Neutral Citation Number: [2012] EWHC 1730 (QB)

Case No: HQ10X04806, HQ10X04808
HQ10X04809, HQ10X04807
HQ10X04500, HQ10X00785
HQ10X00719, HQ10X00499

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 June 2012

Before :

MR JUSTICE SILBER

- -

Between :

AXN and Others	**Claimants**
- and -	
JOHN WORBOYS (1)	**Defendants**
INCEPTUM INSURANCE COMPANY LIMITED (formerly known as HSBC Insurance (UK) Limited) (2)	

- -
- -

Edwin Glasgow QC, Justin Levinson and Angela Rainey (instructed by **Pannone**) for the **Claimants**
Andrew Bartlett QC and Isabel Hitching (instructed by **DAC Beachcroft**) for the **Defendants**

Hearing dates: 24 and 25 April 2012
Further Written Submissions served on 26 April 2012

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE SILBER

MR JUSTICE SILBER:

I. Introduction

1. On 13 March 2009, John Worboys was convicted at Croydon Crown Court of a number of offences, including administering a substance with intent, attempted and actual sexual intercourse and rape while acting as a taxi driver. Civil actions have been commenced by his victims against Worboys and the insurers of Worboys' taxi by ten of his victims of those crimes, who allege that similar offences were committed against them. It is understood that other victims may bring similar actions.

2. The present application is concerned with the resolution of a series of preliminary issues aimed at determining whether the claimants as victims of Worboys' criminal activities can bring claims against the insurers of Worboys' taxi. Anonymity orders have been made in favour of the claimants, but I discharged earlier anonymity orders made in favour of the second defendants ("the insurers").

II. A Summary of the Background to the Claims

3. The agreed facts on which the present application is to be determined are set out in the Appendix to this judgment, but the basic facts are that at the time of the offences in about 2007, Worboys had a licence to operate a Hackney Carriage within the Metropolitan Police District and in the City of London, but not in the Bournemouth area, which is where the offences against one of the claimants were committed. He had in place private and public hire motor insurance.

4. The way in which Worboys committed his offences was that after finishing his legitimate work as a taxi driver, he set about targeting women who were alone at night and who needed transport home. He offered to take them to their destinations and, after, they accepted, they sat in his taxi. During their journeys home, Worboys engaged them in conversation during which he persuaded them with lies to accept alcoholic drinks, which unknown to his passengers he had previously laced with sedatives.

5. When the sedative had taken effect, he carried out the sexual assaults on his sedated victims. It is accepted that his conduct was on each occasion a deliberate and premeditated criminal enterprise falling outside the scope of his licensed activities as a taxi driver and that the injuries on his victims were inflicted intentionally. The consequences for Worboys' victims were not surprisingly traumatic and devastating.

6. The claimants have brought claims against Worboys for damages alleging assault by poisoning, sexual assault and false imprisonment. It is to be assumed for the purpose of the present preliminary hearing that the liability of Worboys will be established.

7. The preliminary issues are concerned with whether, and to what extent, the claimants have, in addition to their claims against Worboys, valid causes of action against the insurers of Worboys as providers of the compulsory motor insurance required by the Road Traffic Act 1988 ("RTA 1988").

8. In essence, the claimants' case is that the insurers insured Worboys pursuant to the RTA 1988 in respect of his liability to the claimants for the matters of which

complaint is made by the claimants. Thus it is said that upon the claimants obtaining judgment against Worboys, the insurers will be liable to pay the judgment sums to the claimants as required by section 151 of the RTA 1988.

9. The insurers deny that they are liable. Very sensibly, it has been agreed between them and the claimants that the legal questions as to the scope of the liability of the insurers should be disposed of in the most proportionate way and in a way that would not cause further distress to the claimants by requiring them to give evidence.

10. It has therefore been agreed that there should be a trial of preliminary issues on the basis of assumed facts, which are set out in the Appendix and which I have summarised above. The order for the trial of the preliminary issues has been made only in eight cases, but, as I have explained, the insurers expect that the result of this application will affect other cases, which are in progress. Issues of limitation and quantum are to be determined at a subsequent trial.

III. The Statutory Regime

11. The claims against the insurers are based on section 151 of RTA, which (in so far as is material) provides with emphasis added that: -

> *"151. — Duty of insurers... to satisfy judgment against person insured...*
>
> *(1) This section applies where, after a certificate of insurance ... has been delivered under section 147 of this Act to the person by whom a policy has been effected... a judgment to which this subsection applies is obtained.*
>
> *(2) Subsection (1) above applies to judgments relating to a liability with respect to any matter where liability with respect to that matter is required to be covered by a policy of insurance under section 145 of this Act and... -*
>
> *(a) it is a liability covered by the terms of the policy... to which the certificate relates and the judgment is obtained against any person who is insured by the policy...".*

12. The regime by which the insurers have a liability to satisfy a judgment against their assured is subject to four conditions which must be satisfied, namely first, that a certificate of insurance must have been provided to the person against whom a judgment has been obtained; second, that the judgment must have actually been obtained against the insured; third, that the judgment against the insured must relate to a liability covered by Section 145 RTA 1988; and finally that the liability must be covered by the policy.

13. The first two requirements are satisfied in this case because first a certificate of insurance was provided to Worboys by the insurers, and second it is assumed for the purposes of this preliminary issue that each claimant will obtain judgment against Worboys. The agreed assumed facts would entitle the claimants to obtain judgment against him.

14. The third requirement (namely that the judgment against the insured relates to the liability covered by Section 145 RTA 1988) requires consideration of that section, which provides, in so far as is relevant, that:

> *"145.— Requirements in respect of policies of insurance.*
>
> *(1) In order to comply with the requirements of this Part of this Act, a policy of insurance must satisfy the following conditions.*
>
> *(3) Subject to subsection (4) below, the policy—*
>
> *(a) must insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road [or other public place] in Great Britain…".*

15. More specifically, this third issue entails consideration of whether the case of the claimants constitutes "*bodily injury to any person …caused by, or arising out of, the use of the vehicle on a road*". As I will explain, it is the consideration of the application of those words to the agreed facts, which is at the heart of this issue.

16. The final issue to be determined on this application is whether the compulsory insurance required from Worboys covers claims by the claimants and that entails consideration of whether these claims are in fact "*covered by the terms of the policy*", which are the words in section 151(2)(a) RTA 1988, which I have underlined in paragraph 11 above.

17. The third and fourth issues have been the subject of admirable written and oral submissions by counsel for which I am very grateful. In particular, at the close of the hearing, counsel submitted a useful schedule setting out their different views on the issues raised on the application. Unfortunately, pressure of work has led to the preparation of this judgment being delayed for which I apologise.

IV. The Preliminary Issues

18. Those Issues with changes inserted to coincide with the abbreviations used in this judgment are:-

> *"1. Did the bodily injuries suffered by the claimants "arise out of the use of the [Worboys'] vehicle on a road or other public place" within the meaning of RTA 1988 s145 (3) (a)?*
>
> *2. Were Worboys' deliberate acts of poisoning and of sexual assault such that liability in respect of them:-*
>
> *(a) was required by RTA 1988 s145(3)(a) to be covered by a policy of insurance?*
>
> *(b) was covered by the policy issued by the insurers? (To avoid overlap with Issue (3), Issue (2)b is to be answered without*

reference to the limitations on use set out in the certificate of insurance).

3. Having regard to the limitations on use set out in the certificate of insurance, was Worboys' use of the vehicle at the material times a use insured by the policy issued by the insurers?

4. Having regard to the answers to Issues (1)-(3), are the insurers liable, pursuant to RTA 1988 s151, to pay to a claimant any sum payable pursuant to the assumed judgment to be obtained by her against Worboys, or any specified part thereof?"

19. It is agreed that these issues are to be determined on the basis of:-

(a) The agreed assumed facts filed with the Court and which are set out at the Appendix to this judgment;

(b) The specimen insurance certificate, insurance policy and policy schedules to which I will refer and in particular the limitation that the policy granted to Worboys was limited to *"social, domestic and pleasure purposes and for use for public hire*"; and

(c) The certificate of conviction by which Worboys was convicted according to the Certificate of Conviction on 13 March 2009 at the Crown Court at Croydon on indictment of *"1) Administering a substance with intent to stupefy/overpower a person to allow sexual activity involving that person x 12; 2) Attempted sexual assault x 1; 3) Sexual assault on a female x 4;4) Rape of a female aged 16 years or over x 1; 5) Sexual assault on a female by penetration x 1"*.

V. Did the bodily injuries suffered by the claimants "arise out of the use of [Worboys'] vehicle on a road or other public place" within the meaning of RTA 1988 s145 (3) (a)?

20. Mr. Edwin Glasgow QC, counsel for the claimants, submits that they did and he contends that the test has to be considered in the light of the fact that it appears in a statute aimed at protecting and compensating innocent victims because Laws LJ explained in **Charlton v Fisher** [2002] QB 578, 592 "*the principle of the statute, that innocent third parties should be protected so far as money can do it from the harm - sometimes fatal- that may be inflicted by careless, dangerous and criminal drivers on the public roads: a protection not sufficiently given by the private law of insurance*" [33]. So he submits that the words "*arising out of*" include more remote consequences than the words "*caused by*", but not necessarily a proximate cause or an effective cause.

21. Mr. Andrew Bartlett QC, counsel for the defendant insurers, disagrees, and he contends that the critical phrase "*arising out of*" means a proximate cause or an effective cause but not necessarily an immediate cause. His submission is that this phrase should be interpreted in the light of the background and his starting point is the

analysis of Lord Hoffmann in **Environment Agency v Empress Car Co (Abertillery) Ltd** [1999] AC 22, when he explained at page 29 that:-

> *"The first point to emphasise is that common sense answers to questions of causation will differ according to the purpose for which the question is asked. Questions of causation often arise for the purpose of attributing responsibility to someone, for example, so as to blame him for something which has happened or to make him guilty of an offence or liable in damages. In such cases, the answer will depend upon the rule by which responsibility is being attributed. Take, for example, the case of the man who forgets to take the radio out of his car and during the night someone breaks the quarter light, enters the car and steals it. What caused the damage? If the thief is on trial, so that the question is whether he is criminally responsible, then obviously the answer is that he caused the damage. It is no answer for him to say that it was caused by the owner carelessly leaving the radio inside. On the other hand, the owner's wife, irritated at the third such occurrence in a year, might well say that it was his fault. In the context of an inquiry into the owner's blameworthiness under a non-legal, common sense duty to take reasonable care of one's own possessions, one would say that his carelessness caused the loss of the radio."*

22. Later in his speech, Lord Hoffmann referred at page 31 to various examples before he concluded that, "*These examples show that one cannot give a common sense answer to a question of causation for the purpose of attributing responsibility under some rule without knowing the purpose and scope of the rule*".

