

Lewin v Gray
Statutory Obligations v Duties of Care

The Background

The claimant was a contractor who had undertaken a number of jobs over the years on the defendant's farm. On the day of the accident the claimant was working with his son in installing guttering on a barn next to the farmhouse. During the work, it was noticed that the gap between the gable end of the farmhouse and the edges of the roof sheets was very narrow, and therefore it was difficult to move the guttering into place. The claimant decided to carry out the task by using crawl boards to spread his weight. It was while he was reaching for a length of guttering that his foot slipped off the board and he fell through the roof onto the ground, suffering catastrophic injuries.

The Case

The claimant alleged that the defendant was partially to blame for the accident due to alleged breaches of obligations imposed by statute. Specifically, the claimant relied on the CDM Regulations, and their requirement for a 'client' to ensure that a contractor completes a construction phase plan, as evidence of negligence. In actual fact neither the claimant nor the defendant had heard of the CDM Regulations before the accident. Nonetheless the question to be considered by the court was whether the failure by the defendant to comply with his obligations under these regulations gave rise to a cause of action.

The Judgement

The case boiled down to two issues:

- Did the defendant owe a duty of care in tort to ensure that the claimant produced a Construction Phase Plan?
- If so, did their failure to discharge that duty cause or materially contribute to the claimant's accident?

The claimant insisted that, had the defendant asked for a Construction Phase Plan, he would have addressed the risks of falling from height more thoroughly and would have requested the defendant provide an elevated cage to act as a crash deck.



However the judge concluded that there could be no justification for imposing a common law duty on the defendant for these failures of obligation under the CDM Regulations, stating:

“...a regulatory requirement for the client of building works to require the contractor to provide a document which is itself a creature of a specific Regulation cannot, in my judgment, be equated with a duty at common law.”

Furthermore, the judge stated that, even if he were wrong on this point, there was nothing to suggest that the claimant would have produced a plan that introduced the additional safety measures proposed.

Conclusion

The key point to take away from this case is that, whilst the CDM Regulations place obligations on the owner of a business or property, these obligations are not synonymous with a common law duty of care. In essence, a breach of the Regulations does not mean that liability will necessarily attach.