

Award in Introduction to Business Law in the Maltese Legal Context

Lecture Title: Overview of Health and Safety Legislation

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History of OHS:

- Professor Nicola Zammit (born 20/11/1815): Maltese doctor, architect, designer and philosopher.
- Published essays dealing with Maltese society.
- Identified risks at the time such as inadequate tools; old equipment; absence of supervisors; exploitation of minors.



History of OHS:

- In the past work in Malta revolved mainly around:
- -Agriculture;
- -Shipbuilding;
- -Construction





- 19th century Europe – industrialisation – more use of machines to carry out work.
Change in the nature of work and in risks

History of OHS:

- 1926 – Factories' Regulation Act;
- 1929 – Workmen's Compensation Act;
- 1940 – Factories' Ordinance
- 1994 – Act for the Promotion of Occupational Health and Safety (repealing Factories' Ordinance);
- 1998 – reactivation of Maltese application to become a member of the EU – process of transposition of EU legislation.



EU Legislation:

- Big impact of the EU in the area of occupational health and safety throughout the Member States;
- EU Commission works with European Foundation for Health and Safety at Work and European Foundation for the Improvement of Living and Working Conditions – spread information; offer guidance; promoting health working environments.

Why the need for legislation?

- Accidents at work kill more than 4,000 per year;
- More than 3,000,000 suffer a serious incident.



- Figures and statistics by the European Agency for Safety and Health at Work (EU-OHSA) & ILO in September 2017....



Some recent statistics...

- Injuries account for only 2% of work-related deaths/ cancers more than 50%.
- Work-related accidents and injuries cost €2,680 billion a year globally/ €476 billion in the EU;
- Work-related injuries and illness result in the loss of 3.9% of all work years globally;
- Work-related injuries cost the EU 3.3% of its GDP.
- <https://visualisation.osha.europa.eu/osh-costs#!/>



Problems in enforcement in Malta:

- Increase in construction sites on the island;
 - Only 14 OHS&A inspectors and most are specialised in certain areas only;
 - Backlog in criminal court proceedings in case of breaches;
 - Works in construction sites can resume once breach is remedied even if court case is still ongoing.
-
- (Times of Malta article 6th July 2020)



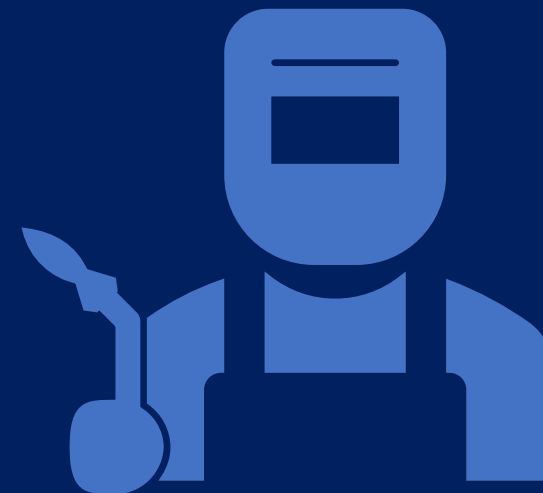
Occupational Health and Safety Authority Act (Chapter 424);

- Act **applies** – to all work places, all sectors of activity, both public and private, to all work activities (excluding activities carried out by members of the armed forces, the police force, or of the civil protection service.
- “**Work**” – any duty, activity, task or service producing a product or result, and being performed for payment of for free or in exchange for goods, for services, for profit or for benefit.



Who is a Worker?

- *any person employed by an employer to perform work, or who provides a service to another person under a contract of service or for service, and includes a trainee, an apprentice and a self-employed person, but shall not include the crew of a vessel registered in Malta or any other person employed thereon as part of the ship complement.*



Who is an employer?

- "employer" means any person for whom work or service is performed by a worker or who has an employment relationship with a worker, and includes a contractor or subcontractor who performs work or supplies a service or undertakes to perform any work or to supply services, and...



- (a) in relation to work performed under a contract for services means the contractor or subcontractor, but shall not include the directors, managers, partners or owners, occupiers or possessors on behalf of whom work is being carried out, except to such extent as regards any tools, materials or equipment provided by them with regard to any defects thereof or therein which are known and not declared or which could have been known;



- (b) in respect of all other organisations including voluntary ones, or in respect of any other form of employment under a contract of service includes any of the persons in overall direction or having day to day management.



