



Neutral Citation Number: [2012] EWHC 1606 (QB)

Case No: 1BM90101

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**BIRMINGHAM DISTRICT REGISTRY**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14/06/2012

**Before:**

**MR JUSTICE STADLEN**

**Between:**

**IAN STYCH**

**Claimant**

**- and -**

**(1) ANTHONY MALCOM DIBBLE**

**Defendants**

**(2) TRADEX INSURANCE COMPANY LIMITED**

-----  
-----

**Mr Bruce Silvester** (instructed by **Irwin Michell**) for the **Claimant**  
**Mr Stephen Worthington QC** (instructed by **Weightmans LLP**) for the **Defendants**

Hearing dates: 2nd and 3rd April 2012

-----

## **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.

.....

MR JUSTICE STADLEN

**Mr Justice Stadlen:**

1. This is a tragic case. It arises out of a car accident in the early hours of 29 June 2008 in which the Claimant Ian Stych (“Ian”) sustained a spinal cord injury leading to tetraplegia. Ian was a rear seat passenger in a Range Rover driven by a friend of his, the first Defendant Anthony Dibble (“Anthony”). A third friend, Peter Evans (“Peter”), was in the front seat. Ian was 19 years old. The other two were 18 years old. The car did not belong to any of them. It belonged to a customer at the garage at which Anthony did part-time work who had not authorised or given permission to Anthony to drive it at the time of the accident. As a result Anthony was not covered by a valid insurance policy.
2. Anthony was convicted of aggravated vehicle taking and sentenced to 14 months imprisonment. In this action Ian sues Anthony for damages for negligent driving. Anthony did not enter a defence and judgment in default was entered against him on 12 March 2012.
3. Ian also sues the second Defendant, Tradex Insurance Company Ltd (“Tradex”) for damages and a declaration that it is liable to meet the judgment obtained against Anthony pursuant to section 151(2)(b) of the Road Traffic Act 1988 (“the 1988 Act”).
4. At the time of the accident the Range Rover, which was owned by a Mr and Mrs David Burn, was covered by a valid road traffic policy insurance with Tradex, an authorised insurer, against third party risks as required to be covered under section 145 of the 1988 Act. The policy covered the time when the accident occurred.

5. Section 151 (1)(2)(4)and(5) of the 1998 Act provides as follows:

(1) This section applies where, after a certificate of insurance or certificate of security has been delivered under section 147 of this Act to the person by whom a policy has been effected or to whom a security has been given, 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 either—

(a) it is a liability covered by the terms of the policy or security to which the certificate relates, and the judgment is obtained against any person who is insured by the policy or whose liability is covered by the security, as the case may be, or

(b) it is a liability, other than an excluded liability, which would be so covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons, and the judgment is obtained against any person other than one who is insured by the policy or, as the case may be, whose liability is covered by the security.

(3) In deciding for the purposes of subsection (2) above whether a liability is or would be covered by the terms of a policy or security, so much of the policy or security as purports to restrict, as the case may be, the insurance of the persons insured by the policy or the operation of the security by reference to the holding by the driver of the vehicle of a licence authorising him to drive it shall be treated as of no effect.

(4) In subsection (2)(b) above “excluded liability” means a liability in respect of the death of, or bodily injury to, or damage to the property of any person who, at the time of the use which gave rise to the liability, was allowing himself to be carried in or upon the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken, not being a person who—

(a) did not know and had no reason to believe that the vehicle had been stolen or unlawfully taken until after the commencement of his journey, and

(b) could not reasonably have been expected to have alighted from the vehicle.

In this subsection the reference to a person being carried in or upon a vehicle includes a reference to a person entering or getting on to, or alighting from, the vehicle.

(5) Notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy or security, he must, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment—

(a) as regards liability in respect of death or bodily injury, any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum,

(b) as regards liability in respect of damage to property, any sum required to be paid under subsection (6) below, and

(c) any amount payable in respect of costs.

6. Because Anthony was not authorised by Mr and Mrs Burn to drive the Range Rover at the time of the accident he was not insured by the Tradex policy. Accordingly Tradex is not liable to pay Ian such sums as he will recover in this action against Anthony pursuant to Section 151 (2)(a) and (5)(a). The default judgment obtained against Anthony was not a judgment obtained against the person who was insured by the Tradex policy as required by Section 151(2)(a).
7. However provided that Anthony's liability to Ian is not an excluded liability for the purpose of section 151 (2)(b), it is a liability which would be covered by the Tradex policy if it insured all persons. Since Ian's judgment against Anthony was obtained against a person other than one who is insured by the policy it follows that by reason of subsection 2(b) subsection (1) would apply to Ian's judgment against Anthony and Tradex would be required pursuant to subsection 5 to pay Ian any sums payable under the default judgment obtained against Anthony.
8. The question whether Tradex is liable to pay Ian the sums recovered under his default judgment against Anthony thus turns on whether Ian's judgment against Anthony relates to an excluded liability as defined by section 151 (4).

**The legal test of "excluded liability"**

9. It is not suggested that Ian acquired knowledge that the Range Rover had been stolen or unlawfully taken after the commencement of the journey which led

to the accident. Thus the provisions of section 151(4)(a) and (b) do not fall for consideration.

10. The question whether Tradex is liable to Ian thus turns on the answer to the question whether at the time of the accident when Anthony was driving the Land Rover Ian, who was allowing himself to be driven in it, “knew or had reason to believe that the vehicle had been stolen or unlawfully taken” within the meaning of section 151(4). It was accepted by Mr Worthington QC on behalf of Tradex that the burden of proof on this issue rests with Tradex and that the standard of proof is the balance of probabilities. Although he did not spell out the basis of that acceptance, and it does not reflect any express language in section 151, it reflected his acknowledgement that section 151, along with other provisions of the 1988 Act, was brought in to effect to seek to give effect to the United Kingdom’s obligations under Council Directive 72/166/EEC and the Second Council Directive 84/85/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (“The Second Directive”), (as subsequently consolidated in Council Directive 2009/103/EC)..

11. Article 2 of The Second Directive provides as follows :

“Article 2

1. Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 (1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

- persons who do not have express or implied authorization thereto, or

- persons who do not hold a licence permitting them to drive the vehicle concerned, or

- persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3 (1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties who have been victims of an accident.

However the provision or clause referred to in the first indent may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, **when the insurer can prove that they knew the vehicle was stolen.**” (emphasis added)

12. Thus the obligation imposed on Member States including the United Kingdom by Article 2 (1) of The Second Directive was to take the necessary measures to ensure that any statutory provision or contractual clause contained in an insurance policy which excludes from insurance the use or driving of vehicles by persons who do not have express or implied authorisation thereto shall be deemed to be void except in the case of persons who voluntarily enter the vehicle which caused the damage or injury provided that the insurer can prove that they knew the vehicle was stolen. Thus the burden of proof under the Directive is on the insurer to prove that the victim knew that the vehicle was stolen.

13. In *Churchill Insurance Company Limited v Wilkinson* [2010] EWCA Civ 556 Waller LJ, in a judgment with which the other members of the Court of Appeal agreed, held:

“There is no dispute that the Road Traffic Act 1988 seeks to give effect to the United Kingdom’s obligations under Community Law. That being so, there is an obligation on the courts to construe United Kingdom legislation “as far as possible” so as to fulfil those obligations: see paragraph 8 of

the judgment of the European Court of Justice in *Marleasing* [1990] ECR I-4135. (Para 14).”

14. Applying that approach to section 151 (2)(b), (4) and (5), it is in my view clear that the burden of proving that section 151 (1) does not apply so that the obligation to pay under section 151(5) does not arise on the ground that the judgment obtained relates to an excluded liability because the Claimant at the time of the use which gave rise to the liability was allowing himself to be carried in or upon the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken rests on the insurer against whom it is alleged that section 151 applies.
  
15. Indeed this conclusion in my view follows from the reasoning of Lord Nicholls of Birkenhead in his speech in *White v White and the Motor Insurers Bureau* [2001] UKHL 9: [2001] 2 All ER 43 (1 March 2001). In *White v White* the House of Lords was concerned with the interpretation of a clause in the 1988 agreement between the Motor Insurers Bureau and the Minister of Transport. It had been submitted that because the clause in the agreement was intended to implement the provisions of The Second Directive the court was under an obligation to interpret it so far as possible in a way which gave effect to the Directive pursuant to the decision of the European Court in *Marleasing SA v La Commerical International de Alimentacion SA* (Case – 106/89) [1990] ECR I-4315. Lord Nicholls held that because that case did not involve legislation the *Marleasing* principles as such did not apply to the interpretation of the agreement. However he also held that:

“Had the MIB agreement been embodied in legislation, whether primary or secondary, the English court would have been under an obligation to interpret its provisions, as far as



possible, in a way which gives effect to the Directive: see *Marleasing SA v La Comercial Internacional de Alimentacion SA* (Case – 106/89) [1990] ECR-I 4315. As Lord Oliver of Aylmerton observed in *Litster v Forth Dry Dock and Engineering Co Limited* [1990] 1 AC 546, 559, a purposive construction will be applied to legislation even though, perhaps, it may involve some departure from the strict and literal application of the words which the legislature has elected to use. ... Article 5 of the EC Treaty (OJ 1992 C 224, P6) obliges member states to take all appropriate measures to ensure fulfilment of their obligations arising out of the Treaty. The rationale of *Marleasing* is that the duty of member states under article 5 is binding on all the authorities of member states, including the courts. The courts must apply national law accordingly, whenever the law was enacted or made. (Para 21, 22).”

16. Thus the English court is under an obligation to interpret section 151, as far as possible, in a way which gives effect to the Second Directive.
  
17. Article 2 (1) of The Second Directive provides that a statutory provision or contractual clause in an insurance policy excluding from insurance the use or driving of vehicles by persons who do not have express or implied authorisation thereto may only be invoked against persons who voluntarily enter the vehicle which caused the damage or injury when the insurer can prove that they knew the vehicle was stolen, thereby placing the burden of proving knowledge that the vehicle was stolen squarely on the insurer. It is in my view impossible to interpret section 151 in a way which gives effect to that provision of Article 2 (1) as in my view is required by *Marleasing* and Lord Nicholls’s obiter dictum in *White v White* other than by interpreting it so as to place the burden of proving that the person who allowed themselves to be carried in or on the vehicle knew or had reason to believe that the vehicle had been stolen or unlawfully taken is placed on the insurer.

**The state of mind required by Section 151(4) to be proved by the insurer**

18. In order to discharge the burden of proving that the liability to which the judgment relied on against it is an excluded liability the insurer must prove that the Claimant “knew or had reason to believe that the vehicle had been stolen or unlawfully taken...” (section 151 (4)). This is to be contrasted with the language of the state of mind which article 2 (1) of The Second Directive requires the insurer to prove, namely that the person who voluntarily entered the vehicle which caused the damage or injury “knew the vehicle was stolen”. On its face the language of section 151(4) is wider than the language of Article 2(1) in two respects: the exclusion in section 151(4) extends (a) to a victim who “had reason to believe” that the vehicle had been stolen or unlawfully taken as well as to one who “knew” that to be the case and (b) to a victim who knew (or had reason to believe) that the vehicle had been “unlawfully taken” as well as to one who knew (or had to reason to believe) that it had been “stolen”.

**“Knew or had reason to believe”**

19. Notwithstanding different contentions advanced in the Defence and Reply, by the time of the trial it was common ground between the parties that “knew or had reason to believe” in section 151(4) means “knew” either in the sense of actual knowledge or in the sense of blind eye knowledge, that is to say suspicion accompanied by a deliberate refraining from asking questions. This reflected a contention made by Mr Worthington QC on behalf of Tradex that Tradex had to show that Ian had information from which he actually drew the conclusion that Anthony did not have permission to drive the Range Rover or from which he actually drew the conclusion that Anthony might well not have

permission to drive it but deliberately refrained from asking questions lest his suspicions should be confirmed. He accepted that the words “had reason to believe” add nothing to the requirement of knowledge.

20. Mr Worthington QC’s concession reflected his acceptance that the combined effect of the dicta of the Court of Appeal in *Churchill Insurance* cited above and the obiter dicta of Lord Nicholls in *White v White* is that section 151(4) of the 1988 Act must be construed as far as possible to as to fulfil the United Kingdom’s obligations under Article 2 (1) of the Second Directive, which it was enacted to implement, and that the requirement of knowledge in the Second Directive is a requirement of actual knowledge or blind eye knowledge.
21. The House of Lords in *White v White* was concerned with the interpretation of Clause 6(1)(e)(ii) of the version of the agreement between the Minister of Transport and the Motor Insurance Bureau (“MIB”) which was in force in 1988 at the time of the car accident which gave rise to the claim for damages under consideration.
22. Clause 6(1)(e) was in the following terms:

(1) MIB shall not incur any liability under Clause 2 of this Agreement in a case where -

...

(e) at the time of the use which gave rise to the liability the person suffering death or bodily injury .. was allowing himself to be carried in or upon the vehicle and .. before the commencement of his journey in the vehicle .. he -

(i) knew or ought to have known that the vehicle had been stolen or unlawfully taken,

or

(ii) knew or ought to have known that the vehicle was being used without there being in force in relation to its use such a contract of insurance as would comply with Part VI of the Road Traffic Act 1972.'

The crucial phrase for the purposes of this case is 'knew or ought to have known'.

As summarised by Lord Nicholls, under the MIB agreement the basic obligation undertaken by MIB related to any judgment in respect of a liability which was the subject of a compulsory insurance obligation under the Road Traffic Act. If such judgment was obtained against any person in any court in this country and the judgment was not satisfied within 7 days MIB would satisfy the judgment regardless of whether the person against whom judgment was obtained was in fact covered by any contract of insurance. MIB's basic obligation was subject to some exceptions one of which was set out in clause 6(1)(e).

23. Lord Nicholls, with whose speech and reasons for allowing the appeal Lords Mackay, Hope and Cooke of Thorndon agreed, said that the purpose of the 1988 MIB agreement was to give effect to the terms of the Second Directive. The main purpose of that Directive was to improve guarantees of compensation for victims of motor accidents by insuring the minimum level of protection for them throughout the Community. One aspect of that was the need, as stated in the preamble, "to make provision for a body to guarantee that the victim will not remain without compensation where the vehicle which caused the accident is uninsured or unidentified." (para 11). Member States however were to have the opportunity of applying certain "limited exclusions". Article 1 of the Second Directive requires each Member State to have compulsory motor insurance covering third party liability for both personal injury and damage to property. It sets minimum standards of

protection up to which compensation must be available for the victims of accidents throughout the Community. Article 1(4) makes provision regarding unidentified and uninsured vehicles:

“Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of insurance obligation, for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.”

The permitted exception is then stated in these terms:

“However, Member States may exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.”

24. Lord Nicholls noted that, unlike the corresponding exception in the MIB agreement (“knew or ought to have known”) the exception permitted by the Second Directive used the word “knew” without any adornment. It was that difference in language which gave rise to the issues arising on the appeal. Lord Nicholls turned first to answer the question: “What is meant by “knew” in the context of the Directive? If the meaning of “knew” in Article 1 was doubtful and it was necessary to resolve the doubt in order to decide the appeal before the House, then a reference to the European Court of Justice would have had to be made. It was thus necessary to consider what “knew” meant in the Directive and whether there was any relevant ambiguity.” (Para 13).
25. Lord Nicholls stated that the context was an exception to a general rule and that the Court of Justice had stressed repeatedly that exceptions are to be construed strictly. Here, a strict narrow interpretation of what constituted knowledge for the purpose of Article 1 was reinforced by the subject matter,

which was compensation for damage to property or personal injuries caused by vehicles. The general rule was that victims of accidents should have the benefit of protection up to specified minimum amounts, whether or not the vehicle which caused the damage was insured. The exception, therefore, permitted the Member State, contrary to the general rule, to make no provision for compensation for a person who has suffered personal injury or damage to property.

26. Lord Nicholls held that proportionality requires that a high degree of personal fault must exist before it would be right for an injured passenger to be deprived of compensation. A narrow approach was further supported by the other prescribed limitation on the permissible ambit of any exclusion: the person claiming compensation must have entered the vehicle voluntarily. He held that the need for the passenger to have entered the vehicle voluntarily served to confirm that the exception is aimed at persons who were consciously colluding in the use of an insured vehicle. He further noted that the Directive emphasises the exceptional nature of the exclusion of compensation by placing the burden of proving knowledge on the party who seeks to evoke the exception, namely, the institution responsible for paying compensation. (para 14).
27. Lord Nicholls held that that was the context in which “knew” is used in the Second Directive. It is noteworthy that, although he was concerned to construe the word “knew” as it appears in Article 1 of the Second Directive, the terms in which he posed and answered the question of construction was not confined

to the use of “knew” in Article 1 but extended to its use more generally in the Directive.

