILITY: The Defendant was held 100% liable.

CONTRIBUTORY NEGLIGENCE ALLEGATION: The Claimant undertook a task which he knew, or should have known, posed a danger and failed to take sufficient care to ensure his own safety.

CONTRIBUTORY NEGLIGENCE FINDING: The Claimant was held not contributorily negligent. Whilst he bore some responsibility for his own health and safety, he had not been provided with any health and safety training and was acting on a positive request from his employer in unsafe conditions.