What is a workplace?

- any premises, place, facility, vessel or other thing or location, whether public or private, where work is carried out or to which the worker has access in the course of his employment...



Duties of the Employer:

- Ensure health and safety at all times of all persons who may be affected by the work being carried out for such employer;
- If the employer enlists competent external services or persons, the employer shall not be discharged from his duties;



General Principles of Prevention:



Avoidance of risk;



Identification of hazards associated with work;



Evaluation of those risks which cannot be avoided;



Control at source of risks which cannot be avoided;



Taking of all necessary measures to reduce risks;

General Principles of Prevention:

- Giving collective protective measures priority over individual protective measures;
- Adapting the work to the worker – in particular to alleviate monotonous work and to reduce the effect on health;
- Adapting to technical progress in the interests of occupational health and safety;
- Develop a coherent overall prevention policy.



Duties of Employer:

- Where a sufficient number of workers are employed – employer is to ensure that there shall be elected, chosen or designated a person/s to act as Workers' Health and Safety Representative/s;
- Representative to be consulted by employer on matters which may affect occupational health and safety.



Duties of Workers:

- Every worker is to safeguard one's own health and safety and that of other persons who can be affected by the work;
- Duty to cooperate with Representative and the employer on matters relating to health and safety.



Joseph u Victoria Pace v Enemalta Corporation et – 23.01.2003

- “Il-haddiem ghandu d-dmir li jinqeda bl-apparat ta’ sigurtà li jaghtih min ihaddmu, u jkollu htija hu wkoll jekk dak l-apparat ma jinqediex bih.”

OCCUPATIONAL HEALTH AND SAFETY AUTHORITY:

- The Authority is to apply the provisions of the Act and Regulations;
- Establish strategies and advice Minister;
- Monitor compliance;
- Prepare regulations and codes of practice;
- Carry out investigations;
- Keep register of persons competent to give advice on occupational health and safety matters.



Occupational Health and Safety Officers:

- **Officers – responsible to implement the Act and Regulations – appeal from a decision to the OHS Appeals Board.**
- **Wide powers: Exs:**
 - Enter without notice in any workplace at any time;
 - Question any person;
 - Take possession of objects/ inspect documents;



General Duties Resulting from Case Law:



Providing a safe system of work;



Providing adequate training;



Providing adequate supervision;



Providing and maintaining adequate equipment

Kevin Mallia v Alfred Mizzi & Sons Ltd–9.10.2003 – Safe System of Work

- “...huwa obbligu ta’ min ihaddem biex jipprovdi kundizzjonijiet ta’ xoghol li jassiguraw is-sahha tal-haddiema fuq il-post tax-xoghol tieghu; min ihaddem ghandu dover li jipprovdi post taxxoghol li ma jkunx ta’ periklu u riskju ghas-sahha tal-istess haddiema...”



Kevin Mallia v Alfred Mizzi & Sons Ltd–9.10.2003

- “Min ihaddem ghandu jinzamm responsabbli meta ma jiehu hsieb li jipprovdi ambjent li jassikura s-sahha tal-haddiem, u jrid ukoll jipprevedi u jipprovdi ghal fatt li l-haddiem ghandu tendenza li jitraskura r-riskji inerenti fix-xoghol tieghu.”



Kevin Mallia v Alfred Mizzi & Sons Ltd–9.10.2003

- “wiehed irid jikkonsidra l-atmosfera fil-post tax-xoghol, iddiffikultajiet li jsib il-haddiem fil-kaz tax-xoghol tieghu, il-hinijiet twal, l-ghaggla fix-xoghol, nuqqas ta’ ghajnuna minn haddiema ohra li jkunu inkarigati biex jahdmu mieghu fuq dan ix-xoghol”; dawn huma kollha fatturi li, min ihaddem irid jikkunsidra meta jkun qed jippjana l-lant taxxoghol u johloq dak li komunement hu msejjah “*a safe system of work*”

Kevin Mallia v Alfred Mizzi & Sons Ltd–9.10.2003 – Supervision and Training

- “Inoltre, gie indikat li min ihaddem ghandu l-obbligu u d-dmir li jipprovdi sorveljanza adegwata sabiex l-ambjent tax-xoghol ma jkunx konducenti ghal kwalunkwe forma ta’ incident li jippregudika lill-impjegati tieghu, u jrid jara wkoll li l-haddiema tieghu jkunu mistharrga ghat-tip ta’ xoghol li jkunu mqabba jaghmlu.”



