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# Annual Case Law Update

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# Personal Injury

# HXA v Surrey County Council [2023] UKSC 52

## Facts:

Claimants in two separate cases had been abused, either by their parent or parent's partner. They brought claims against the respective defendant local authorities, alleging that the defendants had assumed responsibility for protecting them, such as to give rise to a common law duty of care.



# HXA v Surrey County Council [2023] UKSC 52

## a. How the common law interacts with statute

*“In respect of a local authority’s duties and powers under, for example, the 1989 Act, **“there is no cause of action for the tort of breach of statutory duty even if the breach of statutory duty is a negligent breach. That does not mean that the common law tort of negligence has been excluded by statute. The statute is, in that respect, neutral. But what it does mean, as emphasised in N v Poole (see para 49 above), is that the courts must decide whether there is a duty of care at common law by applying to the public authority the same principles that would be applied if the public authority had been a private individual [...]** As we have just indicated, what is required (which the courts, perhaps unhelpfully, have sometimes referred to [...] as the **“something more” or “something else”**) is that there would have been a duty of care owed because, for example, there is an **assumption of responsibility had the public authority been a private individual.**”*

# HXA v Surrey County Council [2023] UKSC 52

b. The need for an assumption of responsibility

*“Applying the approach of looking at whether a private individual would have owed the children a duty of care to protect them from harm, it is clear that the claimants must here **establish a relevant assumption of responsibility**. This is because we are concerned with a failure to benefit the claimants by protecting them from harm by a third party. To establish liability for such a failure to benefit (which can be viewed as **imposing liability for an omission**), which is the exception rather than the rule in the common law, one of the recognised exceptional principles must be established.”*

# HXA v Surrey County Council [2023] UKSC 52

c. There was here no relevant assumption of responsibility

*“It is very common for the language of “assumption of responsibility” to be used at a high level of generality. However, it helps to sharpen up the analysis always to ask, **what is it alleged that the defendant has assumed responsibility, to use reasonable care, to do?** [...] in essence she needs to satisfy the court that there was, arguably, an assumption of responsibility, to use reasonable care, to protect HXA and/or YXA from the abuse that the local authority was aware of or ought to have known about. If properly discharged, that duty of care would then have led, so it is alleged, to the local authority seeking a care order [...]. **In our view it is clear that there was no such assumption of responsibility.**”*



## HXA v Surrey County Council [2023] UKSC 52

c. There was here no relevant assumption of responsibility

*“it is clear from para 81 of N v Poole [...] that **a local authority investigating HXAs position does not involve the provision of a service to HXA.** Rather, the investigation is to enable the local authority to decide whether to bring care proceedings, which investigation would have involved determining the ability of HXAs mother and her partner (Mr A) to keep HXA safe, the level of risk to HXA and whether the section 31 threshold was met.*

***Again, a local authority deciding to obtain legal advice does not involve the provision of a service to HXA. The legal advice would have been advice to, and for the benefit of, the local authority”***



# Tindall v Chief Constable of Thames Valley Police and another [2024] UKSC 33

## Facts:

Motorist lost traction on black ice and slid off the road into a ditch. He got out of his car and waved vigorously to oncoming traffic to warn them of the danger.

He then called the police and explained the situation. The police then arrived, and were told by the motorist and fire crew of the danger. The motorist was taken away in an ambulance. The police then cleared the road of debris, called to request the attendance of a road gritter, but then departed before it arrived. The police left no warning to motorists of the black ice which remained present.

Minutes later, the Claimant's husband was travelling along the road and lost traction on the same area of black ice. He collided with an oncoming vehicle and was killed.





# Tindall v Chief Constable of Thames Valley Police and another [2024] UKSC 33

*“It has long been recognised that the tort of negligence draws a **fundamental distinction between acts and omissions** or, in the more illuminating language adopted in recent years, **between making matters worse (or harming) and failing to confer a benefit (or to protect from harm)**. As a general rule, a person has no common law duty to protect another person from harm or to take care to do so: liability can generally arise only if a person acts in a way which makes another worse off as a result [...]. **Many public authorities - notably, protective and rescue services such as the police force and fire brigade – have statutory powers and duties to protect the public from harm. But failure to do so, however blameworthy, does not make the authority liable in the tort of negligence** to pay compensation to an injured person unless, applying the same principles, a private individual would have been so liable. That means that **to recover such compensation a claimant generally needs to show that the public authority did not just fail to protect the claimant from harm but actually caused harm to the claimant.** Drawing this distinction is not always straightforward.”*



