

JERSEY / JUDGMENT

# AG -v- Dempsey [2005]

## JRC 085 (24 June 2005)

[2005] JRC 085

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### JUDGMENT

THE BAILIFF: 1. The defendant has admitted two infractions under the Health and Safety at Work (Jersey) Law 1989 and Regulations made thereunder, namely the Asbestos (Licensing) (Jersey) Regulations 1997 . 2. Counsel for the defendant made a number of submissions to us. We accept the submission that these two infractions are really to be regarded as one so far as the penalty to be imposed is concerned. 3. We do not, however, accept the submission that the deterrent element of the penalty to be imposed is immaterial. Indeed this Court thinks that the deterrent element is perhaps the most important aspect of the penalty to be imposed. 4. The defendant through his Counsel has accepted very candidly and very properly that his actions on these occasions were reckless. Indeed they were, and it must go out from this Court that to expose others to the risks of asbestosis is a serious matter and one to which all those who are involved in building enterprises should pay attention. 5. We sympathise, of course, with the defendant to the extent that the persons to whom he has exposed this risk are his sons, but in fact whether the persons exposed are relatives or not, it is a serious matter to expose others to that kind of risk. 6. Viewing the matter in the round, we think the conclusions of the Crown Advocate are correct and that a total fine of £10,000 is appropriate for these offences. We have considered the Affidavit of Means which defence counsel has placed before us, and we accept that the cash available to the defendant at present would not enable him to pay a fine of £10,000. We would expect, however, particularly bearing in mind the borrowing which the defendant has already been able to achieve that the comparatively modest amount of the fine to be imposed is something which could be the subject of a loan from a bank or other institution. 7. The sentence of the Court is that the conclusions are granted, and you will be fined on charge 1 the sum of £5,000, or in the alternative 3 months' imprisonment. On charge 2, £5,000 or in the alternative 3 months' imprisonment, consecutive, making a total fine of £10,000 or in default of payment 6 months' imprisonment. We also order you to pay the costs of the prosecution up to the sum of £2,500. We are going to allow 3 months in which to pay the fines and costs; and we give you liberty to come back to the Court if there is any difficulty in finding the means of paying the fines and costs within that period. Authorities R -v- Board of Trustees of the Science Museum (1992) 3 All ER 853. Attorney General -v- H & V Building Services Limited [2000]JRC58. Attorney General -v- MHS Environmental Limited [2001]JRC239 Attorney General -v- Trant Construction Ltd

[2003]JRC114. Attorney General -v- Julian Revell Smith [2005]JRC076 Health and Safety at Work (Jersey) Law, 1989, Articles 3 and 21. Asbestos (Licensing) (Jersey) Regulations 1997, R&O - 9119, Article 2. Page Last Updated: 14 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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