Safe System:

- **Simon Chetcuti v Alex Mizzi:** *““The fact that the system adopted has been in use for years without incident, is not proof that the system is safe; the accident in question justifies this”.*



Charles Farrugia v Malta Investment Management Company Ltd – 9.10.2003 - Training

- Din il-Qorti thoss li s-sid kellu obbligu jingaggja labourers minn barra biex jaghmlu dan ix-xoghol ta' irfieh, u mhux iqabdu z-zewg handymen li kellhom u minghajr training ta' xejn, iqabduhom jerfghu skrivanija ta' certa daqs u toqol.



OHSA and Covid 19:

- Duty to prevent spread of infectious disease – OSHA obligation.
- Guidance issued by government for different workplaces;
- Guidelines for offices:

https://deputyprimeminister.gov.mt/en/health-promotion/covid-19/Documents/mitigation-conditions-and-guidances/Guidance-for-Offices-and-Workspaces_11Sep20.pdf



- Ensure physical distance of at least 2 metres between employees;
- Encouraging workers to wash hands frequently and use sanitizers;
- Ensure awareness re symptoms and encourage workers not to attend the office if sick;
- Ensure regular cleaning of office and disinfection;
- Have signs and posters at work to raise awareness;
- Supply sufficient hand sanitizers, soap etc;
- Placing of desks at a safe distance;
- Avoid 'hot desking' – each employee to have own desk;
- Encourage remote-working if possible;



- Limit number of people at the office;
- Cancel work related events that involve close/ prolonged contact, including social gatherings;
- Installing screening between workplaces and public areas;
- Reconfigure desks to be back to back or side to side;
- Minimise or avoid work-related travel abroad;
- Employees should have temperature checked upon entry;
- Might need to close kitchen/ dining area;
- Keeping door and windows open;
- Having a contingency plan in case of an outbreak at work;
- Keeping records for contact tracing;



Notification of Accidents:

- S.L. 424.09 Work Places (Health, Safety and Welfare) Regulations:
 - Any accident arising out of or in connection with work which results either:
 - in the death of or major injury to a person; or
 - In the case of an employee at work, in that employee being incapacitated for more than 3 consecutive (working) days:
- Notifiable accident and reported to the Director of the DIER.



Register:

- **Obligation of Employer to keep a general register:**
- **Particulars of accidents and disease occurring at work of which notice is required to be given to Director;**
- **All particulars and reports requested by the Regulations.**

- **Register/ record → available for inspection at least 2 years after date of last entry.**



Young Persons: S.L. 424.10

- Young persons – persons under 18 years.
- Before engaging a young person:
 - Duty to carry out assessment of occupational risks;
 - Duty to ensure young person has been examined by a medical practitioner who shall certify young person is fit to carry out the work;
 - Duty to keep a register with details of young person;



Protection of Maternity: S.L. 424.11

- Pregnant employee to inform employer as soon as she becomes aware of it;
- Before assigning work to a pregnant / breastfeeding worker or mother (up to 6 months from birth) – employer to assess nature of work and degree of hazard and resultant risks;

First Aid: S.L.424.13

- Duty of employer to ensure that each worker and any person present at the workplace has rapid access to first aid and that there adequate equipment and facilities for enabling first aid;
- Facilities to include a first aid box – more than 50employees – additional box;
- Employer to ensure presence of first aiders;



Display Screen Equipment: S.L. 424.14

- **Employer to identify all display screen equipment and workstations provided by him or used at the workplace and keep a record thereof and names of persons using them;**
- **For each workstation employer to perform analysis to assess risks to which workers are exposed as a result of use thereof;**
- **Workstations or display screen equipment to meet minimum requirements laid down in Schedule;**



- Employer to provide information and training to workers on all aspects of health and safety relating to their workstations and display screen equipment;
- Worker's activities to be periodically interrupted by breaks /changes in activity;
- Workers entitled to eye-sight tests at regular intervals;



Minimum Health and Safety Requirements: S.L. 424.15

- **General Duties:**
 - Submit equipment to maintenance;
 - Maintain hygiene and cleanliness;
 - Inform workers of safety measures;
 - Provide emergency routes and exits;
 - Ensure proper ventilation of workplace;
 - Maintain a comfortable thermal environment;



General Duties Cont.