28. Lord Nicholls held that:

“In this context knowledge by a passenger that a driver is uninsured means primarily possession of information by the passenger from which the passenger drew the conclusion that the driver was uninsured. Most obviously and simply, this occurs where the driver told the passenger that he had no insurance cover. Clearly, information from which the passenger drew the conclusion that the driver was uninsured may be obtained in many other ways. Another instance would be when the passenger was aware, from his family or other connections with the driver, that the driver had not passed his driving test (“if he had taken the test I would have known”). Knowledge of this character is often labelled actual knowledge, thereby distinguishing other types of case where a person, although lacking actual knowledge, is nevertheless treated by the law as having knowledge of the relevant information. There is one category of case which is so close to actual knowledge that the law generally treats a person as having knowledge. It is the type of case where, as applied to the present context, the passenger had information from which he drew the conclusion that the driver might well not be insured but deliberately refrained from asking questions lest his suspicions should be confirmed. He wanted to know (“I will not ask, because I would rather not know”). The law generally treated this state of mind as having the like consequence as would follow if the person, in my example the passenger, had acted honestly rather than disingenuously. He is treated as though he had received the information which he deliberately sought to avoid. In the context of the Directive that makes good sense. Such a passenger as much colludes in the use of an uninsured vehicle as a passenger who actually knows the vehicle is uninsured. The principle of equal treatment requires that these two persons shall be treated alike. The Directive is to be construed accordingly.” (paras 15 and 16).

29. Lord Nicholls considered it to be acte clair that those two categories of case fall within the scope of the exception permitted by the Second Directive. Conversely he stated that he was in no doubt that “knew” in the Directive does not include what he said can be described broadly as carelessness or

“negligence”. Typically he said that would cover the case where a passenger gave no thought to the question of insurance, even though an ordinary prudent passenger, in his position and with his knowledge, would have made enquiries. He “ought” to have made enquiries judged by the standard of the ordinary prudent passenger. Lord Nicholls held that a passenger who was careless in that way cannot be treated as though he knew of the absence of insurance.

“As Lord Denning MR said in *Compania Maritima San Basilio SA v Oceanias Mutual underwriting Association (Bermuda)* [1977] QB 49, 68, negligence in not knowing the truth is not equivalent to knowledge of it. A passenger who was careless in not knowing did not collude in the use of an uninsured vehicle, and he is not to be treated as though he did. To decide otherwise would be to give a wide, rather than a narrow, interpretation to the exception permitted by the Directive. This also seems to me to be *acte clair*.” (para 17).

30. Lord Nicholls noted that there was no occasion to refer a question of interpretation to the Court of Justice in the instant case. That was because the circumstances of the accident in that case came within that last category of case. The judge, having heard oral evidence, rejected the idea that on the night in question any one of those involved “so much as bothered his head about such a matter as insurance”. The victim ought not to have got into a car driven by his brother without making sure that he had carried out a previous good resolution and really made himself a legal driver. That was no more than a finding of carelessness, assessed by the standard of the ordinary prudent passenger having the knowledge possessed by this particular passenger. Thus the accident fell outside the circumstances in which the Directive permits a Member State to exclude payment of compensation. (Paragraphs 18 and 19).



31. Lord Nicholls held that even though the *Marleasing* principle, which would have obliged the English court to interpret the provisions of the MIB agreement as far a possible in way which gives effect to the Directive, if it had been embodied in legislation, must be put on one side, the application of conventional principles of interpretation of documents arrived at the same result. That was because the exception spelled out in clause 6(1)(e)(ii) of the MIB agreement was intended by the parties to carry through the provisions of the Directive. The phrase “knew or ought to have known” in the agreement was intended to be co-extensive with the exception permitted by Article 1 of the Directive. It was intended to bear the same meaning as “knew” in the Directive and should therefore be construed accordingly. It was to be interpreted restrictively:

““Ought to have known” is apt to include knowledge which an honest person who enters the vehicle voluntarily would have. It includes the case of a passenger who deliberately refrains from asking questions. It is not apt to include mere carelessness or negligence. A mere failure to act with reasonable prudence is not enough. Hence it does not embrace the present case.” (Para 23).

32. Lord Nicholls added that precisely where the boundary is drawn between the states of mind within the scope of clause 6(1)(e) and those outside it was not a matter which rose on that appeal. That question, should it ever arise, was one which was better pursued on an occasion when the facts made it necessary to obtain guidance from the Court of Justice on the precise scope of the exemption permitted by Article 1(4) of the Second Directive. A reference for that purpose was not of course open to the House on that appeal (para 24). Given Lord Nicholls’ apparently comprehensive interpretation of the meaning of the word “knew” in Article 1 of the Second Directive, and his conclusion

that it does not include what can be described broadly as carelessness or negligence, including a case where a passenger gave no thought to the question of insurance even though an ordinary prudent passenger in his position and with his knowledge would have made enquiries so that he ought to have made them judged by the standard of the ordinary prudent passenger, it is not clear to me what additional questions as to the precise scope of the exemption permitted by Article 1(4) of the Second Directive and the precise boundary between the states of mind within the scope of clause 6(1)(e) of the MIB agreement and those outside it, Lord Nicholls considered had not been resolved by the decision in *White v White*. If it was a reference to clause 6(1)(e)(i) of the MIB agreement and the reference therein to a vehicle having been “stolen or unlawfully taken”, it is not clear why interpretation of that provision would be better pursued on an occasion when the facts made it necessary to obtain guidance from the Court of Justice on the precise scope of the exemption permitted by Article 1(4) of the Second Directive which makes no reference to “stolen”.

33. Be that as it may, it is clear in my view that the House of Lords in *White v White* held that the word “knew” in Article 1 of the Second Directive means actual knowledge in the sense of possession of information by the passenger from which he drew the conclusion that the driver was uninsured or blind eye knowledge in the sense of possession of information by the passenger from which he drew the conclusion that the driver might well not be insured but deliberately refrained from asking questions lest his suspicions should be confirmed, a decision not to ask questions because the passenger would rather not know the answer. An alternative formulation of blind eye knowledge was

given by Lord Scott of Foscote, who dissented on the interpretation of “ought to have known” in clause 6(1)(e)(ii) of the MIB agreement but agreed with the majority that “knew” in Article 1(4) can, and should, be construed so as to cover not only actual knowledge but what he described as “imputed knowledge”.

“In my own judgement [in *Manifest Shipping Co Limited v Uni-Polaris Shipping Co* [2001] 2 WLR 170] in paragraph 116, at p209, I tried to express the essentials of “blind eye” knowledge:-

blind-eye knowledge requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist... the deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe”. (Para 53.)

34. In my judgment there is no reason to suppose that the word “knew” as it appears in the exception in Article 2(1) of the Second Directive was intended to have a different meaning to the word “knew” as it appears in the exception in Article 1(4) when the body can prove that the passenger knew that the vehicle was uninsured. To the contrary the reasons which led Lord Nicholls to interpret the word “knew” in Article 1(4) in the way he did in my judgment apply equally to the word as it appears in Article 2(4). Moreover, as I have already pointed out, that reasoning was couched by Lord Nicholls in terms which suggest that he considered it to apply to the word “knew” in Article 2(4) as well as in Article 1(4).
35. In my judgment it also follows both from Lord Nicholls’ obiter dicta in *White v White* and the dicta of the Court of Appeal in *Churchill Insurance* that the *Marleasing* principles require the English court to construe the exception in

section 151(4) so far as possible to fulfil its obligations in the exception in Article 2(4) of the Second Directive,.

36. That being so in my judgment the parties were right to agree that the state of mind required to be proved by Tradex was actual or blind eye knowledge, that is to say that Ian had information from which he either actually drew the conclusion that the prescribed fact was in fact the case or actually drew the conclusion that it might well be the case and, suspecting that it was, deliberately refrained from asking questions so as to avoid confirmation that it was.
37. Mr Worthington drew my attention to the judgment of Keith J in *Andrew McMinn v Iain McMinn and Aioi Insurance Co* [2006] EWHC 827 (QB), which he told me is the only reported case in which the interpretation of “knew or had reason to believe” in section 151(4) is addressed. That was a case in which the Claimant, a passenger in a van driven by his 17 year old younger brother, was seriously injured in a road traffic accident. The van belonged to the employers of a friend of the Claimant and was insured by the Defendant insurance company. The accident occurred when both brothers and the friend left a party in the van to buy some cigarettes after a late night party. The Claimant and his friend had drunk too much and it was agreed that the younger brother would drive as he had not had much to drink.
38. The younger brother was not covered by the insurance policy because cover only applied to the van when it was being driven by someone who (a) had attained the age of 25, (b) held a driving licence, and (c) had been permitted by the friend’s employer to drive it. The younger brother satisfied none of

those conditions, being 17, not holding a driving licence and not having been permitted by the friend's employers to drive the van.

39. Keith J identified the critical question as being whether the younger brother's liability to the Claimant was an excluded liability within the definition in section 151 of the 1988 Act. He restated the critical question as being whether the Claimant "knew or had reason to believe that the [van] had been stolen or unlawfully taken."
40. Keith J cited the passage in Lord Nicholls's speech in *White v White* at paragraph 14 in which he considered the context in which the word "knew" appears in Article 1 of the Directive. He held that "that led Lord Nicholls to conclude that the word "knew" in the Directive meant actual knowledge, or knowledge which is treated by the law as the equivalent of actual knowledge, such as knowledge which a person deliberately refrains from acquiring in case his suspicions are confirmed." (para 14). I note that Keith J, as do I, regarded Lord Nicholls' interpretation of the word "knew" as applying to the word as it appears in the Second Directive generally, rather than only as it appears in Article 1.
41. Keith J stated that when it came to construing the words "knew or ought to have known" in the MIB agreement, Lord Nicholls proceeded from the premise that the phrase was "intended to be co-extensive with the exception permitted" by the Directive. He then quoted Lord Nicholls' conclusion that:

" 'Ought to have known' is apt to include knowledge which an honest person who enters the vehicle voluntarily would have. It includes the case of a passenger who deliberately refrains from asking questions. It is not apt to include mere carelessness or

negligence. The mere failure to act with reasonable prudence is not enough.” (paragraph 15).

42. Keith J then reached the following conclusion as to the meaning of the words

“knew or had reason to believe” in section 151(4):

“16. In my judgment, the word "knew" in section 151(4) does not mean something other than actual knowledge or such knowledge as the law regards as equivalent to it. But there is an alternative to proof that the injured passenger *knew* that the vehicle had been stolen or unlawfully taken. Insurers will avoid liability if they prove that the injured passenger had *reason to believe* that the vehicle had been stolen or unlawfully taken. Whereas the words "knew or ought to have known" in the MIB agreement were intended to be co-extensive with the word "knew" in the Directive, **section 151 does not fall to be construed in the light of the Directive**, so that the words "knew or had reason to believe" in section 151(4) need not be co-extensive with the word "knew" in the Directive. To be fair, Mr Braslavsky did not contend for that.

17. So if the words "had reason to believe" in section 151(4) have to be construed independently of the word "knew", what do they mean? Mr Braslavsky accepted – in my opinion, rightly – that insurers do not have to prove that the injured passenger actually believed that the vehicle had been stolen or unlawfully taken. What has to be proved is that the injured passenger had the information – or what Mr Adrian Palmer QC for the insurers called "the building blocks" – which would have afforded him good reasons for believing that the vehicle had been stolen or unlawfully taken had he applied his mind to the topic. Shutting one's eyes to the obvious is therefore enough, provided that it would indeed have been obvious to the injured passenger if he had thought about it.” (emphasis added)

43. It is thus apparent that in concluding that the words “had reason to believe” mean possession of information which would have afforded the uninsured passenger good reasons for believing that the vehicle had been stolen or unlawfully taken had he applied his mind to the topic and that shutting ones eyes to the obvious is enough provided that it would have been obvious to the injured passenger if he had thought about it, Keith J was proceeding (a) on the basis of a concession by counsel for the Claimant (Mr Braslavsky) and (b) on

the premise that section 151 of the 1988 Act does not fall to be construed in the light of the Second Directive so that the words “knew or had reason to believe” in section 151(4) need not be co-extensive with the word “knew” in the Directive.

44. Keith J did not explain the basis of his conclusion that section 151 of the 1988 Act does not fall to be construed in the light of the Second Directive, although it may be that it was based on the fact that the Claimant’s counsel had not contended that it did.
45. The House of Lords in *White v White* was not concerned with the interpretation of section 151 of the 1988 Act but only with the interpretation of the MIB agreement so that the question whether section 151 of the 1988 Act falls to be construed in the light of the Second Directive did not arise. However, in *Churchill Insurance*, in which the Court of Appeal was concerned with the interpretation of section 151 (8) of the 1988 Act, the Court held, as set out above, both that the 1988 Act seeks to give effect to the United Kingdom’s obligations under Community law and that, that being so, there is an obligation on the courts to construe United Kingdom legislation “as far as possible” so as to fulfil those obligations pursuant to the principles established by the European Court of Justice in *Marleasing*. (See paragraph 14). Mr Worthington conceded on behalf of Tradex that, in the light of *Churchill Insurance* and Lord Nicholls’ obiter dicta in paragraph 21 of *White v White*, Keith J’s conclusion that section 151(4) does not fall to be construed in the light of the Second Directive was wrong. In my judgment that concession was rightly made.

46. For the same reason Keith J's conclusion that the state of mind described by "knew or had reason to believe" could be proved in the absence of proof that the uninsured passenger applied his mind to the topic of whether the vehicle had been stolen or unlawfully taken was accepted by Mr Worthington to be wrong. Again in my judgment that concession was rightly made. There can be no blind eye knowledge of a fact where the relevant mind has not been applied to the question whether the fact exists or is true or not. A failure to ask questions is not sufficient to establish blind eye knowledge. What is required in addition is a suspicion that the relevant fact exists or the drawing of an actual conclusion that it might well exist coupled with a desire not to know and a deliberate refraining from asking questions lest the suspicions should be confirmed. (See Lord Scott in *White v White* at paragraph 53 and Lord Nicholls at paragraph 16).

***"Stolen or Unlawfully Taken"***

47. Tradex's case pleaded in its Defence is that Anthony's liability to Ian is an excluded liability as defined in section 151(4) because it is a liability in respect of injury to a person who was allowing himself to be carried in a vehicle when he knew or ought to have known that the vehicle had been stolen **or unlawfully taken** (emphasis added). That contention is based on the assertion that Anthony did not have permission to take the Range Rover and that Ian knew or ought to have known that, either because Anthony told him and Peter, or because it was obvious from the circumstances. The accident was alleged to have occurred during a joy ride in the Range Rover. It is thus no part of Tradex's case that the Range Rover was stolen either by Anthony or



Ian as defined by section 1 of the Theft Act 1968 or that Ian knew or ought to have known that.

48. It is alleged in the Defence that Peter was convicted of aggravated vehicle taking and that if Ian had not been so badly injured it is probable that he would also have been charged and convicted of the same offence.
49. Tradex's case is thus dependent on the proposition that the words "or unlawfully taken" in section 151(4) create a wider basis for establishing an excluded liability than the word "stolen" and are apt to include a vehicle that is taken without permission.
50. In Ian's Reply it was contended that the 1988 Act seeks to give effect to the United Kingdom's obligations under Community Law, in this case under the 1972 Directive, (as subsequently consolidated in the 2009 Directive) and that as such the provisions of the 1988 Act have to be construed as far as possible so as to fulfil the Community Law obligations.
51. It was contended that the effect and construction of the Directives and in particular Article 2(1) is that the limited derogation in Article 2(1) applies only where the insurer can prove that the person who voluntarily entered the vehicle which caused the injury knew that it was stolen. That is on the basis that there is a general rule that civil liability is covered by insurance to which a derogation, in the case of a passenger who knew that the vehicle was stolen, applies. The provision which establishes that derogation must be interpreted strictly and a high degree of personal fault must exist before it would be right for an injured person to be deprived of compensation.

52. Accordingly it was contended that section 151(4) should be interpreted to mean that, for a liability to be an excluded liability, the insurer has to prove that the passenger was allowing himself to be carried in the vehicle and knew that the vehicle was stolen. It is insufficient for the insurer to establish that the passenger knew that the car was unlawfully taken in so far as that expression is not treated as synonymous with the car being stolen. Unless there was an intention on the part of the driver permanently to deprive the lawful owner of the vehicle, the liability cannot be an excluded liability.
53. In his skeleton argument Mr Worthington QC challenged that contention. He submitted that there is no reason to think that the Second Directive was drafted by reference to the English definition of “theft” or “stolen” or that the draftsman even had that definition in mind. He contended that (1) the word “stolen” may be defined in different ways by the laws of the Member States; (2) what the Second Directive was permitting was an exclusion where the injured person knew that the vehicle had been taken without permission; (3) in interpreting the word “stolen” in the Second Directive so as to include “unlawfully taking” as part of the extended concept of taking without permission under the English law of theft, Parliament must be taken to have intended to do what it did; and (4) there is nothing in the Second Directive to prevent that since the word “stolen” is not defined in the Second Directive by reference to the Theft Act 1968.
54. The Reply was settled by Mr Robert Weir QC. However Mr Weir did not appear at the trial and Ian was represented at trial by Mr Silvester. I was told at the outset of the trial that it was agreed between the parties that in order to

establish that Anthony's liability to Ian is an excluded liability within the meaning of section 151(4) it is sufficient for Tradex to prove that Ian knew (in the *White v White* sense) that the Range Rover had been unlawfully taken in that it had been taken without permission.

