

CASE NOTE

A. DEFENDANTS

Tesco PLC is a leading British multinational retailer, incorporated in England, with global operations and a diverse range of products. After expanding worldwide since the early 1990s, it has become one of the largest multinational retailers, generating an annual revenue of over £50 billion in 2020. It is a prominent player in the UK grocery market, commanding a market share of around 28.4%. Tesco offers various products and services, ranging from groceries, books, electronics, to financial and internet services. Its clothing brand, F&F, is a crucial component of its diversified portfolio. Known for its affordability, the F&F line of clothing is sold in multiple countries, significantly contributing to Tesco's global presence and revenue.

Tesco Stores (Thailand) Limited is a retail company that was an indirect wholly owned subsidiary of Tesco PLC. Being a subsidiary of such a corporate giant, Tesco Stores (Thailand) Limited benefitted from the expansive network, robust resources, and the overall brand reputation associated with its parent company, Tesco PLC. It was a critical part of Tesco's Asian operations, serving as the regional hub for the company's business endeavors in Thailand.

Ek-Chai Distribution System Company Limited, a Thailand-based retail firm, was a direct subsidiary of Tesco Stores (Thailand) Limited from 1998 to 2020. Ek-Chai, operating under the Tesco Lotus brand, was integral to Tesco's regional operations in Thailand, particularly in purchasing clothing for Tesco's F&F line from the V.K. Garments factory. However, in a significant shift in Tesco's global strategy, the company divested several Asian assets, including Tesco Stores (Thailand) Limited and Ek-Chai, in December 2020. This sale to the Charoen Pokphand Group, a Thai conglomerate, for around £8 billion, marked a new chapter for these subsidiaries and significantly changed Tesco's presence in the Asian market.

B. PLAINTIFF

Allegations of worker exploitation have been reported at the VK Garment Factory (VKG) in Mae Sot, Thailand, where F&F jeans for Tesco were manufactured from 2017 to 2020. 130 Burmese workers alleged forced labor conditions with illegal wages, long working hours, and poor living conditions. Workers have brought a unique legal case against Tesco in the UK, accusing it of negligence and unjust enrichment. This case is considered groundbreaking as it is the first of its kind involving a UK company facing litigation over a foreign garment factory in its supply chain that it does not own. Tesco asserts that they would have cut ties with VKG had they known about the severity of the issues. The case reveals deeper labor issues in Mae Sot, where migrant workers are often exploited due to weak law enforcement. In response, Tesco emphasized their commitment to workers' rights and said they'd push for compensation for any unpaid wages, but the situation raises questions about the need for better monitoring and enforcement of labor standards in their supply chain.

C. BACKGROUND

Between 2017 and 2020, Burmese workers in Mae Sot worked at a factory producing F&F clothing for Tesco, under conditions allegedly involving forced labor, imprisonment, and exposure to hazardous working conditions. These situations led to a decline in the workers' physical and mental health. Many workers also experienced dangerous living conditions in accommodations provided by the factory. These Burmese workers were extremely dependent on their employer due to their migrant status, which limited their rights and freedom of movement in Thailand.

In 2017, Tesco carried out an internal ethical assessment of the factory. Despite identifying red flags of modern slavery, including missing work permits and withheld passports for a percentage of migrant workers, the factory was still approved as a Tesco supplier. After the initial audit, Tesco engaged the services of Intertek Thailand to carry out additional social audits of the factory. Intertek Thailand produced audit reports for 2017, 2018, 2019, and 2020, in line with the Ethical Trade Initiative (“ETI”) Base Code, the UN Guiding Principles of Business and Human Rights and local laws. The 2018 and 2019 audits revealed that a substantial number of employees were working significantly more than the 60 hours per week limit stipulated in the ETI Base Code. The 2020 audit reported further instances of modern slavery, including unlawful working hours and underpayment. Despite these alarming findings, Tesco continued to source from the factory until December 2020.

On October 5, 2020, the Burmese workers in Mae Sot and six other workers filed a complaint with the Department of Labour Protection and Welfare (“DLPW”) in Thailand over the factory's failure to pay full wages, among other complaints. The decision from the DLPW, which was based on the flawed Intertek audits, did not grant most of the workers' claims. This decision was appealed to the Thai Labor Court, with another appeal to the Court of Appeal currently in progress as of September 2022, and a decision expected in June 2023.

The Thai Labour Proceedings are narrower in scope than the English proceedings, focusing solely on the factory's failure to pay wages and other benefits, and are against the factory alone. The English proceedings encompass broader issues and involve more parties. Tesco faces a landmark lawsuit in the UK from 130 former workers at VK Garment Factory (VKG), who are suing them for alleged negligence and unjust enrichment. The workers made jeans, denim jackets and other F&F clothes for adults and children for the Thai branch of Tesco's business between 2017 and 2020.

