



PERSONAL INJURY SEMINAR SERIES

Constructing Claims for the Self
Employed: 23rd May 2012

By Katherine Deal

HARE COURT

About us

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Members are frequently recognized in the leading legal directories for the depth and breadth of their expertise, and for their persuasive advocacy and sound advice.

Described as a 'leading civil common law set', Chambers has established a first-class reputation in its fields of practice, providing a wide range of advisory and advocacy services both domestically and internationally in an environment that meets modern business needs.

Types of work undertaken

Our work is concentrated in the following areas:

- ❖ Commercial law
- ❖ PI & Travel law
- ❖ Public, administrative & constitutional law
- ❖ Insolvency law
- ❖ Employment law
- ❖ Property litigation
- ❖ Civil Fraud
- ❖ Professional Negligence
- ❖ Offshore litigation

Additional services

Our practice groups regularly publish articles and provide talks and seminars on all areas of relevance to business and commercial lawyers. Please contact Mika Thom, our Marketing Manager in this regard at mikathom@3harecourt.com or 020 7415 7911.

You may also care to visit our website at www.3harecourt.com, which is regularly updated with news, cases in which members of chambers have appeared and published articles.

SPEAKER PROFILES

KATHERINE DEAL

Year of call: 1997

Main Practice Areas

Personal Injury, Travel Litigation

Personal Injury & Travel

Katherine Deal specialises in all aspects of personal injury litigation. She deals with claims ranging from whiplash injuries to catastrophic brain injuries of maximum severity. She has a particular expertise dealing with claims arising out of overseas accidents. She has extensive experience in package travel claims, acting for and against all of the major tour operators in claims ranging from mass outbreaks of gastric illness to deaths overseas. She acted for the claimant in the ground breaking decision of Jones v Sunworld [2003] EWHC 591 (QB) (with James Dingemans QC) in which a man drowned in a lagoon in the Maldives and (also with James Dingemans QC) for the defendant in Healy v Cosmosair [2005] EWHC 1657 (QB), in which the victim was rendered paraplegic after a fall into a swimming pool in Portugal.

Katherine also does a lot of work arising from accidents outside the scope of package holidays. She acted for the claimant (with James Dingemans QC) in the first ever decision from the European Court of Justice to consider the scope of Rome II, Homawoo v GMF Assurances (CJEU Case C412/10), and is widely considered a leading expert on interpretation of Rome II (on which she has lectured and published extensively). She has considerable experience in jurisdictional disputes and acted for the claimant in two landmark judgments concerning the direct right to sue a foreign insurer in England, Jones v AGF [2010] IL Pr 4 and Thwaites v Aviva Assurances [2010] Lloyd's Rep IR 661. She also focuses on disputes of conflicts of laws. Recent notable successes include Burt v Kravag, a case in which the claimant suffered catastrophic injuries in a road accident in Germany in which the Court accepted that the claim was not statute barred under German law as the defendant contended.

Aviation

In addition Katherine acts in a large number of aviation claims, many of which have a jurisdictional element. These range from fatal air crashes to accidents on board suffered by crew members to claims surrounding the opening of Terminal 5 at Heathrow.

Alternative Dispute Resolution & Inquests



Katherine is an adept litigator but also has immense experience in alternative dispute resolution, and has acted for claimants and defendants in mediations and joint settlement meetings on numerous occasions. She acted for the claimant (with James Dingemans QC) in Grant v AXA, in which the largest ever English settlement was reached arising out of a road accident in France. She has represented clients in numerous inquests including those with juries.

Shipping

Katherine was appointed conciliator for the Passenger Shipping Association in April 2010 and continues to advise cruise lines and disgruntled passengers within the scope of the conciliation scheme.

Other relevant information

She is a volunteer barrister for Disciplinary Hearings held by the Council of the Inns of Court. She is ranked in the current editions of Chambers UK and Legal 500 in Travel Litigation and Personal Injury.

Publications

Katherine contributes Chapter XVIII on Litigating Travel Claims to the Butterworths Personal Injury Litigation Service (and an update is due out later in 2012). She contributed to Oliver & Dingemans on Employers Liability Cases. She is a panel member of the Personal Injury Brief Update Law Journal and edits Chambers' monthly travel article to the same. She edits and contributes to the Chambers' Travel bulletin and contributes to the Personal Injury bulletin. She also lectures frequently, including at the Butterworth's conference on Personal Injury Abroad in December 2011 and is a regular lecturer at PEOPIIL conferences.

