

**1. Define the concepts of applying and distinguishing a case. When Lord Denning considered the case of *Limpus v London General Omnibus Co* did he apply it or distinguish it? Demonstrate how you know.**

To apply a case is to extract the relevant principles from similar and applicable higher court cases, such as appeal courts, and follow what has been ruled in subsequent cases in the lower courts, such as district courts. Appeal court decisions are termed 'binding' upon the lower court, or 'stare decisis', meaning to 'stand by' what has previously been decided.

To distinguish a case is to still extract and reference relevant principles from similar higher court cases, but is to also note the difference in material facts of the precedent case to lower court cases and how such authorities, though of a similar manner, would not be applicable.

Lord Denning applied the case of *Limpus v London General Omnibus Co*. The principles he extracted were as follows:

- a) If a servant's conduct was done so for the purposes of his 'master,' namely his employer, the employer would be liable;
- b) If the servant acted on his own, in order to effect a purpose of his own, the employer would not be held liable.
- c) In this case, as the driver of the omnibus did obstruct a rival omnibus during the course of his service and caused injury, therefore that such service was done for his master's purpose, the employer was held liable.

In this case, Mr Plenty was:

- a) Driving a milk truck for his employer, and therefore his conduct was done so for the purposes of his 'master';
- b) Not acting on his own in order to effect a purpose of his own;
- c) During the course of driving, allowed a boy on the truck he knew he should not have allowed, and caused injury to the boy during the course of his service for his master's purpose, therefore the employer is held liable.

**2. What does the term *ratio decidendi* mean? Can you identify the *ratio decidendi* of this case. Explain how you identified it.**

*Ratio decidendi*, quite literally, means the 'rationale for the decision,' but has been defined more fully as 'the proposition of law in which decides the case in the light or context of the material facts'. It is the binding element of the case.

The identified reasons for Lord Denning's decisions are as follows:

- An employer should be liable for their employee's conduct during the course of employed action and the fact that an employee, during the course of employed action, does something they should not do does not automatically exempt employers from liability
- The boy on the milk truck was a trespasser, because the actual business did not permit him to be there despite what the individual employee had allowed
- Just because there is a trespasser on a vehicle does not mean that the employer does not owe a liability to the trespasser: the 2 previous case precedents have now been abandoned, particularly in respect of children

# Essays On Ethics And Method

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