23. Mr. Bartlett contends that the purpose and scope of section 145 (3) (a) is to be found in its genesis which is to be found in the Royal Commission report, which led to the incorporation of the predecessor provision in the Road Traffic Act 1930 ("RTA 1930"). This was the First Report of the Royal Commission on Transport, "The Control of Traffic on Roads" July 1929, Cmd 3365 and it dealt with the need to introduce compulsory insurance with the focus on what are colloquially called road accidents and no reference was made to other matters such as compulsory insurance for sexual assaults. It recommended that a motorist should insure for "*his legal liability to pay damages on account of the death of, or personal injury to, any person sustained in connection with the use of a motor vehicle*".

24. I am unable to derive any significant assistance from this Report, which does not seek to limit the purpose of the provision envisaged by it and which is now in section 145(3) (a) RTA 1988 and its predecessor sections. In any event, the wording of section 145(3) (a) RTA 1988 and its predecessor sections are very different from the Royal Commission's recommendation set out in the previous paragraph and elsewhere in the report.

25. Another feature which Mr. Bartlett submits is of relevance is the choice and interpretation of the wording in the RTA 1930 (which is repeated in the RTA 1988) because it uses some of the wording in charter-parties previously construed by

Commercial Court judges. He relies on cases such as **Coxe v Employers' Liability Assurance Corporation Ltd** [1916] 2 KB 629 in which Scrutton J (as he then was) said in relation to the interpretation of a life insurance policy at page 634 that: -

> *"The words in the condition 'caused by' and ' arising from' do not give rise to any difficulty. They are words which have always been construed as relating to the proximate cause".*

26. He also refers to a similar approach adopted in other shipping cases such as in "**The Evaggelos TH"** [1971] 2 Lloyd's Rep 200, in which Donaldson J (as he then was) concluded, in relation to a provision in a charter-party indemnifying the owners "*from all consequences or liabilities that may arise from the Captain…complying with [the charterers'] or their Agents orders*", that the owners could then recover only if they could prove that "*the proximate cause of the loss of the vessel was ... compliance with the charterers' orders*" (page 206). No assistance in construing section 145(3) (a) RTA 1988 can be derived from that case as both its wording and its context are very different from that section.

27. This point applies with equal force to another case relied by Mr. Bartlett which is **The "White Rose"** [1969] 2 Lloyd's Rep 52 in which Donaldson J (as he then was) had to construe a provision in a charter-party which adopted very different wording from section 145(3) (a) RTA 1988 and which did not even use the words "*arising out of the use of the vehicle*".

28. Mr. Bartlett also relies on the statement of Lord Shaw of Dunfermline in **Leyland Shipping v Norwich Union** [1918] AC 350 at page 369 where he explained in a case concerning the interpretation of section 55 of the Marine Insurance Act 1906 (which makes the insurer "*liable for any loss proximately caused by a peril insured*") that his understanding of the words "*proximate*" in that context was "*The cause which is truly proximate is that which is proximate in efficiency*". Nothing in Lord Shaw's speech or in the more recent Supreme Court case applying it **"Cendor MOPU"** [2011] Lloyds LR 560 [19] and [40]) help in resolving the meaning of the phrase "*arising out of the use of the vehicle on a road*" in section 145(3) (a) RTA 1988, in which the wording and context are radically different.

29. I do not find any of these authorities relied on by Mr. Bartlett of assistance in resolving this issue. Similarly, although reference has been made to various European Union Directives by Mr. Bartlett, I have not been assisted in resolving this issue by their contents as he accepts that it has not been shown that they would lead to a different result than that which I can and do reach by considering the authorities from the common law countries and from the RTA 1988 and its predecessor provision to which I have had the advantage of being referred.

30. In **British Waterways v Royal & Sun Alliance Insurance plc** [2012] EWHC 460 (Comm), Burton J considered a number of authorities decided in the insurance context on the meaning of "*arising out of*" and he referred not only to some of those judgments to which I have referred, but also to the cases of: -

    (a) **King v Brandywine Reinsurance (UK) Ltd** [2004] 1 Lloyd's Rep IR 554, in which Colman J concluded (at Para 235) that, on the facts of that case "*there was still a sufficient causal link to justify the conclusion that*

the pollution did "arise out of" Exxon's consignment of the oil", notwithstanding the incidence of negligent navigation;

(b) **Bell v Lothiansure Ltd** [1993] SLT 421, which was a decision of the Inner House, in which Lord Justice Clerk Ross upheld the decision of the Lord Ordinary (the contrary apparently not being disputed before him) that, in the exclusions contained in a professional indemnity policy, "*the words "arising from" should be given a narrow meaning and ... meant "proximately caused by"*". Lord Cullen approved the conclusion of the Lord Ordinary that "*the exclusion upon which he founded could only operate as an exclusion from the right to indemnity if the insolvency was a proximate cause of the claim*";

(c) **John Drew Russell (Transport) Ltd v (First) Heath Collins Halden (Scotland) Ltd** [1996] CLC 423, in which Lord Penrose sitting in the Outer House noted that the approach in **Bell** by the Lord Ordinary had been referred to without criticism by the Lord Justice Clerk, and followed and approved by Lord Cullen, in **Bell**, and concluded that "*in my opinion, the expression 'arising from' cannot reasonably be construed otherwise than 'proximately caused by' in the circumstances*"; and also

(d) **Beazley Underwriting Ltd v The Travelers Companies Incorporated** [2011] EWHC 1520 (Comm.) in which Christopher Clarke J reviewed most of these cases including an observation by Akenhead J in **Kajima UK Engineering Ltd v The Underwriter Insurance Co** [2008] Lloyds Rep I & R 391 at 408 that "*"arising out of" can have a wider significance than "caused by"*". Christopher Clarke J concluded by saying that: -

> "*128. I am prepared to accept that "arising out of"... does not dictate a proximate cause test and that a somewhat weaker causal connection is allowed. ...129. That does not, however, determine what degree of causal connection is required …130. In my judgment a relatively strong degree of causal connection is required.*"

31. These cases are dealing in the main with the construction of policies and other documents prepared by one or other of the parties and the principles of construing them are very different from those involved in construing statutory provisions, where the task of the court is to ascertain the intention of Parliament. I have already explained in paragraph 20 what Laws LJ considered to be the principle behind these statutory provisions. This is different from the situation of contractual provisions in which the Court is seeking to determine:-

> *"what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant; the relevant reasonable person being one who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract"* (per Lord Clarke SJC in **Aberdeen City Council v Stewart Milne Group Ltd** [2011] UKSC 56[28] with whom Lady Hale SJC, Lord Mance SJC and Lord Kerr SJC agreed).

32. I do not find these contractual cases of much assistance in resolving the present application for another reason, which is that this is not a case in which the legislation being construed is covering the same ground as some existing common law principle because the shipping cases were unaffected by section 145(3) (a) RTA 1988 and its predecessor section in the RTA 1930. Indeed the **Leyland Shipping case** was concerned with construing the Marine Insurance Act 1906. There is no principle that in construing statutes, Parliament must have intended a statutory provision to be construed in the same way as identical words had previously been interpreted in agreements or policies in a completely different field of law. Indeed such a principle would undermine many existing and accepted canons of statutory construction such as the context in which the statutory provision is placed and the mischief which it seeks to correct (see **Bennion on Statutory Interpretation** (5th Edition 2008) pages 585 ff).

33. I now turn to a case relied on by Mr. Glasgow and which is the only Court of Appeal case to which I was referred and which deals specifically with the interpretation of section 145(3) (a) RTA 1988 and that is **Dunthorne v Bentley and others** [1999] Lloyds Rep IR 560. In that case, the claimant sought damages from the insurers of B, who the claimant had knocked down after B had run across the road after she had run out of petrol. In that accident, the claimant driver had sustained injuries and to recover them from B's insurers, he sought to rely on section 145(3) (a) RTA 1988.

34. The insurers in that case contended that the claimant's injuries were not, using the language of this provision, "*caused by or arising out*" of the use of the car by B, who had been seeking to obtain petrol, but that submission was rejected. Rose LJ, who gave the main judgment, explained:-

(a) At page 562 of the Lloyd's Report, that "'*arising out of*' contemplates more remote consequences than those envisaged by the words '*caused by*'". This is indeed the view of the High Court of Australia in **Government Insurance Office of New South Wales v R.J. Green & Lloyd Pty Ltd** (1965) 114 CLR 437, as Menzies J said at 445 " *the words 'arising out of the use' have no doubt a wider connotation than the words 'caused by… the use'. To my mind, however, they do import a relationship between the use of the vehicle and the injury which has some causal element in it*";

(b) Also at page 562 of the Lloyd's Report, that Windeyer J in the **Green** case said at page 447 that "'*Caused by' connotes a direct or proximate relationship of cause and effect. 'Arising out of' extends this to a result that is less immediate; but it still carries a sense of consequence. It excludes cases of bodily injury in the use of which the vehicle is a merely casual concomitant, not considered to be, in a relevant sense, a contributing factor*"; and that

(c) At page 563 of the Lloyd's Report that, "*That question, I agree, once it is accepted that 'arising out of' is a wider concept than 'caused by' is a question for the judge and is essentially one of fact rather than law. The plaintiff's injuries were caused by Mrs. Bentley seeking help to continue her journey. They arose out of her use of the car as she would not have crossed the road if she was not out of petrol and seeking help to continue her journey*".

35. Pill LJ according to the report in the Lloyd's Report quotes the passage from Windeyer J' s judgment which I have set out in paragraph 34 above and then states at page 563 that:-

> *"'Arising out of' extends the test, with the result that it includes less immediate consequences. It still excludes the use of the vehicle being causally concomitant but not causally connected with the act in question. I do not regard it as a general principle. An act performed by someone seeking assistance of some kind does not necessarily arise out of the use of the vehicle".*

Windeyer J had apparently referred to a matter being "*casually concomitant*" as opposed to "*causally concomitant*" at page 447 of his judgment.

36. In both the reports of his judgment in [1996] PIQR P323 and in [1996] RTR 428, the sentences underlined are linked together and expanded so as to read:-

> *"Applying that test, I do not regard it as a general principle that an act performed by someone seeking assistance of some kind because his vehicle has broken down is necessarily conduct which arises out of the use of the vehicle".*

I respectfully consider that this makes more sense than the wording in the Lloyds Report set out in the previous paragraph.

37. Finally, Hutchison LJ agreed and there is also a difference between how his judgment was reported in different reports. In the Lloyds Law Reports, he is reported as saying that the judge was entitled to find that the deceased in crossing the road was doing something that "*was closely and causally connected with the use of the car*". A similar phrase appeared in [1996] PIQR p323, but it is there reported that he had added that he agreed that the appeal should be dismissed "*for the reasons given by my Lord*" without saying to which of his colleagues' reasons he was referring, while in [1996] RTR 428, he is reported as stating that it was the judgment of Rose LJ with which he agreed.

