

Litigation involving Tesco

Litigation involving Tesco has been mostly in the United Kingdom, as it has, like any major corporation a number of legal disputes. The following cases are grouped in the areas of employment law, personal injury, intellectual property disputes, commercial law and taxation.

Commercial cases

*Tesco Stores Ltd v Constable & Ors [[http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2008/362.html&querytitle=\(+Tesco+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2008/362.html&querytitle=(+Tesco+)&method=boolean) EWCA Civ 362], Tesco lost its claim against an insurance company to pay for compensation it had to pay to a railway company. Tesco was building a new superstore above a railway track going through a new tunnel at Gerrard's Cross. But then the tunnel collapsed. Tesco had an agreement with the rail operator on that line, Chiltern, to pay for loss of revenue should something go wrong. In the event, the line was closed for 51 days, and there was an estimated drop off for future revenues. As was required by Network Rail, Tesco had public liability insurance. But Tuckey LJ found that the particular drafting of the agreement did not cover liability for pure economic loss, as were the losses for future passenger revenue here.

*Tesco Stores Ltd v Elogicom Ltd [[http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWHC/Ch/2006/403.html&querytitle=\(+Tesco+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWHC/Ch/2006/403.html&querytitle=(+Tesco+)&method=boolean) EWHC 403], Tesco won a passing off action against misuse of its internet domain name

*Weight Watchers UK Ltd v Tesco Stores Ltd EWHC 1109, Tesco fended off an action from Weight Watchers, that it using the word "points" for the fat and calorie content in its products was passing off Weight Watcher's name for its own scheme.

*Tesco Plc v Customs and Excise Commissioners [[http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2003/1367.html&querytitle=\(+Tesco+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2003/1367.html&querytitle=(+Tesco+)&method=boolean) EWCA Civ 1367], the Court of Appeal dismissed the claim by Tesco that it did not have to pay any VAT for transactions through its loyalty card scheme.

*Tesco Stores Ltd v Pook [[http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWHC/Ch/2003/823.html&querytitle=\(+Tesco+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWHC/Ch/2003/823.html&querytitle=(+Tesco+)&method=boolean) EWHC 823]; I.R.L.R. 618, Mr Pook was a senior employee who got a computer company called Delta to pay his own company a "consultancy fee" (i.e. a bribe) to make sure Delta did not lose a supply contract with Tesco. Mr Pook was already serving 3 years jail for theft, and this action was for Tesco to get back that bribe money. It succeeded, because it was held that Mr Pook was in breach of trust through his conflict of interest. Moreover there was an implied term that Mr Pook would not be allowed to exercise his rights under the company ESOP, until he had paid all he owed.

*Tesco Supermarkets Ltd v Natrass A.C. 153; 2 W.L.R. 1166; 2 All E.R. 127, an important case on corporate liability Tesco was found to not be in breach of the Trade Descriptions Act 1968 s.24. This requires that advertisements cannot be misleading, which is a criminal offence. A Tesco store manager (they had 800 odd stores at this time) failed to take down a poster advertising special offers on washing powder. A customer was charged a higher price than on the poster. But it was held that Tesco itself was not guilty of an offence, because the store manager did not represent the "controlling mind" of the corporation. The company's directors had used all diligence necessary to comply with its duties under the Act.

*Tesco Stores Ltd v Secretary of State for the Environment 1 W.L.R. 759; 2 All E.R. 636, deals with the Town and Country Planning Act 1990, where Tesco wanted to build a superstore outside Oxford.

*Kayser Bondor v Tesco Stores (Times, January 25, 1962) Tesco's first reported case, it won an injunction against a retailer to whom it sold goods. Tesco required that the prices sold would not be lower than a certain minimum (resale price maintenance). Granting the injunction, Cross J held that no matter how much Kayser disliked the terms, it was not compelled to enter the contract. If it did it would have to abide by the terms, unless it could convince Parliament to legislate against the practice (see now, Competition Act 1998)

Employment cases

*Tesco Stores Ltd v Othman-Khalid (Unreported, 10 September 2001), Mr Othman-Khalid was dismissed from a Tesco petrol station. CCTV camera had shown him serving himself, playing video games on shift and taking a pack of ten cigarettes that was damaged stock and meant to be returned to the manufacturer. At a disciplinary he lied saying that he had sold the cigarettes to a customer. He claimed that the dismissal was unfair, and the tribunal agreed, because it said too much weight was given to the little pinching of the cigarettes over other factors of his job performance. The tribunal allowed the claim, but reduced his damages by 10% for contributory fault. But on appeal, Underhill QC found for Tesco that dismissal for theft, however small, was within the "reasonable range of responses" of an employer, under s.98(4) of the Employment Rights Act 1996.

*Tesco Stores Ltd v Wilson (No.2) (aka, Abrahams v Wilson) (Unreported, 12 January 2000), Mr Wilson was an Afro-Caribbean rastafarian who worked for Barkland Cleaning Ltd, as a cleaner contracted to Tesco's site in Mereway, Northampton. Mr Abrahams, one of Tesco's security guards, was on duty in plain clothes. When Mr Wilson drove into the carpark, Mr Abrahams knocked on his window and told him to get out so he could search the car. When Mr Wilson refused, he said "you lot think you can get away with anything" and went and filed a report. Then Mr Wilson was dismissed. He claimed this was unfair, because it was discrimination under the Race Relations Act 1976. He won £5000 damages. Tesco appealed, but lost again. Judge Peter Clark held that "you lot" was certainly intended to refer to race, and that the whole defence of Tesco was meant to depict Mr Wilson as violent and dishonest. This justified an

aggravated damages award.