55. When I raised this change of position with Mr Silvester he expressly conceded that Tradex does not need to prove that Ian knew that the Range Rover was stolen in the sense that there had been an intention permanently to deprive the owner of it.

56. In his skeleton argument Mr Worthington placed reliance on two decisions of the European Court of Justice. In *Ruiz Bernaldez*: ECJ Case C-129/94 the court said at paragraph 21:

“...however, by way of derogation from that obligation, the second and third subparagraphs of Article 2(1) provide that **certain persons may be excluded from compensation by the insurer, having regard to the situation which they have themselves brought about** (persons entering a vehicle which they know to have been stolen)...” (emphasis added).

57. In *Candolin*: ECJ Case C537/03 that passage was expressly repeated by the European Court. Mr Worthington submitted that it is plain from the passage cited that the derogation in Article 2(1) is aimed at situations which the injured person has himself brought about. In the context of the word “stolen” that was said to apply just as much to a taking without consent as it does to a theft with an intention permanently to deprive. There was no “magic” in the intention permanently to deprive.

58. In *McMinn v McMinn* counsel for the insurers contended that the words “stolen or unlawfully taken” in section 151(4) can only refer to the

corresponding criminal offences in the Theft Act 1968. Counsel for the claimant did not disagree and Keith J said that he was sure that counsel for the insurers was right.

59. Keith J said that the insurers did not contend that the van had been stolen by anyone. There had been no intention on anyone's part to deprive the owners of the van of it permanently. So the question was whether it had been unlawfully taken. He said that the relevant section of the 1968 Theft Act is section 12 which is headed "Taking motor vehicle or other conveyance without authority" and which provides, so far as material:

"(1) Subject to sub-section .... (6) below a person shall be guilty of an offence if, without having the consent of the owner or other lawful authority, he takes any conveyance for his own or another's use or, knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried in or on it.

(6) A person does not commit an offence under this section by anything done in the belief that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it."

Applying that test Keith J held that both the claimant's brother and the brother's friend should be regarded as having unlawfully taken the van within the meaning of section 151(4). The friend knew or believed that his employers would not have allowed the claimant's brother to drive the van. The brother "took" the van by taking the keys from the friend and driving it. He did not have the friend's employer's consent or other lawful authority to drive it and did not assert that he believed he had lawful authority to drive the van or that he would have the owner's consent if the owner had known of his doing it and the circumstances of it.

60. Keith J found that if the claimant had applied his mind to the topic on the evening in question he would have had every reason to believe that his brother was not permitted to drive the van. He knew that the van belonged to his brother's friend's employers, and although he would have had no reason to know that it could only be driven by someone who had reached the age of 25, he would have realised, had he thought about it for a moment, that it could have been driven only by someone who had been permitted by the friend's employers to drive it. He had no reason to suppose that the employers knew his brother, but even if they did, he would hardly have thought that they would have let a young man who had a provisional licence only and who hadn't driven on a public road to drive the van without L plates when both of the holders of full driving licences in the van with him were themselves too drunk to drive, and too drunk to supervise the claimant's brother's driving. So even if the claimant could not be said to have known that his brother was not permitted to drive the van, he had every reason to believe that he was not permitted to drive it and he therefore had every reason to believe that the van had been unlawfully taken. (Paragraphs 18, 19, 21, 27, 29 and 30).
61. As already mentioned in the context of "knew or had reason to believe" Keith J held that section 151 of the 1988 Act does not fall to be construed in the light of the Second Directive. It was for that reason that he held that the words "knew or had reason to believe" in section 151(4) need not be co-extensive with the word "knew" and that the words "had reason to believe" in section 151(4) had to be construed independently of the word "knew".

62. It would thus appear that, although he did not say so in terms, Keith J approached the interpretation of the words “or unlawfully taken” on the same basis, namely that they did not fall to be construed in the light of the Second Directive and thus did not need to be co-extensive with the word “stolen” and thus had to be construed independently of it. However, as in the context of “knew or had reason to believe” Keith J proceeded on the basis of a concession by counsel for the claimant and did not set out his reasons for concluding that section 151 does not fall to be construed in the light of the Second Directive.
63. If it were right that section 151 of the 1988 Act does not fall to be construed in the light of the Second Directive and that there is no obligation on the English court to construe it as far as possible so as to fulfil the United Kingdom’s obligations under Community Law, applying the principles of *Marleasing v Churchill Insurance*, I would with respect agree without hesitation with Keith J’s interpretation of the words “or unlawfully taken”. Looked at in isolation from the Second Directive, it would in my judgment be plain that the word “stolen” was intended to reflect section 1 of the Theft Act and the words “or unlawfully taken” were intended to reflect section 12.
64. However it was conceded by Mr Worthington on behalf of Tradex that section 151 **does** fall to be construed in the light of the Second Directive and that it must be interpreted applying the *Marleasing and Churchill Insurance* principles. The first question that arises therefore is whether, as contended by Mr Worthington in his skeleton argument, what the Second Directive was permitting was an exclusion where the injured person knew that the vehicle

had been taken without permission. Because the point was conceded by Mr Silvester on behalf of Ian and the parties had agreed before the commencement of the trial that the interpretation of “or unlawfully taken” contended for by Mr Worthington was correct, neither counsel came prepared to address this question.

65. For my part I would not regard the passage from the decision of the ECJ in *Ruiz Bernaldez* and repeated in *Candolin* as conclusive. It does not seem to me plain from that passage that, as contended by Mr Worthington, the derogation is aimed at any situation which the injured person has himself brought about. The words “... having regard to the situation which they have themselves brought about (persons entering a vehicle which they know to have been stolen)” may be doing no more than drawing attention to the fact that the derogation in article 2(1) is confined to persons who “voluntarily entered the vehicle” knowing it to have been stolen. In his contention in his skeleton argument that Parliament must be taken to have interpreted the word “stolen” in the Second Directive so as to include “unlawfully taking” as part of the extended concept of taking without permission under the English law of theft, Mr Worthington appears by implication to have accepted that just as the words “knew or had reason to believe” in section 151(4) were intended to implement the word “knew” in article 2(1) so the words “stolen or unlawfully taken” were intended to implement the word “stolen” in article 2(1).
66. Neither in my judgment is the fact that the word “stolen” is not defined in the Second Directive by reference to the Theft Act 1968 conclusive in showing

that what the Second Directive was permitting was an exclusion where the injured person knew that the vehicle had been taken without permission.

67. If the matter had been in dispute between the parties and if it had been necessary to decide it for the purpose of deciding the preliminary issue of whether Anthony's liability to Ian is an excluded liability under section 151(4), I would not, at any rate without fully developed arguments and citation of authority, have considered it to be *acte clair* that the word "stolen" in the Second Directive is to be interpreted so as to include unlawful taking or taking without permission. As Lord Nicholls said in *White v White* in the context of the interpretation of "knew" in the Second Directive, the Court of Justice has stressed repeatedly that exceptions are to be construed strictly and here a stricter narrow interpretation is reinforced by the subject matter which is compensation for damage to property or personal injuries caused by vehicles. The general rule is that victims of accidents should have the benefit of protection of specified minimum amounts whether or not the vehicle which caused the damage was insured. Proportionality requires that a high degree of personal fault must exist before it would be right for an injured passenger to be deprived of compensation. (Paragraph 14). It is to be inferred from the higher maximum sentence applicable to theft (now 7 years) than for taking a vehicle without authority (6 months) or even for aggravated vehicle taking (2 years, unless the accident caused the death of the person concerned) that at any rate the United Kingdom Parliament considered that theft involves a considerably higher degree of personal fault than unlawful taking. Against that Lord Nicholls stated that the need for the passenger to have entered the vehicle voluntarily serves to confirm that the exception in article (1) is aimed at



persons who were consciously colluding in the use of an uninsured vehicle. If knowledge that the vehicle is uninsured involves a sufficiently high degree of personal fault to justify a derogation in the context of article 1, why should not knowledge that a car has been unlawfully taken involve a sufficiently high degree of personal fault to justify a derogation in the context of article 2?

68. For the reasons set out below I have reached the conclusion that Anthony's liability to Ian is not an excluded liability within section 151(4) even on the wide interpretation of "stolen or unlawfully taken" contended for by Mr Worthington, conceded by Mr Silvester and agreed between the parties. In those circumstances, quite apart from the fact that no question of a reference to the ECJ was raised, let alone suggested, it would not, on the facts as I find them to be, be necessary for the purpose of deciding the preliminary issue.

69. Accordingly I proceed on the basis, agreed between the parties, that the question which I have to decide on this preliminary issue is whether Ian knew that Anthony had taken the Range Rover unlawfully in that he took it without permission or whether he suspected that to be the case having information from which he drew the conclusion that the Range Rover might well have been taken by Anthony without permission and deliberately refrained from asking questions lest his suspicions should be confirmed.

### **The Agreed Background Facts**

70. The 28<sup>th</sup> of June 2008 was a Saturday. Ian spent the evening with friends at a park in Leighs Wood, kicking a football around and chatting. They were joined by Anthony. Ian and Anthony first met when they were quite young, Anthony's grandmother having lived next door to Ian's family home in

Walsall Wood. They met again at secondary school where Anthony was in the year below Ian.

71. The Leighs Wood park was close to Ian's house. Ian had his bicycle with him. At some point it started to rain and Anthony suggested that they should walk to Aldridge Tyres, the garage where he worked and for which he had a set of keys.
72. A number of the group went to Aldridge Tyres where they were let in to the premises by Anthony. One of those present at Aldridge Tyres was Peter. The group spent some time at Aldridge Tyres in the reception area, some of them drinking cans of beer or cider. There came a time when Anthony drove Ian and Peter in a Peugeot 307 which was in the garage to a nearby petrol station. Two other members of the group set off in a red Ford Fiesta at the same time. After putting some petrol in the Peugeot Anthony drove it back to Aldridge Tyres. There was a problem with the Peugeot's engine and Anthony drove slowly. Ian and Peter knew that Anthony had a full driving licence.
73. Sometime later Anthony drove Ian and Peter from Aldridge Tyres in a Range Rover which had been in the garage. He turned left into Northgate, right into Walton Road and then second right into Jessie Road, the road in which Ian lived. In Jessie Road Anthony put his foot down on the accelerator in order to show off to the others. While driving at great speed he lost control and the car crashed.
74. Anthony was prosecuted for aggravated vehicle-taking and sentenced to 14 months in prison.

## **Ian's Evidence**

75. Ian made two witness statements. The first dated 25 January 2012 set out his account of his relationship with Anthony and the events of 28 and 29 June 2008. The second, dated 22 February 2012 served two functions. First, it responded to an assertion in Anthony's first witness statement dated 17 May 2010 that at around 1am to 1.30am Ian and Peter both egged him on to take out the Range Rover, which he agreed to. In his witness statement Ian said that that was just not true and that they said nothing of the kind.
76. Second it exhibited two documents. The first was a copy of a document prepared by him which he thought he prepared on 13 September 2009 because that was the date of the document on his home computer. He said it was a true account and the most detailed account of what he remembered about the day of the accident. He said he put it together himself without being asked to. He just wanted to try and get his thoughts down about what he remembered. He said that he did it at that time because it was only then that he was able to start using a computer. The way he used it then and still does use it was to use his head to operate an infra-red mouse on the screen. That was done by placing a sensor on the end of his nose. He could then point at an on-screen keyboard to choose the letters he needed to make the words. He said the document was very personal to him and he did not want other people to see it which is why it was labelled "Private-Do Not Touch". He said that he had not amended the document since first putting it together.
77. The second document attached as an exhibit to Ian's second witness statement he described as a short summary which he put together to give to his

grandmother and grandfather. He thought it was prepared on 9 December 2010 as that was the date showing on his home computer but it might have been earlier as some of his data had been changed to a different hard drive. He said that he still saw his grandparents every week. They were still upset about what had happened to him and he thought that if he wrote something down for them it would help them to understand what he had been through. He also thought it might be useful to give to other people in the future to save him explaining every time what had happened. He said the document was only a short summary and a few things in it were wrong. He said that Anthony was speeding but not going as fast as 70 miles per hour as stated in the document. He also said the time he gave in the document was wrong. In the witness statement Ian also said that he had no previous convictions or cautions.

78. Asked in cross-examination why he had not disclosed these two documents in his first witness statement, Ian said that he kept them so that he could look back because he knew that as time goes on you forget things. He wrote the first document for personal reasons and did not think his solicitors would need it. He e-mailed it to his solicitors at the end of 2009 three months after he wrote it. He did not send the second document which was personal and meant for his grandparents. He told his solicitors about it and they then said that it could be relevant. Mr Silvester volunteered that when he was shown the first document he asked for a conference to find out how it had materialised and then advised that it was not privileged and had to be disclosed. He also advised that the second document had to be disclosed, which was done in February 2012.

Ian adopted his two witness statements as his evidence-in-chief and confirmed the truth of their contents as well as of the contents of the two documents.

*Ian's Relationship with Anthony*

79. In his first witness statement Ian said that he bumped into Anthony from time to time when he visited his grandmother. He met him again at secondary school but because he was in the year below he did not socialise with him at school and did not know him well but only to say "hello" to.
80. In the three months before the accident he got to know Anthony a bit better because he started hanging around with Ian's group of friends more frequently. Ian used to meet his group of friends, which was made up of people from school and people who lived in his local area in Walsall, in the evenings. They would play football or sit and chat in the local park. One of his friends Jason, was also friends with Anthony and in the three months before the accident Anthony started coming out with his group a bit more. However he did not personally spend much time with Anthony who did not like football and would sit in the park while the rest of his group played. He did not get the opportunity to speak to him very much and really did not know him that well. He always thought Anthony was a bit weird but put up with him because he was a friend of Jason's.
81. One thing Ian said that he knew about Anthony was that he was interested in cars. He knew that he worked and lived at a garage and that he fixed cars. He sometimes spoke about cars and engines when he came out with Ian and his friends. He told him that he lived at Aldridge Tyres garage.

82. Ian said that he knew that Anthony had passed his driving test a few months before the accident. Although he never saw his licence he remembered hearing that he had passed the test. It was common knowledge in his group of friends. Ian knew that Anthony drove a Fiat Punto because he had been driven in it by Anthony on about five different occasions in the couple of months leading up to the accident. The only thing that concerned him about Anthony's driving was that he turned corners a bit faster than he felt comfortable with, but other than that his driving seemed OK.
83. Not long before the accident Ian remembered being told that Anthony had given Jason a driving lesson in a car park during which Jason had caused some damage to the Fiat Punto. That was common knowledge in their group of friends.
84. As well as Anthony telling Ian and his friends that he lived at Aldridge Tyres, Ian had also seen Anthony working at the garage a couple of times before the night of the accident. He remembered one occasion when he went to the garage with his friends Laura and Jason and saw Anthony there. Laura helped Anthony wash cars including her own whilst he changed the wheels. He remembered that on that occasion Anthony knew his way around the garage. He knew where to find and how to work the power jet wash and the other members of staff who were there acted as though it was completely normal for Anthony to be cleaning these cars and using the equipment. Anthony also had to move some of the other cars at the garage around to make room for Laura's car. He had the keys to the other cars and was very casual about moving them. It seemed second nature to him. Ian said he would go as far as saying that

Anthony acted as if he owned the place. As far as he was aware Anthony was allowed to drive the cars both inside and out of the garage and Ian's friends had seen him driving around in cars from the garage.

85. On the day of the accident Anthony drove to Ian's house to show him his new car, a Peugeot 307. Ian was not surprised to see Anthony in a new car given that his Punto was broken. This was the first time that Anthony had specifically called round to Ian's house to spend time with him. Ian remembered that his father thought that it was odd too and he asked him what Anthony was doing there. Anthony told Ian that he had bought the Peugeot from his father's friend earlier that day. He asked Ian what he thought of it. Ian told him he thought it looked quite flash. Anthony wanted to know if Ian was coming out. Ian asked him to give him five minutes to get his coat and trainers on. He met Anthony in his car and complimented him on it because it was a lot nicer than his Punto. Anthony then drove them to Aldridge Tyres, which was just down the road from his house. He parked outside and nipped into the garage while he waited in the car. Anthony returned approximately two minutes later. He had keys to get into the garage and Ian assumed that Anthony had just called in to pick something up given that he was living and working there. They did not stay out for very long and Anthony dropped Ian back off at his house about half an hour later.

86. Ian said that he was aware that Anthony later told the police that Ian and all of his friends knew that Anthony was not insured to drive the Peugeot and that he had told them that it was stolen. Ian said that that was not correct. Anthony

never told them anything of the sort and, if he had done, Ian would not have been willing to get in the car with him.

