Bing Crosby would turn in his grave….

In late July I began shopping for Christmas presents, there's always a Christmas bargain to be had at that time of year. As I shuffled around 'Poundland' for that extra special something for the current Mrs Shepherd, to ensure that Cupid continues to look kindly upon our marriage, I began to ponder the theme for this years Chamber's Christmas party. Of course, last year will go down in the annals of history, ambulances called, police dogs in attendance, SWAT in full riot gear. Tame by comparison to the previous years.

However, it did set my mind a' wandering, the types of injuries and the liabilities that may go with them, when injury occurs at the work's crimbo party. Therefore as the leaves begin to fall from the trees and the news reports of gritting salt shortages begin to pervade our local news at 6, it seemed an appropriate theme for this autumn's newsletter.

I've searched and I've searched for any foundation to the workplace urban myth of the lacerated bottom and broken photocopier personal injury claim. Unfortunately, I can find none. If you were the lawyer who conducted that case, or you own that buttock, or even you're the delivery man from Comet who brought the new copier, please do get in touch.

Alcohol

Though the effects of the credit crunch may well limit the provision of free and unlimited booze by employers to employees during the coming Christmas party period, those who do should take great care in ensuring sensible consumption. Such measures may well include providing a chaperone, from senior management, to ensure those Dashing to the bar for their umpteenth pint, are restrained. Though do be careful, if that chaperone becomes overly aggressive in his or

her duties, causing injury, liability would rest with the employer as per FENNELLY v CONNEX SOUTH EASTERN LTD (2000).

Other measures which may assist include a token system, limiting the number of drinks each attendee can have, a no drinking-game policy communicated to all staff and plentiful food and soft drinks being provided. Nevertheless, some employers do get into hot water in this area and below are just some of the examples.

The first example is BARRETT v MINISTRY OF DEFENCE (1995), a Court of Appeal authority, where a serviceman died after asphyxiating on his own vomit, after a particularly heavy session. It was argued that the MoD should have retained better control over, and instilled better discipline in, its servicemen. The court rejected these first heads of liability but did find against the MoD for failing to care for the serviceman once he was unconscious. As you would expect, there was a heavy finding of contributory fault.

The MoD also falls foul of the courts in the next authority, that of MINISTRY OF DEFENCE v RADCLYFFE (2009) where it was found vicariously liable for the actions of a superior who 'encouraged' a subordinate to undertake a foolish dare. Both were off duty. Nevertheless, the court found that in such circumstances, rank and discipline was still a potent force, and as a result, the MoD was vicariously liable. One can easily imagine the extension of such liability to the MD of a company encouraging drinking games, shots or pranks. If injury occurs as a result, liability may well follow.

Venue

Next, let's look at the venue. Whether it's in the open plan office of a magic circle firm, the spares department for a manufacturing company or a stately home in the country, if injury occurs due to the

unsuitability of the premises for the Yuletide razzle, liability may well rest with the employers.

Though it sounds dull in the run up to this festive period, risk assessments still need to be completed, to dot the i's and cross the t's, as you would for any other work activity.

And the category at the top of the risk assessment, that's right, over indulgence, getting a little too familiar with the eggnog. The risk assessor needs to examine the venue through their notional beer goggles. I have dealt with alcohol as a separate heading above but in reality, it must colour all of our thinking under the other heads set out here and below.

If the party is in the office itself, accidents may well follow when staff misuse work equipment, drinks are split on the floor and not cleaned up (think night club glass collector roles), and desks and tables are used as an impromptu pedestal by the office Vixen, Beryl from accounts. The image of her Prancing still haunts me. The latter performance, if done with the connivance of senior management, turning a blind eye as it were, resulting in a particularly vigorous Beryl 'timewarping' her way into a fall and injury, liability would likely follow.

Similarly, if a temporary dance floor had been installed to guard against the aforementioned but drinks had been spilled on it, and a Dancer was involved in a slipping accident as a result, in just the same way as liability would attach to a nightclub who failed to clear spills or didn't have a 'no drinks on the dance floor' policy, an employer would be found responsible in such circumstances.

