

JERSEY / JUDGMENT

Morley -v- Reed [2012]

JRC 127A (28 June 2012)

[2012] JRC 127A

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judgment

the commissioner: 1. This is a personal injuries claim brought by the plaintiff against the first defendant ("the defendant") arising out of an accident which occurred on the Five Mile Road on 4th August, 2007. The Court was concerned with whether the defendant was liable for the accident and the extent to which, if any, the plaintiff caused or contributed to the injuries he suffered by his own negligence. The issue of quantum was left over. 2. The hearing took place over some three days and, following closing submissions, the Court reserved its judgment. 3. The accident took place at a junction well known to Islanders, namely opposite Le Braye car park and slipway, where the Five Mile Road passes the entrance to Le Braye car park on the western side and the road known as Le Chemin des Basses Mielles, which leads up to the southern side of the airport, on the eastern side. 4. When approaching the Five Mile Road down Le Chemin des Basses Mielles, there is a Give Way sign and line. There is a restricted view to the south caused by the undulating nature of the sand dunes, but at the junction itself when on the Give Way line, there is no restriction on the visibility up and down the Five Mile Road. 5. Le Chemin des Basses Mielles approaches the Five Mile Road at an angle of some 40 degrees and the road to Le Braye car park leaves the Five Mile Road slightly to the south at a similar angle. Just prior to the Give Way line, Le Chemin des Basses Mielles turns slightly to the right so that you do not get the impression as you approach the junction of the Five Mile Road that the road continues straight on (across the Five Mile Road) into Le Braye car park. 6. The Five Mile Road at this junction is some 6.3 metres wide, with both lanes being of equal width, and straight, extending some 600 metres to the north and some 500 metres to the south towards what was referred to at the hearing as an S bend. 7. We will first set out the evidence we heard from the parties and their witnesses in relation to the accident itself and the moments immediately leading up to it as they saw it. The plaintiff and Sophia Roberts had filed witness statements with a statement of truth. The defendant and his three passengers had filed affidavits. The plaintiff 8. The plaintiff was 25 at the time of the accident and was proceeding northwards along the Five Mile Road towards the junction just after 9.00pm on his motor cycle, a Honda CBR 900RR Fireblade, a 900cc sport machine with six gears, capable of a top speed of 170 mph and of accelerating from 0 to 60 mph in 3.1 seconds. His then girlfriend, Sophia Roberts, was riding pillion; she was not suitably attired in terms of protection in that she was wearing flip-flops and three quarter shorts. He was not happy with this and this

caused him to be extra cautious. When they had set off from his father's home at Clos Orange he had put on his sidelights which he said was standard procedure for him whether night or day. 9. He said it was a lovely day with a clear sky and plenty of light. There was no need for him to engage his headlights. Going through the S bend, he checked his speedometer at 40 mph and maintained that speed. He was in 5th or 6th gear. There was a vehicle in the distance ahead of him but no cars coming the other way. The visibility was very good. 10. As he approached the junction, he checked to the right (Le Chemin des Basses Mielles) to see whether there was a car on the Give Way sign or ahead for any cars coming towards him; both were clear. Then there was a flash of blue of a vehicle side on to him on his carriageway coming from right to left. He went to brake, but before he could do so, he had already hit the vehicle. He had no chance to take evasive action. It was a loud and violent impact. He felt his girlfriend slip up his back and over the top of him and the car. The motor cycle fell on to its side and slid with him along the road. He did not know what had happened to the car, but he was lying on his back looking for his girlfriend. She got up and walked over to him and appeared to be fine, but he could not feel his left knee. It was numb at first but then the pain kicked in and he saw a pool of blood on the road. It did not look good. 11. He was certain that he was doing 40 mph. It was impossible, in his view, that he was doing more; in fact, he told us that he had never exceeded the speed limit. He accepted that his jacket had no reflective or high visibility strips, but pointed out that the jacket (of which we had a photograph) was designed for motor cycle riders, was coloured bright red over the top one third and the motor cycle itself was brightly coloured, being (seen from the front) predominantly red. 12. He was definite that there was no one coming towards him indicating to turn right (across his path) into Le Braye car park and no one waiting at the give way line on Le Chemin des Basses Mielles to pull out. If there had been, he would have seen. He was paying attention. As he said in his statement, he had given a lot of thought about the accident since it happened, and it was his belief, and indeed this was the case put forward by him, that the driver of the car must have been travelling along Le Chemin des Basses Mielles, exited the road without stopping at the Give Way line and crossed directly over the Five Mile Road into the Le Braye Car park. Sophia Roberts 13. Sophia Roberts (who was aged 19 at the time of the accident) could not say whether the plaintiff had switched on his sidelights as they left his father's home but it was sunny and clear when they left with really good visibility. She could not see the speedometer as it was obscured by the plaintiff's head, but it didn't feel to her that he was driving fast; it felt normal to her. Again, like the plaintiff, she saw a flash of blue and then blacked out. She landed in the gravel car park to the left (going north) 25 metres away from the estimated point of the collision with, amazingly, only a cut leg and grazing. She went over to the plaintiff. Someone from the car was smoking and she told them in no uncertain terms to keep away as there was petrol on the road. 14. She said it was really bright at the time of the collision. She had ridden pillion a few times (she had her own 50cc motor cycle) and the plaintiff always drove sensibly when she was riding pillion. He never normally went fast. She could not remember if he braked or took evasive action. The defendant 15. The defendant was 17 at the time of the accident. He had obtained his driving licence in March of that year. He had just acquired a VW Golf hatchback 2.0 GTI which was capable of a top speed of 123 mph and of accelerating from 0 - 60 mph in 9.8 seconds. He was intending to get the car insured the following Monday and was therefore driving on the day of the accident