*The Night of the Accident*

87. In his first witness statement Ian said that a group of his friends had agreed to meet in Leighs Wood park for a game of football later that evening. The park was just around the corner from his house and he went there on his bicycle. Before the accident he went everywhere by bike because he had suffered from birth with a congenital condition known as diplegia which caused his feet to turn inwards. He found it difficult to walk long distances and was aware that people would notice that he had a disability. When they played football he was always in goal. He found it much easier to travel by bike than to walk anywhere.
88. He met Jason, Rob Davis and James Wilson in the park at about 7.30pm. There was normally a bigger group of people that met in the park and he expected more people to arrive later in the evening. He called his friend Stacey to ask if she was coming and she arrived shortly after with two friends. They sat talking for a while, while some of them kicked a football around.
89. Later in the evening Anthony turned up and joined the group. After a short while people started saying that they were bored and Anthony suggested that they go back to his place. Ian remembered that some people thought that Anthony meant his home in Walsall Wood and complained about walking there but Anthony said that he meant Aldridge Tyres which was much closer to the park.



90. Jason agreed to come back to Anthony's but said that he wanted to buy some cans of beer first and he went to the shops. Ian did not have any money and did not have any beer of his own. Anthony and Ian walked to the garage which was only about five minutes away from the park. Ian took his push bike with him.
91. When they arrived at the garage Anthony used his keys to get in and he showed Ian to the reception area. Ian sat in the reception area next to the fish pond. It was the first time that he had been in that part of the garage. He had only ever been around the back of the garage where the cars were washed and repaired. After five minutes Jason arrived on Ian's bike and came and sat with Ian in the reception area. (On its face that is inconsistent with the statement that Ian took his push bike with him). Anthony put Ian's bike out of the way in the back with the cars.
92. James Wilson then arrived and joined Ian and Jason. Anthony stayed in the garage and seemed to be working on some of the cars. Ian thought at the time that he might be trying to impress his boss by working on some of the cars outside of normal hours. A little while later Jason received a telephone call from Peter who asked what they were up to and then said that he would join them with their other friend Jordan.
93. Peter and Jordan joined Jason, James and Ian by the fish tank. A few of them had brought cans of beer and Ian asked Peter and James for a can but they refused. Ian did not have any money to buy any beer himself. Anthony had a four-pack of Strongbow cider with him and gave Ian one of his cans. Ian did not particularly like cider so drank it slowly. Anthony opened one can of

Strongbow, had a sip, put it down on the floor and went back to working in the garage. Jordan, Jason, Peter, James and Ian remained in the reception area.

94. Later Peter asked Anthony whether his bedroom was upstairs and Anthony told them that it was and showed Peter and Ian around his bedroom and the bathroom. Ian remembered being impressed that Anthony had a job at the garage, was allowed to drive the garage cars back and forth as well as having the keys and being allowed to live there as if the place was his own. Ian and the rest of his group were still living with their parents.
95. After Anthony had shown them his room Ian asked him for another can of his Strongbow and Anthony gave him one. Anthony still had his first can but did not appear to be drinking it. Ian remembered that his friend Dean arrived at around 10.30pm after he had finished work. Ian's ex-girlfriend Tessa had also arrived at the garage and they all sat around talking.
96. After a while Tessa decided that she wanted to go home and Jason agreed to walk her back. At that point Anthony said that he needed to get some petrol. It was agreed that Dean would give Tessa a lift home and Jason went in the car with them. "The rest of us" got in Anthony's Peugeot 307 and followed Dean's car to Tessa's house in Walsall Wood and then went on to a petrol station. While they were driving to the petrol station the Peugeot started making a strange noise. Anthony explained that he thought it was because he did not have enough petrol and drove slowly to the petrol station.
97. They arrived at the petrol station where Anthony filled the car up, paid for it and then drove them back to the garage. On the way back the engine continued making a strange noise and Anthony slowed right down to about

20mph. He said that he would need to look at the car when he got back to the garage to try and fix it. During the journey Anthony told “us” that the car was not completely his yet, as he had not paid all of the money for it yet but he did not think anything of that given that he was buying it from a friend of his father’s.

98. When they arrived back at the garage Anthony opened the garage gates with his keys and drove the Peugeot into the back. He then opened up the bonnet and began to work on the car. “The rest of us” went back to the reception part of the garage.

99. After a while Ian said that he started to get tired and so told the group that he was going home. He did not remember what time that was but expected it would have been about 1am. Peter agreed with him and Ian went to get his push bike out of the garage so that he could go home. As Peter and Ian were about to leave Anthony came out of the garage and told them not to go as he would drop them home in a minute. Ian was outside in the customer parking area of the garage chatting to Dean and Jason through the window of Dean’s car. Anthony then came round to the front of the garage in a Range Rover. He had to open the garage gates to drive the Range Rover onto the road in front of the garage and he locked the gates when the car had passed through them. Anthony had keys to open and close the gates to the garage and he had the keys to the Range Rover.

100. Ian said that he had seen the Range Rover when he had been at the garage before. It seemed to have been there for several months. He had not seen it on this day until Anthony turned up in it. Ian said that he supposed he thought

that it belonged to the garage owner. It never occurred to him that Anthony should not be driving the Range Rover because he had the keys and Ian knew that he was allowed to drive the cars from the garage. Anthony seemed very relaxed about driving the Range Rover and giving Ian and Peter a lift in it. It all seemed very natural and no big deal.

101. As Ian's house was only round the corner he did not see any point in getting a lift and so said that he was happy to make his own way home. If he got a lift he would have to leave his bike in the garage and come back and pick it up. Ian did not like being without his bike. However Anthony insisted that he would give him a lift and that he would bring his bike back to him in the morning. Peter had already said to Anthony that he would agree to a lift and Ian said that he could not be bothered to argue any more as he just wanted to get home. If Peter had not already agreed to a lift Ian said he suspected he would not have done so either and they would have made their way home together on foot and with Ian's bike. However before he knew it Peter had put Ian's bike into the garage and they were bickering about who would sit in the front seat. Ian thought it made sense for him to sit in the front because he would be getting out first but Peter said that he wanted to. As he just wanted to get home and it was such a short journey Ian jumped into the back and let Peter sit where he wanted to.

102. It was only a short journey by car to Ian's house, no more than 2 minutes. At first Ian said that Anthony was driving normally and as they turned down Jessie Road and approached his house Ian took his seat belt off so that he could get out. However, instead of pulling up Anthony suddenly accelerated

and turned the wheel of the car from side to side so that it was moving from one side of the road to the other. Peter and Ian shouted at him to stop but Anthony did not listen.

103. Ian remembered that Anthony lost control of the car and it smashed into the back of a parked van and flipped up into the air. He could remember everything until about 2 seconds before the car landed on the floor. He also remembered waking up and that the car was on its roof. He could not breathe properly and could not move or feel his body. He tried to shout “Get me out of here” but could hardly make any noise and must then have lost consciousness.

104. Ian’s next memory was waking up in hospital in the worst pain he could ever imagine. He could not move and was shouting at the doctors and nurses for them to kill him because of the pain that he was in. He could not see anything apart from the ceiling. However he heard his family arrive and started telling them to kill him. He was so angry and upset at what Anthony had done to him. He was kept at Manor Hospital in Walsall for about four days although it felt like a lifetime because of the constant pain he was in. He was then taken by helicopter to Oswestry. Anthony had never apologised to Ian for what he did.

105. Ian said that he had seen what Anthony told the police in interview after his arrest. (In the record of Anthony’s interview with the police on 4 July 2008 the following exchange was recorded: “Q. Did you say anything to them about why you were taking this Peugeot? A. I told them I weren’t insured and it was stolen but they got in anyway. In his witness statement Ian said that he

had absolutely no reason to doubt that Anthony was allowed to drive the Range Rover. He said that he knew that Anthony worked and regularly stayed overnight at the garage. He had the keys to the garage and its gates and Ian did not doubt that Anthony was allowed there out of hours. Anthony had the keys to the Range Rover and Ian thought that he had permission to drive the cars that were there. Ian and some of his friends had seen him driving cars from the garage before. Anthony gave Ian no reason to doubt that he did not have permission to drive the Range Rover.

106. Ian said that the question of whether Anthony was acting illegally or not when he drove the Range Rover never entered his head. All he was thinking about at the time was the fact that he was tired and wanted to get home. He was also concerned about his bike and about making sure that he would get it back the next day. He said that of course if he thought about it now he could see that it might seem odd to be driving the garage cars in the middle of the night but that was not the case when they were there. Anthony had keys to the garage and all of the cars there. They all knew that Anthony was allowed to move them around and drive them. Ian also knew that Anthony's Peugeot needed some work doing and so, at the time, it made sense for him to drive a different car. Peter had made up his mind to accept a lift and because of that Ian decided it would be less hassle just to get in as well. Peter was a good friend and Ian did not think that he had any concerns about whether Anthony could drive the Range Rover or not. Ian did not really give it any thought. The fact that Peter was getting in and the way Anthony had a lift all seemed very straightforward.

107. Ian said that he understood that Peter had also been convicted of aggravated vehicle taking after pleading guilty to the charge. He was surprised to hear that he had been charged with anything. Peter was a shy person and as far as he was aware had never been in any trouble with the police.
108. The first document attached to Ian's second witness statement was headed "The worst day of my life". It started with an account of the alleged episode with the Peugeot in the afternoon of the accident. Ian wrote that it was a normal Saturday around 3pm. His father answered the door and it was Anthony. His father shouted to Ian. As Ian came down the stairs his father said: "What's he doing here". Ian said "I don't know" as it was unusual because he had never called for him before. Anthony asked Ian what he was doing. Ian replied: "Nothing really. Why?" Anthony said "u like my new car?" (Peugeot 307). Ian wrote that he asked when Anthony had got it, for how much and where from. Anthony said he got it off his dad's mate that morning. He did not tell Ian the price. Ian wrote that this all seemed genuine because Anthony had been saying that he was getting a new car for a while. His old one broke when he gave Ian's friend, Jason Haynes, a driving lesson on Anchor Meadow car park. Anthony asked if he was coming out. Ian replied "Yes, give me five minutes to get my coat and trainers on". Anthony said meet me in the car and Ian said "OK". When he got into the car he complimented Anthony and said that it was a lot better than his old one.
109. Anthony drove down "to his work" which was just down the road and parked outside. He just nipped in as he always did while Ian waited in the car. He was only about two minutes. Anthony had the keys so there was no reason to

believe that he wasn't meant to be there as Anthony was always there after work hours. Anthony said he lived there a lot of the time. That is what Ian and Peter believed as Anthony showed Ian and Peter his bedroom on the night of the accident.

110. He wrote that he remembered that night quite well because it was the first night he and his girlfriend had off from seeing each other since they got together around three months before the accident. The plan had been to get a few beers and go and have a game of football at the park, but he was skint so could not buy any beers. He, Rob Davis, Jason Haynes, James Wilson and Ian arrived at the park at around 8pm. It was a quiet Saturday night because usually there were many more of them. Ian was moaning that it was boring and suggested that they should get some girls to join them. He got a girl called Stacey and two of her friends to join them.
111. As Ian was talking to the girls Anthony turned up, came over to him and the girls and tried to make a conversation but it didn't work so he went over to the football pitch and was chatting with the group over there. A short while later the group by the football pitch joined Ian and the girls. A few of them said how boring it was. Anthony then said to all of them to come back "to his" but they all said they were not going all the way down Walsall Wood. Anthony replied "Not there, my work place". Jason asked if they were allowed to which Anthony replied: "Of course you am. I practically live there."
112. After discussion they all said that they would go to Anthony's. Initially Rob Davis said he wouldn't because they could all tell that he didn't like Anthony. However he changed his mind and said he would join them.



113. Jason asked to borrow Ian's bike to nip home and get a few beers. Ian agreed. Anthony told Jason and Wilson to meet the others at Aldridge Tyres. Ian then walked with Anthony to "his place" only about five minutes away from the park.
114. When they got there Ian sat in the reception part next to the goldfish pond which he did not know was there because he only used to be round the back part where Anthony washed the cars and changed the tyres and bits like that. Five minutes later Jason turned up on Ian's bike. Ian told him to bring it in. Anthony was walking around his garage doing stuff. Ian wasn't sure what but he was busy.
115. Peter then rang Jason asking where he was and what he was up to and said he would be down in a bit with Jordan. James Wilson then turned up and half an hour later Peter and Jordan turned up.
116. They all sat chatting by the pond, Wilson, Peter and Jason having a drink but not much because Jason only had a few cans. Peter had more but was hardly drinking. He thought Wilson had four. He asked Peter and Wilson for one but they said no. Anthony then said that Ian could have one of his and out of nowhere produced four cans of Strongbow. Anthony gave Ian one but Ian wasn't too keen because it was cider and he preferred lager. He had it anyway but drank it slowly, not being keen on the taste. But it was Saturday night and he was used to drinking so he made do. Anthony had one but opened it up, had a sip and put it down on the floor and then went back to working in the garage. At that time there were Ian, Jordan, Jason and Peter sitting in the reception.

117. Peter shouted to Anthony: “Is your bedroom upstairs, Dibble?” Anthony replied yes and asked if he wanted to see. Peter said he did. “So as they are going to look up the stairs I joined them. He just gives us a short tour of his bedroom and bathroom, me and Pete was quite impressed with it.”
118. Back in the reception area Ian asked Anthony for a second can and started on his second can of Strongbow. Jason then phoned Ian’s ex-girlfriend Tessa who had not long since come out of a two-year relationship with Ian, not on the greatest terms, and invited her to join them. Jason went to meet her and brought her back to the garage.
119. Ian and Tessa talked to each other for a while about their relationship. They were not getting on very well, it was getting late, and Tessa asked Jason to walk her home which he said he would do.
120. Anthony then said he needed to go and get some petrol for tomorrow. They all said that there was nowhere that would be open at that time but Anthony said that he knew somewhere and told them all to come with him. They said no but Anthony said he was not leaving them in the garage on their own. They asked why not. Anthony did not really have a good reason but kept saying “Come on, come on”. Eventually they did. As they went to get petrol Dean Williams pulled up outside the garage. Jason said that he was walking Tessa home to which Dean said: “Jump in. I’ll take her”. So Jason and Tessa jumped into Dean’s car, Anthony and Dean decided that they would drop Tessa off at her house and get some petrol. So they did, Ian, Peter, Jordan and Anthony in Anthony’s car (the Peugeot) and Dean, Jason, Tessa and another girl that Dean worked with in Dean’s car.

121. Anthony's car followed Dean's car to Walsall Wood where Tessa lived, pulled up outside her house and said goodbye. Next they drove to the petrol station. None of them knew where a petrol station was open and Anthony wouldn't tell them which one. On the way to the petrol station the car was making a strange noise. They thought it was the petrol and so Anthony was driving very slowly so that he could make it to the petrol station. Finally they made it and Anthony filled it up. They started back to the garage. On the way back the engine went wrong and slowed right down. The car wouldn't speed up and was stuck at a maximum of 20mph. Anthony shouted "Bollocks". They said "Anthony, you have broken your car on the first day you got it". Anthony replied: "I'll fix it when I get back if I get back tonight". It took them a while but eventually they got back to the garage, Anthony opened the garage gates and drove the Peugeot in the back.
122. They were all back in the garage and Anthony was looking at trying to fix his car while the others were chatting away in the reception part. After a while they were all getting tired and bored so Dean said he was going to "Drop her off his workmate" (it is not clear who "her" was referring to) and Jason said he would come with him. So they went off.
123. A short while later it was just Ian and Peter. Anthony was still working on his car. Ian and Peter had nothing more to say so Ian said that he was going home. Peter said "Me too". So Ian got his bike out of the garage and went to go. Dean was still parked up outside the garage. Ian asked him what he was still doing there to which Dean replied that he was just having a cigarette.

124. Anthony came out to Ian and Peter and said “Don’t go yet. I’ll drop you off in a minute”. They replied: “No, it’s pointless. We are going now.” Anthony said: “OK. Just wait there.”
125. Anthony came through the back entrance in a Range Rover. “We was like what the hell”. Anthony said: “Get in. I’ll drop you off”. Peter said OK instantly. Ian said: “No, I’m on a bike.” Anthony went on for a while saying “Come on leave your bike here. I’ll bring it to your house tomorrow”. Ian wrote: “I really couldn’t be arsed to argue because he is not the sort of person to give up”. So Pete put the bike just inside the garage, then I got in the back of the Range Rover. I put the seat belt on. Pete got in the front passenger side and put his seat belt on. Dibble then drove out, turned left, turned right then right again onto my road, as he is coming up my road he starts to be a div and turns the car side to side, me and Pete shouted at him, anyway he’s just coming up to my house and starts to slow down, then I take my seat belt off thinking he was going to stop. However as he was by my house he puts his foot down starts to go crazy, then wobbles the car side to side. At this point me and Pete are shouting loudly at him. Then smash into the back of parked van and the car just flips. I can remember everything up until about two seconds before he crashed.” Ian then gave an account of waking up, waking up in hospital in the worst pain imaginable, shouting to nurses and doctors to kill him because of the pain and hearing his family come in and telling them to kill him. He was asking where Dibble was. He wanted to kill him.
126. The second document attached to Ian’s second witness statement was headed: “Just a bit about my accident”. It is a much shorter document. Most of it

summarised his experience from waking up in hospital through six months of rehabilitation to moving into his own house in April 2009.