38. The principles that emerge from that case are first, that the concept of '*arising out of*' is a wider concept than '*caused by'*; second, that the focus of the inquiry has to be to consider whether the *injuries* of the claimant were matters "*arising out of the use of the car*"; and third, that it is necessary to analyze the activities of the driver whose insurers are being sued to see what he was doing at the time when the injuries were suffered in order to ascertain if they were "*arising out of the use of the car*". The approach of Christopher Clarke J in the **Beazley Underwriting case** to which I have referred in paragraph 30(d) above is consistent with, although more detailed than, the first of these points and is the approach which I consider to be correct.

39. I must deal with submissions of Mr. Bartlett seeking to undermine the authority and relevance of the **Dunthorne** case. First, he points out that no reference was made in the judgments to the shipping cases to which I have referred in paragraphs 25 to 28 above and they do not appear to have been cited. I do not consider that these cases (which construe insurance policies and charter-parties as well as different wording in

the Marine Insurance Act 1906) help in construing a statute in which it is necessary to apply different rules of construction in particular to consider the parliamentary intent. Indeed I believe that if the attention of the Court of Appeal had been drawn to these cases, they would have reached the same conclusions as they did.

40. A second point made by the insurers is that the approach to construing the words "*arising out of the use*" in section 145 (3) (a) RTA 1988 was not properly argued, as it was conceded by the insurer's counsel in that case. It is true that Rose LJ does state at page 562 of the Lloyds LR that it was "*not submitted to the contrary*" in relation to the meaning of those words, but that does not undermine the authority of what Rose LJ said as I have no doubt that he would have reached the same conclusions after full argument.

41. **Dunthorne** was followed by Morland J in **Slater v Buckingham County Council** [2004] Lloyds Law Reports 432 in which the claimant was knocked down while crossing a road to reach a minibus which was waiting for him. He sought to recover damages from the insurers of the minibus. The claim was rejected and Morland J explained that:-

> *"117. In my judgment, the accident to [the claimant] was neither caused by the use of the minibus nor arose out of the use of the minibus…"*

42. The admirable researches of counsel meant that my attention was very helpfully drawn to a number of Commonwealth cases. In the Australian High Court in **Government Insurance Office of New South Wale v R.J. Green & Lloyd Pty Ltd** (1965) 114 CLR 437 (which was a case to which Rose and Pill LJJ referred in **Dunthorne** as I explained in paragraphs 34 and 35 above), the issue was whether the employer of a workman could obtain an indemnity from his insurer after the workman had obtained damages from his employer after he had been injured whilst loading a hoist on to a stationary vehicle. The insurer's liability depended on, among other things, whether according to the terms of the relevant insurance policy (which was in the form required by regulations made under the Motor Vehicles (Third Party Insurance) Act 1942 (N.S.W.)) "*the bodily injury to [the workman was] caused by or arising out of the use of a motor vehicle in any part of the Commonwealth of Australia*".

43. The High Court of Australia unanimously held that the injury sustained by the workman was "*caused by or arising out of the use of a motor vehicle*". As I explained in paragraphs 34 and 35 above, Rose and Pill LJ quoted some passages from the judgment of Menzies J and Windeyer J, who later explained on page 447 the importance of the need of the use of the vehicle to be for "*ordinary purposes*" when he said that:-

> *"The policy covers a vehicle of a kind described when used for its ordinary purposes. In the present case the vehicle, a motor truck, was classified as a "goods vehicle". The loading of a vehicle designed to be used, and ordinarily used, for the carriage of goods is a necessary element in its ordinary use. Loading it is incidental to the use of it in the normal way. But that does not mean that whatever is done that is incidental or*

> *ancillary to such loading is itself a use of the vehicle in the relevant sense. Therefore, if a person suffers bodily injury when engaged upon some task connected with loading, the question whether his injury was caused by or arose out of the use of the vehicle depends upon whether it was a consequence, direct and not remote, of the operation of loading. But the question that arises in cases such as this is not answered simply by asking was the vehicle being used."*

44. Barwick CJ said in a judgment with which McTiernan and Taylor JJ agreed at pages 442 and 443 that:-

> *"…The words "arising out of" in s 10 of the Act and in the indemnity clause of the policy are not merely, if at all, explicative of the words "caused by"; they are really used in contrast to them; and in the total expression are extensive in their import. Bearing in mind the general purpose of the Act I think the expression "arising out of" must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words "caused by". It may be that an association of the injury with the use of the vehicle while it cannot be said that that use was casually related to the injury may yet be enough to satisfy the expression "arise out of" as used in the Act and in the policy.*
>
> *On the other hand, injuries received away from the vehicle but in the course of bringing goods or things to it to be loaded upon it ought not, if no more appears, to be regarded as having arisen out of the use of the motor vehicle. To say that the operation of loading and unloading a transport vehicle is part of its use is to state the matter too widely".*

45. This decision was followed by the High Court of Australia in **Dickinson v Motor Vehicle Insurance Trust** (1987) 163 CLR 500 in which the appellant infant was severely burnt when his four- and- a- half year old brother began to play with matches in the back of their father's car and thereby started a fire while his father had gone to do some shopping. The appellant infant sued his father's insurers under the Motor Vehicles (Third Party Insurance) Act 1943 (W.A), in which he had to prove that the liability of his father arose "*in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of such motor vehicle"*. Significantly, the wording of this provision is the same in all material ways to the provision, which is the basis of the present claim.

46. The decision of the High Court was that the claimant was entitled to the declaration against the insurers and the combined judgment stated that:-

> *"11. Whether or not the appellant's injuries were actually caused by the use of the motor car, it is sufficient to say that they arose out of such use. The test posited by the words "arising out of" is wider than that posited by the words "caused by" and the former, although it involves some causal or*

> *consequential relationship between the use of the vehicle and the injuries, does not require the direct or proximate relationship which would be necessary to conclude that the injuries were caused by the use of the vehicle: State Government Insurance Commission v. Stevens Bros. Pty. Ltd. [1984] 154 CLR 552, at pp 555, 559.*
>
> *12. There can, in our view, be no doubt that the motor car was being used within the meaning of the Act at the time at which the appellant sustained her injuries. It was in use to carry the appellant and her brother as passengers in the course of a journey which was interrupted to enable the father to do some shopping. There is no suggestion that the interruption was other than temporary."*

I add that this judgment is based on the finding also found in Rose LJ's reasoning in **Dunthorne** that the words "*arising out of*" involve a causal and consequential relationship short of a "*direct or proximate relationship*" between the injuries and the use of the vehicle.

47. The wording of the legislation under which **Dickinson** was decided has been amended as a result of that decision, but that fact has no relevance to the present claim as there is no evidence that Parliament when it passed the RTA 1988 paid any attention to **Dickinson** or the Western Australian amendments. Unlike the position in the present case, in **Dickinson** no responsible human action by an adult intervened between the father's use of the car and the injuries being caused to the claimant.

48. A similar approach was adopted by the Supreme Court of the Australian Capital Territory in the case of **Commercial Building Centre Pty Ltd v NRMA Insurance Ltd** [2004] ACTCA 3, in which it dismissed an appeal against a judgment which rejected a claim that an injury sustained by D did not arise out of *"bodily injury to, any person caused by or arising out of the use of a motor vehicle…"* as specified in section 54 of the Motor Traffic Act 1936 (ACT). D had sustained his injury when passing a bag of plaster to another man, who was part of a team moving the plaster on to a delivery truck for the purposes of subsequent delivery.

49. The Court followed the comments of Barwick CJ in the **Green case** which I set out in paragraph 44 above and it explained that "*11…The authorities establish that the use of an insured motor vehicle includes the doing of all things reasonably incidental to its normal use as a motor vehicle*". In that case, it was held that the passing of the bag for the purposes of subsequent delivery did not satisfy this test.

50. Mr. Bartlett relied on some Commonwealth cases to support his contention that the test for holding the insurers liable was whether the use of the car was the proximate cause; albeit not necessarily the immediate cause of a claimant's injuries and therefore that the injuries of the claimants did not arise out of the use of Worboys' car.

51. First, he relies on **Casalino v Insurance Australia Ltd** [2007] ACTSC 25, in which the claimant had suffered psychological injuries after her car had been hijacked. She brought a claim under section 163 of the Road Transport (General) Act 1999, which required her to prove that she had suffered "*bodily injury to, any person caused by or*

arising out of the use of a motor vehicle…" It was held by Connolly J, a judge in the Supreme Court of the Australian Capital Territory, that the claimant's psychological injuries did: -

> *"33…arise …from the violent nature of the crime, and the natural fear of having a weapon aimed at her, rather than from 'the use of a motor vehicle'. She was not injured as a consequence of any collision between the vehicle and any other vehicle or object, but rather sustained a psychological injury commencing from the moment the assailant entered the vehicle and made his unlawful demands…. her injury cannot be said to arise out of the use of the vehicle".*

52. Mr. Glasgow stresses the importance which was apparently attached by the judge to the fact there had not been a collision, and submits that approach is inconsistent with **Dickinson** (supra), where it was held by the High Court of Australia that the occupation of the motor car by the claimant and her brother while the car was stationary and their father was absent was enough to establish that the starting of the fire by the claimant's brother arose out of the use of the car. That important decision of the High Court of Australia was apparently not drawn to the attention of the judge in the **Casalino** case. So I cannot attach much weight to it, especially as the judge in the **Casalino** case was bound by the **Dickinson** case.

53. The second case relied on by Mr. Bartlett was **Citadel General Assurance Company v Vytinglam** [2007] 3 SCR 373, which was a decision of the Canadian Supreme Court, whose members rejected a claim by claimants, who were injured by a large boulder dropped from the top of an overpass and who then sued the insurer of the car of one of the people who had dropped the boulder. The reason why the claim was rejected was because the injury caused by the dropping of the boulder was not in the words of Section 3 of the Ontario Policy Change Form 44 R "*bodily injury…arising directly or indirectly from the use or operation of an automobile*".

54. This decision does not assist in determining the present application because the connection between the dropping of the boulder and the car in that case was very tenuous, as the car was not being used and, although it had been the means of transporting the boulder, it was not involved in any way in causing the injury. So it does not further the case for the defendant insurers.

