

## **IN THE COURT OF APPEAL (CIVIL DIVISION)**

### **Davies v The Martial Arts Academy**

The Martial Arts Academy (MAA) is an academy that promotes martial arts at all levels. It employs a number of high-ranking martial arts instructors who have, over the years, trained students to an extremely high level, with many going on to represent their country in international competition.

Following a recent major competition in which students from the MAA won a number of medals the instructors went out to celebrate. Unfortunately, the celebrations went on for longer than they had planned and as a result they missed their flight home that evening. This meant that the MAA was without any instructors for the following day's classes which, as it happened, were being filmed for promotional purposes. To avoid having to cancel classes, the MAA decided to engage the services of an external martial arts instructor, Mr Lee. Mr Lee had been used by the MAA a number of times over the past 12 months when the MAA needed cover for holiday-related absences. The MAA stressed to Mr Lee that in accordance with MAA procedures no students were to be allowed into the training hall (the Dojo) unless he was himself present and could therefore supervise them. It was also a requirement that Mr Lee only use MAA's equipment and attached MAA's badge/emblem on his uniform. Mr Lee was also required to teach the classes himself and not delegate the work to anyone else.

The following morning Mr Lee commenced the training and then gave the students a break. During the break, he left the Dojo unattended and a number of students stayed on the mats practising what he had taught them that morning. Unfortunately, one of the students, Sam Davies, suffered a broken arm when he was thrown to the ground by another student. It transpires that this other student used an advanced throwing technique on Sam for which he was not prepared. The throwing technique used was not one that had been taught. Mr Lee says that had he been there he would not have allowed this to have happened.

Sam Davies commenced proceedings against the MAA. At trial, Sensei J held that:

1. Mr Lee was negligent in leaving the students in the Dojo unsupervised.
2. Mr Lee was an employee of the MAA.
3. The MAA was vicariously liable for Mr Lee's actions.
4. In disregarding the MAA's instructions, Mr Lee was acting in the course of his employment

The MAA appeals to the Court of Appeal on the following grounds:

1. Mr Lee was not an employee of the MAA but was an independent contractor.
2. By disregarding the MAA's instructions, Mr Lee put himself outside of the course of his employment and the MAA cannot therefore be liable for his actions.