

Quentin Tannock successful in a case considering pure economic loss, scope of duty of care and title to sue in bailment 'Armstead v Royal Sun Alliance Insurance Company Limited [2022] EWCA Civ 497'

The Court of Appeal has handed down judgment in an appeal addressing important issues in the law of negligence and the law of bailment. [Quentin Tannock](#) appeared against a KC and a junior and successfully resisted the appeal on behalf of the Defendant, Royal Sun Alliance Insurance Company Limited ('RSA').

The case, [Armstead v Royal Sun Alliance Insurance Company Limited \(Bailii.org\)](#) will be of interest to practitioners in a wide range of areas. The judgment develops the law in respect of whether claims in tort are for pure economic loss, as well as about how damages for loss of use of revenue generating assets should be assessed. As the court found, clauses similar to the one in dispute are common in rental agreements. Moreover, the court's findings will be relevant to other types of contracts wherever liquidated damages, accelerated or increased payment terms are engaged when property is damaged by a third party's negligence.

The appeal considered a claim for liquidated damages in respect of an owner's loss of use of a hired asset, brought by the hirer of the asset against a party who had negligently damaged it. The case is the first time that the Court of Appeal has considered the issues of (i) whether such a claim amounts to a claim for recovery of pure economic loss, (ii) whether the kind of loss falls within the scope of a tortfeasor's duty of care and (iii) whether or not such loss is too remote and reasonably foreseeable. These are all issues of significant and general importance. The court found for the Defendant in respect of all of them, unanimously dismissing the appeal.

The Court of Appeal also considered the law of bailment and (iv) whether a bailor can bring a claim against a negligent stranger based on the rights and obligations as between bailor (the hirer) and bailee (the hire company). Finally, the court assessed (v) the reasonableness of the quantum claimed. The court also unanimously found for the Defendant in respect of these issues.

Dingemans LJ gave the main judgement and the reasons he gave for dismissing the appeal included:

- The liability arose not due to the accident but because of the terms of the hire contract and the loss did not fall within the scope of the tortfeasor's duty of care (§59).
- The loss arose from an 'internal' agreement between the hirer and the hire company (§56), meaning it was not reasonably foreseeable and was too remote to be recoverable (§57).
- A wrongdoer is unconcerned with what the rights and obligations are as between bailor (the hirer) and bailee (the hire company) (§51) and such 'internal' arrangements cannot be a basis for a bailee (the hirer) to recover losses from the wrongdoer (§52).
- There was no true independent agreement as to the quantum of the losses (§53) and the clause in dispute did not represent a genuine and reasonable attempt to assess the hire company's loss of use (§55).

Singh LJ gave a short concurring judgment stressing that the liability under the hire contract was an example of pure economic loss, irrecoverable in negligence (§66).

[Quentin Tannock](#) was instructed by [DAC Beachcroft](#) on behalf of the Defendant, [RSA](#).

Link: [Armstead v Royal Sun Alliance Insurance Company Ltd \(bailii.org\)](#)

Date: 28 April 2022

Court: Court of Appeal

Neutral Citation: [2022] EWCA Civ 497