55. Another Canadian case relied on by Mr. Bartlett was **ING Insurance Co of Canada v Harder Estate** (2008) 91 Alta LR (4th) 109, in which the Alberta Court of Appeal decided that the claimants could not recover under a policy which covered liability for loss or damage "*arising from ownership, use or operation of the automobile*". The claim arose after the father had shot his son dead before killing himself with both events occurring in the father's car. It was noted in the judgment that the claimant's case: -

> *"8. …does not complain about the father's use and operation of the car. [The claimant] complains about the gunshot that killed [the son]".*

56. The reason for the decision was that the claimant's case:-

> *"9…either alone or in combination do not meet the requirements for causation. They do not show an unbroken causal chain connecting the operation of the truck to the tragic shooting of [the son]."*

57. The only relevance of the car to the claim was that it was the location of the killings and that it provided the car user with the opportunity for the killing. This case was based on a wider and different legislative wording than section 145(3) (a) RTA 1988 but what is of relevance is the analysis of the claimant's complaint which is a matter to which I will have to return.

58. I am not bound by any of these Commonwealth cases, but I have found them of value. Pulling the threads together, I have concluded that my approach to section 145(3) (a) RTA 1988 should be that: -

   (a) The term "'arising out of' contemplates more remote consequences than those envisaged by the words 'caused by'" per Rose LJ in **Dunthorne** at page 562 and "'arising out of' extends the test, with the result that it includes less immediate consequences" per Pill LJ in **Dunthorne** at page 563 and a similar comment was made in **Green and Lloyd** (supra) as set out in paragraphs 34 and 44 above. Christopher Clarke J put it similarly in Beazley (as I have explained in paragraph 30(d) above) when he said that the words *"arising out of"... does not dictate a proximate cause test and that a somewhat weaker causal connection is allowed. …[but] …In my judgment a relatively strong degree of causal connection is required"*. I agree that this degree of causal connection is needed, especially as Christopher Clarke J explained that the presence of the words "caused by " in the same provision indicated that the words "arising out of" then "had *some wider meaning"*;

   (b) I cannot accept Mr. Bartlett's submission that that the critical phrase "arising out of" means a proximate cause or an effective cause but not necessarily an immediate cause as this is too narrow a test and it is at variance with the views expressed in **Dunthorne** and the other cases set out in (a) above;

   (c) The term "'*arising out of*' still excludes the use of the vehicle being casually concomitant but not casually connected with the act in question" per Pill LJ in **Dunthorne** at page 563. Similar comments were made by Windeyer J in **Green and Lloyd** (supra);

   (d) The relationship to which the words "arising out of" must be applied is between the injuries suffered (not the negligent and wrongful acts) and the use of the vehicle (see **Dunthorne** and **Dickinson**) not at the start of the journey, but as at the time when the injuries were suffered as was shown by the approach in these two cases;

   (e) The application of the words "bodily injury …arising out of the use of a vehicle" entails considering all the material circumstances. **Dickinson** and **Dunthorne** show that deliberate human acts of respectively starting a fire and of crossing the road do not prevent the bodily injury being held to

have arisen out of the use of the motor vehicle. What was crucially important in **Dunthorne** in reaching the decision that the injuries of the claimant arose out of B's use of the car is that she would not have crossed the road if she had not run out of petrol and sought help to continue her journey. By the same token in **Dickinson**, the Chief Justice and his colleagues explained that:-

"12. There can, in our view, be no doubt that the motor vehicle was being used within the meaning of the Act at the time at which the appellant sustained her injuries. It was in use to carry the appellant and her brother in the course of a journey which was interrupted to enable the father to do some shopping."

(f) So the purpose of the user of the motor vehicle is relevant in deciding whether what occurred and in particular the bodily injuries arose out of the use of his motor car as explained by Rose LJ in **Dunthorne** at page 563; and so

(g) The wording of section 145(3) (a) RTA1988 shows that the focus has to be on the question of whether the bodily injury of the claimants was a matter "*arising out of the use of the vehicle*" by Worboys at the time when the bodily injuries were sustained.

59. I must now apply these principles to the agreed facts. In considering the authorities, I bear in mind that all the decisions, which have to be made on the question of whether the injuries of a claimant are injuries "*arising out of the use of the vehicle on a road*" entail fact-sensitive decisions. Mr. Glasgow placed great reliance on the **Dickinson** case to which I referred in paragraphs 45 and 47 above. In **Dickinson's** case, there was an unbroken chain linking the car, which was being used at all times for the purposes of the journey, with the injuries as the claimant's father stopped temporarily and for a short period just to do some shopping. In other words, the use of the car was a contributing factor, which crucially had the necessary strong degree of causal connection to the claimants' injuries to found a valid claim.

60. That is different from the present case in which the chain between Worboys' use of the taxi and the claimant's injuries was broken by Worboys' acts of poisoning and committing sexual assaults as the facts show. Indeed there are some similarities between the present case and the **ING** case (supra) (which is consistent with **Dunthorne**) because in that case the link between the injuries and the use of the vehicle was broken by the decision of the father to kill his son. In the present case, there was no link between the injuries suffered by the claimants and the *use* of the taxi on a road at the time when the claimants were poisoned and assaulted.

61. Put in another way, while in **Dunthorne,** Rose LJ explained that the claimant's injuries "*arose out of [B's] use of the car as she would not have crossed the road if she was not out of petrol and seeking help to continue her journey*". The reasoning in the present case is different as it is that the claimants' injuries arose not because of any wish to continue the journey, but instead because Worboys wanted to poison the claimants so as to facilitate and implement his wish to sexually assault them. This is a factor, which is not connected with the use of the taxi on a road.

62. In the present case, it is clear that the fact of the location of the offences of administering the sedatives and of committing or attempting the sexual assaults occurred in Worboys' taxi, but that is not conclusive or by itself of any real potency. Applying the logic of Rose LJ in **Dunthorne,** the injuries of the claimants were caused by the criminal acts of Worboys in administering sedatives and then in attempting to or actually assaulting the claimants. They did not arise out of the use of the taxi on a road.

63. The reasoning of Pill LJ leads to the same conclusion, as his interpretation of the applicable test means that the words "*arising out of*" extend the cases covered by this provision but that they exclude "*the use of the car being causally concomitant but not causally connected with the act in question*". In my view, Worboys committed the offences of administering the sedatives and of committing or attempting the sexual assaults, as part of a separate exercise and it was not causally connected with the use of the car. In addition, the activities of Worboys when he poisoned and assaulted the claimants cannot be regarded as Windeyer J described in his judgment in the **Green** case in paragraph 43 above as using his taxi "*for its ordinary purposes"*.

64. I should add that even if I am wrong and Mr. Bartlett is right and that the proper test is whether the use of the car was the proximate or effective cause, but not necessarily the immediate cause of the claimants' injuries, then in that event the insurers' case is much stronger and it must follow that the claimants' injuries did not arise out of the use of the car, as the proximate or effective cause was Worboys' conduct in administering sedatives to the claimants and then attempting to assault them or actually doing so.

65. So I answer in the negative the question "Did the bodily injuries suffered by the claimants "*arise out of the use of* [Worboys'] *vehicle on a road or other public place*" within the meaning of RTA 1988 s145 (3) (a)?"

VI. Were Worboys' deliberate acts of poisoning and of sexual assault such that liability in respect of them (a) was required by RTA 1988 s145 (3)(a) to be covered by a policy of insurance and (b) was covered by the policy issued by the defendant insurers?

(This issue is to be answered by agreement without reference to the limitations on use set out in the certificate of insurance)

66. The focus on this issue is not as in the previous issue on the *cause* of the claimants' bodily injuries, but instead it requires consideration of the totally separate issue of whether Worboys' acts of committing or attempting to commit sexual assaults and of poisoning were liabilities for which he was first required to be insured, even though they did not relate to his mode of driving or manipulating the car but to his deliberate criminal acts; and second, whether he was actually covered by the policy issued by the insurers and that has to be considered without reference to the limitations on use set out in his certificate of insurance.

67. The case for the claimants is that what was required and what was indeed provided by Worboys' policy issued by the insurers was cover for personal injuries arising out of Worboys' use of the taxi. Mr. Glasgow points out that the deliberate use of a car as a weapon has been held to be an act for which insurers have been liable in a trilogy of cases to which I will turn in paragraphs 72 to 79 below. So he submits that Worboys'

deliberate acts of poisoning and sexual assault were required by RTA 1988 s145 (3) to be covered by insurance and they were covered by a policy issued by the insurers.

68. Mr. Bartlett for them contends that: -

i) The purpose of the regime by which insurers are liable to claimants is to provide compensation for road traffic accidents, including those caused by deliberately bad driving but not to provide compensation for matters not concerned with incidents where there was no accident. He therefore submits that claims based on deliberate acts of poisoning and sexual assault do not entail accidents and therefore fall outside the regime and so they are not required to be covered by RTA 1988 s145 (3)(a); and that

ii) In any event even if claims based on Worboys' deliberate acts of poisoning and sexual assault fell within the scope of RTA 1988 s145 (3)(a), his policy was limited to an "*accident involving your vehicle*" and that it is not in the nature of insurance to cover liabilities for deliberate acts where the injury is not due to bad driving and the like.

69. Mr. Glasgow's response is that the liability for insurance cover on Worboys' part extended to deliberate acts of the insured and that there is no requirement for an accident to have occurred.

70. It is clear from the agreed facts that Worboys' criminal conduct and the infliction of injury by him on the claimants was deliberate and that it was carefully pre-meditated. Indeed no aspect of his conduct could be regarded as accidental involving as it did the assembling of his bag of equipment, his selection of potential victims, his banter, his carefully planned system for ensuring that his victims were drugged and the assaults that he committed on them.

71. In support of his contention that deliberate conduct of this kind falls outside the ambit of insurance law, Mr. Bartlett remind me that in the words of Rix LJ in **Charlton v Fisher** [2002] QB 578, 591C: -

> *" 51. It is a basic rule of insurance law that a contract of insurance does not cover an assured against his deliberate or wilful infliction of loss, at any rate in the absence of express stipulation or necessary implication. That is a matter of construction, quite apart from public policy..."*

72. The position under section 145(3) (a) RTA 1988 and its predecessor section is different because there is clear authority that these provisions require a policy of insurance covering liability to a third party arising from even an intentional criminal use of the vehicle. In **Hardy v Motor Insurers' Bureau** [1964] 2 QB 745, the Court of Appeal applied that principle to enable a security officer to recover damages from the defendant after he had sustained injuries when a driver of a van he was questioning had driven off with the security officer holding on to the door so that he was dragged along and sustained injuries. The driver had failed to satisfy a judgment against him.

