

# VICARIOUS LIABILITY – PROXIMITY OF EVENT

MATTIS V POLLOCK [2003] COURT OF APPEAL

**The Claimant was stabbed by a doorman from a night club. There had been some aggravation on a couple of occasions and the doorman had physically handled customers in an aggressive manner. As a result a number of customers set about him and eventually he was able to escape and rushed off to his nearby flat. There he armed himself with a knife and went back to the vicinity of the club where some of the group were still assembled. It seemed he wanted to avenge his humiliation. The Claimant had taken no part in the previous events but he was standing nearby. The assailant lashed out with the knife and stabbed the Claimant, resulting in injuries which left him a paraplegic.**

The doorman was convicted of causing grievous bodily harm and sent to prison for 8 years. The Claimant made a claim against the owner of the club who employed the doorman but the trial judge held that the employer was not vicariously liable for the attack, nor liable for a breach of duty of care. The attack took place outside the course of the assailant's employment. The claim was dismissed.

On appeal it was held that the employer would be vicariously liable for the attack if it was so closely connected with what the employer authorised or expected the doorman to do in the performance of his employment. Vicarious liability could arise even if the act of the employee was an independent act in itself. Where an employee was expected to use violence while carrying out those duties it was more likely that an act of violence fell within the broad scope of his employment. There was evidence that the doorman had used violence in the presence of the employer within the club and was overtly encouraged to carry out his duties in an aggressive and intimidatory manner.

The doorman should not have been employed at all as he was unlicensed and the employer should not have encouraged him to behave as he did. Vicarious liability was established and the employer was personally responsible as well.

**Peter Gornall, Consultant**