**Tesco Group of Companies (Holdings) v Hill* I.R.L.R. 63, a checkout lady did not ring up 18 items worth £7 in one customer's purchase. Tesco started an investigation. She said she felt ill. Tesco called the police. They dismissed her. The Employment Appeal Tribunal held that the dismissal was unfair because she was given no opportunity to state her case when she was in a fit state.

**Johnson v Tesco Stores* I.R.L.R. 103, an old case under old law, the employment tribunal found Tesco to have unfairly dismissed Mr Johnson. He had wrongly stated on his application that he had a certain job between 1967 and 1973, when he had not. 18 months later Tesco found out, and they said this was the reason for dismissal. Under the Trade Union and Labour Relations Act 1974 Sch.1, para.6, which refers to conduct during and not prior to employment, conduct prior to the start of the contract could not make the contract itself void. So Tesco was found to have dismissed Mr Johnson unfairly.

Health and safety cases

**Amanda Hardy v Tesco Stores Plc* EWHC 3091, Judge Seymour QC dismissed a claim by Mrs Hardy that she got a back injury while trying to lift some heavy bottles from the conveyor belt at the checkout. It was found her evidence was unreliable.

**Tesco Stores Ltd v Pollard* [[http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2006/393.html&querytitle=\(+Tesco+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2006/393.html&querytitle=(+Tesco+)&method=boolean) EWCA Civ 393], a 13 month old child fell ill when it ate some washing powder from a product that had a faulty child resistant cap. It was bought from Tesco, but manufactured by another company. When bringing proceedings against Tesco and the manufacturer, Tesco joined the mother for negligence in not properly looking after the child. The Court of Appeal found Tesco and the manufacturer alone liable under the Consumer Protection Act 1987.

**W (A Child) v Tesco Stores Ltd* C.L.Y. 3097, in the St Albans County Court, a 10 year old girl won £1600 worth of damages for a nasty injury to her ear five years before. She had slipped in the supermarket.

**Tesco Stores Ltd v Harrow LBC* [[http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWHC/Admin/2003/2919.html&querytitle=\(+Tesco+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWHC/Admin/2003/2919.html&querytitle=(+Tesco+)&method=boolean) EWHC 2919], in the Harrow store, a customer found a piece of wire in a bag. The local council was found to be entitled to fine Tesco under the Food Safety Act 1990 s.8.

**Collins v Tesco Stores Ltd* [[http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2003/1308.html&querytitle=\(+Tesco+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc/ew/cases/EWCA/Civ/2003/1308.html&querytitle=(+Tesco+)&method=boolean) EWCA Civ 1308], the Court of Appeal (Pill LJ giving the lead judgment) agreed that Mrs Jan Collins' claim for some £24,000 for a workplace injury was statute barred. Because she had not brought the claim within 3 years of knowing the injury to be significant she was too late.

**Sutton v Tesco Stores Plc* (Unreported, 30 July 2002) Mrs Sutton, who was a nurse and was pregnant, slipped on a squashed tomato at the store. She won £7500 in general damages for her anxiety about the baby (who was born prematurely) and painful injury to her wrist.

**Harvey v Tesco Plc* 6 Q.R. 11, Mrs Harvey at age 73 slipped on the floor in Tesco and fell, injuring her hand. She had to have a plaster cast, and because of swelling her wedding ring needed to be cut off. She received £4000 in damages.

**K (A Child) v Tesco Stores Ltd* C.L.Y. 1670, in the Uxbridge Crown Court a seven year old won £500 damages for minor injuries at the Tesco store. An automatic door had failed to open and the child got bruising for a week, and felt quite ill the next day with a bad bump to the head.

**Jacob v Tesco Stores Plc* (Unreported, 19 November 1998), the Court of Appeal (Henry LJ and Clarke J) held that Mrs Jacob, a Tesco employee, was entitled to damages after a heavy fall probably from a water puddle in the store. Mrs Jacob had hurried to answer a colleague's query, and stepped in a water puddle. She quickly told someone that they should get a cleaner, hurried on 25 paces and fell. Tesco argued that the judge had not applied the leading case, *Ward v Tesco Stores Ltd* 1 W.L.R. 810 properly, which uses the *res ipsa loquitur* doctrine (i.e. if it was not the puddle, how else could it have happened). Tesco argued that there was no way the puddle could have made her slip 25 paces later, but their argument was dismissed because they could not come up with a better explanation.

**Peach v Tesco Stores Plc* C.L.Y. 1665, Mrs Peach, 65, slipped on a mangetout (a pea pod) in the store and really hurt her hip badly. She had to have surgery. She recovered after 3 months but she developed deep vein thrombosis. She got £10,000 in compensation.

**Watford (A Minor) v Tesco Stores Ltd* C.L.Y. 1672, in the Uxbridge County Court, a little boy, aged 2 at the time of the accident, won £3850 after he slipped on some crisps. He fractured bones in his leg, and it took him three months before he fully recovered.

**Kitching v Tesco Stores* C.L.Y. 1731, Miss Kitching was a checkout lady, aged 22. She injured her wrist badly when she tried to stop some soft drinks falling on her. She won £5500 for this injury in the course of employment, because experienced, possibly permanently, pain up her arm and she was hindered in her hobbies of swimming and writing to pen-pals.