73. Lord Denning explained at page 760 that:-

> *"The policy of insurance which a motorist is required by statute to take out must cover any liability which may be incurred by him arising out of the use of the vehicle by him. It must, I think, be wide enough to cover, in general terms, any use by him of the vehicle, be it an innocent use or a criminal use, or be it a murderous use or a playful use".*

74. Pearson LJ said at page 765 that the predecessor section to section145(3) (a) RTA 1988 in the RTA 1960 :-

> *"confers alternative or independent rights in certain events on the persons to whom the insured has become liable. Public policy should be so applied as not to diminish their rights. It follows that the insurance policy required by the statute has to cover liability arising from any use, even an intentionally criminal use, of the vehicle on a road. The implied provision would merely debar Phillips from recovering an indemnity under his policy even if he had been insured, or it can be said that there is a personal ban. Thus the liability of Phillips to the plaintiff was a liability required to be covered by a policy of insurance under the Road Traffic Act".*

75. Diplock LJ at pages 779-780 expressed similar views stating that:-

> *"The whole purpose of this Part of the Act is for the protection of the persons who sustain injury caused by the wrongful acts of other persons who use vehicles on a road, and it was no part of the policy of the Act that the assured's rights to enforce his own contract against the insurers should constitute the sole measure of the third party's rights against the insurers, as section 205 shows. The liability of the assured, and thus the rights of the third party against the insurers, can only arise out of some wrongful (tortious) act of the assured. I can see no reason in public policy for drawing a distinction between one kind of wrongful act, of which a third party is the innocent victim, and another kind of wrongful act; between wrongful acts which are crimes on the part of the perpetrator and wrongful acts which are not crimes, or between wrongful acts which are crimes of carelessness and wrongful acts which are intentional crimes".*

76. This decision was approved by the House of Lords in **Gardner v Moore and another** [1984] 1 AC 548 so as to allow a pedestrian who had been deliberately run down by a driver to recover his damages from the Motor Insurers' Bureau. Lord Hailsham of St Marylebone LC in a speech with which other members of the Appellate Committee agreed explained that the sole issue was whether **Hardy** was correctly decided. He considered that it was.

77. The issue was considered in **Charlton's** case in which a claim had been made by a person who was a passenger in a stationary car when a car was driven into it

deliberately. The claimant sued the insurers of the car, which had driven into the car in which he was sitting, relying on section 145(3)(a) RTA 1988. The claim failed because the incident occurred on private property. There was a difference of opinion between the members of the Court as to the approach to adopt to the deliberate conduct of the wrongdoer. I have already explained Rix LJ's approach while Laws LJ concluded that section 145(3) (a) RTA 1988 could be invoked "*where the insured's liability arises from his own deliberate conduct*" [35]. It is unnecessary to analyse the thoughtful judgments of the Court of Appeal in this judgment in the light of other conclusions at which I have arrived which determine this issue.

78. The approach of Laws LJ was followed by Tugendhat J in **Bristol Alliance Limited Partnership v Williams** [2011] EWHC 1656 (QB) in which he held when determining a preliminary issue that a claimant was entitled to recover against a defendant insurer even if the damage was the result of a deliberate act by the assured of the defendant insurer as part of his deliberate attempt to commit suicide.

79. The issue between the parties is whether the law goes as far as to require insurance under section 145(3) (a) RTA 1988 not for deliberate and intentional dangerous driving, but for the acts of administering substances as well as for actual and attempted sexual assaults.

80. The case for the claimants is that the cases of **Hardy**, **Gardner** and **Bristol** were examples not merely of bad driving but of cases of deliberately using a car as a weapon. Indeed in those cases, the car had been used with the clear intention of causing damage while in this case, as I have sought to explain, the position is totally different, because unlike the damage caused in those three cases, the injuries sustained by the claimants were not caused by and do not arise out of the use of Worboys' taxi on the road.

81. In those three cases, the decision to permit the claimants to recover from those insuring wrongdoers or the MIB standing in the shoes of the wrongdoers was based on the facts that the injuries were caused by the use of the car. As I have already explained, the position is totally different because, as I have concluded, the injuries sustained by the claimants did not arise out of Worboys' use of a vehicle on a road and so they were not required by section 145(3) (a) RTA 1988 to be covered by insurance. This conclusion is underpinned by the fact that Laws LJ explained in **Charlton v Fisher** [2002] QB 578, 592 "*the principle of the statute that innocent third parties should be protected so far as money can do it from the harm -sometimes fatal- that may be inflicted by careless, dangerous and criminal drivers on the public roads: a protection not sufficiently given by the private law of insurance*" [33]. This statement assumes that the provisions in section 145(3) (a) RTA 1988 relate solely to injuries caused by or in relation to those types of driving and not extraneous conduct such as poisoning and carrying out or attempting to carry out sexual assaults.

82. In my view, there is no requirement contained either expressly or impliedly in that section or in any decided case that a car insurance policy covers administering sedatives and attempting to assault or actually assaulting passengers in the car. For there to be such a requirement would entail rewriting section 145(3) (a) RTA 1988 and that is not permissible. In the light of this conclusion, it is unnecessary to consider any further aspect of Mr. Bartlett's submissions.

83. As to sub-issue (b), the wording in Worboys' policy only covers *"accidents involving your vehicle"* and I cannot understand how that could be interpreted so as to cover deliberate poisoning and sexual assaults. These words show that there was a requirement for Worboys' taxi to be involved in an accident but the deliberate acts of poisoning and of committing sexual assaults cannot be regarded as satisfying that requirement even if they occurred in the taxi.

84. For those reasons, I answer in the negative both parts of the question posed of "*Were Worboys' deliberate acts of poisoning and of sexual assault such that liability in respect of them (a) was required by RTA 1988 s145 (3)(a) to be covered by a policy of insurance and (b) was covered by the policy issued by the defendant insurers*?"

VII. Having regard to the limitations on use set out in the certificate of insurance, was Worboys' use of the vehicle at the material times a use insured by the policy issued by the insurers?

85. The insurance policy of Worboys stated that it provided cover for *"social, domestic and pleasure purposes and for use for public hire*". The significance of this issue is that although the RTA 1998 does not require all uses of the car to be insured, it is imperative that the user of a car has insurance for the particular use to which he puts the vehicle. So if an incident occurs, the insurer is not required to satisfy a judgment if it fails to satisfy the requirement in the words of section 151(2) (b) of the RTA 1998, which is that "*it is a liability covered by the terms of the policy*".

86. So in **Jones v Welsh Insurance Corp Ltd** (1937) LI.L.R. 13, Goddard J (as he then was) held that the insurers of the defendant were not liable to satisfy a judgment in a case in which the permitted use of the defendant was "*carrying on or engaged in the business or profession of motor engineer and no other for the purposes of this insurance*". The claimant was injured as a result of the defendant's negligence and he duly sued the defendant's insurers. The insurers were held not to be liable because at the time of the accident, the defendant was engaged in the business of sheep farming, but not in the business specified in the policy.

87. The case for the claimants is that the insurance policy of Worboys covered his activities while they were in the taxi, as first he was plying for hire when the claimants entered his taxi, and second, he agreed to take them to their destinations, which he duly did. It was not material, according to the claimants that the "for hire" sign was or was not illuminated, or whether the fare of any claimant was or was not waived. The evidence of Worboys at his trial, according to the claimants, leads to the conclusion that these trips were for his own pleasure and so they fell within the terms of his policy and of his insurance cover. If that is not right, the claimants' case is that the trips were made as part of Worboys' business and so they were made for public hire.

88. Mr. Glasgow submits that in determining this issue, it is critically important to have regard to all the agreed facts in order to determine the *"essential character"* of the incident, and that this issue must be considered from the points of view of both the claimants and of Worboys. In this connection, he contends that the motive of each of those people is a factor, which can, and indeed should, be taken into consideration but it is not conclusive. Mr. Glasgow submits that an officious bystander test is useful.

89. He stresses that the character of the claimants' journey in the taxi has to be ascertained at its outset, and that what happens later cannot determine the character of the journey. In this case, Mr. Glasgow contends that Worboys might have intended to offend, but that he could not have had a settled intention to do so. So his case is that the use of Worboys' taxi when he picked up the claimants and thereafter was "public hire", or conceivably "social and domestic use" as the claimants gave instructions to be delivered to a specified destination, which is what occurred even though the claimants had not foreseen or intended that they would be poisoned and then assaulted during the course of the journey. The claimants' case is that the fact that Worboys took a deviation for his own purposes did not alter the essential character of the journey, and reliance is placed by Mr. Glasgow on the comment of Browne LJ in **Seddon v Binions** [1978] RTR 163 that "*any incidental or subsidiary use for another purpose would not take the case outside the cover of the policy*".

90. The case for the insurers is that Worboys was not using the taxi for any of the permitted purposes so as to give him cover, because the assaults were the primary purpose for the journey or at least a primary purpose. Mr. Bartlett relies on the agreed facts to support this submission and in particular, he points to first, the paraphernalia carried by Worboys, which would and did enable him to sedate his passenger, second, his carefully planned and well-rehearsed pattern of conversation with the claimants, and third, his repeated and premeditated conduct in poisoning and in assaulting his victims.

91. The way in which the purpose of a trip should be ascertained for the purposes of determining whether it falls within the permitted insurance cover has been the subject of a number of authorities starting with **Seddon v Binions** (supra), in which the issue was whether the terms of the defendant's insurance cover , which was that when driving someone else's car, he was only covered for *"use for social, domestic and pleasure purposes"* prevented a victim of the defendant's negligence from suing for damages when an accident occurred when the essential character or primary purpose for which the defendant was then driving the car was for taking his son's employee either home or to a dentist.

92. The Court of Appeal held that the claim against the insurers failed as the primary purpose was not "*social, domestic and pleasure".*

93. Roskill LJ stated in his judgment at pages 384-386 that:-

> *"Inevitably, where one has a phrase such as 'social, domestic or pleasure purposes' used in a policy of insurance…there will be cases which will fall on one side of the line and cases which will fall on the other side. For my part, however much claims managers might wish it otherwise, I do not believe it is possible to state any firm principle under which it can always be predicted which side of the line a particular case will fall. It must depend on the facts of the particular case; and the facts of particular cases will vary infinitely in their detail."*
>
> *"It seems to me that the solution to the problem can best be reached in this case by asking the question: what was the essential character of the journey in the course of which the particular accident occurred?"*

> *"It may well be that there will be cases, as there have been in the past, where the essential character…of a particular journey was of a particular kind - and that that essential character will not be altered in the crucial respects merely because, incidental to that journey, something happens in the way of giving a lift to a friend as an act of courtesy or, to borrow Mr. Justice du Parcq's expression [in Passmore v Vulcan Boiler & General Insurance Co Ltd (1936) 54 Ll L R 92], 'charity'."*

94. Megaw LJ, agreeing, said at page 387 that:-

> *"[I]n general, I should have thought that there is something that can clearly be called, as I would put it, a primary purpose, by which I intend the same meaning, I think, as Roskill LJ intended in using the phrase 'essential character of the journey'. If there be such a primary purpose, or essential character, then the Courts should not be meticulous to seek to find some possible secondary purpose, or some inessential character, the result of which could be suggested to be that the use of the car fell outside the proper use for the purposes of which cover was given by the insurance policy".*

95. The Court of Appeal returned to consider this issue in **Caple v Sewell and others** [2002] Lloyds Rep IR 627, in which a vessel was insured "*whilst being used for demonstration purposes*", and a photographer was injured. She claimed against the vessel's insurers, but they contended that they were not liable as the vessel was not being used for demonstration purposes, but that instead it was being used as a platform for photography. The claimant contended that the boat was being used for demonstration purposes.