Memberships

PIBA; LCLCBA; Pan-European Organisation of Personal Injury Lawyers (PEOPIL)

Qualifications

MA Hons (Modern Languages) (First Class), St Hugh's College, Oxford

Languages

French; German; Spanish

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CONSTRUCTING CLAIMS FOR THE SELF EMPLOYED

1. Scenario 1
 - a. C is employed as a hairdresser earning, according to her pre-accident payslips, an average of £300 net per week.
 - b. She is unable to work for 6 months as a direct result of injuries sustained in the accident and receives no income that falls to be set off. She then returns to work.
 - c. Loss = £300 x 26 weeks, £7,800.

2. Scenario 2
 - a. C is self-employed as a hair dresser and works as a sole trader. According to her accounts her net (pre-tax) profits in the last 3 years have been exactly £15,000.
 - b. The accident is on the 1st day of her tax year. She is unable to work for 6 months and has to shut the shop. The net profits in the tax year of the accident are £7,500.

3. Conventional approach for the self-employed: take the average of the 3 years prior to the accident as the baseline figure for anticipated income had the accident not happened.

4. Scenario 3
 - a. C is self-employed as a hair dresser and works as a sole trader. According to her accounts her net (pre-tax) profits in the last 3 years have been exactly £15,000.
 - b. The accident is on the 1st day of her tax year. She is unable to work for 6 months. But C employs a trainee to keep the business ticking over during this time.

- c. The trainee costs £4,000 during C's time off work and the business's net profits in that tax year are £12,000.

5. Scenario 4

- a. C is self-employed as a hair dresser and works as a sole trader. According to her accounts her net (pre-tax) profits in the last 3 years have been exactly £15,000.
- b. The accident is on the 1st day of her tax year. She is unable to work for 6 months.
- c. When C is able to return to work, she increases the shop's opening hours so is offering hairdressing services 14 hours a day 6 days a week. She takes no holiday and misses numerous special occasions with friends and family.
- d. The business's net profits in that tax year are £15,000.

6. Scenario 5

- a. C is self-employed as a hair dresser and works as a sole trader. According to her accounts her net (pre-tax) profits in the last 3 years have been £10,000; £20,000 and £17,000.
- b. The accident is on the 1st day of her tax year. She is able to return to work immediately but says she works at a much slower rate and has to turn away a lot of work.
- c. The business's net profits in the tax year of the accident are £15,000.

7. Scenario 6

- a. C is self-employed as a hair dresser and works as a sole trader. According to her accounts her net (pre-tax) profits in the last 3 years have been £10,000; £20,000 and £30,000.
- b. The accident is on the 1st day of her tax year. She is unable to work for 6 months.
- c. The business's net profits in the tax year of the accident are £20,000.

8. Scenario 6

- a. C is self-employed as a hairdresser and works as a sole trader. Her Pre-tax profits in the last 3 years have been £20,000; £20,000 and £10,000.
- b. C explains that she spent £10,000 in the last tax year buying special chairs to give customers massages during their haircut. She believes that these would have been a big selling point and would have led to a significant increase in her profits in the following year.
- c. She was injured on the 1st day of the new tax year. She had to take time off, was not able to work long hours and could not promote and market her business effectively.
- d. In that tax year the business's net profits are £18,000.

ISSUES

9. Understanding accounts

- a. Gross; net profits; net income
- b. Deductible expenses
- c. Going behind the accounts

10. Understanding this Claimant's business

- a. Partnership or sole trader
 - i. Kent v BRB [1995] PIQR Q42 }
 - ii. Ward v Newalls [1998] PIQR Q41 }
 - iii. Neal v Jones [2002] EWCA Civ 1731 } court should look at true relationship of the partners and not necessarily be bound by IR arrangements
- b. Past, present and future plans.
 - i. Explanation of expenditure
 - ii. Trends in profits and growth
 - iii. Market conditions
 - iv. Evidence...

1. Claimant
 2. Customers (& suppliers)
 3. Competition
 4. Comparators
- c. Ability to replace Claimant.
 - d. Regression of trade.
11. Documentation
 - a. Tax returns (ideally at least 3 years pre- and post-accident)
 - b. Accounts
 - c. May well need invoices; pay slips; receipts (i.e. all the paraphernalia behind the accounts).
 12. Consider use of forensic accountant in bigger claims
 - a. Charting likely profits had accident not happened
 - b. Charting regression of trade effect.
 13. Consider use of alternative expert in appropriate claims
 - a. Employment expert;
 - b. Expert in specialist field
 14. Loss of leisure time
 - a. General damages - probably part of PSLA
 - b. Likely to be only in extreme cases
 - c. And for relatively short periods - tactics
 - d. Failure to mitigate...
 15. Remember Blamire v South Cumbria HA [1993] PIQR Q1: vague lump sum might be permissible in rare circumstances where future loss cannot be calculated with any certainty.

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