uninsured; hence the involvement of the Motor Insurers' Bureau as the second defendant. 16. The defendant had three passengers. In the front passenger seat, was Matthew Boyle, then aged 18. In the nearside rear passenger seat was Jamie-Lea Baudains, then aged 16 and in the offside rear passenger seat (behind him) was Megan Pople, then also aged 16 years. They were going camping that night (together, it would seem on the evidence given by the two girls, with others in their group of friends). He was driving south along the Five Mile Road to go to Le Braye car park to retrieve camping gear from his other car, a Renault Clio, which was parked there. He was not driving down Le Chemin des Basses Mielles. 17. There had been a red sunset and it was starting to get dark. He had put on his sidelights and then his headlights, dipped. He was doing about 40 mph along the Five Mile Road. When he came to Le Braye junction, he saw a car coming the other way with its headlights on and slowed down to let it pass. He said in his affidavit that he had stopped but in evidence said he may have been creeping forward for this purpose. He could not remember what was happening in the car in the moments before the accident, but there was no music as the car had no radio unit. He looked in his wing mirror to check behind, put on his right-hand indicator, looked in his mirror again, looked up ahead - all was clear and he made his right-hand turn into Le Braye car park. When he or the front half of the car was over the yellow line marking the exit from Le Braye car park he felt an impact to the back of the car on the passenger side and the car spun round 180 degrees. He could not understand what had happened. Matthew Boyle went over and switched the motor cycle engine off. He did not think its lights were on. When shown Matthew Boyle's affidavit where he said that that he, the defendant, had switched the motor cycle engine off, the defendant accepted that this must have been the case. 18. He had not been drinking; he was subsequently breathalysed by the police with a nil result. He said he didn't smoke then. He saw a skid mark in the centre of the road, angling slightly towards the yellow line marking the exit of Le Braye car park. He just had not seen anything at all and therefore assumed that the motor cycle had no lights and was travelling at an excessive speed. At the time of the impact, he estimated that he was travelling not more than 1 - 3 mph. At the time of the impact it was dark enough for lights and by the time the police arrived, it was pretty much pitch black. Matthew Boyle 19. At the time of the accident, he had not known the defendant long. They had picked up the two girls to go camping. He had not been drinking. The defendant was driving sensibly. They approached the junction at Le Braye car park going south along the Five Mile Road. They did not go down Le Chemin des Basses Mielles. It was getting dark and the defendant had his lights on. There was a normal level of chat in the car. They had to stop (according to his affidavit) before turning into Le Braye car park in order to let a car pass. In evidence he said they could have been rolling forward but they were virtually stopped. The indicator was on. He looked ahead and saw nothing coming. They were more than half way over the opposite lane when they were hit and spun round 180 degrees. They were practically in the car park when they were hit. He saw the motor cycle at the point of impact - when it was virtually in the side of the car. He did not see any lights on the motor cycle. At the time of the impact, they were doing 3 - 4 mph. After the collision the defendant went over and switched the motor cycle engine off. He did not remember anyone smoking. Megan Pople 20. She was in the passenger seat behind the defendant. They were proceeding along the Five Mile Road going south towards the junction at Le Braye car park. They did not go down Le Chemin des Basses Mielles. It was dark