96. The Court of Appeal upheld a decision that the claimant succeeded as, in the words of Rix LJ giving the judgment of the Court, *"it must be primarily to the insured's purposes more than to someone else's purposes that one must look, because one is construing a policy between an insured and an insurer"* [28]. This led to the conclusion that the vessel was being used for demonstration purposes.

97. Rix LJ then explained that: -

> *"29…the Court of Appeal emphasized in Seddon that a question such as this had to be decided very much on the particular facts of each case. Roskill LJ went out of his way to emphasise that consideration on a number of occasions in his judgment; and he cautioned against the idea that that case raised any new question of principle as distinct from being determined upon its own facts. For my own part I would add that in finding the essential character or purpose of a journey or use at a given time and place, one should not be blinkered, by which I mean that such a finding may properly depend upon a wider consideration than the narrowest facts relating to the particular journey or use in question".*

98. These cases were considered again in **Keeley v Pashen** [2005] 1 WLR 1226, in which the defendant, whose insurance covered him for *"social, domestic and pleasure purposes including travel to and from permanent place of business"* was providing a taxi service. At the end of one shift in which the defendant had had an altercation with some drunken passengers and dropped them off, he reversed his car at the passengers to frighten them and he thereby inflicted fatal injuries on the claimant's husband. She sued the defendant and his insurers.

99. Negligence was admitted but the insurers contended that they could not be liable pursuant to section 151 RTA 1988 (which is set out in paragraph 11 above) as the use of the car at the time of the accident did not fall within the permitted uses of the car. The Court of Appeal held that it was necessary to determine the essential character of the journey at the time of the incident.

100. It held that by the time when the men were run over, they had been dropped off and so the defendant was then not driving for the excluded purpose of hire and reward but for "soc*ial domestic and pleasure purposes"* which were permitted uses. So the claimant could recover. Brooke LJ in giving the only reasoned judgment applied the statements of Megaw and Roskill LJJ in **Seddon**, which I have set out in paragraphs 93 and 94 above.

101. Mr. Bartlett submits that in order to determine the use of the taxi for the purposes of determining whether it fell within the terms of Worboys' policy, it is necessary only to consider his use, not only because of what Rix LJ said in **Caple** in the passage quoted in paragraph 96 above, but also because the Court of Appeal held in **O'Mahony v Joliffe** [1999] Lloyd's Rep IR 321 that the relevant use of a vehicle is that of the insured and not the passenger. Indeed in that case, Simon Brown LJ explained in a judgment with which Ward and Robert Walker LJJ agreed that *"…a user is someone required to provide third party cover*". He mentioned various cases in which a passenger can be the '*user'* but none apply in the present case because in Simon Brown LJ's words "*there must be present in the putative user some element of controlling, managing or operating the vehicle".*

102. A fundamental dispute between the parties is how to assess "*the essential character of the journey in the course of which the particular incident occurred*". It must not be forgotten, as Rix LJ pointed out in **Caple** in the passage quoted in paragraph 96 above, that the permitted use in an insurance policy relates primarily to the use made by the driver of the vehicle in question and only he or she may know what it is and so it is the driver's use which is of critical importance.

103. I have come to the conclusion that the operative point for assessing "*the essential character*" of the journey is the time of the occurrence of the incident, which led to the claim. Thus in **Keeley'**s case, (as I have explained in paragraph 98 above) on the night in question, the defendant's vehicle had been previously used for the unpermitted purpose of running a taxi service, but after the passengers had been dropped off, the purpose of the defendant changed and it was then to drive home. This purpose fell within the range of "social, domestic and pleasure purposes" which were permitted uses and that was when the incident occurred.

104. The Court of Appeal in that case allowed an appeal from the decision of the Recorder, who had held the purpose was not "social, domestic and pleasure purposes" and instead

it looked at the matter at the time of the incident to determine the critical question what was "*the essential character*" of the journey at that time. In consequence, the claimant in that case could recover and an important principle established in that case is that, contrary to Mr. Glasgow's submission, the focus in considering "*the essential character*" of the journey must be at the time of the incident, but what happened earlier might assist in undertaking this exercise.

105. In my opinion, the statutory provisions and the cases to which I have referred establish the following principles, which are that:-

(a) If the use is outside the permitted uses specified in the policy, then the test in section 151(2)(a) RTA 1988 (*"it is a liability covered by the terms of the policy*") is not satisfied;

(b) To determine if a use is permitted under the policy, the court has to ask itself "*what was the essential character of the journey in the course of which the particular incident occurred?"* (per Roskill LJ in **Seddon's** case and followed in **Caple** [[33] per Rix LJ) or what was the "*essential or primary purpose"* (per Browne LJ in **Seddon's** case) or *"primary purpose or essential character"* per Megaw LJ in **Seddon's** case);

(c) The purpose has to be determined at the time when the incident occurred and not at the start of the journey (**Keeley's** case [18]);

(d) The critical factor must primarily be the driver's intention (**Caple** [[28] per Rix LJ); and that

(e) "*Of course, if the essential character of the journey in question consists of use for a criminal purpose (as when a burglar takes his car out for a night of burgling other people's houses) then the car will not be being used for 'social, domestic or pleasure purposes'*". per Brooke LJ in **Keeley** [19].

106. Applying these principles, there are a number of factors set out in the agreed facts, which show that even if the essential character or the primary and essential purpose of the journey was "*for public hire*" or for *"domestic and pleasure purposes*", this character and purpose would have changed by the time when the claimants were sedated and assaulted or the subject of attempted assaults. By that time, the essential character or the primary and essential purpose of the journey was the primary purpose of committing sexual assaults.

107. Those factors, which lead to that conclusion, are that:-

(a) Worboys developed and adopted a regular procedure that after carrying on his legitimate business as a taxi driver, he set about targeting and attacking female victims. For that purpose he carried in his taxi a bag of equipment and wine carriers, which contained everything he would need for carrying out the assault. That included alcohol in which he put sedative drugs, namely temazepam, which was a prescription drug, and Nytol, which was a drug containing diphemhydramine;

(b) On the nights in question, Worboys targeted and enticed claimants into his taxi in breach of the terms of his licence. He often approached victims rather than waiting to be hailed and he did not have his taxi "for hire" sign illuminated. Then Worboys did not agree proper fares and even if a fare was agreed, he waived payment. At least one of these factors prevailed in each case;

(c) In each case, Worboys intended from the outset to attempt to sexually assault the victim;

(d) He commenced his conversation immediately and he attempted to give the claimants the drugged alcohol as soon as he could. During the conversation, he provided an alias and he gave an incorrect address if he was asked for it by a claimant;

(e) Worboys stopped the taxi for lengthy periods of time in many cases, even though the passengers had not requested him to stop;

(f) He did this to enable him to get to the back of the taxi and to administer more drugs if he deemed it necessary and to carry out the intended assault on the passengers, who by then were under the influence of the drugged alcohol which he had given them; and that

(g) Worboys had with him the wine carrier replenished throughout the period of the offence and he also had cigarettes to give to his victims, large quantities of condoms, plastic gloves and the sedative drugs.

108. All these factors show that the essential purpose (and not "*the incidental or subsidiary purpose*" as contended for by Mr. Glasgow) was a criminal purpose and then, as Brooke LJ explained in Keeley and as set out in paragraph 105(e) above,

> *"if the essential character of the journey in question consists of use for a criminal purpose …then the car will not be being used for 'social, domestic or pleasure purposes"*.

VIII. Having regard to the answers to Issues (1)-(3), are the insurers liable, pursuant to RTA 1988 s151, to pay to a claimant any sum payable pursuant to the assumed judgment to be obtained by her against Worboys, or any specified part thereof?

109. In the light of the answers to issues (1), (2) and (3), this question must also be answered in the negative.

110. For the purpose of completeness, I should record that in respect of what could be recoverable under the provisions of the RTA1988 set out above:-

(a) the claimants accept first that claims in respect of false imprisonment are not claims in respect of "*bodily injury*" to a person, and second that damages for the way in which Worboys conducted the criminal trial are not recoverable from the insurers;

(b) the insurers accepts that poisoning and physical sexual assault are bodily injuries to persons, and that if an injury were alleged which was

a recognised psychiatric condition, such condition would also constitute a "*bodily injury*" to a person; and that

(c) The claimants and the insurers agree that aggravated damages are damages in respect of bodily injury to a person within the meaning of RTA 1988 s145 (3)(a), if and only if they are compensatory damages in respect of personal injuries.

IX. Conclusion

111. Anybody who has read the pleadings and the agreed facts in these cases must have the greatest sympathy for the claimants in the light of the horrifying experiences that they suffered at the hands of Worboys, but my duty is to follow the appropriate legal principles. These mean that for the reasons which I have sought to explain that I must answer the questions posed as follows: -

1. Did the bodily injuries suffered by the claimants "*arise out of the use of the [Worboys'] vehicle on a road or other public place*" within the meaning of RTA 1988 s145 (3) (a)? No.

2. Were Worboys' deliberate acts of poisoning and of sexual assault such that liability in respect of them (a) was required by RTA 1988 s145 (3)(a) to be covered by a policy of insurance? (b) was covered by the policy issued by the insurers? (a) No. (b) No.

3. Having regard to the limitations on use set out in the certificate of insurance, was Worboys' use of the vehicle at the material times a use insured by the policy issued by the insurers? No.

4. Having regard to the answers to Issues (1)-(3), are the insurers liable, pursuant to RTA 1988 s151, to pay to a claimant any sum payable pursuant to the assumed judgment to be obtained by her against Worboys, or any specified part thereof? No.

112. It might be some consolation to the claimants to know that every point, which could have been argued on their behalf, has been argued with great skill by their counsel.

Appendix I

1. Worboys is a convicted serial, predatory, sex offender. He is currently in custody.
2. Worboys was born on 30.4.1957. At various times, he worked as a milkman, a security guard and a stripper. At the time of the events which are the subject matter of the preliminary issue, he owned and carried on business driving a licensed London hackney carriage, registration number V940 LGO.
3. At the time of the offences, Worboys had a licence to operate a hackney carriage within the Metropolitan Police District and City of London subject to the usual conditions and bylaws. Worboys did not have a licence to operate a hackney carriage in the area licensed by Bournemouth Borough Council.
4. At the time of the offences involving BXN, CXN, FXN and JXN, Worboys had in place private and public hire insurance on the terms set out in the insurance policy and certificate, an example of which is supplied herewith, the example being the insurance in force from 2 March 2006 to 1 March 2007.
5. The certificate stated under "Limitations as to Use", "Social Domestic and Pleasure purposes and use for Public Hire". It also certified that the policy satisfied the requirements of the relevant law applicable in Great Britain.
6. The policy provided inter alia:

   [Definitions] "Certificate of insurance ... shows ... the limitation as to use of the vehicle which we have agreed."