127. In relation to the accident Ian wrote in the second document that he was in the back seat of a Range Rover on the way home. He had had a few to drink as it was Saturday night early Sunday and he was also very tired. He just wanted to get home. His mate was in the front passenger seat and his mate was driving. On the way home at about 12.30am driving up the street that he actually lived on a couple of houses before his house the driver thought it would be funny to put his foot down and drove straight past his house. He picked up speed of up to 70mph. Ian and his mate were shouting at him to stop. He ignored them and then started swerving in and out of parked vehicles. The next minute he lost control and crashed straight into the back of a parked van and the Range Rover flipped.
128. In cross-examination Ian said that he had had 32 driving lessons, passed his theory test and booked a driving test for three weeks after the accident. He had a provisional licence. When it was put to him at the end of his cross-examination that he encouraged Anthony to see what the Range Rover would do, Ian repeated that he was tired and wanted to go home. He did not want to argue and that is why he got in the Range Rover. Anthony seemed to want to do him a favour. He could see how tired he was. Having repeated his account of the fateful drive from Aldridge Tyres to Jessie Road in the Range Rover he said: "I'm not that sort of guy. I was doing driving lessons. I wanted to be completely legal. I would never have got in the car if I did not feel it was

right. I did not know that Dibble did not have permission to drive either car. I did not want to go for a spin.”

129. Ian was, quite properly, vigorously cross-examined by Mr Worthington who challenged a number of key parts of his evidence as untruthful. Mr Worthington put it to Ian that the episode in the afternoon when Ian said that Anthony called at his home, was let in by Ian’s father, took him for a drive to Aldridge Tyres in the Peugeot 307 and told Ian that the car belonged to him did not take place. Ian stuck resolutely to the account which he gave in his evidence in chief. He said that the meeting had not been arranged and that Anthony had never knocked at his door before, although he had parked outside his house with Jason in the Fiat Punto before and telephoned Ian to say that they were outside and ask if he was coming out. Ian would get his trainers and go out to join him. On this Saturday afternoon Anthony had told him that he was going to nip into work. He was always in and out of work. The Peugeot was a much better car than the Fiat Punto which was rubbish and Anthony said he wanted to take him for a test drive. Ian said that he was 100% sure that Anthony told him that the Peugeot was his. He became angry when it was put to him that he was lying. “Don’t say I’m lying. I’m not a liar. Why would I make it up?”

130. Ian accepted that he had never been in the garage at night before but said that he absolutely thought that it was true when Anthony said that he had permission to go to the garage late on a Saturday. Asked whether he thought that the owner would give permission, Ian said that it was not even a question. Anthony was so natural. He would walk around the garage from one car to

another. He knew that Anthony had worked there for a long time. He had the keys. He was responsible. Why would he let the owner down, or risk his job by having a few people round if he did not have permission. It did not occur to Ian that the owner would be furious. He did not even think about whether the owner would give permission for lots of young men to be in the garage late at night with drinks. Asked if he thought that there were valuable tools in the garage Ian said that they did not think like that. They felt that Anthony knew what he was doing. If they weren't allowed there he felt that he would tell them. They did not think: "We are not allowed". It was just casual. The weather was not at its best and Anthony offered to take them to his place. It never crossed their minds that the owner would mind. It was not at all like thinking that they would get away with it. It never popped into Ian's mind what the owner would say if he turned up. He accepted that he might have said to Anthony: "Tell them to go home. I don't want your mates here."

131. Ian was adamant that Anthony showed him and Peter the upstairs flat at the garage. Peter asked Anthony where his bedroom was, to which Anthony replied: "Upstairs." As Peter got up Ian thought that he would go with him and got up to have a look. They went upstairs. He saw a bed. Anthony went first, then Peter and Ian was at the bottom of the stairs when Anthony was at the top. He remembered that the sink was in the bathroom. You could see it as you got to the top of the stairs. He said: "This is all right. You live and work at the garage. Us lot have to live with our parents." Anthony said that it was his bedroom and that he lived upstairs.

132. In relation to the journey in the Peugeot to the petrol station Ian said that Anthony said that he needed petrol and he did not want the others to stay in the garage on their own. Dean was going to take Tessa home which he did and they were going to follow. He did not remember if Anthony said: "Let's go for a drive." Ian, Peter, Anthony and Jordan were in the Peugeot.
133. Ian said that his evidence that Anthony said that the car was not completely his yet as he had not paid all the money for it yet, but that he did not think anything of that given that he was buying it from a friend of his dad's was true. No one said: "Should we be doing this? Do you have permission?" They all got the impression that it was Anthony's new car. He did not know if Peter had a conversation with Anthony about the car although it was likely that he would have done. The others would not have got in the car if they thought that it was not Anthony's.
134. On the way back when the car slowed down they said to Anthony: "You've fucked up your new car on the first day, Dibble." (Ian said that they used to call Anthony 'Dibble'). Anthony drove back slowly and put the Peugeot in the back of the garage when they returned. Anthony said: "Don't worry, I'll fix it."
135. Asked why he got in the Range Rover, Ian said that Anthony drove other cars during the day time. He drove so many cars in the garage and also took them out. There was absolutely no question of them not being allowed in the Range Rover. He got his bike and wanted to go home.
136. Ian vehemently denied that someone asked Anthony if he had permission and that he said no (In fact Anthony's evidence owns that that exchange took place



in the Peugeot, not before they got in the Range Rover). He knew it was not Anthony's car. He did not know whose car it was. It was possibly a customer's car. Most of the cars in the garage would be customer cars. The Range Rover had been in the garage for a very long time. Ian had seen it. It was always there. It was there when they washed Laura's car and when Dean's tyres were changed. It did not go through their heads whose car or what car it was.

137. Asked if he thought that, if it was a customer car, the customer would let Anthony drive it, Ian said that there was no question of that. They just wanted to go home. They did not think that anything was wrong and did not think anything of being able to be dropped off in any car. "There was no conversation or question of we're not allowed in. It was just: let's go home." Ian reiterated that he did not want to go home in a car. He had planned to go home on his bike. It was just Anthony dropping them off at home.
138. He was talking to Dean and Jason through their car window on the garage forecourt discussing the next day. They said that they would give him a call. After two minutes Anthony said: "Wait there. I'll drop you off." Ian said that there was no point. He was on his bike. Anthony came out of the garage in the Range Rover. It was still on the forecourt with the engine on facing the road.
139. Ian said: "It's fine I'm on my bike." Anthony said: "No. I'll drop you off." He promised to bring Ian's bike back the next day. Ian said: "You'd better bring it back." He said: "Don't worry I will."

140. Because Anthony promised to bring the bike back, Ian said that he walked to the Range Rover and got in the back left side. Peter got in the front and Anthony drove off.
141. Anthony turned right, right again into Jessie Road. Just before he reached Ian's house in Jessie Road Anthony swerved left to right, slowed right down outside his house. Ian took off his seat belt because he was going to get out. The next minute Anthony put his foot down on the accelerator, swerved left to right, left to right, and smashed straight into the back of a parked van.
142. Ian did not remember any conversation about getting more beer from Tesco. All he wanted to do was to go home. He did not encourage Anthony to see what the Range Rover would do. He was tired. He wanted to go home and did not want to argue. That's why he got into the Range Rover. Anthony seemed to want to do him a favour. He could see how tired Ian was.
143. Asked if he thought that Anthony would have had permission to drive him home in an Aston Martin and if he would have been prepared to get into an Aston Martin, Ian said that Anthony would not have taken an Aston Martin to take him home.
144. Ian was asked about his assertion in his first witness statement that he knew that Anthony worked and lived at a garage and that he told him that he lived at Aldridge Tyres garage. He said that he was told this by Anthony at the park at 11pm on the Saturday night. His words were "I practically live there." He had not told Ian before then that he lived at Aldridge Tyres. Asked about the assertion in the "Worst day of my life" document that Anthony told the group "to come back to his" and that in response to Ian and his friends saying they

were not going all the way down to Walsall Wood Anthony said “not there, my work place”, Ian said that when Anthony said “mine” he thought he meant his home and that he proved on the night that he lived at Aldridge Tyres.

145. In re-examination Ian said that while they were in the garage Anthony was working on cars and there was nothing secretive or cloak and dagger about them being there. Anthony did not tell them to be quiet.

146. If Ian’s evidence was both truthful and correct on the main points he plainly did not have the state of mind which Tradex accept they have to prove on the balance of probabilities he had. That is to say he neither knew or suspected (and deliberately refrained from asking questions so as to avoid having his suspicions confirmed) that the Range Rover had been unlawfully taken by Anthony because he has taken it without permission. Ian said that he thought that Anthony had permission to drive the cars in the garage. He and some of his friends had seen him driving cars from the garage before, Anthony gave him no reason to doubt that he did not have permission to drive the Range Rover. The question of whether Anthony was acting illegally or not when he drove the Range Rover never entered his head. All he was thinking about at the time was the fact that he was tired and wanted to get home. He knew that Anthony’s Peugeot (as it thought it to be) needed some work doing on it and so at the time it made sense for him to drive a different car. Peter had made up his mind to accept a lift and because of that Ian decided that it would be less hassle just to get in as well. Ian and Peter had not been egging Anthony on to take the Peugeot and the Range Rover. Ian did not encourage Anthony to see what the Range Rover would do. He did not know that Anthony did not have

permission to drive either car. He did not want to go for a spin. The reason he went in the Peugeot earlier that night was because Anthony said that he needed to get some petrol and he did not want the others to remain in the garage on their own. Ian denied that on the way to the petrol station in the Peugeot he and Peter asked Anthony if he was allowed to drive it and that he replied: “No. I’m not.”

147. The critical question is whether Ian’s evidence on the material points was truthful and correct.

### **Anthony’s evidence**

148. As already mentioned Anthony was interviewed by the police five days after the accident on 4 July 2008. He also made two witness statements, the first dated 17 May 2010, the second dated 12 March 2012. Although the first witness statement was headed “In the matter of Ian Stych, Claimant -v- Anthony Dibble and Tradex, Defendant”, it was not explained to me how or why that witness statement came to be made given that the claim in this action was not issued until 15 June 2011. At the trial Anthony, who gave evidence for Tradex, adopted as his evidence-in-chief the contents of the two witness statements, confirming that their contents as well as those of the police interview were true.

149. Although Anthony broadly agreed with Ian on the chronology of the events on the night of 28/29 June he painted a very different, albeit shifting, picture on a number of crucial points. In summary he denied entirely having gone to Ian’s home in the afternoon and driven him in the Peugeot 307 to the garage and back and denied having boasted to Ian that the Peugeot was his. To the police

he said, in relation to the first ride in the Peugeot on the night of the 28<sup>th</sup>, that he asked his friends if they were coming for a spin because he wanted to show off, to which they said yes and got in the vehicle. He said that he told them he was not insured and that the Peugeot was stolen, but they got in anyway. He agreed that he told Ian and Peter that he was not insured and that he was taking the vehicle without consent. He went to the petrol station because he was going to put some diesel in the Peugeot and then drive it round, but having put some fuel in it he decided to take it back. He confirmed that a receipt from Muckley Corner petrol station for £6.27 was his.

150. In relation to the Range Rover Anthony told the police that the garage sometimes had vehicles for sale on behalf of customers and that the Range Rover was one of them. Peter and Ian started telling him to take it out and were egging him on to take it. So he took it out and he was going to take them around the block but crashed. He said that it was the first time he had taken cars from the premises, that his friends Peter and Ian asked him to take them for a ride in the Range Rover and that at the time he was trying to show off.

151. In his first witness statement Anthony gave a different account in relation to the Peugeot, saying that after they arrived at the garage at around 11.30pm to 12pm he decided almost straight away to take one of the cars out, and that was a Peugeot 307. He repeated that at around 1.00 to 1.30am Ian and Peter both egged him on to take out the Range Rover which he agreed to do. He said that both Ian and Peter knew that the Peugeot and the Range Rover were not his and that they were taking them without permission. He said that everyone else stayed at the garage while Ian, Peter and Anthony went out in

the Range Rover. They decided to just take the car around the block and then come back again. He had been driving for around 3 minutes when the accident happened.

152. In his second witness statement, in which he commented on Ian's first witness statement, Anthony said that it contained a number of factual statements which were not true. In particular it was not true that he called at Ian's house that day in the Peugeot 307. He had never called at Ian's address on his own, although he had done so with other people. He did not own the Peugeot 307. In cross examination Anthony maintained that he had not gone to the Stych house that afternoon and that Ian's father had not answered the door. He had not boasted that it was his car. He had been the last to leave work. (The latter statement was inconsistent with his statement to the police that he had not been to work that Saturday.) As to the flat above the garage there was one but he did not show anyone around it that night. He did not have the keys to the flat and never went in it without Fred Rigby, the owner. Fred had the flat for when his wife kicked him out, or if he had been out drinking. None of his friends or the people he was with on the day of the accident went to or attempted to go in the flat.
153. After Ian, Peter and he returned to the garage from the petrol station in the Peugeot the others nagged Anthony for a couple of hours to take another car out as the Peugeot was not running properly, and due to peer pressure he relented and took out the Range Rover. He only intended to go around the block which naturally took them up Jessie Road. There was no plan to go anywhere else. Both Peter and Ian were saying: "Go on – see what it's got."

So when he got to Jessie Road, which is straight, he floored it and that is when he clipped the kerb and had the accident. It happened about six houses or so past Ian's house. He did not offer to give Ian and Peter a lift home. They were egging him on to take the Range Rover out. Ian's account of the ride in the Range Rover in his first witness statement was just not true. The only person wearing a seat belt in the vehicle was Peter. Ian was laying in the back, lounging across the seats. Ian was not going to come but jumped in the back at the last minute. Anthony stated that he was very sorry about the outcome of the accident but felt that everyone involved should put their hands up and accept responsibility for what they did that evening.

154. Anthony's claim that both Peter and Ian were saying : "Go on-see what it's got" was made for the first time in his second witness statement. There was no such suggestion either in his statement to the police or in his first witness statement. When he came to give evidence at the trial he introduced a further new claim, namely that as well as saying : "See what it's got" Peter and Ian also said: "Put your foot down."
155. In his first witness statement Anthony said that both Ian and Peter had about four cans of Strongbow each that night, whereas he did not consume any alcohol.
156. In his police interview Anthony agreed that he used to be employed full time at Aldridge Tyres as a tyre fitter and had worked there for two-and-a-half years. In his second witness statement he said that he had helped out at Aldridge Tyre Service since he was 15 years old. The owner, Fred Rigby,

used to give him a fiver or a packet of cigarettes rather than proper wages. His friends knew that he did not work there full time. After the criminal court case and his custodial sentence Fred Rigby offered him more casual work and gave him the keys for the garage but not the flat. Anthony was pleased that he trusted him and glad that he realised that the events that day had been out of character. In his police interview Anthony said that he had keys to the front door and side gate of the garage which allowed him into the premises, and that he had built up some trust with his boss who allowed him to have the keys to the premises. The reason he had the keys to the premises was so that he could open up in case Fred did not make it in the morning. The keys to the vehicles were kept in the cars, which were driven into the premises at night. The Peugeot was a customer's car. He did not know who the customer was. It was in the garage with the keys inside the vehicle. In his first witness statement Anthony said that the Peugeot was in the workshop and the keys to it were in the till.

157. Anthony painted a picture of a closer friendship with Ian than appeared from Ian's evidence. In his first written statement he told the police that he had known Ian and Peter as friends for about 5 years. He said that before the incident he, Peter and Ian were good friends and spent most of their spare time together. Ian and Peter had been in his Fiat Punto probably on most days.
158. In his evidence at trial Anthony said that he had been to Ian's house in Jessie Road a few times. Ian and Peter had been in his Fiat Punto on most days. He repeated that he and Ian spent most of their spare time together. By way of explaining why he offered to take Ian and Peter for a ride in the Peugeot,



Anthony said that he did not have many friends at the time, he was showing off and wanted to impress them. It was his idea to go out.

159. In cross-examination Anthony was referred to his statement to the police that he had been employed full time at Aldridge Tyres as a tyre fitter and had worked there for two-and-a-half years and that he had now lost his job as a result of the accident. He said that he had not meant to say that he worked there full time. He meant to say it was part time. He had his own keys to the gates and the door to the premises for well over a year before the accident. After the accident Fred Rigby told him never to go in to the garage out of hours again but gave him his key back. He had told the police that he did not have Fred Rigby's permission to enter the premises after the garage was closed in the evening.
160. Anthony said that nearly every day he moved cars in the garage because he had access to the keys to all the cars in the garage for the purpose of moving them. He could not remember if Ian saw him moving cars to make room for Laura's car but accepted that it would not be surprising if Ian had seen him working at the garage and that he could have seen him washing Laura's car.
161. When shown the assertion in Ian's "The worst day of my life" document that when Jason asked if they were allowed to go to his workplace he had replied: "Of course you am [sic]. I practically live there", Anthony did not deny saying it. Rather he said he could not remember if he had said it.
162. Anthony did not recall Jason borrowing Ian's bike in the park or walking with Ian to the garage, but he said that he did himself walk there.