- Maintain suitable and sufficient lighting;
- Provide suitable seating if work can be done in a seating position;
- Provide an adequate supply of drinking water;
- Provide rest facilities;
- Provide changing room facilities;
- Provide suitable washing stations;
- Provide suitable sanitary conveniences;



Provision of Health and Safety Signs: S.L. 424.16

- Every health and/or safety signs at work must fulfil the minimum requirements set out in the Schedule to the Regulations;
- Employer to provide and ensure presence of suitable health/safety signs at workplace where hazards cannot be avoided/reduced;
- Employer to provide training and instruction in the meaning of the signs.
- <https://legislation.mt/eli/sl/424.16/eng>



Risks of Back Injury: S.L. 424.17

- Duty of employer to take measures to avoid the need for manual handling of loads;
- Workers to receive information about weight of loads and on how to handle weights;



General Provisions: S.L. 424.18

- Employer to designate one or more persons to assist him in undertaking the measures required in relation to health and safety or enlist external services;
- Duty of employer to carry out a risk assessment of all hazards which may be present and resultant risks – 5 or more employees – keep copies of assessment;
- Duty to consult through employees' representative/s.



General Provisions: S.L. 424.18

- Duties of workers – take care of own health and safety as well as that of others who may be affected by his acts/omissions at work;
 - Make correct use of machinery and protective equipment;
 - Inform employer of dangers;
 - Co-operate with employer to enable requirements imposed by the Authority be carried out.



Personal Protective Equipment: S.L. 424.21

- Personal protective equipment to be used when the risks cannot be avoided or sufficiently limited;
- Equipment to comply with specific regulations;
- Employer to determine the conditions of use;
- Equipment to be provided free of charge;
- Employer to inform employee of risks equipment protects him against;



Simon Chetcuti v Alex Mizzi – 20.06.2002

- *“Dwar ir-responsabbilta’ ghall-incident, il-gurisprudenza nostrali titfa’ oneru qawwi fuq l-employer li jara li l-impjegati tieghu ma jigrilhomx hsara fuq il-lant tax-xoghol. L-employer irid mhux biss jipprovdi lill-haddiema b’safety equipment, izda irid jassigura li dak l-equipment jintuza.”*

Simon Chetcuti v Alex Mizzi

- *“Ghal dan kollu, hu s-sid li jrid jkopri lill-haddiem. Irid, fi kliem iehor, ikopri lill-haddiem kontra l-aljenazzjoni tieghu stess, u jekk jonqos minn dan l-obbligu, avvolja jista’ jkun hemm grad ta’ negligenza mill-haddiem stess, is-sid irid, fi grad jew iehor, jirrispondi ghad-danni li jirrizulta.”*



Work Equipment: S.L. 424.35

- Employer to ensure that work equipment made available to workers is suitable for work to be carried out properly;
- Work equipment must comply with minimum requirements laid down in the regulations;
- Equipment to be subject to initial inspection;
- Employees to have adequate information on the work equipment.



Francis Busuttil v Sammy Meilaq – 19.12.2002

- “Mhux hekk biss in kwantu jehtieg li jkun assikurat li dawn l-istess mezzi (makni, apparati, ghodod, ecc.) ikunu l-hin kollu mantenuti fi stat li jibqghu "safe". Ghax "xejn ma jiswa li l-impjegat li korra kien talvolta imprudenti jekk il-makkinarju ma kienx mizmum bid-debiti ripari u prekawzjonijiet ohra; ghaliex dawn ir-ripari u prekawzjonijiet huma intizi precizament biex jiskonguraw il-konsegwenza ta' din l-imprudenza”

Other Specific H & S Regulations:

Woodworking
Machinery;

Dock Safety;

Building Safety;

Steam and Hot
Water Boilers;

Power Presses;

Control of Major
Accident
Hazards;

Exposure to
Carcinogens or
Mutagens;

Exposure to
Asbestos;

Risks related to
Chemical Agents;

Exposure related
to Biological
Agents;

Other Specific H & S Regulations:



Mineral Extracting Industries;



Confined and explosive atmospheres spaces;



Exposure to noise;



Work at Construction Sites;



Exposure to Vibrations;



Exposure to Artificial Optical Radiation;



Exposure to Electromagnetic Fields;

OHSA and teleworking

- What obligations exist on the employer in the case of teleworking?
- Obligation to inspect v obligation to inform.
- Need for casual link between work and injury.