   "Policy" "your contract of insurance consisting of ... this policy booklet, the policy schedule, the endorsement schedule and the certificate of insurance."

   'We will cover you for legal liability if you have an accident involving your vehicle in which ... another person is injured or dies ...' (Section 3 p13).

   'We will not provide cover for anyone ... in respect of death, injury or damage caused by or resulting from the use of your vehicle or trailer whilst being operated as a tool of trade except as required by the Road Traffic Acts' (Section 3 p14).

7. The policy schedule stated under "Important Notes", "This insurance covers only the vehicle, drivers and use as defined in the Certificate(s) of Motor Insurance issued."

8. Worboys developed and perfected a web of deceit that enabled him to ensnare women in order to provide him with the opportunity of sexually abusing them. Although in individual cases there were some variations depending on the circumstances. Worboys' modus operandi (which he described at his criminal trial as 'the procedure') was generally as follows:

9. On the days when he assaulted his victims, Worboys had formed an intention when leaving home, before starting work, that late that night, after he had finished his business of taking fare-paying customers in accordance with the terms of his licence, he would target a vulnerable victim and drug and sexually assault her. Worboys stated at his criminal trial that these were not journeys he was making as part of his business and for money but for his own pleasure and to 'obtain [the victims'] company'.

10. Worboys deliberately targeted women who were out late at night (or the early hours of the morning) and had clearly been drinking.

11. On some occasions the victims hailed his taxi and on others he approached them.

12. Worboys usually agreed very low fares (far lower than the norm for such a journey), or offered not to charge at all. He often persuaded the victims to accept the offer by falsely stating that the victim's destination was on his way home and it was his last trip of the night. Even if a low fare was agreed he would usually then waive payment.

13. If the victims were on their own when entering the taxi he immediately began 'his banter' (as he described it in his criminal trial).

14. Worboys' 'banter' followed a consistent pattern which he used in order to persuade the victims to accept from him alcohol into which he had put sedative drugs (temazepam, a prescription drug, and nytol, an over-the-counter drug containing diphenhydramine). He commenced the 'banter' as soon as he could in order to reach the point where the alcohol and drugs would be consumed as early in the journey as possible.

15. Initially Worboys would ask whether the victims had had a good evening and what they had done. He did this both to commence friendly conversation and to establish how much alcohol they had already consumed. If the victims were unhappy, he was apparently sympathetic, repeatedly telling them how lovely they were.

16. Worboys then referred to his own good fortune in winning a large amount of money at a casino and often showed a bundle of cash to back up the

story. He then asked if the victims would have a glass of champagne to celebrate his success. If they refused, he persisted. Worboys retrieved a glass and bottle of champagne from the front passenger foot-well, poured the champagne into the glass and passed it back to the victims. He often watched in the rear view mirror to ensure that the victims drank the drink and, if it was spilt, would pour another either into the same or a second glass that he produced. Into the drinks he had put temazepam and/or nytol.

17. On occasion Worboys would vary 'his banter', substituting a story about making home-made wine instead of the casino win and offering wine which he passed off as of his own manufacture. He always however offered alcohol into which he had inserted the sedative drugs.

18. Worboys stated at his criminal trial that he was keen to 'move to this next stage' of 'the procedure' where the victims were persuaded to consume the alcohol (into which sedative drugs had been inserted) as soon as possible.

19. Having continually observed the victim via his rear view mirror, when Worboys judged that the drink and drugs were beginning to take effect, he would ask if he could stop the taxi, join the victim in the back and have a glass of champagne to celebrate his success at the casino with her. If the victim consented he would do so. If not, he would stop the taxi but initially remain in the front seat.

20. Worboys would ensure that the victim consumed as much further alcohol as possible (even on occasion suggesting a drinking game) into which he had put more temazepam and/or nytol. Whilst waiting for the drink and drugs to take full effect he would engage the victim in conversation. This could take a considerable period of time, and on occasion up to several hours.

21. During the 'banter' and the conversation in the back of the taxi Worboys would introduce sexual remarks. These followed two general patterns. First he repeatedly stated how lovely the women were and then suggested that they take up 'glamour' modelling. Second he mentioned a story about a woman performing sexual favours for money and asked if the victim would do the same.

22. When Worboys judged that the drink and drugs had sufficiently taken effect such that they were impairing the victims' awareness of what was occurring, (thus affecting both their ability to resist and their memory afterwards) in most cases he sexually assaulted the victims.

23. Having decided at the outset that these particular women would become his victims, Worboys was keen to protect his true identity. He introduced himself to them by a false name (usually Tony and occasionally Paul) and

he lied about the area of London that he lived in. If the victim asked him for a telephone number (in order for example to send him payment afterwards) he gave the number for an unregistered pay as you go phone which he designated in his notebook as ‘Tony’s phone’. If a passenger accepted a cigarette that he offered them he would also suggest that they sat on the floor to smoke. The victims agreed thinking that this was to prevent Worboys being seen allowing a passenger to smoke but it also ensured that they were not seen in his taxi by third parties who might subsequently have been able to make an identification.

24. In order further to prevent detection Worboys eventually drove the victims to the agreed destination.

25. In contrast, on occasions when Worboys did not intend to carry out a sexual assault he charged usual fares, drove the journeys in the appropriate time and insisted on payment, even taking people’s details or providing his own in order to chase payment subsequently. On these occasions he gave his correct name, and if required, his correct address and the telephone number of the mobile telephone registered to him.

26. Using 'his procedure’ Worboys succeeded in drugging and sexually assaulting women who had impaired recollection afterwards of the events that had taken place and false information as to his identity.

27. Worboys prepared a wine-carrier and a bag, which together contained all the equipment that enabled him to carry out the sexual assaults.

28. The wine-carrier contained:

- small bottles of Tesco’s champagne
- wine (which he passed off as his home-made wine)
- spirits
- glasses.

Worboys kept the wine-carrier replenished throughout the period of the offences. It was kept in the front passenger foot-well whilst Worboys was in the taxi and otherwise kept in the boot of his car, a Fiat Punto, or a ‘safe cupboard’ in his garage.

29. The bag contained:

- cigarettes to give to victims to lull them into a false sense of security and camaraderie (and to persuade them to sit on the floor of the taxi),
- a large ashtray to offer to victims who wished to smoke and also in which to crush up drugs,

- large quantities of condoms,
- a vibrator (for some of the period in which he was carrying out the assaults),
- plastic gloves,
- the sedative drugs (temazepam and nytol),
- a large quantity of cash (usually several thousand pounds) to back up his story of having won money at a casino,
- a false licence number plate that could be placed over his real licence number plate further to disguise his identity.

This bag he kept constantly ready, restocking the drugs and cleaning and replacing the vibrator when necessary. The bag was kept in the foot-well of the front passenger seat of his taxi whilst he was out in his taxi and at other times was locked in the boot of his car, the Fiat Punto.

30. At Croydon Crown Court, on 13 March 2009 Worboys was convicted of twelve counts of administering a substance with intent, one count of attempted sexual assault, four counts of sexual assault, one count of sexual assault by penetration and one count of rape. On 21 April 2009 he was sentenced to concurrent sentences on the last two counts of a minimum of eight years' imprisonment based on a notional determinate period of sixteen years, and on the remaining counts to concurrent sentences of five years' imprisonment based on a notional determinate sentence of ten years. The sentence on each count was indeterminate, Worboys only to be released when no longer considered to constitute a risk. At that date he was considered to be a high continuing risk to women with a significant risk of reoffending.

31. On 21 April 2009 the court made a forfeiture order in respect of both the hackney carriage and the bundle of cash found on arrest which had been used to back up the story of the casino win. The proceeds from those assets were ordered to be divided equally between the victims of the offences of which Worboys was convicted.

32. BXN is a woman born in 1988 who prior to the matters set out below did not know Worboys. She was in a relationship at the time of the incidents set out below but as at September 2011 she was single.

33. In July 2007 BXN was a student at Warwick University. She was part way through her degree course in theatre studies and living at home during the Summer Vacation with her mother in East Sheen. On 15th July 2007 BXN had

34. decided to join two friends to go to a night-club, 'Mamilangi' at 107 King's Road, London, SW3. BXN and her friends spent several hours at the club during which time she consumed at least four shots of vodka with coke. At around 2.00am on 16th July 2007 BXN and one of her friends decided to leave the club and return to their respective homes. BXN's other friend had left earlier. They came out of the club and went to wait for their night-bus home. As they were going in opposite directions their bus-stops were on opposite sides of the street. The night-bus which BXN's friend was waiting for arrived shortly and he left. BXN continued to wait, alone, for her night-bus at the bus-stop. She had sufficient money with her to pay for the night-bus but not to pay for a hackney carriage and she did not intend to travel home in a hackney carriage. After about twenty minutes, at approximately 2.20am, a hackney carriage pulled up alongside BXN. BXN cannot recall whether the hackney carriage had the 'for hire' light illuminated. She did not hail the hackney carriage. The hackney carriage was driven by Worboys.

35. Worboys put the window down, and asked if BXN wanted a lift. BXN replied that she only had £5, and to confirm this waved the £5 note at Worboys. Worboys then asked BXN where she was going. When BXN told Worboys that she was going home to East Sheen Worboys told her that East Sheen was on his way home and that, as this would be his last pick-up of the night, he would take her to her destination for £5. This was a greatly reduced sum for

the suggested journey. BXN agreed and got into the back of the hackney carriage. Worboys drove off towards East Sheen.

36. Worboys did not live near East Sheen. The comment was a deliberate lie. Worboys had identified BXN as a victim and commenced 'the procedure' (as he referred to it in his criminal trial).

37. Worboys immediately began 'his banter' and took steps to put BXN at ease and off her guard. Worboys quickly elicited that BXN had been drinking that evening. Having seen BXN smoking at the bus-stop, Worboys immediately offered BXN a cigarette. She accepted and Worboys passed her a cigarette. Worboys told BXN to sit on the floor, explaining that passengers were not allowed to smoke and that she should avoid being seen. She did so.

38. Worboys thereby premeditatedly took steps to ensure that she would not be seen in the rear of his hackney carriage by third parties who might subsequently make an identification.

