

ENGLAND AND WALES

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Vicarious Liability for Relationships 'Akin to Employment':
Cox v Ministry of Justice [2016] UKSC 10

Cox v Ministry of Justice: Facts

- Mr Inder was a convicted prisoner of HMS Prison Swansea (an executive agency of the Ministry of Justice)
- Prison policy requires prisoners to engage in useful work
- Mr Inder was one of twenty prisoners selected to work in the prison kitchen (six days a week from 8.30am-5pm for a weekly wage of £11.55)
- Mrs Cox, the claimant, was the catering manager in the kitchen
- She instructed four prisoners, including Mr Inder, to carry supplies from ground floor to kitchen stores

Cox v Ministry of Justice: Facts

- One prisoner dropped a sack of rice, which split open
- Mrs Cox bent over to prop it up to prevent spillage
- As she did so, Mr Inder passed by carrying two sacks of rice
- He lost his balance and dropped one of the sacks on Mrs Cox's back, causing injury
- The legal question: could the Ministry of Justice be held vicariously liable for Mr Inder's negligence?

***Various Claimants v Catholic Child Welfare Society* [2012] UKSC 56: Legal History**

- Appropriate to impose vicarious liability because:
 - i. Employer more likely to have means to compensate
 - ii. Tort results from activity undertaken on behalf of employer
 - iii. Employee's activity part of employer's business activity
 - iv. Employer created the risk of the tort
 - v. Employee to some extent under employer's control
- Where a non-employment relationship has the same incidents, it is 'akin to employment' and appropriate to impose vicarious liability

Cox v Ministry of Justice: Findings

- Was the relationship between Mr Inder and the Ministry of Justice 'akin to employment'?
 - Trial judge: No ...whilst the relationship resembled employment, it was not voluntary but part of penal policy
 - Court of Appeal: Yes...the prison service took the benefit of Mr Inder's work and there was no reason not to take its burdens
 - Supreme Court: Yes...the requirements laid down in the *Catholic Child Welfare* case were met

***Cox v Ministry of Justice*: Supreme Court**

- Five factors laid down in *Catholic Child Welfare* not equally significant: main focus on factors ii-iv, which are inter-related
- Prisoners working in kitchens are integrated into the operation of the prison
 - They undergo a selection process to work in the kitchen and work under the direction of prison staff
 - The compulsory nature of the work means prisoners have a closer relationship with the prison service than their employees

Cox v Ministry of Justice: Supreme Court

- Their activities further the aims of the prison service, in particular, providing meals for prisoners
 - Prison work intended not only to achieve rehabilitation but also to ensure prisoners contribute to the cost of their upkeep
 - Their activities benefit not only themselves but also the prison: the prison would incur additional costs if prisoners did not work in the kitchen
- They are placed by the prison service in a position where there is a risk that they may commit negligent acts (e.g. undergo health and safety training)

***Cox v Ministry of Justice*: Comment**

- *Cox* confirms that the approach taken in *Catholic Child Welfare Society* is not confined to some special category of cases, such as sexual abuse of children
- Reflects prevailing ideas about the responsibility of enterprises for risks created by their activities
- Extends vicarious liability but not where a tortfeasor's activities are entirely attributable to the conduct of an independent business of his own or of a third party
- Extension enables law to protect injured claimants notwithstanding changing legal relationships in modern workplaces