163. When the group was in the garage that night the lights were on. Anthony said that he did not do any work or walk about. He did not drink that night. He does not drink cider.
164. In relation to the bedroom at the garage, Anthony accepted that he told the others about the bedroom, but denied telling them that he sometimes stayed there. He said he told them it was Fred's flat when they asked what was upstairs. He denied showing them around the upstairs. He said there were two main locks on the front door of the flat upstairs and a third on the bedroom door. He denied showing off about the bedroom and said that the others knew he lived with his parents.
165. In relation to the ride in the Peugeot, Anthony said that it was his suggestion to take it. They were going to do the same as they later did with the Range Rover, i.e. take it round the block and then put it back where it was. He said: "Do you want to go for a ride?". He denied saying that he was going to get petrol. It was only when he switched the ignition on and found that the car was low on fuel that he decided to take it to Muckley Corner, the only petrol station open at that time of night. He could not remember if Tessa was going home or if Dean said that he would take her home but he did remember that Dean followed him in the Peugeot and made no stops, both cars leaving together. They passed Walsall Wood and there was no stop. He was running low on fuel and did not want to stop before filling up. The car did not make a noise or stutter but did lose power. He said that it was a lie to say that he filled the car up with petrol. In a case like this he would like the facts to be perfect. The engine then went wrong and he drove back at 20 miles-an-hour and

shouted “bollocks”. He did not say it was his first car and did not say that he would fix it when he got back to the garage.

166. Anthony was shown the record of his police interview which recorded the following exchange: “Q. Did you say anything to them about why you were taking this Peugeot? A. I told them I weren’t insured and it was stolen but they got in anyway.” He confirmed having told the police that he had asked his friends if they were coming for a spin in the Peugeot, that he told them that he was not insured and that it was stolen but that they got in anyway. However he accepted that it was not true that he had told them that he was not insured and that the Peugeot was stolen. He said that it did not come up in conversation and they did not ask if he was insured.

167. He said that Ian and Peter knew that the cars were not his and got in anyway. They knew the Peugeot was stolen. He did not say anything before they got in the Peugeot but on the way to the petrol station they asked. “Are you allowed to do this?” and he replied: “No, I’m not”. He said that it did not seem to bother them. He said that to him saying that he was not allowed to take or drive the car was the same as saying he was not allowed to do it.

168. He then volunteered the following remarks which gave the impression of being pre-planned: “You don’t know what kind of people they are. They’re not bothered if it’s stolen. They’ve got no morals. Everyone who was there that night including myself – I do not know exactly who was there, but whoever was there had no morals. They all knew the cars were being taken. I’m not sure who was there when I took the Peugeot or the Rover but they were all there when I took both cars”.

169. Anthony accepted that he had not mentioned either to the police in interview or in his second witness statement in March 2012 that, having got in the Peugeot, Ian and Peter asked him whether he was allowed to do this and that they were not bothered a bit when he said that he was not. He denied that he was trying to spread the blame. He said that he took full responsibility but that “they are just as bad as me”.
170. In relation to the taking of the Range Rover Anthony said that he did not remember the red car group leaving the garage but they did not leave with him, Ian and Peter in the Range Rover. He left them unattended in the reception when he went into the Range Rover. The only time that he, Ian and Peter were alone was in the Range Rover. Although the two hours of nagging of Anthony to take another car out as the Peugeot was not running was mainly from Ian and Peter, there were others also egging him on.
171. Anthony denied that Ian said that he was going home, that Peter said that he was going too, that Ian got his bike out of the garage and went to go and that Dean was outside the garage having a cigarette in the red Fiesta. He said that Ian’s statement in his “Worst day of my life” document that Anthony said he would drop him off in a minute was a lie. However Anthony did say that Ian was not originally going to come with “us” but then jumped in the back seat. Asked why Ian was not originally going to come in the Range Rover and only jumped in the back at the last minute if he had been egging him on to take out the Range Rover for two hours, Anthony’s response was that he was that fed up at being nagged that he was going to take the car out regardless of who was in it. Ian was not reluctant to go. The only reason he came was that Anthony

stopped at the junction of the forecourt and the main road and Ian jumped in. Ian did not say that he did not want to leave his bike at the garage and never mentioned the bike.

172. At the beginning of Jessie Road both Ian and Peter said: “Put your foot down and let’s see what its got”. He did so and must have been doing 90mph. He floored it from beginning to end and did not have time to stop at anyone’s address. The last time he looked at the speedometer 30 seconds before the crash it was doing over 80mph. He accepted that the accident was his fault because he made the decision to speed but said that it would not have happened if Ian and Peter had not egged him on.
173. Anthony said that he did not tell Fred Rigby, the garage owner, that the accident would not have happened if Ian and Peter had not egged him on. He said they did not talk about the events of that evening at all and Fred asked for no explanation. A few months later he employed him again and gave him the keys. He never asked him why he had ignored his instructions.
174. Anthony said he got on well with Fred Rigby. He treated him more like a godson. He went to the garage when Fred needed him but did not come and go as he pleased. He only worked on Dean’s car and only washed Laura’s car once. Fred did not mind him doing that because he worked for next-to-nothing, a fiver or a packet of cigarettes a week. It did not depend on how many days he worked for him.
175. Anthony was asked why, if his intention had been to go for a spin round the park, he had not taken the first right turn off Walton Road into Herbert Road rather than going on and turning right into Jessie Road where Ian lived. He

said it was not because Ian wanted to go home. It just happened to be the route he had in his head. He denied showing off in the Range Rover even though in his police interview he said that he was speeding up, braking and speeding up again and trying to show off and did not know why he had done it. He said he tried to go in and out of parked cars instead of slowing down. He probably braked twice but only just with a light tap to get past the parked cars. He had no intention of scaring Ian and Peter. They said: "See what it's got". He swerved from side to side. He could not explain why he had not said in his first witness statement that Ian and Peter had egged him on to take the Range Rover out.

176. In re-examination Anthony said that he knew that the others apart from Ian and Peter were not bothered that they were taking the Range Rover out because they stayed in the garage and did not say: "You shouldn't be doing this".

### **Other evidence**

177. Peter did not give evidence at the trial. However he was interviewed by the police twice, first on 29 June 2008 and then on 11 August 2008. The second interview was conducted by PC Hearsey, the first by another police officer who did not give evidence at the trial. Tradex called PC Hearsey who made a witness statement for the purpose of criminal proceedings on 16 July 2008.
178. At the trial PC Hearsey was shown 2 records of police interviews. He confirmed that the first was a record of the police interview with Anthony, the third a record of his interview dated 11 August 2008 with Peter and the second

a record of the interview conducted with Peter on 29 June 2008 by the other officer, PC Owen. As to the latter he said that he had seen the transcript.

179. PC Hearsey made a witness statement for the purpose of this trial dated 7 February 2012 whose contents he confirmed were true. However in cross examination he accepted that he had incorrectly stated in his witness statement that Anthony had been arrested at the scene and taken to the police station for questioning and that Peter had fled the scene. In fact he had arrested Evans at the scene and Anthony had gone to the hospital. The first part of this is consistent with PC Hearsey's witness statement dated 16 July 2008 in which he said that while at the scene of the collision he spoke to a man who identified himself as Peter Evans who had sustained cuts and grazes to his forearms. At about 2:30 a.m. he told Peter that he believed that he was one of the occupants of the Range Rover which he suspected was stolen and was therefore arresting him on suspicion of the theft of that vehicle. After caution he said that Peter replied: "yeah no problems, I just want to know how the others are."
180. The transcript of the police interview with Peter conducted by PC Owen on his own on 29 June 2008 at 8:30 a.m. on the morning of the accident shows that he was the only officer present and PC Hearsey confirmed that he had not been present.
181. Some of the answers given by Peter in the two interviews are inconsistent with parts of Anthony's evidence. Others are inconsistent with parts of Ian's evidence. The answers were not of course given under oath and because Peter did not give evidence at the trial he was not cross examined about any of them.

182. In the interview on the morning of the accident Peter said that a few of them were sitting in the reception of Aldridge Tyres “just having a drink and that”. He was there until about 2:00 a.m. when Anthony asked if he wanted to go for a spin round the block in “that Land Rover”. Anthony had told him many times that he was insured on all the cars in the premises.: “Well he says to me you know, like because I, he’s got a licence and that he, he reckons he’s insured for all the cars on the premises sort of thing like, oh I’ll come then and then Stych-y says yeah.”
183. Peter said that he went to Aldridge Tyres after Anthony rang him at about 11:00 p.m.. The Range Rover had been parked outside the garage round the back. Anthony had the keys. The keys to the cars in garage were left in the cars. Anthony had the keys to the garage because he worked there.
184. Asked if he thought that Anthony had permission to drive the cars in the garage Peter said “I don’t know because I used to know him before he used to work there (inaudible) and he says he is, like can drive the cars around there and down the road.”. Anthony had a full licence.
185. Asked what he thought about Anthony going in the Range Rover, Peter answered: “I don’t know really, well it was a bit bad you now.”. He thought Anthony did have permission to drive the cars in the garage, it was just that the Range Rover felt a bit dodgy. He though Anthony had permission to drive the cars because he used to say that he would drive them. Asked if he thought Anthony had permission to drive them at that time of the morning, Peter first said he did not know and then, when asked again, said: “no, thinking about it no.”



186. When the interviewing officer said that he could not see Anthony having permission to take the car out at 2:00 a.m. on a Sunday morning when the office was supposed to be shut, Peter replied: “no, nor me, **now**” (emphasis added). : “Q. So you’re thinking of it and why weren’t you thinking of that at the time? A. I don’t know.”
187. Asked if he went anywhere else in the building other than the reception Peter replied: “no, not really”.
188. In the 11 August 2008 interview Peter was asked for the first time about the Peugeot, no doubt because the police had not been aware on the day of the accident that a Peugeot had also been driven from the garage. In that interview Peter said that Anthony had been driving round in the Peugeot all day and had gone to his friend’s house in it. He had seen Anthony driving around in that Peugeot “come past with my mates (inaudible)”.
189. In relation to the ride in the Peugeot from Aldridge Tyres Peter said that he wasn’t going to get in it. He was going to get into his mates’ car but someone else jumped in so he had to get into the Peugeot and then they went to a petrol station and drove back. Anthony did not say that he owned the Peugeot or had permission to drive it. When it was suggested that he knew that all the cars inside the premises either belonged to the premises or belonged to customers, Peter said that he knew that they either belonged to the premises or the Peugeot could have been Anthony’s car which he had parked there. He had seen Anthony driving a Fiat Punto but he had crashed that about a month before the accident. Asked if he understood when he entered the Peugeot that

if Anthony didn't own it he was a party to it by getting into the car, Peter said that he did not think that Anthony was stealing the car.

190. Peter agreed that Anthony did not tell him when he got into the Peugeot on the night of the accident that he owned it. He did not tell him either that he had permission to drive it or that he did not have permission to drive it.

191. Peter signed a witness statement dated 4 May 2010 which was headed "In a proposed matter between Ian Stych Claimant and Anthony Dibble Defendant". It was placed in the trial bundle and referred to in the index under Claimant's witnesses. In the event however Ian did not call Peter to give evidence on his behalf.

192. Tradex adduced in evidence a written statement made by Fred Rigby, the owner of Aldridge Tyres to the policy on 29 June 2008. It was adduced pursuant to a Civil Evidence Act notice in which the reason given for not calling Mr Rigby as a live witness was that he was unwilling to cooperate. In his statement Mr Rigby told the police that on 28 June 2008 he was at work until around 12 p.m.. When he left David Poppitt were still working. He had not seen Anthony. He returned to work at around 6 p.m. at which point the premises were locked and secure, the silver Peugeot being in the garage. He did not see the Range Rover as it was in the compound and he did not go there. He said he had never given Anthony permission to enter the premises outside work hours or to use the waiting area for drinking or bringing friends round. About 12 months earlier he had found out that Anthony had been in out of hours. He warned him about it and told him never to do it again. Anthony had a set of keys to the premises as he lived around the corner so that it was

handy sometimes to help him out. Anthony had never been given permission to take any vehicles off the premise. The Range Rover was parked in the compound when he last saw it on 28 June 2008 at about 12 p.m.

193. Tradex called David Poppitt to give evidence. No witness statement had been served and he appeared pursuant to a witness summons issued by Tradex. He had made a statement to the police on 29 June 2009 the truth of whose contents he confirmed in the witness box. In that statement he said that he had worked at Aldridge Tyre services on Saturdays as a tyre fitter for the past two years. He had finished work on 28 June 2008 at around 4:30 p.m. and had left Anthony to lock the premises when he had finished. Anthony was working on a red Fiesta, a car belonging to a friend of Anthony's known to him as Dean. Anthony helped out at Aldridge Tyre services occasionally but was not an employee. Anthony had his own set of keys to the premises and had been left to lock them up many times before.
194. Mr Poppitt told the police that when he left the premises the Range Rover was parked in the compound to the rear of the premises and the keys had been left inside the office hanging up. The Peugeot 307 was inside the premises with the keys in the ignition. That was normal as the vehicles were locked inside the premises. He said that before he left Anthony told him that he would only be working for another 10-15 minutes before locking up and leaving.
195. In his oral testimony Mr Poppitt said that Anthony was there when he finished work at about 4:30 p.m. on 28 June. Anthony had started work at about 9:00 to 10:00 a.m. and had been there all day. That statement was inconsistent with Anthony's statement to the police that he had not been to work that Saturday

and with Mr Rigby's statement to the police that he had been in the garage from 10 a.m. to 12 p.m. and that he had not seen Anthony. It is also inconsistent with Peter's statement to the police that Anthony had been driving round in the Peugeot all day and had gone to his friend's house in it. .

196. Mr Poppitt said in evidence that Anthony had started work between 9:00 to 10:00 a.m. on the Saturday and had been there all day. He had not seen him drive the Peugeot and had never seen him drive it off the premises.

197. In cross examination he said that he left the premises at 4:00 p.m. or 4:30 p.m. he said it was not uncommon for Anthony to be working on cars. Mr Poppitt said that he did not work at Aldridge Tyres. He helped out in exactly the same way as Anthony. He had known Mr Rigby for 20 odd years. He would work on his own car although on that particular day he was working as a tyre fitter. He was not paid by Mr Rigby. He was a self-employed delivery driver. If he needed something doing to his car such as cleaning or repairs he would go to Aldridge Tyre Services and use the garage to repair his own car. Instead of there being any payment, Mr Poppitt would help Mr Rigby out as a tyre fitter. He only worked there on Saturdays. Both Anthony and Mr Poppitt had a set of keys.

198. Tradex called Mrs Dibble, Anthony's mother. Mrs Dibble appeared anxious to volunteer the information that it had always been known that "round the block" was "up Jessie, down Rutland, down Herbert, up Walton and back again." As children she lived two doors away from the Stychs in Jessie Road and they were told as children that they could ride their bikes that way. This appeared to be designed to support Anthony's evidence that he had said that

he would drive Ian and Anthony “round the block” by way of explaining why, if that had been the case, Anthony, having turned right into Walton Road did not take the first turning on the right to Herbert Road and instead waited to take the second turn on the right into Jessie road. If that was indeed the purpose of her evidence the logic in my judgment was unsound. It was common ground that the journey in the Range Rover started, not in Jessie Road, as in Mrs Dibble’s childhood bike rides, but in Northgate, the road in which Aldridge Tyre services was. What is round the block is dictated by where one starts from. Moreover Mrs Dibble’s “round the block” route did not even take in Northgate.

199. In addition to his own evidence Ian relied on that of his father, Robert Stych. Mr Stych confirmed the truth of his witness statement in which he said that on the afternoon of 28 June 2008 Anthony called round to 31 Jessie Road to see Ian. He called “some time after 3:00 p.m. I think”. When Mr Stych answered the door Anthony asked if Ian was in. Mr Stych said that he was but that he was upstairs. He shouted to Ian saying that someone had called round for him. Ian said he would come down. Mr Stych did not invite Anthony into the house. Anthony said he would wait for Ian in his car and then went to sit in a silver Peugeot car which was parked right outside Mr Stych’s house. When Ian was ready he went out to meet Anthony. Either Mr Stych or Ian closed the front door.
200. In cross examination Mr Stych said that he did not know Anthony and had not seen him come to his house before that day. As to the time when Anthony

called round that Saturday, he said that it was late afternoon. It could have been between 3:00 and 4:00 p.m.. It could have been later.

201. Mr Stych said that he did not know at the time that it was Anthony who called round at his house. He only found that out later when someone told him that it was Anthony. He discovered that it was Anthony when he went to court when Anthony was prosecuted. Anthony was called to give evidence and it was the same person whom Mr Stych had seen that afternoon. The silver Peugeot stuck in his mind. When asked why that was, given that he did not himself own a car, Mr Stych said he remembered it because the last time he ever saw his son walking was when he went to get into that car. “Things like that stick in your mind.” Asked if he was sure it was Anthony, he said: “Of course it was”. In re-examination he confirmed that the person he saw in court was the same person who called on him that afternoon. He was in front of him at court.
202. Asked why he did not mention this incident to Peter or his defence lawyers before Peter’s prosecution, Mr Stych said that he was too concerned for his own son to think of telling Peter that Anthony had driven the Peugeot before the accident and Peter had not asked him to confirm this in a witness statement. In any event he had not discovered that Peter was to be prosecuted.

