

Employers' liability annotated problem question

Every Tuesday, Thursday and Friday evening there is a drop-in centre for young people between the ages of 11 and 16 at Kings Wharf, a local community centre. It is run by a team of youth workers employed by James.

Harry is youth counsellor at the centre. He is busy setting up the hall for the evening's activities when he slips on a puddle of greasy water from a leaking radiator and breaks his wrist. He had reported the leak to his supervisor, Dougie, over a week earlier and it had not been fixed. Tom, a youth worker at the centre and Harry's partner, sees him fall. Frustrated by Dougie's lack of action, Tom punches him on the nose.

Danny works in the centre kitchen, making snacks and drinks for the young people. He is using a food processor to make some cookies when a fragment of metal is thrown off by the machine and enters his eye. The food processor had been serviced two weeks earlier in accordance with the provisions of the Kitchens Safety Act 2003 [a fictitious statute] which states that 'all moving parts on food-mixers must be maintained'.

Advise the parties.

All the claims will be brought against James—you should establish this at the outset.

Perhaps a classic case of a non-delegable duty of care—James owes Harry a duty to ensure a safe system of working—see further *Latimer v AEC Ltd.*

Might Danny also have a claim for breach of statutory duty? You should work through the following questions stating clearly what more information you need in order to answer them fully: (1) Does the statute give rise to a claim in tort law? (2) Is a duty owed to the claimant? (3) Has the defendant breached their duty? (4) Does the claimant's loss or injury fall within the scope of the duty? (see **Chapter 14**).

James will be vicariously liable for Tom's actions if the following conditions are satisfied: Tom is an employee of James (this is likely to be straightforward); Tom has committed a tort 'in the course of his employment' (see **section 20.4**).

An employer also has a duty to take reasonable care to provide all necessary equipment (including safety equipment), as well as instructions on how to use it and to maintain it in a reasonable condition. See common law and the Employers' Liability (Defective Equipment) Act 1969.