39. Worboys quickly moved to the 'next stage' of 'his banter' falsely telling BXN that he had won a large sum of money at a casino that night. He showed BXN a large amount of cash that he had with him in his bag in the front passenger foot-well of the cab to back up his story. Worboys invited BXN to celebrate his success by having a glass of champagne. BXN accepted the offer. Worboys retrieved a bottle of champagne and a glass from the wine carrier in the front passenger foot-well. He poured some champagne into the glass and passed it to BXN whilst continuing to drive.

40. Unknown to BXN, Worboys had inserted a sedative drug into the champagne (either temazepam and/or nytol), which would affect BXN's awareness and ability to resist Worboys and her recollection afterwards. BXN, who was still sitting on the floor of the hackney carriage, drank a small quantity of the champagne. Unknown to Worboys she tipped away the remainder on the floor of the hackney carriage, rubbing it into the carpet.

41. Worboys then moved to the 'next stage' of 'his banter'. First, he told BXN that a previous passenger had informed him that she had provided sexual favours for money. He asked BXN whether she would do such a thing. She said that she would not. Second, he kept telling BXN how attractive she was and suggested that she take up glamour modelling.

42. Throughout this time Worboys repeatedly observed BXN in the rear view mirror. He also enquired how much alcohol she had consumed that evening and discussed with her how much she drank as a student, her preference for vodka and her belief that she had a very high tolerance to alcohol. BXN informed Worboys that she was used to 'downing' vodka in drinking games.

43. On a side road near Putney Common, Worboys asked BXN if she would mind if he stopped the hackney carriage so that he could get out and relieve himself. BXN said that that was fine. Worboys stopped the vehicle, got out and disappeared from BXN's sight for a few minutes.

44. When Worboys returned, he got into the front driver's seat, picked up a bottle of champagne and another glass and asked BXN if he could have a drink with her to celebrate his winnings. BXN felt uncomfortable but agreed. Worboys,

bringing the bundle of cash, the champagne bottle and a glass with him, opened one of the rear doors of the vehicle and sat down opposite BXN.

45. Worboys placed the bundle of cash on the seat next to BXN. He then refilled BXN's glass of champagne and filled a glass for himself. BXN toasted Worboys' success but did not drink anything. Worboys started to taunt BXN about her alcohol tolerance. He reminded BXN of her comment that she could 'down' vodka and said that he did not believe her. When BXN boasted that it was true, Worboys asked her to prove it. He got out of the passenger cabin, retrieved another glass and a bottle of vodka and then returned to sit opposite BXN. Worboys then poured nearly half a pint of vodka into the glass and challenged BXN to drink it. BXN told Worboys that she had no reason to drink the vodka. Worboys offered BXN £10 to drink the vodka, but she declined saying it was not worth her while to drink it for £10. Worboys then said that if BXN drank the vodka, he would not charge her even the agreed fare of £5 and would give her £50. BXN agreed to his offer. BXN drank the whole quantity of vodka straight down. Worboys took £50 out of the bundle of cash that he had brought with him into the back of the taxi and gave it to BXN.

46. The vodka contained a sedative drug (either temazepam and/or nytol).

47. BXN almost immediately started to feel unwell and she asked Worboys if he would take her straight home. Worboys told her not to worry and that they would go home. He returned to the driver's seat and started to drive BXN home. BXN remembers nothing further of the journey home.

48. The court is invited to consider the preliminary issue on the alternate bases that:

    (i) At some stage after BXN drank the vodka Worboys sexually assaulted her.

    (ii) No such sexual assault occurred.

49. BXN's next recollection was of arriving at her home in the hackney carriage at about 4am. Worboys told BXN to call him if she ever needed a hackney carriage again, giving her a false name (Paul) and phone number.

50. Some months later, on learning of media coverage of the charges against Worboys and of his modus operandi, BXN reported to the police that she had been in a hackney carriage whose driver had offered her champagne to celebrate a win at a casino. BXN identified Worboys at an identity parade arranged by the police as the driver of the hackney carriage.

51. At Croydon Crown Court, on 13 March 2009, Worboys was convicted of administering a substance with intent committed against BXN and sentenced to a term of imprisonment. Worboys had denied the commission of any offence against BXN, thereby requiring her to give evidence against him at the Crown Court, which was humiliating and upsetting for BXN and compounded her suffering.

52. BXN had not alleged to the police that Worboys had sexually assaulted her and Worboys was not charged in the criminal proceedings with that offence.

53. The London Evening Standard newspaper subsequently published a large photograph of BXN with the caption "Raped by John Worboys". This both revealed BXN's identity (which had been protected in the criminal proceedings) and did not accurately reflect the conviction of Worboys or BXN's evidence or statements to the media which were that she would know if she had been sexually assaulted and that she did not believe that she had been. This was humiliating and upsetting for BXN and further compounded her suffering.

54. On 21 April 2009 the court made a forfeiture order in respect of both the hackney carriage and the bundle of cash found on arrest which had been used to back up the story of the casino win. The proceeds from those assets were ordered to be divided equally between the victims of the offences of which Worboys was convicted. BXN has received £625.51.

55. In acting as set out above, (and on both of the alternate bases set out at paragraph 17 above), Worboys was engaged in a pre-meditated, deliberate criminal enterprise falling outside the scope of the activities for which he held

56. CXN is a woman, born in 1988, who, prior to the matters set out below, did not know Worboys. As at September 2011 she is in a relationship but was single at the time of the incidents.

57. In July 2007 CXN was a student at Greenwich University reading for a degree in English and Politics. She was living in student accommodation at Avery Hill in Eltham. CXN also worked part-time in Mayfair as a service desk assistant for a property company, her present employers.

58. On the 25th July 2007, CXN was at work in Mayfair during the day. After work she returned to her student accommodation in order to get changed before returning to central London to meet two friends for an evening of socialising. She met her friends at Charing Cross Railway Station at around 8.30pm. They went first to a bar near Covent Garden and then to a nightclub, 'The End', in the Holborn area, on West Central Street, WC1A. During the evening CXN drank two glasses of red wine and two glasses of vodka and lemonade.

59. By about 2.00am on 26th July CXN's friends had left the club and she too decided to go home. She left the club alone intending to return to Charing Cross Station and catch the night-bus home to Eltham. She was not however sure of the way to Charing Cross Station and, noticing a hackney carriage rank outside the club she decided to get a hackney carriage home instead. She approached the first hackney carriage in the queue which was plying for hire, but the driver declined to take her to Eltham. She then approached a hackney carriage which drew up to the rank whilst she was speaking to the driver of the first hackney carriage. She did not notice if the 'for hire' sign was illuminated and it is disputed whether or not it was. The driver was Worboys.

60. Worboys had identified CXN as a victim from the outset and immediately started 'his procedure' (as he described it at his criminal trial). He offered to take her to Eltham. CXN agreed and got into the rear of the hackney carriage. It is disputed whether a fare was agreed or paid.

61. Worboys drove off towards Eltham and immediately started 'his banter'. He asked CXN what she had been doing that evening. CXN told him that she had been at the club with friends but that they had left her. Worboys repeatedly complimented CXN on her appearance saying how nice she looked. CXN told Worboys that she was in a relationship but was having relationship problems and he told her not to worry as she was 'gorgeous'.

62. Worboys then swiftly moved on to the next stage of 'his banter'. He falsely told CXN that he was celebrating as he had won thousands of pounds gambling. He showed CXN a large bundle of cash which he took from the bag in the foot-well of the front passenger seat in order to back up his story. Worboys invited CXN to celebrate with him by having a drink. CXN was

reluctant to accept the offer and told him she did not want a drink, but Worboys was persistent, repeatedly asking her to celebrate with him and trying to pass her the drink that he had already poured until she accepted. He then passed her a glass of fizzy drink through the sliding window of the hackney carriage whilst continuing to drive.

63. CXN had drunk approximately a quarter of the drink (which tasted bitter) before Worboys braked heavily at a set of traffic lights, causing her to drop the glass, which smashed. Worboys handed her a replacement drink of clear liquid in a plastic cup, whilst driving. CXN told Worboys that she did not want the drink but he insisted, commenting that she must drink it as she had wasted the other one. CXN drank approximately a quarter of this second drink.

64. Unknown to CXN, Worboys had inserted a sedative drug into the drinks (temazepam and/or nytol containing diphenhydramine), which would affect CXN's awareness and ability to resist Worboys and her recollection afterwards.

65. Worboys continued to drive CXN back to her accommodation in Eltham.

66. At an unknown time before arriving back to her accommodation, at an unidentified location on a public road Worboys stopped the vehicle. Without CXN's consent he climbed into the rear of the hackney carriage and sat down next to CXN. He had three pills in his hand, two of which were white and circular (consistent with being nytol), the other long and white (consistent with being temazepam). Worboys offered them to CXN and aggressively stated that he had 'paid £60 for this so you'd better have one'. When CXN declined Worboys forcibly opened CXN's mouth, put one of the tablets into her mouth and squeezed her cheeks to make her swallow it. CXN lost consciousness. She has no further recollection of the events of that night.

67. After CXN had lost consciousness Worboys sexually assaulted and raped her.

68. In order to prevent detection, having carried out the sexual assaults, Worboys got back into the driver's seat of the hackney carriage and drove CXN to her student accommodation in Eltham. He did not arrive at the destination until 4.32 am.

69. CXN's next recollection is of waking up in her bed, clothed save for her shoes, at 2pm on 26 July 2007. CXN noticed a button missing on her shorts (which she had worn for the first time the previous night) and scratches and abrasions on her left elbow and right knee. Her tampon, which had been in place the previous evening, was missing. She had flashbacks to being in the hackney carriage and being forced to take the tablet. CXN reported her limited recollections and concerns as to what might have happened to her to a work

colleague, a flat mate, the University Campus manager, and at approximately 5pm that evening she called 999 and reported the matter to the police.

70. CXN was medically examined by the police on the 27th July 2007 and forensic samples were taken. On the 31st July 2007 she made a detailed statement to the police. Worboys was arrested in July 2007 but released from police bail in October 2007.

71. At Croydon Crown Court, on 13 March 2009, Worboys was convicted of the offences of sexual assault and administering a substance with intent committed against CXN and, on 21 April 2009, sentenced to a term of imprisonment. He had denied the commission of any offence against CXN, thereby requiring her to give evidence against him at the Crown Court, which was humiliating and upsetting for CXN and compounded her suffering. Worboys was not charged with her rape.

72. On 21 April 2009 the court made a forfeiture order in respect of both the hackney carriage and the bundle of cash found on arrest which had been used to back up the story of the casino win. The proceeds from those assets were ordered to be divided equally between the victims of the offences of which Worboys was convicted. CXN has received £625.51.

73. In acting as set out above, Worboys was engaged in a pre-meditated, deliberate criminal enterprise falling outside the scope of the activities for which he held his licence and the services for which CXN had agreed to pay.