enough for lights to be on and she thought that the defendant had switched the car lights on. They had to stop to allow a car to pass. They turned into the car park. She was looking towards Jamie-Lea Baudains, who was in the other rear passenger seat when she saw a motor cycle coming towards the car through the back seat passenger window. The motor cycle was very close to the car when she first saw it (about a foot away) and there was nothing that could have been done to prevent the impact. She heard the driver of the motor cycle shouting as it hit the car. She did not remember seeing any lights coming towards the car prior to the impact. 21. She thought that Jamie-Lea Baudains may have had an iPod, but did not know whether it had been plugged in. At the time of the impact, they were not going fast. She recalled the defendant having a cigarette after the accident and someone telling him to put it out. Jamie-Lea Baudains 22. She had had a vodka and coke before being picked up. She was in the rear nearside passenger seat behind Matthew Boyle. They were proceeding south down the Five Mile Road towards the junction at Le Braye car park. They did not go down Le Chemin des Basses Mielles. The light was turning but she could not remember whether the defendant had his lights on. They had stopped to allow a black Fiesta hire car to pass before turning into Le Braye car park. She remembered looking up the road towards the S bend and seeing something in the distance but it was too far away to be hit. She did not register it as being a motor cycle but was just conscious of something. She couldn't say whether it had lights on. As the car turned she leant forward between the front seats (with her seat belt still on) to change the song on the iPod (which she says was not hers), fortuitously, as she then heard a weird sound and a massive bang. The car swung right round. If she had been sitting normally she might have been injured by the impact into her door. 23. The defendant had not been speeding before the accident. She was a nervous passenger and would have said something if he had been. There was a level of chat. She had been physically sick after the accident. Brendan Flaxman 24. Mr Flaxman was a member of the police force in 2007 and carried out a specialist collision investigation role. He was asked to prepare a collision investigation report on the accident and had prepared the plan used at the hearing, which showed the junction, the final resting place of the motor cycle and the defendant's car and the 25 metres of scratch marks made by the motor cycle after the impact. 25. When he attended the scene, there were a number of skid marks on the western side of the road, one of which in particular could have been from the motor cycle. It was not included in the plan because, in his view, it was not associated with either vehicle. There had been a sprint event very recently on that road involving the Jersey Motor Cycle and Light Car Club which used the Le Braye car park. The mark had the characteristics you would expect from a locked rear motor cycle tyre. If a vehicle leaves a mark on the road, there will be a corresponding mark on the vehicle called a "foot" mark. He carefully examined as much of the front wheel that was visible (it was not possible to turn the front wheel) and the rear wheel, using a "dragon light", which is a powerful hand-held torch. Because he could not find a corresponding foot, he could not link the tyre mark to the motor cycle of the plaintiff and did not therefore include it in the plan. The experts 26. The plaintiff called Ian Paine and the defendant John Johnston as expert witnesses. Both have prepared reports and following a meeting a joint statement. Further progress in narrowing their differences was made during the hearing, to the point where, very helpfully, there was broad agreement between them. We would summarise their evidence and the remaining differences

