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# RECENT DEVELOPMENTS IN PERSONAL INJURY LAW: LEGAL UPDATE

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# So: what shall we talk about?

## Appeal Judgments:

- Claims for income loss from (impending or past) death
- When is your insured vicariously liable for an abuser?

## Litigated Claims:

- ‘Material contribution’ or ‘but for’ causation test in future claims for multi-factorial illnesses



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# Death and Financial Loss: The latest three cases

“Lost years”

- Head v Culver Heating [2021] EWCA Civ 34

”Fatal’ claims”

- Paramount Shop Fitting v Rix [2021] 4 WLR 109
- Steve Hill Ltd v Witham [2021] EWCA Civ 1312



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# Death and Financial Loss: The unlevel playing field

per Lord Diplock *Cookson v Knowles* [1979] AC 556

*“Today the assessment of damages in fatal accident cases has become an artificial and conjectural exercise. Its purpose is no longer to put dependents, particularly widows, into the same economic position as they would have been in had their late husband lived”*



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# Death and Financial Loss: The frozen scene

*Per Smith LJ Williams v Welsh Ambulance [2008] EWCA Civ 81 @ [50]*

- *“He was correct when he said that nothing that a dependant (or for that matter anyone else) could do after the death could either increase or decrease the dependency. The dependency is fixed at the moment of death; it is what the dependants would probably have received as benefit from the deceased, had the deceased not died. What decisions people make afterwards is irrelevant. The only post death events which are relevant are those which affect the continuance of the dependency (such as the death of a dependant before trial) and the rise (or fall) in earnings to reflect the effects of inflation”*



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# Death and Financial Loss

*HEAD v CULVER*



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# Death and Financial Loss

*PARAMOUNT SHOP FITTING V RIX*



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# Death and Financial Loss

STEVE HILL LTD v WITHAM



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# Vicarious Liability

- *Various Claimants v The Catholic Child Welfare Society [2012] UKSC 56*  
“Christian Brothers”
- *Cox v MOJ [2016] UKSC 10*
- *Mohamud v WM Morrison Supermarkets PLC [2016] UKSC 12*
- *Barclays Bank plc v Various Claimants [2020] UKSC 14*
- *Various Claimants v WM Morrison Supermarkets PLC [2016] UKSC 12*
- *Blackpool Football Club Ltd v DSN [2021] EWCA Civ 1352*
- *TVZ v MCFC [2022] EWHC 7 QB*
- *MXX v A SECONDARY SCHOOL [2022] EWHC 2207 (QB)*



# Vicarious Liability: The test

*“It has been quoted and applied in numerous subsequent cases:*

- “i) The first stage is to consider the relationship of [the Defendant and the primary tortfeasor] to see whether it is one that is capable of giving rise to vicarious liability.*
  
- ii) ... What is critical at the second stage is the connection that links the relationship between [the Defendant and the primary tortfeasor] and the act or omission of the primary tortfeasor, hence the synthesis of the two stages.”*



# Vicarious Liability: The policy behind the test

## *Per Lord Phillips in Christian Brothers [35]*

*“(i) the employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability; (ii) the tort will have been committed as a result of activity being taken by the employee on behalf of the employer; (iii) the employee’s activity is likely to be part of the business activity of the employer; (iv) the employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee; (v) the employee will, to a greater or lesser degree, have been under the control of the employer.”*



# Vicarious Liability: PROBABLY EXISTS

- Between a Bishop and a parish priest or that of brothers and their order or that of the Jehovah's Witnesses and one of its elders;
- Between a prisoner and a prison governor where the former is paid to do work for the prison
- Between a local authority and a foster-parent in respect of a placed foster child
- Between the Crown and armed forces and the Chief Officer of Police and a police officer.
- Potentially between a scout master and the scouting association.



# Vicarious Liability: PROBABLY DOESN'T EXIST

- Football scouts and medics carrying out works medical examinations (both as set out above)
- A school and a teacher engaged in providing swimming lesson
- A debt collection agency and a bailiff



# And finally...and gloriously

## Lord Pearce *West v Shepherd* [1964] AC 326 @ 368

*“The loss of happiness of the individual plaintiffs is not, in my opinion, a practicable or correct guide to reasonable compensation in cases of personal injury to a living plaintiff. A man of fortitude is not made less happy because he loses a limb. It may alter the scope of his activities and force him to seek his happiness in other directions. The cripple by the fireside reading or talking with friends may achieve happiness as great as that which, but for the accident, he would have achieved playing golf in the fresh air of the links. To some ancient philosophers the former kind of happiness might even have seemed of a higher nature than the latter, provided that the book or the talk were such as they would approve. Some less robust persons, on the other hand, are prepared to attribute a great loss of happiness to a quite trivial event. It would be lamentable if the trial of a personal injury claim put a premium on protestations of misery and if a long face was the only safe passport to a large award. Under the present practice there is no call for a parade of personal unhappiness. A plaintiff who cheerfully admits that he is happy as ever he was, may yet receive a large award as reasonable compensation for the grave injury and loss of amenity over which he has managed to triumph I venture to think that an alteration of the current principles of assessing damages for personal injury would be an embarrassment to a practice which in spite of its difficulties does in the main produce a just result”*





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Thank you

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