### **The parties’ submissions**

203. Mr Worthington’s primary case was that Anthony told Ian that he did not have permission to take the Peugeot and that therefore Ian must have known that he did not have permission to take the Range Rover or it was so obvious that he did not need to be told. Although he formally advanced an alternative case that Ian had information that raised his suspicions but deliberately refrained

from asking questions, he accepted that if Anthony was lying when he said that Ian and Peter asked him if he was allowed to drive the Peugeot and that he had told them that he did not that would seriously undermine Anthony's evidence and significantly support Ian's as to what he believed Anthony was allowed to do.

204. This reflected the recognition by both Mr Worthington and Mr Silvester that at the heart of this case lies a fundamental conflict between Anthony and Ian, on the resolution of which the outcome depends. I agree with them. If, as Anthony claimed for the first time in the witness box, Ian and Peter asked him on the way to the petrol station if he was allowed to drive the Peugeot and he replied that he was not, it is hard to see how Ian could have believed that Anthony was allowed to drive the Range Rover. This ties in with other key aspects of the case on which Ian and Anthony gave irreconcilably different evidence.

205. Thus if, as Ian claimed, Anthony had taken him for a ride in the Peugeot that afternoon and told him that it was his new car, it is inherently unlikely that he would have asked Anthony on the way to the petrol station that night whether he was allowed to drive it and that Anthony would have told him that he was not.

206. There are other aspects of the case in which Anthony's evidence, if correct, supports Tradex's case but if incorrect supports Ian's case. Thus if Anthony had shown Ian and Peter the upstairs flat at the garage, that would reinforce what Ian said was his general impression that Anthony had a wide degree of latitude in what he was allowed to do. The same is true, albeit in my judgment

to a lesser extent, of their different accounts of the circumstances of the ride in the Range Rover. If, as Ian claimed, he did not ask to go in the Range Rover and in particular did not egg Anthony on to take him and Peter for a spin, as alleged by Anthony, and did not tell Anthony to “to see what it’s got”, and to “put his foot down” as belatedly alleged by Anthony in respectively his second witness statement and the witness box, but rather reluctantly acceded to Anthony’s offer of a lift home, that would render more plausible Ian’s claim that it did not occur to him when he got in the Range Rover that Anthony did not or might not have permission to drive it. He was tired, it was late, he did not want to argue, he just wanted to get home, and the issue never crossed his mind. I say these latter points are of lesser importance because if Anthony had not told Ian that he was not allowed to drive the Peugeot and Ian genuinely believed that it belonged to Anthony, the fact, if fact it be, that once in the Range Rover in Jessie Road Ian or Peter told Anthony to floor it would not of itself be inconsistent with Ian having got in the Range Rover believing that Anthony was allowed to drive cars in the garage on the road or the point just not having crossed his mind,.

207. Mr Silvester invited me to find that Ian was an honest witness and to prefer his evidence to that of Anthony. It was, he submitted, supported both by the consistent account given in his “Worst day of my life” document, which was not produced for the purpose of litigation, and by the evidence of his father as to the disputed incident with the Peugeot in the afternoon. If the afternoon Peugeot incident took place, Anthony must have lied about that, from which it follows that it is likely that he lied when he said that Ian and Peter asked him



if he was allowed to drive the Peugeot that night. It also sets the context for what happened later that night.

208. Mr Silvester submitted that Mr Poppitt's evidence reinforced the impression that Ian said he got that Anthony in effect had the run of the place. Neither of them was an employee of Aldridge Tyre Services. There was a relaxed and informal atmosphere, Anthony had a set of keys to the premises, car keys were left in the cars and both Mr Poppitt and Anthony were given benefits in kind by being allowed to use the garage to work on their own cars and in the case of Anthony being given a packet of cigarettes or a fiver rather than a formal salary or payment.
209. Ian said that he had seen Anthony move cars around the garage and was aware that he had done so on the road to test drive them. He also said that on the night in question Anthony had shown him and Peter round the upstairs flat. While in the garage that night Anthony did not suggest that he had told them to keep quiet and the lights were on. Anthony was wondering around working on cars and not acting in a surreptitious way. The journey to the petrol station was admitted by Anthony to be his own idea rather than the result of being egged on by the others. Anthony admitted to showing off that night. If, as Ian said, he pretended earlier that day that he owned the Peugeot and later showed Ian the upstairs flat, that would be consistent with Ian, as an honest 19 year old, having been lulled into a false sense of security. Put another way, without the disputed statement by Anthony that he was not allowed to drive the Peugeot it is not implausible that when, as Ian said happened Anthony pressed

him to accept a short lift home it did not occur to Ian that he did not have permission to do so.

210. As to whether Anthony was lying in his evidence about the disputed question and answer in the Peugeot on the way to the petrol station, Mr Silvester relied heavily on the facts that Anthony alleged this for the very first time in cross examination in the witness box and admitted that his statement to the police five days after the accident on 4 July 2008 that he told Ian and Peter that he was not insured and that the car was stolen before they got into the Peugeot but that they got in the car anyway was not true. By the same token Anthony's claim that Peter and Ian were saying "go on – see what its got" once they were in the Range Rover was not made to the police or even in his first witness statement dated 17 May 2010 and his evidence in cross examination that they told him to "put his foot down" was an invention.
211. This linked up with Mr Silvester's answer to the question posed by Mr Worthington, namely what motive would Anthony have for lying. The answer it was submitted was that although Anthony accepted responsibility for the accident and for taking the car without permission, he wanted to spread the blame when first interviewed by the police and continued to want to do so at the trial.
212. As to the ride in the Range Rover, Anthony admitted that initially Ian was not going to get in the car and only did so when Anthony drove it round to the garage forecourt. That it was submitted is inconsistent with Anthony's claim that Ian had been egging him on to take him out in the Range Rover.

213. Ian had a provisional licence, had booked a driving test and wanted to do everything according to the book. He was not obsessed with cars, his interest being in computers, and he would not have entered the Range Rover if he had thought that it was against the law.
214. On the central question of credibility, Mr Worthington recognised that in relation to the disputed first Peugeot incident the evidence of Ian's father Mr Stych and the fact that Ian referred to it in his "worst day of my life" document both on their face supported Ian's evidence in the witness box. As to Mr Stych, he recognised that it was not open to him to submit that Mr Stych was lying when he said that the reason he remembers the silver Peugeot car was because it was the last time he saw his son Ian walking, because he did not put that allegation to Mr Stych in cross examination. In any event the oddity suggested by Mr Worthington of Mr Stych's statement that he did not see his son walking again given that Ian according to Mr Worthington came back into the house a few minutes later is not in my judgment a powerful point, both because in his witness statement Ian said that Anthony dropped him back at his house about half an hour later and not a few minutes later and also because it may be that Mr Stych left the house before Ian returned.
215. Mr Worthington said that he was not saying that Mr Stych was lying but rather that he was mistaken that it was Anthony whom he saw that afternoon. He said it could not have been Anthony because in his witness statement, adopted in his testimony, Mr Poppitt said that he left the garage at about 4:30 p.m., leaving Anthony who was working on his friend's car, to lock the premises when he had finished. The silver Peugeot was in the garage. That he said was

inconsistent with Mr Stych's evidence as to the time when Anthony knocked at his door.

216. As to Ian's account of the first Peugeot incident in his "Worst day in my life" document, Mr Worthington submitted that this was a lie. However he did not put to Ian that when he wrote this account he knew that his compensation depended on this point, still less that his motive in writing it was to promote a false insurance claim. Mr Worthington was unable to suggest any other plausible motive for Ian concocting the episode in his document other than to try to convince everyone that he thought Anthony had permission to drive the Peugeot which would explain why he was in it later that night. Why he should wish to concoct a false story to blame Anthony and exculpate himself other than in the context of promoting a fraudulent insurance claim was not explained.

217. Mr Worthington submitted that it was not credible that Ian could think that Anthony had permission to allow him and his friends to enter the garage for social purposes late on a Saturday night and not credible that he would think that Anthony would be allowed to drive him and Peter in someone else's car at 2:00am. In this context he submitted that Ian had been forced to lie to get out of a corner when he said, by way of supporting his claim that they all got the impression that the Peugeot was Anthony's new car, that the others would not have got in the car if they had thought it was not Anthony's. If that was right asked Mr Worthington why did Ian think that Anthony would be allowed to drive him in the Range Rover which Ian admitted he knew did not belong to Anthony. Ian's answer to that was that he did not ask to go for a ride in the

Range Rover. He had intended to go home on his bike and only got into the Range Rover because it was a less of a hassle to give in to Anthony's badgering. Against the background of Anthony having driven many cars around the garage and also for test drives out of the garage, it did not strike Ian, who was tired, that there was anything untoward about this.

218. Mr Worthington invited me to draw adverse inferences in relation to Peter. First he relied on the fact that Peter pleaded guilty to aggravated vehicle taking. Why would he have pleaded guilty he asked forensically unless he knew that Anthony had taken the Range Rover without authority and did not believe that he had the lawful authority to take it or that he would have the owner's consent if he knew of his doing it and the circumstances of it? Further he invited me to infer, from the fact that Ian served a witness statement for Peter but did not call him to give evidence at the trial, that he was worried as to what Peter might say when cross examined and in particular that he might say that he knew that either the Peugeot or Range Rover had been taken without permission.

219. In this context he relied on the following dictum of Lord Diplock in *British Railways Board v Herrington* [1972] AC 877 at 930 G-H:

“The appellants, who are a public corporation, elected to call no witnesses, thus depriving the court of any positive evidence as to whether the condition of the fence and the adjacent terrain had been noticed by any particular servant of theirs or as to what he or any other of their servant either thought or did about it. This is a legitimate tactical move under our adversarial system of litigation. But a defendant who adopts it cannot complain if the court draws from the facts which have been disclosed all reasonable inferences as to what are the facts which the Defendant has chose to withhold.”

220. Mr Worthington also relied on what he described as admissions or partial admissions made by Peter as to his knowledge when interviewed by the police. While at the scene of the accident PC Hearsey said that he spoke to Peter who had sustained cuts and grazes and told him that he was arresting him on suspicion of theft of the Range Rover which he said he suspected was stolen. After being cautioned he said that Peter replied: “Yeah, no problems, I just want to know how the others are.” In the 29 June 2008 interview Mr Worthington submitted that Peter’s line about the Range Rover was half way between an admission and a denial. On the one hand he said that he thought that Anthony had permission to drive the cars in the garage because Anthony used to say that he would drive them. On the other hand he said “it was just the Range Rover, it felt a bit dodgy.” Earlier he said that it was “a bit bad” going into the Range Rover.
221. Mr Worthington further submitted that Peter had been deliberately cagey to the police about the Peugeot which he did not mention in the first interview in June 2008, the inference being that he knew he should not have been in the Peugeot but did not volunteer a reference to it in the hope that the police might not find out about it. The reason he did not want them to find out about it was because he knew he should not be in the Peugeot because Anthony had told him that he was not allowed to drive it.
222. In the later interview dated 11 August 2008 when he was asked about the Peugeot Peter said that Anthony did not tell him anything about it. Mr Worthington contrasted that with Ian’s statement in his first witness statement that during the ride in the Peugeot Anthony told “us” that the car was not

completely his yet as he had not paid all of the money for it yet. He accepted that it was possible that Anthony had only boasted to Ian about owning the car but submitted that if he had done so it was likely that Ian would have mentioned it to Peter. He therefore submitted that this shows that Anthony did not tell either Ian or Peter in the car that he had not paid all the money for it yet and that Ian had lied in his first witness statement.

### **Findings**

223. Tradex have not persuaded me on the balance of probabilities that Ian knew when he got in the Range Rover that Anthony had taken it unlawfully in that he had taken it without permission or that he suspected that to be the case and deliberately refrained from asking questions lest his suspicions should be confirmed.
224. The central plank of Tradex's case is the belated claim made by Anthony in cross examination that when they were already in the Peugeot Ian (and Peter) asked him if he was allowed to drive the Peugeot to which he replied that he was not. Plainly if that was said it would be surprising in the absence of anything different having been said before Ian got in the Range Rover (which is not alleged by Ian) if Ian had believed that Anthony had permission to drive him in the Range Rover.
225. Ian was adamant that no such conversation took place in the Peugeot. It is striking that Anthony's claim that it did was made for the first time when he was cross examined at the trial. There was no suggestion of that exchange having taken place either in Anthony's statement to the police a few days after the accident in 2008, or in his first witness statement in May 2010 or in his

second witness statement in March 2012. Given its obvious importance to the main issue in these proceedings the latter two omissions are particularly striking.

226. Moreover Anthony also admitted in cross examination that his statement to the police a few days after the accident that he told Ian and Peter that he was not insured and that the Peugeot was stolen but that they got in it anyway was not true. He had not said anything to them before they got in the Peugeot. Anthony gave no explanation as to why he had said that to the police or why he had not corrected it in his two witness statements (particularly in the second one in which he went through Ian's first witness statement and identified details which he said were untrue and particularly in the light of his observation that in a case like this he would like the facts to be perfect) or why he had not mentioned until cross examined in the witness box the conversation which he said for the first time at trial had in fact taken place.

227. The unexplained change in Anthony's evidence was compounded by the strange outburst to which I have referred in which, having admitted that he did not say anything before Ian and Peter got in the Peugeot, Anthony attacked all the people present in the garage. Even though he accepted that he did not know exactly who was there, he felt able to assert that they all had no morals and that we did not know what kind of people they are. They all knew the cars were being taken and none of them were bothered if they were stolen. By definition on Anthony's changed version of his conversation with Ian and Peter, since it happened only after they got in the Peugeot, the other people



present at the garage would not have heard it and thus were not told that he was not allowed to drive it.

228. I did not find Anthony's outburst convincing. Nor did I find his evidence as to the alleged conversation in the Peugeot convincing.

229. In relation to the alleged incident with the Peugeot in the afternoon, either that happened or it did not. If it did, it is hard to escape the conclusion that Anthony was lying when he denied that it happened. Ian's detailed account of it first appeared in his "Worst day of my life" document which he said was written in 2009 for his own private purposes. If the incident did not happen the account in that document was false and fabricated. While it could have been invented to show himself in a better light, it would in my judgment be a surprising thing to invent.

230. Mr Stych corroborated Ian's account of this episode in the witness box. It was not put to him that he had lied about it with a view to promoting a dishonest insurance claim for his son. It is theoretically possible that the incident did occur but that the person who knocked on his door and drove off with Ian in a car that afternoon was someone other than Anthony. However Mr Stych saw Anthony at his trial a few months after the incident and said that it was him. As to the suggestion that it is not plausible that he would have remembered that it was a silver Peugeot, I believed Mr Stych when he said that he remembered it because it was the last time that he saw his son walking.

231. On its face the evidence points strongly in my judgment to the afternoon Peugeot incident having taken place. Ian's evidence that it did take place is in my judgment strongly supported by the detailed account of it in his "Worst

day of my life” document, which I do not believe was written with a view to supporting an insurance claim but was, as Ian said, intended as a personal record of what happened that fateful day, and also by the evidence of Mr Stych who struck me as a truthful witness.

232. Of course if the evidence as to timing is irreconcilable with it having taken place then it cannot have taken place. However in my judgement the evidence of timing is not irreconcilable.

233. Mr Poppitt said that he left the garage not at 4.30 p.m. but at around 4:30 p.m. leaving Anthony to lock up. In his witness statement dated 22 February 2012, adopted by Mr Stych as his evidence in chief, he said that Anthony called “some time after 3 p.m.,I think.” When he was asked about this at the trial Mr Stych said that it was late afternoon and could have been later than he said in his witness statement. His wife told him that it could have been going on for 4:00 p.m. but he was not looking at the clock 24/7. Given that the witness statement was made over three and a half years after the event and that Mr Stych gave evidence nearly four years after the event, it would not strike me as surprising if he had an imprecise recollection of the actual time. Indeed both his witness statement and his evidence at trial suggest that he had a ballpark memory of the incident having taken place some time late in the afternoon rather than a recollection of a specific time. Although when Mr Worthington asked if between 3:00 and 4:00 p.m. was his best estimate, Mr Stych assented to that, this appeared to have been based on Mr Stych’s reference to what his wife had said rather than an independent recollection. Although Mr Worthington did not rely on this he could also have pointed to

the fact that Ian in his “Worst day of my life document” Ian said that Anthony knocked on his door at about 3 p.m. However he was not asked at trial about how precise his recollection of the time was.

234. Moreover Mr Worthington’s submission was based on the premise that Mr Poppitt’s evidence must be accurate. In fact his evidence that Anthony was at the garage all day was itself contradicted both by the statement of Mr Rigby to the police, adduced by Tradex, that he had been at work between 10 a.m and 12 p.m. and had not seen Anthony that morning and by the statement of Peter to the police in the interview transcript also adduced by Tradex, that Anthony had been driving round in the Peugeot all day and had gone to his friend’s house in it., presumably a reference to Ian’s house.

235. There is also a fundamental inconsistency between Mr Poppitt’s evidence that Anthony was at the garage all day and Anthony’s statement to the police five days after the accident that he was not at work on the Saturday. There was no reference to him having been at work at the garage on the Saturday in either of his witness statements, although in cross examination he said that he had been there that day and that Mr Poppitt had left him to lock up although he gave no time.