between them as follows:- (i) The collision took place at 21:10 pm on the north bound lane of the Five Mile Road when the plaintiff's motor cycle hit the defendant's car at the middle point of the rear nearside passenger door at an angle of approximately 45 degrees. (ii) Sunset occurred at 20:44 pm that day. Pursuant to the Road Traffic Lighting (Jersey) Order 1998 , sidelights have to be switched on at sunset and headlights half an hour after sunset. The accident therefore took place 26 minutes after sunset when it was a legal requirement for sidelights to be switched on and 4 minutes before the time at which it was a legal requirement for headlights to be switched on. (iii) There was insufficient physical evidence to accurately pinpoint the exact position of the collision but it must have been within the north bound lane of the Five Mile Road south of the first scratch marks left by the motor cycle and in a line extending back from those marks. The motor cycle was travelling north along the Five Mile Road before the collision but as for the defendant's car, both agreed there was insufficient physical evidence to determine whether it had been travelling south along the Five Mile Road or west along Le Chemin des Basses Mielles. (iv) If the defendant's evidence as to the route he was taking was accepted by the Court and if the plaintiff had his lights on, then at the time the defendant was starting his turn into the car park it is more likely than not that the plaintiff was in a position whereby he could be seen approaching the junction. (v) Again, on the basis that the defendant's evidence as to the route he was taking was accepted by the Court, the defendant's car was in a position whereby the plaintiff should have seen the car as it was turning into the car park. (vi) The post-impact speed of the defendant's car was 14-16 mph. (vii) There was a small difference between the experts as to the post impact speed of the motor cycle. Mr Paine placed it in a range of 29-35 mph and Mr Johnston 31-37 mph. Mr Johnston had added the 2 mph difference to take into account the speed loss caused by the motor cycle falling to the ground before sliding along the road. (viii) Initially, there were substantial differences between the experts as to the pre-impact speed of the motor cycle. Mr Paine had placed it at 10 mph above his estimate of the post impact speed which would give a range of between 39 and 45 mph. Mr Johnston had initially placed the pre-impact speed at 17-20 mph above his estimate of the post impact speed, which would give a range of between 48 and 54 mph. However, he discovered a mistake in his calculations during the course of the hearing so that in evidence he reduced his estimate of the pre-impact speed to 11 or 12 mph above his estimate of the post impact speed, giving a range of 42-49 mph, which is close to that of Mr Paine. Both experts agreed that one would normally look towards the higher end of the speed range. (ix) The experts agreed that the generally accepted, typical or likely reaction time is 1.5 seconds. 27. Mr Paine had attended at the junction and found that vehicles going south along the Five Mile Road took less than 3 seconds to complete a right turn into the car park from a standstill position. Mr Johnston had not had the opportunity to perform the same exercise and pointed out that much depended on how far back (to the north) the turn was commenced. At 12 metres back, it would take some 4 seconds to clear the main road. At the hearing, the defendant was asked to indicate on the plan where he thought he had stopped in order to make his turn into the car park, an exercise which one has to treat with some caution bearing in mind that he was being asked to do this some 5 years after the accident. In any event, he pointed to a position some 20 metres away, and from that position, Mr Johnston calculated that it would take some 5.6 to 6.4 seconds to complete the turn. 28. In their joint statement, the experts advised that at 40 mph the plaintiff would have been

covering the ground at the rate of 17.88 metres per second. Allowing 3 seconds for the defendant to completely clear the road, the plaintiff would have covered some 53.64 metres. With a reaction time of 1.5 seconds and applying emergency braking (a manoeuvre not itself without risk) he would have been able to stop within 52-54 metres. In Mr Paine's opinion, he would not therefore have been able to come to a complete stop but the impact with the defendant's car may well have been less. If the turn had taken 4 seconds to complete, then the plaintiff would have been 72 metres from the junction and in Mr Johnston's opinion, this would have been sufficient distance for him to stop with moderate braking. It follows that the longer the defendant took to turn and the faster the plaintiff was driving the further away from the junction the plaintiff would have been. At 45 mph, allowing a 3 second turn, he would have been 60.34 metres away and allowing a 6.4 second turn, 128 metres away. Mr Paine advised us that the beam of dipped headlights extended some 30-40 metres (and this was not challenged) and therefore, on the basis of any of these calculations, the plaintiff would not have been illuminated by the dipped headlights of the defendant's car. 29. Mr Paine had attended the junction on Sunday 13th May. 2012. at 21:10 pm, when the sunset had been at 20:43 pm - only a minute different from the time of the sunset on the day of the accident. The weather was clear and he told us that from the middle of the road, he could see the 500 metres to the south to the S bend. He could see a cyclist coming towards him on the gravel path. The cyclist had his light on. There was vehicle traffic; some were displaying sidelights and some headlights. Mr Johnston did not challenge these observations, but pointed out that there was a difference between standing in the road at dusk, in order to ascertain how far you could see and what a normal driver might see if looking momentarily before making a turn. 30. Whether the plaintiff's motor cycle would have been visible was a question of its conspicuity. Both experts agreed that this came down to how the motor cycle would have contrasted with its background. Moving across one's line of vision, the contrast is better than moving straight towards one. Mr Johnston in his report referred to an American study (Olson and Fabre Forensic Aspects of Driver Perception and Response) which concluded that the most common daylight car/motor cycle collision is that where a car turns across the path of a motor cycle that has right of way. In such collisions, where a car driver attempts to cross an opposing traffic lane, the driver is more likely to fail to detect an approaching motor cycle than another car or lorry. He referred us to another paper by Hurst et al (Human Factors in Motor Cycle Accidents SAE 770103) where the authors indicate that where vehicles are in opposing traffic lanes, the conspicuity due to motion is very low, if it exists at all, and that consequently, recognition of the motor cycle by the car driver will depend entirely on conspicuity due to contrast. They go on to say that if the approaching motor cycle and rider blend well with the background scene, and if the car driver has not developed improved visual search habits, i.e. searching for motor cycles and bicycles, the motor cycle will not be recognised as a vehicle. An important counter measure was the use of an illuminated motor cycle headlamp during daylight hours. 31. The experts' opinion as to the post impact speed of the defendant's car, namely 14-16 mph contrasted with the evidence of the defendant and Matthew Boyle as to how fast they thought they were going. Mr Paine thought it unlikely that they could have achieved this speed from a standing start. Mr Johnston advised that allowing 4 seconds to make the turn from a standing start, then 14-16 mph was achievable by most cars and certainly this car. 32. When giving evidence, Sophia Roberts was asked to indicate