As an alternative let's turn our focus to the party held at an external venue. One can compare and contrast the situation with those

locations that tout themselves for weddings. In a recent case I conducted, a man fell into a brook after tripping over a low stone wall, whilst attending a wedding. The venue attempted to argue that he was the author of his own misfortune due to his celebrating the nuptials in a bubbly fashion. Such a 'defence' neglected to take into account that it was they who had sold him the alcohol and they who were making the profit out of the guests being drunk.

In this matter, the case of LIPS v OLDER (2004) a High Court authority, dealing with the interplay of intoxication and liability, was relied upon. In very brief terms, an alcoholic tenant of this multi tenancy property, sat on a low wall, fell backwards and down a considerable drop, sustaining injury. The court estimated that he was approximately 3 times over the legal drink drive limit though as an alcoholic he described himself as not drunk but not sober. As a tenant he was clearly familiar with the entrance to the property.

The court specifically highlighted the fact that a landlord should take into account the ‘type’ of people living at an address (when examining a landlord’s duty of care) and specifically highlights the fact that the claimant was a known alcoholic but also, some of the flats were tenanted by students (by inference, students who drink). The court in that case came to the conclusion that the claimant was 2/3 to blame though primary liability rested with the defendant. This case is a prime example of the 'beer goggle risk assessment' I champion above.

Food

The next matter is food. Let's go back to the informal party in the office, and picture a situation where each attendee is invited, by the company, to bring a dish for the celebrations. Whereas a more formal event may enquire (or should), through its invitations, whether any attendee has food allergies or is vegetarian, such a safeguard may not be in place in the informal office party.

As a legal analogy to this type of liability, the case of AMARJIT KAUR BHAMRA v PREM DUTT DUBB (2010) CoA, serves as a fitting warning. Mr Dubb, ironically trading as 'Lucky Catering', was sued by the estate of the deceased who died when attending a wedding at a Sikh temple. The deceased had a severe egg allergy. This should not have proved to be a problem as eggs are forbidden in the Sikh religion and the caterer knew this. As a result, the deceased did not inquire as to the ingredients, ate one of the dishes and died.

Though there were a number of factual discrepancies in the defendant's evidence, the court accepted that the initial batch of this dish did not contain egg. However, as food was running low, further supplies of it were obtained during the course of the wedding. This new batch did contain substantial quantities of egg, though the caterer was not aware of it (nor inquired).

The court asked itself the following three questions; should the defendant have foreseen (a) that food with egg in it might injure a guest who was allergic to egg; (b) that a guest or guests allergic to egg were reasonably to be anticipated, who would not be suspicious of there being egg in the food because it was being served at a Sikh temple; (c) if so, did the defendant take reasonable care to ensure that there was no egg in the food he served?" The court answered yes, yes and no, respectively. As a result, liability rested with the caterer.

Let's turn back to the office party. As usual, Beryl brings in her Blitzed Donner kebab surprise, the surprise being the added ingredient of peanuts. The employer is aware that two of its attendees have severe nut allergies, but does not seek to regulate, inquire and/or label any of the food that is supplied. By comparing the above factual matrix to that of Lucky Catering's, it is not too far a stretch to

conclude that liability, for injury in such circumstances, may well rest with the organiser of such a party, the employer.

Post-Party Liability

Unfortunately, liability doesn't finish when the last attendee staggers his way through the revolving door of reception. Unless his Rudolph like nose guides his way, he may think about getting a taxi, or even accepting a lift from one of the fellow guests.

In BOOTH v WHITE (2003) and more recently GLEESON v COURT (2008), it was held that passengers can be held to be partially responsible for their injuries should they accept a lift from someone who is drunk. However, the scenario where one of the company's drivers is invited to the party and though off duty, no policy or guidance is in place about whether that person should drink, or how much. That person then offers lifts home to others, who accept, an accident occurs and injury follows. The employer may be found to be vicariously liable for the actions of its employee, connected with his or her employment.

Similarly, where a stately home is booked as the venue and is not on easy public transport routes, the employer should make its drink/drive policy very clear to all attendees, should make taxi's available, or at the very least numerous taxi numbers. Otherwise primary liability could rest with the employer for later drink/drive accidents, though no doubt with a heavy finding of contributory fault.

Well, now that's out of the way, back to shopping for Mrs Shepherd...*hmmm, tumble dryer balls, less electricity and softer clothing...and only a pound... perfect!*