

Seatbelt Cases

There are conflicting cases on the appropriate discount for not wearing a seatbelt, the leading Court of Appeal case (the locus classicus) was and probably still is **Froom -v- Butcher 1976** in which the then Master of the Rolls Lord Denning MR set forth the following guidelines:

If wearing a seatbelt would have prevented injury altogether: 25%

If wearing a seatbelt would have substantially reduced injury: 15%

Although somewhat confusingly, the Court having laid down these guidelines, then awarded a reduction of 20% having decided on the medical evidence *that injuries might have been slighter if the seatbelt had been worn.*

However a more recent case of **Hitchens-v-Berks County Council 2000**, is said to indicate that the Court of Appeal now believes that the guidelines in Froom-v-Butcher need to be overhauled as times had moved on. In Hitchens the Claimant was fatally injured but had he been wearing a seatbelt he would have escaped all but the most minor injury. The 1st instance Judge who was being appealed against, had held that he was “unhappily” bound by Froom but if he had had a free hand, he would have applied a discount of at least 50% and possibly as high as 60 or 70%. The 1st instance Judge, well and truly laying the ground for the subsequent appeal, then proceeded to award a discount of only 15%. The Defendant took up the Judge’s kind invitation and duly lodged an appeal. A last minute settlement was reached at the door of the Court of Appeal; the Court of Appeal approved a settlement between the parties which provided for a deduction of 50%.

However many commentators argue that Hitchens-v-Berks is not good law, first because the Court was not actually deciding the case but simply approving a settlement between the parties. Thus it is not a binding precedent. Secondly the Claimant in question was suing a local council for failure to grit an icy road which had caused the accident, and it is believed that the concession of a 50% discount by the Claimant might have been heavily influenced by an impending Court decision which came out a few days later which proceeded to abolish the liability of councils in respect of a failure to grit*. In other words the Claimant was "getting in" before the rug got pulled out from under his feet.

Some, perhaps pro-Defendant commentators, also cite another Court of Appeal case in 2000 (**Jones v Wilkins**) in which one of the Appeal Judges (LJ Keene), is said to have echoed Hitchens in suggesting that the time might have come to crack the 25% glass ceiling. However in fact Lord Justice Keene actually upheld the 25% discount in the face of a strong attack by Peter Main QC for the Defence who argued for a bigger a discount. LJ Keene went on to comment on the desirability of sticking to the well known guidelines in Froom-v-Butcher, he acknowledged that theoretically the Court could increase the discount above 25% but this type of case would "*be very rare indeed*"; and the Court was clearly very reluctant to encourage an endless run of seatbelt arguments in the future.

Later cases have thus followed Froom-v-Butcher, for example it was quoted with approval by the Court of Appeal in **Parkinson-v-Chief Constable of Dyfed 2004**; and in Takers-v-Thorne 2002 HHJ Bishop explicitly refused to follow Hitchen and applied a 25% discount as the recognised benchmark where a fatal injury might very probably have been avoided if the seat belt had been used.

In summary therefore: **Claimants 1 -v- Defendants 1**, with Lord Denning still presiding from his grave although in many subsequent cases “20% or even 25%” seems to have been substituted for 15%.

Obviously the above cases still leave open other arguments against a discount eg where the wearing of a seatbelt would have actually made no difference to the injury, or the driver had the benefit of a statutory exemption from wearing a seat belt.

A perennial argument concerns taxi drivers who are sometimes exempt from having to wear a seatbelt. The exact terms of the exemption differ between hackney (public hire) drivers and private hire taxi drivers.

Private hire drivers are exempt only when carrying passengers; Hackney drivers on the other hand are also exempt when "plying" for trade.

Rather interestingly, the Defendants argument against taxi drivers harks back to Froom-v-Butcher but with an added twist of their favourite decision (Hitchens-v-Berks)

The point about Froom is that the case pre-dated the compulsory wearing of seatbelts. Therefore even though at the time it was perfectly legal NOT to wear a seatbelt, the Court of Appeal was happy to knock the damages

down by 25% because wearing a seatbelt was a *sensible precaution to take* whether a legal requirement or not.

In the same sort of way walking down the street with your eyes closed is probably not illegal but it is very stupid and you should not necessarily expect to get full compensation if you happen to fall down an open man-hole cover!

"So whether legally required to do so or not, taxi drivers for their own safety should wear a seat belt and should get penalised in their compensation in the same way as an ordinary motorist if they do not"?

The extra twist from Hitchen is that the deceased Mr Hitchen was actually a taxi driver, so the Defendant's argue ergo the Courts can and do make discounts against taxi drivers in the same way as any other driver.

The problem with the above argument is 2 fold:

- 1 First in Froom the Court was deciding the matter on purely common law principles without any statutory backcloth. We now we have a full statutory backcloth. This is very relevant because in his decision, Lord Denning did try to grapple with the idea that in some exceptional (or should that be exemptional) cases the Court might excuse the driver or passenger from not wearing a seatbelt, the examples given by Lord Denning were very fat people or pregnant women. Parliament has since taken great care to define when seat belts must be worn and when they need not, Parliament has spoken. Should a taxi driver be open to criticism (is he acting "unreasonably") if he chooses to do something which he is expressly and explicitly permitted to do. Very clearly Parliament is satisfied that taxi drivers have made out a case as to why they reasonably should not have to wear a seat belt. As Parliament has now provided the matrix of compulsion and exemption which Lord Denning acknowledged should be part and parcel of the law of contributory negligence; why then should the common law wag its finger at the taxi driver for doing what he is allowed to do?
- 2 There are often very good reasons why a taxi driver might not wear a seat belt. He is at risk of attack or of people making off without payment both of which threaten his livelihood and therefore indirectly the provision of a very important public service. Many would argue that it is for the taxi driver to make a balanced decision weighing off for himself the risks and benefits of wearing a

seatbelt, and that the Courts should be very reluctant to second guess the taxi driver's own assessment. Certainly in this day and age the risk of violent attack upon a taxi driver is probably far greater than the risk of incurring serious injury as a result of not wearing a seat belt**

[The Hitchen twist is actually a red herring because Mr Hitchen had been travelling home at the time of his accident and so was not entitled to the benefit of the seatbelt exemption]

The taxi driver point has never been decided by the Court of Appeal, but an “English” (actually a Welsh) High Court case **Jones-v-Morgan 1994** (Dyson J) hints at the way forward. Here the Court refused to award any discount because it considered the taxi driver had acted reasonably in not wearing a seatbelt when he had a passenger in the back of his taxi (a barmaid he had picked up from her place of work at midnight). Whether the decision might have been different if for example there had been no passengers in the cab or the passenger had been elderly lady taking her regular trip to a Sunday morning Church service, is perhaps debatable.

Finally what if the car is not fitted with seatbelts? Well, its OK not to wear one then! (A bit strange that the Defendants argued this one but they did in the Court of Appeal case **Hoadley-v-Dartford District Council 1979**)

*since reversed by Section 111 of the Railways and Transport Safety Act 2003 which reinstates the duty of the local authority to take reasonable measures against wintry conditions.

** on the other hand the family of a fatally injured taxi driver who wasn't wearing his seatbelt might see things differently.

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