where on the plan she had finally come to rest and she indicated a point approximately 25 metres from the likely impact position. Using that, the experts were able to make "Pedestrian Throw Calculations" to estimate the pre-impact speed of the motor cycle. Mr Paine estimated the pre-impact speed at within a range of 28-40 mph. Mr Johnston at between 36.6 and 41.2 mph. Both advised that one would normally look to the higher end of the range. However, Mr Johnston advised that Sophia Roberts would have lost speed when impacting on and sliding over the back of the plaintiff. Something must be added for this factor which was difficult to quantify. Again, we think we must treat Sophia Roberts' evidence with some caution. She had been badly shocked by the accident and was being asked for the first time some five years later to indicate on a plan which she had not seen before, where she finally came to rest. It was however useful as a check to confirm that the pre-impact speed of the motor cycle was not in the higher realms originally put forward by Mr Johnston. The law 33. As made clear in Rudd (née Lowry)-v-Hudson

[1977] JJ 2055 at 2062, the essential ingredients of actionable negligence are:- (i) The existence of a duty to take care owing to the plaintiff by the defendant; (ii) Failure to attain that standard of care prescribed by the law; (iii) Damage suffered by the plaintiff which is causally connected with the breach of duty to take care. 34. As further made clear in Rudd, the driver of a motor vehicle owes a duty to exercise reasonable care and skill towards all persons using the highway and therefore both the plaintiff and the defendant owed to each other a duty of care. The relevant standard of care is set out in Goad-v-Butcher and another

[2011] EWCA Civ 158 at paragraph 10:- "... to take reasonable care to avoid causing injury to other road users whom he should reasonably have foreseen might be affected by his actions. That means he had a duty to act as a reasonably prudent and careful driver...." This is not a counsel of perfection as the court in the same case observed at paragraph 11:- "a driver will not be held negligent simply for failing to achieve that." 35. The question which must be asked and answered is whether the defendant's decision either on the plaintiff's case to cross the Give Way line and proceed straight over the Five Mile Road to Le Braye car park or on the defendant's case to turn right across the carriageway was negligent at the time he took it in the light of the position he was in, and what he knew or ought to have known at that moment (Lambert-v-Clayton

[2009] EWCA Civ 237 at paragraph 30). As to the latter, the English High Court held in the case of Taylor-v-Tyler QBD, 29 th November 2000:- "...a motorist who is performing a manoeuvre of turning right must make sure that the road ahead is either clear or the traffic is so far away that it will not be inconvenienced by the vehicle turning right impeding the carriageway which it is about to cross." 36. It has always been the case that exceeding the speed limit, though an offence, is not in itself negligence imposing civil liability (Barna-v-Hudes Merchandising Corporation

(1962) Crim LR 321 106 SOL JO 194 CA). 37. Turning to contributory negligence, Article 4(1) of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960 provides as follows:- "Where any person suffers damage as the result partly of the person's own fault and partly of the fault

of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage." 38. Fault is defined by Article 4(9) to mean any:- "...wrongful act (faute), negligence (négligence) lack of skill (impéritie), breach of statutory duty or other act or omission which gives rise to liability in damages or would, apart from this Article, give rise to the defence of contributory negligence." 39. These provisions enable the Court to reduce the damages in proportion to the degree of responsibility for the accident; and the Court may take into account not only the share of each party in causing the accident, but also the degree of blameworthiness (see *Louis-v-Troy* and others

(1970) JJ 1371 at 1404). 40. In *Hacquoil-v-Troy & Sons and Harbours and Airport Committee*

(1970) JJ 1305, the Court referred (at 1333-1334) to *Halsbury's Laws of England* (Third Edition) to define the test to be applied:- "...the test to be applied is whether the defendant's negligence was nevertheless a direct and effective cause of the misfortune. The existence of contributory negligence does not depend on any duty owed by the injured party sued and all that is necessary to establish a plea of contributory negligence is to prove that the injured party did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury. The standard of care depends upon foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent man, he might hurt himself." 41. In *Jones-v-Livox Quarries*