Stress at work – an OHS&A Consideration?

- UK's HSE's definition of stress:

“The reaction people have to excessive demands or pressures, arising when people try to cope with tasks, responsibilities or other types of pressure connected with their job, but find difficulty, strain or worry in doing so.”



Stress at the workplace

- Health and safety – includes obligation to ensure there are no excessive levels of stress;
- Sources – excessive work; harassment; bullying.
- Problems – very subjective + low chances of authorities to intervene;
- Rarely form part of risk assessment;
- Usually tied to cases of constructive dismissal.
- Can lead to psychological disorders – cases of damages.



Organisation of Working Time Regulations



- Directive 2003/88/EC (the Working Time Directive) → aim at providing minimum standards common to MS to protect workers from health and safety risks associated with excessive or inappropriate working hours, and with inadequate time for rest and recovery from work.
- Limit to weekly working hours / Rest Breaks / Minimum Daily Rest / Minimum Weekly Rest / Paid Annual Leave / Protection in case of Night Work.

Organisation of Working Time Regulations

- Daily Rest – 11 consecutive hours per 24hr period;
- Rest Break – At least 15mins if working day longer than 6hrs;
- Weekly Rest – 24hrs for every 7 days;
- Maximum Average Working Time – 48hrs per week including overtime (opt-out clauses);
- Annual leave – at least 27 days per year / provisions on carrying forward of leave;
- Night work – hours of work not to exceed 8hrs in every 24hr period.



Consequences of a Breach of OHS Laws:

- Consequences in terms of the OHS Laws:

Main Act: acting in contravention of the main Act or the Regulations made under the Act and any person who conspires, attempts, aids, abets, counsels or procures any other person to contravene – guilty of an ‘offence’.



Offences under the Act:

Furnishing false information;

With intent to deceive, makes use of a document which is false;

Withholding material information;

Making incorrect statements or entries in records;

Failing to cooperate with officers;

Hindering an officer in the performance of his duties.

Penalties:

- On conviction – imprisonment for a period of not more than 2 years or to a fine (multa) between €465.87 - €11,646.87 or to both.
- Court may also cancel licences, warrants or permits issued to or in the name of the person guilty.
- No proceedings taken if person pays penalty of up to €465.87;
- Prescriptive period of 6 years.



Specific offences and penalties:

- Occupational Health and Safety (Payment of Penalties) S.L. 424.33
- List of offences and corresponding penalties which the Authority may intimate a person to pay;
- Schedule I – description of infringement/ penalty to be paid and legal basis.
- Failing to pay – institution of proceedings in Court.
- Fines imposed by the Authority – a civil debt.



CONT: S.L. 424.33

- Authority may accept that penalty is paid by instalments;
- Payment of penalty not in lieu of fulfilling a particular duty;
- An intimation may be issued for every day in which the violation continues.
- Schedule II – frequency of examinations/ testing/ certification of equipment and actions to be taken by the employer.



Who is liable?

- Body or association of persons: every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or purporting to act in such capacity – guilty unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.



Onus of Proof:

- *In any proceedings for an offence under these regulations consisting of a failure to comply with a duty or requirement to do something, or to do something so far as is reasonably practicable, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.*



Action in Damages:

- Principle of Responsibility of the Employer under general civil law principles:
 - a) Nexus (connection) between an act/ omission and the resulting damages;
 - b) Negligence on the part of the employer – act/omission must be caused voluntarily or through negligence, imprudence or want of attention.



Action in Damages:

- Civil Code 1032: *(1) A person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a bonus paterfamilias.*
- 1033: *Any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.*



Quantum of Damages

- 2 heads of damages in a personal injury claim:
 - 1) Damnum Emergens – actual damages suffered:
 - 1) Lucrum Cessans – loss of future earnings.



