

B E T W E E N:

MS SARAH SMITH

Claimant/Appellant

~v~

MR PETER POSNER

Defendant/Respondent

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AGREED FACT PATTERN

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1. In the summer of 2020 Ms Smith, a resident of Liverpool, was walking through the city centre. She was on her favourite street, Ringo Road, which has many period features including lamps that overhang from buildings and light the street.
2. Liverpool, being a coastal city, frequently experiences high levels of wind. On the day in question, it was particularly windy. As Ms Smith was walking along Ringo Road, a lamp connected to a period property fell and landed on top of her. She was injured.
3. The building and lamp belonged to Mr Posner. He was very fond of the property, as it was Grade II listed. Ms Smith brought a claim in negligence and public nuisance against Mr Posner.
4. At first instance Prendergast J found that there was no evidence of negligence because Ms Smith had not proven that Mr Posner had failed to keep up an adequate maintenance routine of the property. Mr Posner was grateful for this finding, as he had done very little to maintain the property.
5. Prendergast J then considered the claim in public nuisance. She had regard to *Wringe v Cohen* [1940] 1 KB 229 where Atkinson J said:

*“If, owing to want of repair, premises on a highway become dangerous and, therefore, a nuisance, and a passer-by or an adjoining owner suffers damage by their collapse, the occupier, or*

*the owner if he has undertaken the duty of repair, is answerable whether he knew or ought to have known of the danger or not”.*

6. However, given Ms Smith had not demonstrated cogent evidence to show the lamp had fallen due to disrepair, Prendergast J dismissed the claim in public nuisance. She found the burden of proving the reason for the lamp’s fall was on Ms Smith as the Claimant. Mr Posner did not have insurance and so was relieved at this result.
7. Ms Smith was aggrieved by the outcome of the case as Mr Posner did not provide any evidence that the lamp was in good repair before it fell. She appeals straight to the Supreme Court on the public nuisance point only.
8. Her argument is only that Prendergast J erred in law in finding that she, as Claimant, had to prove that the lamp fell because it was in a state of disrepair. Ms Smith argues the mere fact the lamp fell onto the user of a public highway shows a *prima facie* case that Mr Posner should have to refute.
9. Ms Smith relies on *Southport Corpn v Esso Petroleum Co Ltd* [1954] 2 QB 182 and *Dymond v Pearce* [1972] 1 QB 496 to make good her argument.
10. The Supreme Court has asked that the Parties provide written arguments, limited to two pages and two authorities (excluding those mentioned in this Agreed Fact Pattern). You are instructed on behalf of Mr Posner to draft his two-page written argument.