236. I did not find Mr Poppitt to be a very reliable witness and he certainly did not give me the impression of having a precise recollection as to the time he left the garage. Taking the evidence in the round it is in my view perfectly possible either that Anthony was at the garage that afternoon and drove round to Ian’s house in the Peugeot, as alleged by Ian and Mr Stych, after Mr Poppitt had left the garage or that, as Anthony told the police, he was not at work at all

that afternoon (a possibility that derives some support from Peter's recorded statement to the police that Anthony had been driving round in the Peugeot all day and had gone to his friend's house in it) or even that he was at work and drove the Peugeot to Ian's house unnoticed or unremembered by Mr Poppitt, it being an unremarkable event for Anthony to take a car out on the road for a test drive.

237. In forming a view as to whether the first Peugeot incident took place and whether the disputed conversation in the Peugeot in which Anthony claims that he told Ian and Peter that he was not allowed to drive it took place, it is of course important to have regard to the other evidence and the inherent probabilities. However this is a classic case in which the central issue turns on whether in my judgment Ian was telling the truth about what happened and about his state of mind or whether, on the main areas where their evidence was in conflict, he was lying and Anthony's evidence was correct.
238. When I heard Ian give his oral testimony I found him to be an honest and credible witness who, not surprisingly in view of the effect it had on his life, had a good recollection of the events of 28 and 29 June 2008 and who made an honest attempt to recount what happened and what his state of mind was.
239. I do not believe that the "Worst day of my life" document was deliberately created so as to bolster a dishonest insurance claim by inventing the first Peugeot incident. I believed Ian's account of that incident in the witness box.
240. I also believed his denial in the witness box of the exchange between him Peter and Anthony in the Peugeot that night alleged for the first time by Anthony when he was cross examined.

241. By contrast I did not find Anthony to be a reliable witness and I did not believe his evidence as to the disputed exchange between him, Anthony and Peter in the Peugeot that night.
242. I have given careful consideration to Mr Worthington's submission that Anthony had no motive to lie about that exchange. In my judgment it is overstated and I do not accept it. Although when he was interviewed under caution by the police five days after the accident Anthony admitted that he did not have permission to drive the Peugeot, that he had no permission to enter the garage out of working hours, that the Range Rover belonged to a customer and that he had driven it when the accident happened, a number of things he told the police could be interpreted as having been designed to reduce or mitigate his own responsibility and spread the blame to Ian and Peter. Thus when asked what he was doing driving the Range Rover his answer was that his friends asked him to take him for a ride and he was trying to show off. Asked why he took the Peugeot he answered that he wanted to show off and asked them if they were coming for a spin to which they said yes and got in the car. Asked if he said anything to them about why he was taking the Peugeot he said he told them that he was not insured and that the car was stolen but that they got in anyway.
243. It is in my view not implausible that Anthony might wish to spread the blame nor is it in my view inconsistent with such a desire that he accepted primary responsibility both to the police and at the trial. It would not in my judgment have been an implausible reaction to the situation Anthony found himself in when first interviewed by the police. His own responsibility for causing the

accident and driving both the Peugeot and the Range Rover without permission were, as he obviously knew, inescapable. It would not be irrational in that situation to seek to implicate Ian and Peter by alleging that he had told them that he was not insured and that the car was “stolen” and also that the reason he set out on the fateful journey was because they had egged him on to take out the Range Rover, the implication being that but for that egging on the accident might not have happened. Having committed himself to that line with the police, it is not implausible that Anthony may have felt that he was stuck with it when it came to the trial, although his account of the disputed conversation changed.

244. Overall I found Ian’s account of what happened and of his state of mind to be credible and I believed it. It was common ground that Anthony was something of an outsider from Ian’s group of friends. It was also common ground that he was given to boasting that day. I find that having taken Ian for a ride in the Peugeot in the afternoon, pretending that he had just bought it, Anthony suggested taking Ian and Peter for a drive in the Peugeot that night. Given that, as I find, Ian and Peter did not ask Anthony in the Peugeot if he was allowed to drive it and Anthony did not tell them that he was not, there was no reason for Ian to believe that Anthony was not allowed to drive them in the Peugeot. He had told Ian earlier that day that he had bought it and had taken him for a drive in it to show it off.

245. It is also common ground that Anthony had the keys to the garage to let Ian and his friends in when it started to rain in the park. In other circumstances it might strike someone as unlikely that an employee would be allowed to bring

his friends into a garage late on a Saturday night to sit around chatting and drinking. However it is clear that Anthony was no ordinary employee. Indeed he was not an employee at all. In his own words he got on very well with Mr Rigby, the owner who treated him more like a godson. Although Anthony did not accept that he could come and go as he pleased, he did accept that he was allowed to work on a friend Dean's car and to wash another friend Laura's car. He said that Mr Rigby did not mind because he worked for next to nothing, a fiver or a packet of cigarettes for a week.

246. The close nature of the relationship between Mr Rigby and Anthony was underlined by the fact that, notwithstanding the events of 28 and 29 June and Anthony's conviction for aggravated vehicle taking, after a few months according to Anthony Mr Rigby employed him in the garage and gave him the keys to the premises again. It may very well be that the upstairs flat or rooms were not Anthony's bedroom and that he did not have the right to stay there. It is in my view however not implausible that one of the keys which Anthony had gave access to those rooms and that, as part of his boasting, he showed them to Ian and Peter. He had the keys to the garage, the garage had a number of cars with the keys either in the ignition or in the office and if Mr Rigby was prepared to trust Anthony with the keys to the garage it is not in my view implausible that he would have entrusted him also with the keys to the upstairs.

247. Anthony accepted that he moved cars in the garage nearly every day because he had access to the keys to all the cars in the garage for the purpose of moving them and he accepted that it would not be surprising if Ian had seen

him working at the garage and that he could have seen him washing Laura's car. Anthony did not deny Ian's assertion in the "Worst day of my life" document that when Jason asked if they were allowed to go to his workplace he had replied "Of course you am. I practically live there." I find that Anthony did show Ian and Peter the upstairs rooms and may well have given the impression, as part of his boasting, that he had the use of the bedroom. I accept that when Ian had seen Anthony help Laura washing cars including her own whilst he changed the wheels he remembered that Anthony knew his way around the garage, he knew where to find and how to work the power jet wash and that the other members of staff acted as though it was completely normal for Anthony to be cleaning those cars and using the equipment. I also accept that Anthony on that occasion had to move some of the other cars at the garage around to make room for Laura's car, that he had the keys to the other cars and was very casual about moving them. I accept that it seemed to Ian that it was second nature to Anthony and that it appeared to Ian that Anthony acted as if he owned the place. I also accept that Ian's friends told him that they had seen Anthony driving around in cars from the garage outside the garage presumably for test drive purposes.

248. I further accept Ian's evidence that while the group of friends was in the garage on the night of 28 June Anthony worked on cars and that there was nothing secretive or cloak and dagger about them being there. Anthony did not tell them to be quiet and the lights were on.
249. Against that background I do not find that when Ian got into the Range Rover he either knew or suspected that Anthony was not allowed to drive it. He knew



that Anthony had a driving licence and he believed that the Peugeot in which Anthony had driven him and Peter to the petrol station belonged to Anthony, or at any rate that he had agreed to buy it. It is common ground that something went wrong with the Peugeot on the way back to the garage. Ian had the impression that there was nothing untoward about Anthony having invited Ian and his friends to the garage to sit around. He had seen Anthony driving cars in the garage which did not belong to him on previous occasions and had been told that Anthony had taken cars out on the road.

250. Ian accepted that he knew that the Range Rover did not belong to Anthony. He had seen it in the garage for a long time and assumed that most of the cars in the garage would be customer cars. Asked if he thought that, if it was a customer car, the customer would let Anthony drive it, Ian said that there was no question of that. In assessing that evidence it is in my judgment important to bear in mind the context. It was Ian's evidence that he had got tired and announced that he wanted to go home. It was Anthony who offered to give him a lift home. Initially Ian refused the offer because he had his bike with him and he did not want to leave it behind. However Anthony persisted and when he turned up on the forecourt in the Range Rover Ian thought it was less of a hassle to accede to his invitation rather than carry on arguing.

251. Given that the Peugeot was known by Ian not be working, and given that Anthony was known by Ian to have driven cars, presumably belonging to customers, both in the garage and for short distances out on the road, it is in my judgment not implausible, if the purpose of the lift was simply to drive him home which was effectively round the corner from the garage, rather than,

as alleged by Anthony to take it for a joy ride that early in the morning, that tired as he said he was, it did not occur to him that, if asked, the owner of the car would not have permitted Anthony to drive him home.

252. It is particularly in this context that I have given anxious consideration to Mr Worthington's submissions based on the position of Peter. As to the inference which he invited me to draw from Ian's failure to call Peter to give evidence, while I see the force of the submission, it is by no means determinative of the issue I have to decide. Lord Diplock's dictum is in my judgment of limited assistance to Mr Worthington. The inferences referred to by Lord Diplock are all reasonable inferences to be drawn from the facts which have been disclosed as to what are the facts which the defendant has chosen to withhold. In other words the facts which give rise to the inference are the other facts in evidence, rather than the fact that the party has chosen to withhold evidence which he or it could have adduced. The fact from which Mr Worthington invited me to draw an adverse inference was the fact that Ian chose not to call Peter rather than all the facts which were otherwise in evidence.

253. Moreover in *Herrington* the appellants elected to call no witnesses on the crucial disputed issue of fact thus depriving the court of any positive evidence as to whether the condition of the fence and the adjacent terrain had been noticed by any particular servant of theirs or as to what he or any other of their servants either thought or did about it. In this case Ian gave evidence himself and also called his father whose evidence corroborated his own on a vital aspect of the case.

254. The court is not naïve. It is of course possible that Ian's evidence was untruthful and that he knew that Peter knew his evidence to be untruthful and would reveal that to be the case in cross examination. However that is not the only possibility. It is in my judgment entirely plausible that, in the light of the manner in which Ian gave his evidence, which in my judgment was very impressive and showed him to be a truthful and credible witness, the decision was taken that, even though Peter would not undermine Ian's evidence if called to give evidence, there was no need to call him. It is undoubtedly the case that there are parts of the transcripts of Peter's interviews with the police which contradict parts of Ian's version of events. As is often said nothing is certain in litigation and a view may have been taken that the risk of those matters being put to Peter and making some inroads into Ian's case or of Peter not making a good impression in the witness box was not worth taking because on the state of the evidence thus far it was clear that Ian was telling the truth.

255. I also note that Tradex did not take the opportunity open to them under the CPR to rely on the contents of Peter's witness statement as hearsay evidence in its favour when they were informed that Ian would not be calling Peter.. It may reasonably be inferred that Tradex did not consider that Peter's witness statement was overall favourable to it. Of course if Peter's witness statement was not considered by Tradex to be overall in its favour, it does not follow that Ian's reasons for not calling Peter may not have been that he was concerned that in cross examination he would be driven to give evidence favourable to Tradex and adverse to him. It is nonetheless a further factor to bear in mind.

256. As to the transcripts of Peter's interviews with the police, the passages relied on by Mr Worthington related to what Peter is said to have told the police about his view of getting into the Range Rover and Peter's statements about the Peugeot. As to the former, the statements on balance are in my judgment more helpful to Ian than to Tradex. It is true that he said that the Range Rover felt a bit dodgy and a bit bad. Against that, however, Peter told the police that he thought that Anthony had permission to drive the cars in the garage because he used to say that he would drive them. He said that he had heard loads of times from Anthony that he was insured on all the cars in the garage and that he knew he had a licence. He also said in answer to whether he thought that Anthony had permission to drive the cars in the garage that he did not know but that Anthony said that he could drive the cars around there and down the road. Peter also said that he did not think at the time he got into the Range Rover about whether Anthony had permission to drive garage cars at that time of the morning. In retrospect thinking about it then, i.e. at the time of his police interview, Peter said that he did not think that Anthony had such permission but he made it clear that he did not think about it at the time.

257. It is also of note that in his second interview with the police on 11 August 2008 Peter is recorded as having said that Anthony "was driving round in the Peugeot all day like and my mate, he'd gone to his house in it". (He also said that he had seen Anthony driving around in the Peugeot coming past with his mates.) On its face that would appear to corroborate Ian's evidence that Anthony went to Ian's house in the Peugeot. This would be consistent either with Mr Poppitt having been wrong in his recollection or with Anthony having taken the Peugeot out of the garage at some point during the Saturday

afternoon, apparently as part of his routine work, and Mr Poppitt either not having noticed it or not having thought it worthy of mention to the police since, when he gave his statement on 29 June 2008 the significance of the Peugeot had not yet emerged.

258. As to the Peugeot, Peter is recorded as having told the police that on the night of 28 June Anthony did not tell him that he owned it and told him nothing about the Peugeot. I see the force of Mr Worthington's submission that this does not sit easily with Ian's evidence that during the journey in the Peugeot on the night of 28 June 2008 Anthony told "us" that the car was not completely his yet as he had not yet paid all the money for it. On the other hand he was also recorded as having said that the Peugeot could have been Anthony's car which he had parked in the garage and that he had seen him driving it around. Again this does not seem to me a conclusive point in Tradex's favour. In my judgment it falls far short of showing that Ian's evidence as to the first Peugeot incident must be false. On the critical question whether Anthony told Ian and Peter in the Peugeot that he was not allowed to drive it, Peter's statement to the police that Anthony at no stage told him that he had not got any permission to drive it supports Ian's evidence and undermines that of Anthony.

259. A short extract from Peter's first interview with the police in which he is recorded as having said that Anthony said: "Do you want to go for a spin round the block in that Land Rover?" was not referred to or relied on by Mr Worthington. On its face it does not sit easily with Ian's evidence that Anthony's offer to drive him in the Land Rover was a response to Ian saying

that he wanted to go home. Again however it does not strike me as determinative. It is on its face inconsistent with Anthony's evidence that the others, presumably including Ian and Peter, had been egging him on to take them out. It is also possible that if true it was said by Anthony to Peter but not also to Ian. It is also significant in this context that Anthony's admission that at first Ian had not been going to get into the Range Rover supports Ian's evidence that it was Anthony who badgered him to accept a lift home in the Range Rover and is on its face inconsistent with Anthony's claim that it was Ian and Peter who had been egging him on for two hours to take them out in the Range Rover.

260. In assessing the various extracts from Peter's two interviews with the police and what weight to give them it is important to bear in mind that, unlike the evidence of Ian and Anthony, they were not subjected to the test of cross examination.
261. As to Peter replying: "Yeah, no problems, I just want to know how the others are." when PC Hearsey told him that he was arresting him on suspicion of theft of the Range Rover which he said he suspected was stolen, in my judgment the inference to be drawn is of limited assistance to Tradex. In the immediate aftermath of such a car crash it would not be surprising if Peter was only concerned about the fate of his friends and not giving thought to defending his own actions.
262. There is in my judgment more support for Tradex's case to be found in Peter's plea of guilty to the charge of aggravated vehicle taking. On its face this constituted an admission that he knew that Anthony did not have authority to

take the Range Rover and did not believe that he would have the owner's consent if he knew that Anthony was driving it. However the issue with which I am concerned is not Peter's state of mind when he got into the Range Rover but rather that of Ian. It was not suggested that Peter had been present in the first Peugeot incident and thus he was not present when it is said that Ian was told by Anthony that the Peugeot belonged to him. If true that represents a very important part of the background against which Ian's state of mind falls to be assessed when he got into the Range Rover. Any inference to be drawn from Peter's guilty plea must also be considered in the context of those of his recorded statements to the police to which I have referred which either support Ian's case or do not support Tradex's. Again, as with those statements, it is important to bear in mind that there was no opportunity at the trial for Peter to be asked about his reply to PC Hearsey or his guilty plea and what lay behind them.

263. I have come to the very clear conclusion that taking into account all the matters relating to Peter to which I have referred I am not persuaded by Tradex that either individually or cumulatively they show that Ian was not telling the truth or that he had the state of mind when he entered the Range Rover alleged by Tradex.

264. I come back to where I started. As was recognised by both sides this is a case which turns principally on an assessment of the truthfulness and credibility of Ian and Anthony. I found Ian to be a very impressive witness whereas I found Anthony to be an unsatisfactory witness and where their testimony was in conflict I preferred that of Ian to that of Anthony. I am fortified in my

conclusion by the fact that it is in my judgment supported by the fact that for the reasons which I have given in my judgment the evidence as a whole supported Ian's version of events in relation to the first Peugeot incident and the disputed conversation in the Peugeot on the night of 28 June.

### **Conclusion**

265. For the reasons which I have given I find that the answer to the question which I have to decide on this preliminary issue is that Ian did not know when he allowed himself to be driven by Anthony in the Range Rover that Anthony had taken it unlawfully in that he had taken it without permission. Nor did he suspect that to be the case, having information from which he drew the conclusion that the Range Rover might well have been taken by Anthony without permission, and deliberately refrain from asking question lest his suspicions should be confirmed. I thus find that Anthony's liability to Ian is not an excluded liability within section 151(4) of the 1998 Act. It follows that this action may now proceed to the next stage.