Contract Law

- 1. Discuss the contractual relationships in the Tesco case.**
- 2. Analyze the implications of contract terms and conditions on the parties involved.**

Sale, Hire of Work, Hire of Services

3. Differentiate between 'sale', 'hire of work', and 'hire of services' in the context of the Tesco case.

Liability Regimes

4. Explore the different liability regimes applicable to Tesco and the garment factory.

Tort Law

5. Apply the principles of tort law to the actions of Tesco and the garment factory.

Agency Law

6. Examine the agency relationship, if any, between Tesco and the garment factory.

Broader Ethical and Legal Implications

7. Discuss the ethical responsibilities of multinational corporations in monitoring their supply chains.

Here are the potential answers to the seven questions under Thai law.

1. Contractual Relationships in the Tesco Case

The contractual relationships in the Tesco case involve multiple layers, particularly between Tesco PLC, its subsidiaries, and the VK Garment Factory (VKG) in Mae Sot. Tesco PLC, as the parent company, indirectly maintained a contractual relationship with VKG through its subsidiary in Thailand. This relationship, while not direct in terms of employment, created obligations related to Tesco's supply chain and labor standards. The court could consider Tesco's knowledge of and control over VKG's labor practices when assessing whether these connections create grounds for liability.

2. Implications of Contract Terms and Conditions on the Parties Involved

Contract terms and conditions in this case are critical in determining responsibilities across Tesco's subsidiaries and the supply chain. While Tesco may argue that it had no direct control over VKG's labor practices, its internal audits and ethical commitments may imply a higher level of responsibility. Thai law does not automatically extend liability from parent companies to subsidiaries without a clear contractual obligation or evidence of control. Nevertheless, Tesco's public statements and policies on labor rights may influence the court's interpretation of its duty to enforce these standards in its supply chain.

3. Differentiation Between 'Sale', 'Hire of Work', and 'Hire of Services'

In the context of this case, the production agreement between Tesco and VKG aligns more with "hire of work" rather than "sale" or "hire of services." "Hire of work" refers to VKG's agreement to produce specific goods (F&F jeans) as instructed by Tesco. This is distinct from "sale," which typically involves the transfer of ownership of existing goods, and "hire of services," which involves providing labor or expertise without producing a specific product. These distinctions are important for determining obligations and assessing any liability for non-compliance with labor standards in the production process.

4. Liability Regimes Applicable to Tesco and the Garment Factory

Liability under Thai law could arise for both Tesco and VKG based on various liability regimes, including tort law and potentially joint liability. Tesco, as a parent company, might face direct or vicarious liability if it is established that it had sufficient knowledge of and control over the operations at VKG. VKG, as the direct employer, is primarily responsible under labor laws for ensuring safe working conditions and lawful treatment of its employees. Tesco's knowledge of VKG's labor violations, as evidenced in audit reports, could contribute to a finding of negligence under Section 420 of the Civil and Commercial Code, should a direct causal link be established.

5. Application of Tort Law Principles

Under Section 420 of the Thai Civil and Commercial Code, tortious liability requires a demonstration of a wrongful act causing harm, either through a willful act or negligence. In this case, allegations of forced labor, unlawful working hours, and non-payment of wages could constitute misconduct by VKG. Tesco's knowledge of these conditions through audits and subsequent inaction could further establish tortious liability on the grounds of negligence or omission. The court might examine whether Tesco's continued sourcing from VKG, despite knowledge of exploitative conditions, indirectly contributed to the harm suffered by the workers.

6. Examination of an Agency Relationship

There is limited precedent under Thai law for recognizing an agency relationship between a parent company and an independent supplier. In this case, Tesco's relationship with VKG does not constitute a formal agency under Thai law, as VKG operated independently. However, if Tesco exercised substantial control or influence over VKG's operations, Thai courts might consider applying the principles of "corporate disregard" or "piercing the corporate veil" to hold Tesco accountable. This approach could potentially establish joint liability if Tesco's control over VKG was extensive enough to disregard their separate corporate identities.

7. Ethical Responsibilities of Multinational Corporations in Monitoring Supply Chains

Multinational corporations like Tesco are increasingly expected to ensure ethical compliance across their supply chains, particularly in regions where labor exploitation risks are high. Tesco's internal audits and commitment to the Ethical Trade Initiative (ETI) Base Code suggest an acknowledgment of this responsibility. Under Thai law, ethical obligations may not create enforceable legal duties. However, if Tesco's commitment to ethical standards is publicly documented, Thai courts may view it as evidence of Tesco's assumed duty of care to oversee labor practices, despite the absence of a statutory requirement for such oversight. This case underscores the importance of vigilant monitoring and the ethical obligation of companies to address human rights issues within their supply chains.