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King's Bench Walk

Cyclists and Helmets an overview

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Cycle helmets: the law

- ▶ There is no legal requirement to wear a helmet
- ▶ However, the Highway Code recommends wear one:
“59 Clothing. You should wear a cycle helmet which conforms to current regulations, is the correct size and securely fastened”
- ▶ *Froom v Butcher* [1976] 1 QB 286 : contributory negligence for not using a seatbelt when recommended by the Highway Code but not required by law
- ▶ *O’Connell v Jackson* [1972] 1 QB 270 similar in relation to moped riders’ helmets

Cycle helmets: contributory negligence

- ▶ The Law Reform (Contributory Negligence) Act 1945, section 1
“Apportionment of liability in case of contributory negligence.
(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.”
- ▶ A cyclist's failure to wear a cycle helmet may lead to a finding of contributory negligence
- ▶ Defendant must plead and prove:
 - ▶ the cyclist was at fault for not wearing a helmet
 - ▶ this failure was causative of greater injuries
 - ▶ Once these two limbs have been satisfied, the court will then apply a 'just and equitable' deduction to the claimant's damages, by reference to the parties' respective blameworthiness and the causative potency of each of their actions
 - ▶ Other aspects of the cyclist's actions may also have to be considered when determining the level of the deduction

Contributory negligence: case law

▶ **A (A Child) v Shorrock [2001] 3 WLUK 534**

- ▶ 14 year old cyclist hit by a camper van
- ▶ C lost on liability
- ▶ HHJ Brown commented that he would not have found contributory negligence based upon A's failure to wear a helmet:
 - ▶ there was no statutory requirement for him to do so
 - ▶ not engaged in any particularly hazardous kind of driving during which it might be thought prudent to wear a helmet

▶ **Smith v Finch [2009] EWHC 53 (QB)**

- ▶ Claimant cyclist collided with a cyclist
- ▶ D argued that a 15% deduction should be made for failing to wear a helmet
- ▶ Contributory negligence argument failed as the helmet would not have been effective
- ▶ Mr Justice Griffith:
 - ▶ there can be no doubt that the failure to wear a helmet may expose the cyclist to the risk of greater injury..."
 - ▶ "subject to issues to issues of causation, any injury sustained may be the cyclist's own fault..."

Contributory negligence: case law

▶ **Reynolds v Strutt and Parker [2011] EWHC 2263**

- ▶ Claimant cyclist sustained a head injury after colliding with a competitor in a cycling race organised by his employers
- ▶ C was not wearing a cycle helmet despite availability and the impact speed was found to be below 12 mph
- ▶ HHJ Jones found C's employer had failed to properly assess the need to require helmets usage and had been negligent in failing to communicate information regarding the wearing of helmets
- ▶ A finding of two-thirds contributory negligence was made on the basis of the claimant's reckless actions in the race and his failure to wear a cycle helmet

▶ **Phethean-Hubble v Coles [2011] EWHC 363 (QB)**

- ▶ 16-year-old cyclist riding at night without a helmet or without lights, on a pavement
- ▶ Struck by D's vehicle and sustained a severe brain injury
- ▶ Court found that the use of a helmet and lights would have made no difference to the injuries
- ▶ However, HHJ Wilcox commented that although there was no legal compulsion to wear a helmet, the starting point was to accept that a cyclist who failed to wear a helmet ran the risk of contributing to his injuries

▶ **Capps v Miller [1989] 1 WLR 839**


- ▶ Claimant motorcyclist sustained severe head injuries whilst wearing an unfastened helmet
- ▶ Court of Appeal held that this had contributed to the seriousness of his injury
- ▶ Medical evidence did not allow a finding to be made as to extent to which injuries had been made worse by the failure, a reduction of 10% was however applied

How do Helmets Work?



- ▶ Can we compare them to seatbelts?
- ▶ UK cycle helmets are specified to BSEN1078 with a maximum impact testing velocity of 12.1mph.
- ▶ Impact energy increases with the square of impact velocity.
- ▶ The UK cycle helmet standard is quickly overwhelmed as impact velocity rises above 12.1mph.
- ▶ Helmets can convert linear forces into rotational forces that are much more likely to lead to serious or fatal brain injury.
- ▶ Helmets have been shown to increase the risk of neck injury.
- ▶ Helmet-wearers suffer more collisions than non-helmet wearers.

Expert Evidence

- ▶ To what extent can bicycle helmets prevent, reduce, or conversely increase injuries to cyclists?
 - ▶ Do motorists behave differently when passing a cyclist wearing a helmet?
 - ▶ What is the effectiveness of helmets for the specific type of impact?
 - ▶ Would a helmet have been likely to lead to the cyclist avoiding or suffering a materially lesser injury? What about at different impact speeds?
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- ▶ Are there any other factors that might have contributed, e.g., lights, clothing, riding style, etc.?

Panel Discussion