

GIBSON SHEAT LAWYERS



INSTITUTE OF ROAD TRANSPORT
ENGINEERS OF NEW ZEALAND

WHAT ARE YOU RISKING?

CORPORATE KILLING: INDIVIDUAL vs
CORPORATE LIABILITY

ROTORUA JULY 2004

Presented by
Edward Cox
13 July 2004

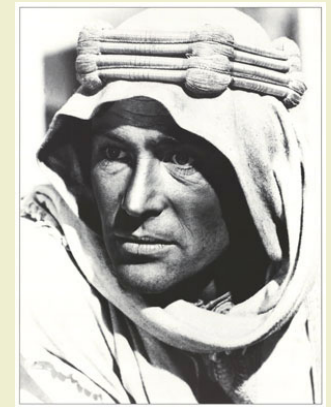
LEGAL **KNOW HOW**

CORPORATE KILLING

Individual vs Corporate Liability

Key messages:

- companies (and individuals) can be criminals
- corporate liability = bad
- personal liability = worse
- the corporate veil is falling



Gibson Sheat - Who are we?

We are:

- a commercial law firm – specialised knowledge of issues affecting road transport industry
- act for Road Transport Forum and NZRTA
- wrote Brookers *Road Transport Handbook*



CORPORATE KILLING

Individual vs Corporate Liability

Corporate Killing – what is it?

- employee accident causing death



CORPORATE KILLING

Individual vs Corporate Liability

Specific themes:

- individual vs corporate – is one better?
- when will you be personally liable?



CORPORATE KILLING

Individual vs Corporate Liability



What type of liability?

- not civil: \$
- criminal
 - fines
 - imprisonment



CORPORATE KILLING

Individual vs Corporate Liability

Are you already personally liable?:



- trading
 - as individual?
 - in partnership?

CORPORATE KILLING

Individual vs Corporate Liability

Personally liable when the company causes death:

- S.56 Health & Safety in Employment Act 1992

“...any of its officers, directors, or agents who directed, authorised, assented to, acquiesced in, or participated in, the failure is a party to and guilty of the failure...”



CORPORATE KILLING

Individual vs Corporate Liability

s56 HSE:

- officers
- directors
- agents



CORPORATE KILLING

Individual vs Corporate Liability

HSE: Penalties:



- \$500,000 or 2 years for “knowing” serious harm offences
- breach of duties – ‘all practicable steps’ \$250,000



CORPORATE KILLING

Individual vs Corporate Liability

Personal liability for corporate killing:

- Crimes Act 1961 offences
 - conspiracy
- more difficult
- *Le Race: R v Anderson*



CORPORATE KILLING

Individual vs Corporate Liability

Personal liability and chain of responsibility legislation

- S.79k Land Transport Amendment Bill
- directors:
 - express or implied authority
 - failed to take all reasonable steps
 - way of the future?

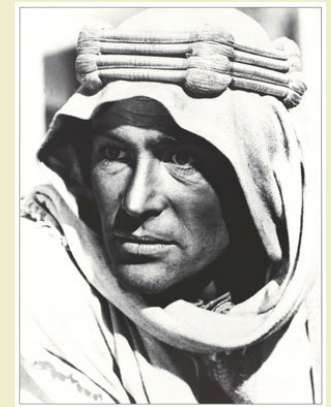


CORPORATE KILLING

Individual vs Corporate Liability

Key messages:

- companies (and individuals) can be criminals
- corporate liability = bad
- personal liability = worse
- the corporate veil is falling



GIBSON SHEAT LAWYERS



Edward Cox

Partner

edward.cox@gibsonsheat.com

Phone: 04 916 630



LEGAL **KNOW HOW**