

Psychiatric harm

1) What is psychiatric harm?

- The concept of 'psychiatric harm' is also known as 'nervous shock'
- Recognised psychiatric illness that is independently verified through medical evidence; represents long-term psychiatric consequences following a shocking event
- Created by judges from the cases they hear in court = case law (common law)
- Severe injury so that C (claimant) cannot work
- But most importantly, this is simply **negligence causing psychiatric harm**; a duty of care was owed and breached by D and it resulted in a nervous shock
- **Mental injury** = a severe, long-term mental injury which is more than a shock or grief; e.g.:
 - Post-traumatic stress
 - Reactive depression
 - Acute anxiety

At first there was suspicion amongst judges of Cs with mental injuries; claims as a result of fear for one's own safety would only be allowed.

'Close ties of love and affection' = include V's blood relatives + more distant relatives + friends + those in a relationship with V

Until 1982 claims for psychiatric harm could only be made if one was present at the scene of the accident (until this case; changed the rule).

Dulieu v White (1901)

- C was working in a bar; heard an accident outside
- A horse and a coach crashed into the bar
- C suffered fear for her own safety
- Claim was allowed as it was foreseeable that in the event of an accident, someone could suffer real and immediate fear of personal danger
- First successful claim for mental injuries

McLoughlin v O'Brien (1982)

- C's husband and children were involved in a car accident; C heard about it on TV
- C went to hospital 2 hours after the incident and saw her family being treated
- C suffered shock when she saw them and heard of the death of one of her children

Early development of the rules

Safety of a family member.

Hambrook v Stokes (1925)

- Mother was walking with her children along a pavement when a runaway lorry passed her
- Heard a crash ahead of her and also that the lorry was involved in an accident involving a child
- Suffered severe shock as she feared for the safety of her children
- Claim was allowed as it could be made by those suffering shock due to fearing for the safety of a family member; psychiatric harm was foreseeable

Bourhill v Young (1943)

- A mother heard and later saw the scene of a motorcycle crash => she suffered a miscarriage
- Unsuccessful in suing the dead motorcyclist's estate as she couldn't prove that neither the crash, nor seeing it caused the miscarriage

- C had suffered from ME before the accident
- C was in a process of recovery when he was involved in a minor car accident due to D's negligence
- Not physically injured; accident triggered his ME => became chronic and permanent
- C was unable to do his job as a teacher
- House of Lords ruled that the damage was foreseeable
- D had a duty of care and breached it
- D must have taken V as he found them

Primary victim = someone, who is injured in an accident + suffers physical or mental injuries or both

Secondary victim = someone who suffers a mental injury after witnessing an accident or its immediate aftermath; it is much harder to claim for psychiatric harm as being a secondary victim

Primary and Secondary victims

Needs to prove:

- (1) That there was an accident or sudden event where someone (D) was negligent, which caused the injury
- (2) Some form of mental injury
- (3) The Alcock criteria must be passed so as to allow the claim
- (4) A person of reasonable fortitude (no already suffering from an illness) would have suffered the same injury in the same circumstances

Alcock criteria:

- 1) **C has close ties of love and affection with V**; it is really hard to prove that the relationship was of a close type; relationship is close in fact; proved by C; e.g. blood relatives, but it could also include friends
- 2) **C suffered mental injuries at the scene of the accident or in its immediate aftermath**; the 2-hour period in McLoughlin v O'Brien was not too distant, but the 8-hour period in the Alcock case was too distant; problem is that time limits are artificial and different judges can view time being too distant in a different way
- 3) **C suffered shock through his/her own unaided senses** = he/she saw or heard the accident or its aftermath; suffering shock through watching TV or listening to the radio won't satisfy the criteria

Alcock v Chief Constable of South Yorkshire (1992)

- Due to the negligence of the police too many football supporters were allowed into an area of the Hillsborough ground, leading to many suffering injuries
- 96 dead, 100 injured
- Case involved a representative group of families suffering mental injuries as a result of learning that family members were involved in the tragedy
- Police didn't open the back gates of the stadium and didn't let any ambulances for 12 minutes, BUT the D was not guilty

Objective test: C must prove that a person of reasonable fortitude would have suffered the same reaction and injury as C

PRIMARY VICTIMS | SECONDARY VICTIMS

Chadwick v British Railway Boards (1967)

- C was part of a group of people suing their boss, who caused them to suffer psychiatric harm
- Rescuers, who do not put themselves at risk are treated as secondary Vs and have to prove the Alcock criteria

White v Chief Constable of South Yorkshire (1998)

- A train derailed and many were injured
- Lots of people nearby and 'official' rescuers (police, firemen) came and helped the victims from the crash
- Rescuers suffered psychiatric harm
- Those rescuers that put themselves at risk through helping were treated as primary victims

Rescuers = people who are not involved in an accident, but who attends the scene as a rescuer can qualify as a primary victim if they suffered psychiatric damage as a result of their experience

'Near missers' = people who were close to the scene of the accident and may have suffered physical or mental injuries; regarded as primary victims and can claim for their injuries if they can prove D caused the accident negligently; a 'near misser' does not have to be related to the victim of the accident

Other categories of victims

As a result of this case, the court will not extend a duty of care to mere bystanders of horrific events nor to a rescuer lacking ordinary courage; whether a person is to be regarded as a rescuer is a question of fact to be decided on the facts of the case; if trivial or peripheral assistance is given, this will not be sufficient

Bystanders = accident (or aftermath) witnesses, who do nothing to help; if they suffer mental injuries, they will not be able to claim unless they satisfy the Alcock criteria

McFarlane v EE Caledonia (1994)

- C was on board of a supply ship
- Piper Alpha oilrig exploded
- Witnesses that survived were rescued and suffered psychiatric harm
- Had to prove the Alcock criteria as they were secondary victims

Property owners

Attia v British Gas (1987)

- C asked British Gas to install control heating
- C returned home from work to find smoke coming out of the property
- By the time the fire brigade arrived, the household had burned down

Those suffering gradual rather than sudden shock = usually shock is suffered after witnessing a sudden event; however, there have been attempts to extend this rule to those who have experienced mental injury as a result of a gradual appreciation of events

North Glamorgan NHS Trust v Walters (2002)

- A doctor failed to diagnose C's 10-month-old son's liver condition
- The baby was taken to hospital in an ambulance for a liver transplant
- V suffered brain damage after a seizure
- Died after her life-support machine was switched off
- Whole situation took 36 hours

Sion v Hampstead Health Authority (1994)

- C's son was injured in a motorcycle accident and was taken to hospital in coma
- Died 14 days later
- C stayed by her son's bed throughout the 14 days and suffered psychiatric harm
- Wasn't a sudden shock