(1952) 2 QB 608 it was established that contributory negligence does not require a plaintiff to reasonably foresee the particular risk to which he succumbs but only that a plaintiff should foresee the general risk. 42. The Court of Appeal in *Jersey Post-v-Chartier*

[2007] JLR 187 at 196 held that:- "It is obviously logically impossible for the court making the deduction to do so with mathematical precision. In truth, it is really a matter of impression, the court looking at the conduct of the claimant and of the other person or persons and doing the best it can to be fair. The phrase "just and equitable" is suggestive of a discretion and, as in the case of the exercise of a discretion vested in a lower court, an appellate court should be slow to interfere." 43. Mr Heywood, for the defendant, accepted that where contributory negligence is alleged, the burden is on the defendant to prove that the plaintiff's fault contributed to the injuries suffered.

Submissions

44. We have limited our summary of the evidence given by the witnesses as to fact to the accident itself and to the moments immediately leading up to it. Much of the hearing, however, was taken up with thorough, if not exhaustive, cross-examination by Mr Steenson

of the defendant and his passengers as to inconsistencies he saw in their conduct in particular before and after the accident. For reasons which will become clear, we have not set out that wider evidence in this judgment, although we have taken it into account. 45. Mr Steenson submitted that there could be no doubt that the defendant and his three passengers were unreliable historians (an expression, he said, that came as close as possible to saying that they were lying in their evidence). He said that they had been blasé about the court process and cavalier with the need for accuracy and truth. We should dismiss the defendant's case out of hand, as it was riddled with inconsistencies and inexplicable occurrences. He gave a few examples of inaccuracies, inconsistencies and lies on the part of the defendant, such as what he described as his cavalier approach to the issue of insurance and the insurance documentation, his failure to make reference to the two girls as witnesses in his statement given to the Motor Insurers' Bureau in June 2009, his statement that he and Matthew Boyle were good mates at the time of the accident, when it would appear from Matthew Boyle's evidence that they had not known each other that long, the question mark over the route taken before arriving at the Five Mile Road, the general purpose of that evening, who it was who turned off the motor cycle after the accident, whether there was music in the car, whether the defendant had smoked and whether the car had come to a complete stop or was creeping forward before making its turn. 46. At its most basic level, he said the defendant's case was inexplicable and hopeless for two obvious reasons, firstly that he and his passengers had absolutely no sensible explanation as to why they never saw the plaintiff's motor cycle and they had no explanation at all as to how the defendant's car could have been travelling at at least 14-16 mph at the time of impact. 47. All of these gaping holes in the defendant's case could be accounted for if the Court accepted that he was not travelling south along the Five Mile Road but came down Le Chemin des Basses Mielles, crossing the Five Mile Road without stopping to give way. That would explain entirely why the plaintiff failed to see the defendant's car. Motor cyclists do not simply drive into cars, at least without attempting to take some form of evasive action. In short, he said, the defendant's case did not make sense. In contrast, the plaintiff's case was logically sound, his evidence and that of Sophia Roberts was credible and not in any material way undermined through cross-examination. 48. Furthermore, he submitted, the Court should have regard to the simplistic admissions of liability made by the defendant in two respects. On 28 th August, 2007, Transport and Technical Services Department wrote to him, asking for £410 to meet the cost of clearing and cleaning the collision site. The letter stated that if he did not consider that he was responsible for the accident, then he should advise them as soon as possible. He did not do so and paid the sum required. On 7 th May, 2009, Islands Insurance wrote to the defendant seeking reimbursement of the cost of repairing the motor cycle in the sum of £2,300. The letter stated that there was no doubt that he was responsible for the accident, in that he drove over the Give Way line into the plaintiff's motor cycle that was already established on the main road. The defendant paid the sum demanded. Mr Steenson did not seek to argue that these constituted admissions binding upon the defendant but that they were probative of his state of mind at the time, namely that he regarded himself as responsible. 49. Mr Heywood submitted that the credibility of the defendant and his

