

Next Talk: 16:00 – 16:40

Emerging Tech: Driverless Cars, E-Scooters & Drones



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Drones











REUTERS



AAIB investigation into DJI Phantom 4 RTK

Loss of control due to detached propeller, Newtongrange, Dalkeith, Midlothian, 2 December 2020.

'The UAS, a DJI Phantom 4 RTK, was being operated in an automated flight mode to survey a railway track and surrounding infrastructure when one of the four propellers detached whilst in-flight. The aircraft rapidly descended from a height of 70 m (230 ft) where it struck the ground in the rear garden of a house. No persons were injured.'

Air Navigation Order 2016

- ▶ Height restrictions;
- ▶ Mandatory registration and pilot competency requirements;
- ▶ Rules on maintenance of line of sight (BVLOS v VLOS);
- ▶ *'A person must not recklessly or negligently cause or permit an aircraft to endanger any person or property.'*
- ▶ Permissions and exemptions are obtained by applying to the CAA with evidence of pilot competency and an operating safety case.

Civil Aviation Act 1982

s.76: 'where material loss or damage is caused to any person or property on land or water by, or by a person in, or an article, animal or person falling from, an aircraft while in flight, taking off or landing, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect, or default of the owner of the aircraft.'

Montreal Convention 1999

Art 17: *'The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.'*

Consumer Protection Act 1987

- ▶ S.2: Subject to the following provisions of this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage.
- ▶ Subject to the following provisions of this section, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes “safety”, in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.
- ▶ See: [Gee & Others v DePuy International Limited \[2018\] EWHC 1208 \(QB\)](#)

Regulatory Liability?

- ▶ Liability of the CAA: see *Perrett v Collins* [1998] 2 Lloyd's Rep 255.
- ▶ Liability of third parties for creation of a danger on the move: *Begum v Maran* [2021] EWCA Civ 326.
- ▶ Human Rights Act 1998? See *Richards v EA* [2021] EWHC 2501.



E-Scooters









E-Scooters

- ▶ The global sale of electric scooters and bicycles reached 50 million units by the end of 2020. This number is expected to reach 129 million by 2028.
- ▶ By 2023, electric two-wheelers will make up 8% of all two-wheelers on the road. Currently, this number stands at 2.5%.

DFT stats for 2020:

- ▶ There were 460 accidents involving e-scooters.
- ▶ There were 484 casualties in accidents involving e-scooters, of these 384 were e-scooters users.
- ▶ Of the 484 casualties 1 was killed. The best estimate, after adjusting for changes in reporting by police, is that there were 128 seriously injured and 355 slightly injured.
- ▶ Most casualties were aged between 10-19.
- ▶ 60% of the accidents recorded were in London.

E-Scooter Trials

- ▶ Began in July 2020.
- ▶ 6 London boroughs began trials in June 2021.
- ▶ Trials look set to run to mid-2022.

E-Scooter Trials

- ▶ The **Electric Scooter Trials** and Traffic Signs (Coronavirus) **Regulations** and General Directions 2020:
 - ▶ Fitted with an electric motor with a maximum continuous power rating not exceeding 500 watts.
 - ▶ Maximum weight of not more than 55kg (not including the rider).
 - ▶ Maximum design speed of not more than 15.5mph.

E-Scooters: Insurance

- ▶ E-Scooters involved in the trials are covered by a motor insurance policy provided by the operators of the e-scooters.
- ▶ Likely position after the end of the trials?
- ▶ What is the position in other European countries? Germany, Netherlands and Ireland.

E-Scooters: Future Battlegrounds

- ▶ Types of injuries
- ▶ Scooter/car accidents
- ▶ Scooter/pedestrian accidents
- ▶ Contributory negligence
- ▶ *Ex Turpi*
- ▶ Highways Act

Ex Turpi- The Law

- ▶ Gray v Thames Trains Ltd [2008] UKHL 33
 - ▶ Narrow form- C cannot recover for damage which flows from loss of liberty, fine, punishment imposed in consequence of unlawful act.
 - ▶ Wider form- C cannot recover compensation for losses suffered as a consequence of his own unlawful act. Justified as being offensive to notions of the fair distribution of resources that C should be compensated for consequences of criminal conduct.

Patel v Mirza [2016] UKSC 42

- ▶ The majority held that before applying *ex turpi* a court should:
 - ▶ Consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim;
 - ▶ Consider any other relevant public policies which may be rendered ineffective or less effective by denial of the claim; and
 - ▶ Consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts.

Les Laboratoires Servier v Apotex Inc [2014] UKSC 55

▶ Lord Sumption:

▶ *"The paradigm case of an illegal act engaging the defence is a criminal offence" but that: "there may be exceptional cases where even criminal and quasi-criminal acts will not constitute turpitude for the purposes of the illegality defence"*

RTA Cases

- ▶ Joyce v O'Brien [2013] EWCA Civ 546
- ▶ McCracken v Smith [2015] EWCA Civ 380
- ▶ Delaney v Pickett [2011] EWCA Civ 1532
- ▶ Clark v Farley [2018] EWHC 1007 QB

RO v (1) Freddy Gray (2) MIB [2021] EWHC 2770

The rationale for the general prohibition on public disorder, careless and dangerous driving and property damage is public safety, the protection of property and upholding societal values of peaceable living, community and respect for property. It is clearly in the public interest that the law acts consistently and in a way that deters commission of such offences and condemns such practices. In my judgment those purposes would not be furthered by applying the illegality defence on the facts of the present case. It is hard to see why the public policy behind the prohibitions requires the claimant to go uncompensated for his losses.

RO v (1) Freddy Gray (2) MIB [2021]

EWHC 2770

- ▶ *The seriousness of the conduct: I have considered the gravity of the claimant's wrongdoing. I am satisfied it is serious but is at the lower end of the scale of criminal conduct.*
- ▶ *the centrality of the conduct to "the transaction" (here, the loss): the claimant's conduct played a part in the train of events that led to his injuries. That conduct was however peripheral and not central. The operative causative factor of the claimant's injuries was the defendant's deliberate action.*
- ▶ *whether the conduct was intentional: the claimant's wrongs were obviously deliberate, and I am quite satisfied that he was aware that his conduct was criminal. I have considered the deliberate actions of the defendant in the context of considering causation issues.*
- ▶ *whether there was a marked disparity in the parties' respective wrongdoing; in my judgment this is the key consideration when considering proportionality in the present case. The claimant engaged in deliberate criminal conduct towards the bottom end of the scale. That conduct resulted in some property damage and (over its full course) some general public disorder and fear of the type that an experienced doorman found to be nothing out of the ordinary.*



Driverless Cars





Driverless Cars

- ▶ Law Commission
- ▶ Automated and Electric Vehicles Act 2018
 - ▶ Sections 1-8 came into force on 21 April 2021
 - ▶ Direct right under section 2(1)
 - ▶ List of vehicles to be prepared by Secretary of State

Driverless Cars

- ▶ Automated Lane Keeping Systems (ALKS):
- ▶ First commercially available system allowing the driver to cede control of his or her vehicle
- ▶ In place by the end of the year?
- ▶ CCAV call for evidence

Driverless Cars

- ▶ Future litigation flashpoints:
 - ▶ Liability for collisions
 - ▶ Product liability: CPA 1987
 - ▶ Data protection / cyber security



Thank you