Lucrum Cessans Calculation:

- Formula:
 - 1) Percentage of disability;
 - 2) Yearly wage (usually adjusted because of inflation);
 - 3) Multiplier (approx. age until retirement)

Deductions – lump sum payment;

In case of death and claim is by heirs – deduction for own consumption and degree of dependency.



Formula

- Ex. – 30 years on date of accident; 10% disability; wage of €25,000.

$$25 \times 10\% \times €27,000 = €67,500$$

- Deduction of 25% lump sum payment = €50,625
- Lump sum – in view that injured person is obtaining payment now as opposed to a long period over his working life.
- Decreases if a long period of time passes from accident to date of judgment.

What if the employee continues working or finds a better job?

- The employee is still entitled to compensation according to the formula;
- *“Id-dizabilita timplika nuqqas ta' opportunitajiet ta' xoghol alternattiv u dan in-nuqqas ta' ghazla huwa ta' zvantagg u wisq probabbli jikkaguna nuqqas ta' opportunitajiet ta' qliegħ ahjar f'xogħol addattat għal min ma għandux dizabilita` fizika, senjatament f'kaz ta' xogħol manwali, bħal dak ta' l-attur appellat.”* (Busuttil v Meilaq).



John Scicluna v Malta Drydocks – 14.12.2001

- *“...il-fatt li persuna dizabbli tkun qed tahdem u taqla’ aktar milli kienet qed taqla’ qabel korriet ma jfissirx li hija ma setghetx issib opportunitajiet ahjar ta’ xoghol kieku ma korrietx. Id-dizabilita’ necessarjament timplika nuqqas fil-persuna fil-potenzjal taghha ghaxxoghol, mhux biss ma l-employer prezenti izda ukoll ma’ terzi jew anke jekk tahdem ghal rasha.”*



Contributory Negligence:

Carmel Bray v Alfred Petroni et:

“Dan pero' kif tajjeb osservaw il-Qrati taghna mhuwiex il-kuncett ta' strict liability tal-Ligi Ingliza u l-istess impjegat huwa wkoll obligat li jipprova jevita' incidenti li jistghu jwasslu ghall-korriment tieghu u jista' wkoll minhabba n-nuqqas ta' prudenza adoperata minnu jikkontribwixxi ghac-cirkostanzi li jkunu wasslu ghall-korriment tieghu.”



Ingredients of Reasonable Care: Joseph Agius v All Services Ltd – 25.04.2008

- *"1) First and foremost is the question of the likelihood or otherwise of injury. The more likely or probable an accident is, the greater the duty to guard against it. But, if there is only a remote possibility of danger, the need for precautions is usually much reduced.*

- *"2) The second factor helping us to decide whether an employer took reasonable care is that of the potential seriousness of injury. If a certain process or product could cause a disastrous accident, any reasonable employer would take the greatest possible care to avoid it. Such stringent precautions would still be necessary even though the chances of the accident happening were in fact quite small."*



- *"3) The third 'ingredient' is the obviousness of the danger. Since an employer can only guard against hazards he knows or ought to know about he cannot usually be blamed for injuries caused by hidden or unexpected dangers. But on the other hand he might be held liable if a proper research, training or information flow system would have revealed the risks in question."*



- *"4) The fourth factor is the cost of safety. Essentially the law's task is to balance out society's desire for profit and the individual worker's demand for safety and welfare. It rarely resolves a safety problem by forbidding work to be carried out at all or by requiring precautions so expensive as to drive the employer out of business – though such a conclusion may possibly be reached if the danger is extreme and there is no other way of avoiding it."*



- *"5) Lastly we should recognize the inherent risk factor. All kinds of work involve varying degrees of risk which little or nothing can be done. This is well recognized in the contest of mining, steeple-jacking, oilrig work, and the like, but the point is equally true of much more humdrum jobs."*



Breach of Contract:

- Implied term in contract- employer will provide a safe system of work;
- Breach of this implied term can give rise to a claim of constructive dismissal;
- Constructive dismissal – employee will be entitled to resign and claim compensation as in the case of a direct dismissal.



Thank You for Your Attention

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