passengers had been unjustly impugned. Although they knew each other at the time, they had all gone their separate ways and it was simply untenable to suggest that they had conspired together to fabricate an account of events in order to deceive the Court. Discrepancies in their accounts of the surrounding events were precisely the kind of discrepancies one would expect from honest witnesses and indeed, in his view, similar discrepancies could be found in the accounts of the plaintiff and Sophia Roberts. Neither the plaintiff nor Sophia Roberts had seen the defendant's car emerge from Le Chemin des Basses Mielles and the Court was being asked to accept their theory as to the route the defendant was travelling against the actual evidence of the defendant and his three passengers. 50. Mr Heywood submitted that the defendant had done everything that a reasonably prudent and careful driver would have done. He had his headlights on. He had slowed to almost a complete stop and indicated that he was turning right having let a car with its headlights illuminated pass him going northward. He checked the road and began his turn. He did not see the plaintiff or anyone else and thus considered the road was clear. At the point he began his turn, the plaintiff was well outside the range of his dipped headlights. The ambient light was not good and the plaintiff had failed to illuminate his headlight or his front sidelight. The plaintiff's conspicuity was such that it was reasonable for the defendant not to have seen him and thus begin his turn. 51. Far less explicable said Mr Heywood is why the plaintiff failed to see the defendant's car. Its dipped headlights were illuminated and its indicator was on. The only explanation was that he cannot have been paying attention - in other words, he was not acting as a reasonably prudent and careful driver. 52. If the Court found the defendant was responsible for the accident, then, in the alternative, Mr Heywood submitted that the plaintiff must bear by far the majority of the responsibility or blameworthiness. The plaintiff must have known, or ought to have known, that travelling at speed in poor light without wearing appropriate clothing or illuminating his headlights he put him and other road users at significant risk of harm. Furthermore, if he had been travelling at a reasonable speed and paying attention, he would have seen or ought to have seen the defendant's car and would have had sufficient time to brake safely and/or avoid the car. Findings 53. We make each of our findings on the civil test, namely on the balance of probabilities. Route taken by the defendant 54. We have not set out all of the evidence covered in the extensive cross-examination by Mr Steenson of the defendant and his three passengers, because it relates to their credibility and credibility is a matter of judgement for the Jurats, who saw their demeanour and heard their evidence given live before them. Mr Steenson made much of the fact, for example, that the defendant had been "frantically mopping his brow" while he was giving evidence; the Court also noticed this, but considered it to be indicative of the stress of the circumstances rather than mendacity. The Court had also noticed that the plaintiff was very nervous but we were conscious that this was a stressful situation for both these young men. 55. The evidence has been carefully considered in its entirety and in the view of the Court, the defendant and his passengers were truthful in the evidence that they gave. The inconsistencies and inaccuracies over which Mr Steenson laboured did not, in the Court's view, undermine their credibility. The Court did not find them either blasé or cavalier. 56. These four young people went their

separate ways many years ago. The defendant has settled down with his partner and young child and is working full time for a local carpentry business. Matthew Boyle remains a bachelor and is working as a plumber. Megan Pople has settled down and has two young children to look after. Jamie-Lea Baudains is forging a career in the finance industry. We cannot and do not find that these four witnesses have conspired together to lie on oath about the route they were taking. We found nothing suspicious about the defendant and Matthew Boyle going back to the scene of the accident the next day to look at what they thought was the skid mark caused by the plaintiff's motor cycle or about all four of them (with others in their group it would seem) going to see the damaged motor cycle at the DVS. 57. During the hearing Matthew Boyle, Megan Pople and Jamie-Lea Baudains had been placed in the witness room together before giving evidence and were overheard by the Court usher discussing their evidence. They had not been warned against discussing the case and in the absence of such a warning it was understandable in our view that they would have done so. They were examined about this and we are satisfied that there was nothing conspiratorial about their discussions. 58. On this key issue, therefore, the finding of the Court is that the defendant was travelling south along the Five Mile Road before turning into Le Braye car park. He did not go down Le Chemin des Basses Mielles. It follows that each vehicle was or should have been visible to the other. Post and Pre Impact Speeds 59. The Court accepts the evidence of the experts that the post impact speed of the defendant's car was 14-16 mph. 60. In terms of the post impact speed of the plaintiff's motor cycle, the Court prefers the evidence of Mr Johnston that 2 mph should be added to take into account the loss of speed caused by the motor cycle falling over. We therefore find that the post impact speed of the motor cycle was in the range of 31-37 mph. 61. The experts were very close on the loss of speed caused by the impact itself. Mr Paine estimated it at 10 mph and Mr Johnston between 11 and 12 mph. The evidence therefore is that the pre impact speed of the plaintiff's motor cycle was in the range of 41 mph (the lowest figure put forward by Mr Paine but adding the 2 mph as above) to 49 mph (the highest figure put forward by Mr Johnston). We accept the advice of the experts that we should look to the higher end of the range and we find therefore that the plaintiff was travelling at a speed in the range of 45 mph to 49 mph. For the reasons set out above, we did not take into account the pre impact speed as calculated using the Pedestrian Throw Calculations. Level of light 62. Perhaps understandably the plaintiff and Sophia Roberts have tended to accentuate the amount of light there was and the defendant and his passengers how little. However the fact is that the sun had set 26 minutes before the accident; indeed the accident occurred only 4 minutes before headlights became compulsory as a matter of law. We find that whilst it was still possible to see, as Mr Paine informed us in the exercise he conducted and as made clear by the evidence of Jamie-Lea Baudains, it was getting dark and conspicuity was reducing. The stage had been reached, we find, where a cautious and prudent driver of a motor vehicle and certainly a motor cycle would have switched on their headlights. Lights 63. The evidence of the defendant and Matthew Boyle that the defendant's headlights were on and the right-hand indicator engaged was not expressly challenged and we accept it. The plaintiff accepted that he did not have his motor cycle headlights on but said that he did put on his sidelights; it was his standard

