

In the Court of Appeal

**R. -v- Playthings Ltd.
(Environment Agency Prosecution)**

Playthings Ltd. is a private company, based in premises in Narwich. The company carries out the assembly, packaging and distribution of games and toys. In November 1995, its production manager, Criminale, was in temporary charge at the premises, due to the fact that the two directors (and 100% shareholders) in the company, Barbie and Ken, were away at a conference. At that time, the company workforce was working flat-out on a new product, a board game called "Frivolous Pursuits". In recent years, the company had experienced considerable difficulties; it had often been on the verge of insolvency and had almost collapsed during the previous year. Great hopes were being placed on the success of the new product, the forecast for which, in the crucial run-up to Christmas, was excellent. Each day, large numbers of good vehicles were collecting the new product for distribution.

On the afternoon of Sunday 18 November 1995, Criminale arrived at the premises and discovered that, just inside, many tonnes of waste matter had been dumped in a manner that blocked the only vehicular entrance to the premises. Criminale suspected that it was the work of a business competitor, seeking to disrupt Playthings' productivity. He believed that any delay would also mean lost orders from retailers but that the local authority waste disposal unit would take several days to respond to this urgent situation. With such factors in mind, Criminale became convinced that his employers would expect positive action and so, at some expense, he arranged for mechanical diggers to remove the waste, which he ordered to be tipped onto nearby derelict land. The whole operation was completed in time for the opening of the factory the next morning. Criminale was well aware of the company's waste disposal procedures which did not allow for the tipping of waste except with the approval of the local authority. He intended to inform the local authority at some stage and, the next day, dictated a report to the directors advising that "it may be necessary to inform the authorities as soon as practicable."

On Tuesday 20 November, the local authority received an anonymous tip-off and informed the Environment Agency, the statutory enforcement agency in respect of waste offences. Upon inspection, the Agency discovered the waste which, unknown to Criminale, was controlled non-hazardous waste. The company was charged with the offence of unlawful deposit of controlled waste, in breach of the Environmental Protection Act 1990, Section 33(1)(a). The case was heard on indictment in the Crown Court where the company was convicted. The trial judge, Her Honour Judge Skillern:

- (i) refused to allow the defence of necessity to be put to the jury on those facts; and
- (ii) ruled that, upon the fact of deposit being established, the company was strictly liable for depositing waste contrary to Section 33 of the 1990 Act and could not avoid vicarious liability for the acts of its employee in these circumstances.

Playthings Ltd now appeals to the Court of Appeal, on the following grounds:

- (i) that the company should be able to avail itself of the due diligence defence contained in Section 33(7) of the 1990 Act and should not be held criminally responsible for the acts of its employee, Criminale, in accordance with the authority of *Tesco Supermarkets Ltd v. Natrass* [1972] AC 153; and
- (ii) that the defence of necessity, being now well established, should have been put to the jury; that it is a defence sui generis and distinguishable from duress, there being no reason why it should be restricted to threats of death or serious physical injury; and that, in accordance with the principles of legality, a proportionality test should be applied, as between the nature of the threat posed and the nature of the accused's response.

This problem is taken from the second round of the Observer-ESU-Lovell White Durrant Mooting Competition 1995-96, and was provided courtesy of the English Speaking Union.