procedure to do so. However none of the other witnesses saw any lights on the plaintiff's motor cycle before the accident and none gave evidence of seeing any lights when the motor cycle was on the ground afterwards and accordingly we find that on this occasion he had not put his sidelights on. Skid mark 64. We accept the evidence of Mr Flaxman that the skid mark he had seen on the road was not connected with this accident. That is consistent with the plaintiff's evidence, which we accept, that he did not have time to engage his brakes before the accident occurred. Decision 65. In our view, the defendant must bear primary responsibility for this accident. He was under a duty to make sure that the road was clear before crossing the carriageway. It was getting dark but it was still possible to see. The fact that the collision took place before he had cleared the carriageway means that the plaintiff must have been visible if the defendant had looked properly. Depending on the time the defendant took to make the turn, and on the basis that the plaintiff was travelling at 45 mph, then he would have been between 60 and 128 metres away. It may be that the defendant focused only on what was within the beam of his dipped headlights, but in failing to see the plaintiff, who we find must have been visible, means that he did not make sure that the road was clear. He cannot have looked properly. He did not act as a prudent and careful driver would have acted. 66. In reaching this conclusion we have not taken into account the admissions referred to above. The defendant was young at the time and he said he felt under pressure to pay the bill from the Transport and Technical Services Department. As to the demand from Island Insurance he told us, and we accept, that he attended the legal aid department and was advised that he should pay it as it would cost more to challenge. In any event we took the view that the defendant's opinion as to his liability was irrelevant. As it transpires we have now found that he was primarily responsible. 67. However, we find that the plaintiff must share a degree of responsibility for this accident for the following reasons:- (i) Despite the plaintiff's insistence that he was not doing more than 40 mph and indeed, his somewhat surprising assertion (we felt) that he had never exceeded the speed limit, the expert evidence showed this was not the case. It is true that he was not doing the excessive speeds originally mooted by Mr Johnston, but he was approaching a junction with no lights on when it was getting dark. In those circumstances a speed in the range of 45 mph to 49 mph was too fast, in our judgment (ii) Although it was not quite yet a legal requirement to switch on his headlight, a prudent and careful rider of a motor cycle 26 minutes after sunset would have done so in addition to the side lights (which were a legal requirement). The Highway Code recommends dipped headlights for motor cycles even in good daylight (see rule 86), let alone when it is getting dark, in order to make a motor cycle more conspicuous, recognising as it does the need to be aware that other vehicle drivers may still not have seen an approaching motor-cycle, or may have judged its distance incorrectly, especially at junctions. (iii) His evidence was that he did not see any car facing him. The first he saw was a flash of blue in front of him, leaving him insufficient time even to brake before the impact. Allowing for the 1.5 seconds' reaction time that must mean that he was within 1½ seconds of the collision point when he first saw the defendant's vehicle. A necessary consequence of our finding as to the route the defendant was taking means that the defendant's vehicle was facing him with its dipped headlights on and its indicator showing.

He failed to see it and it must follow inexorably that he was not paying attention. 68. If the plaintiff had been travelling at a more reasonable speed, had his side light and dipped headlight switched on and been paying attention, either the defendant would have seen him and not crossed in front of his path, thus avoiding the accident altogether, or he would have been able to apply his brakes and take evasive action, in which event even if a collision could not be wholly avoided the impact could have been much reduced. 69. We conclude that the plaintiff, for these reasons, contributed to the accident to the extent of 40%. 70. In conclusion, we apportion blameworthiness for this accident as to 60% to the defendant and 40% to the plaintiff. Authorities Olson and Fabre Forensic Aspects of Driver Perception and Response. Human Factors in Motor Cycle Accidents SAE 770103. Rudd (née Lowry)-v-Hudson

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