## **Tindall v Chief Constable of Thames Valley Police and another [2024] UKSC 33**

*(i) There is a fundamental distinction, drawn in all the above cases, between making matters worse, where the finding of a duty of care is commonplace and straightforward, and failing to confer a benefit (including failing to protect a person from harm), where there is generally no duty of care owed.*



## Tindall v Chief Constable of Thames Valley Police and another [2024] UKSC 33

*(iii) A difficulty in drawing the distinction (between making matters worse and failing to protect from harm) is how to identify the baseline relative to which one judges whether the defendant has made matters worse: see Sandy Steel, “Rationalising Omissions Liability in Negligence” (2019) 135 LQR 484, 487. The cases show that the relevant comparison is with what would have happened if the defendant had done nothing at all and had never embarked on the activity which has given rise to the claim. **The starting point is that the defendant generally owes no common law duty of care to undertake an activity which may result in benefit to another person. So it is only if carrying out the activity makes another person worse off than if the activity had not been undertaken that liability can arise.***



## Tindall v Chief Constable of Thames Valley Police and another [2024] UKSC 33

*A further point may usefully be made about the **need to view the defendant's activity as a whole**. This dispels the objection that it can be difficult or even arbitrary to distinguish between acts and omissions. Take, for example, what Lord Nicholls of Birkenhead in *Stovin v Wise* [1996] AC 923, 930, described as the **classic illustration of failing to apply the handbrake when parking a car**, with the result that the car rolls down a hill and causes damage to another vehicle.*



## **Tindall v Chief Constable of Thames Valley Police and another [2024] UKSC 33**

*“It follows in any case from first principles. It is simply a particular illustration or manifestation of the duty of care not to make matters worse by acting in a way that creates an unreasonable and reasonably foreseeable risk of physical injury to the claimant. There is no reason in principle why the conduct which creates this risk should not consist in acts which are foreseeably likely to have the effect of putting off or preventing someone else from taking steps to protect the claimant from harm.*”



## **Tindall v Chief Constable of Thames Valley Police and another [2024] UKSC 33**

*“A major factual difficulty”*

*“Where the claimant’s case breaks down, however, is in relation to what the police knew or ought to have known about Mr Kendall’s warning efforts. There is no pleaded allegation that the police were aware that, before calling 101, Mr Kendall had been attempting to warn other motorists of the ice hazard. Nor is it alleged that Mr Kendall said anything to the call handler or to any of the police officers who attended the scene of his accident to suggest that he had any intention of making such attempts.”*

## **Lewis-Ranwell v G4S Health Services (UK) Ltd and others [2024] EWCA Civ 138**

### **Facts:**

The claimant had been diagnosed with schizophrenia in his 20s. Some time afterwards, he was arrested on suspicion of grievous bodily harm after assaulting a man he wrongly believed to be a paedophile. He was seen by medical professionals, and then released on bail. A short time later, he attacked and killed a number of individuals under the delusional belief that they were paedophiles. He was tried for murder and found not guilty by reason of insanity, but he was detained under a hospital order pursuant to the Mental Health Act 1983. The claimant then brought a claim against the healthcare providers, the police, and the local authority in respect of the consequences he said he had suffered as a result of their negligence.

## **Lewis-Ranwell v G4S Health Services (UK) Ltd and others [2024] EWCA Civ 138**

After reviewing the authorities, Underhill LJ addressed the two broad headings of “*the consistency principle*” and “*the public confidence principle*”. The inconsistency relates to the inconsistency between, on the one hand, treating the claimant’s conduct as criminal and, on the other, allowing them to claim damages for the consequences of that conduct. On this point, the court accepted the claimant’s case: that the verdict of not guilty by reason of insanity was an acquittal, and that accordingly the law has not treated him as criminally responsible for his actions, such that there is no inconsistency in allowing him to recover for the loss that he has suffered in consequence of them.



## **Lewis-Ranwell v G4S Health Services (UK) Ltd and others [2024] EWCA Civ 138**

In terms of inconsistency with the civil law, Underhill LJ also rejected the suggestion. He noted that the question of liability to one's victims for the injury caused to them is self-evidently different from the question of the liability of the defendants for the loss which they have caused him. In the former case, justice required that the interest of the victim in receiving compensation comes before any question of moral culpability. In the latter, it is the claimant who is the victim of wrongdoing.

## **Lewis-Ranwell v G4S Health Services (UK) Ltd and others [2024] EWCA Civ 138**

Finally, Underhill LJ went on to consider “*the public confidence principle*”. The was summarised as follows: “allowing a claimant to be compensated for the consequences of his own criminal conduct risks bringing the law into disrepute and diminishing respect for it because that is an outcome of which public opinion would be likely to disapprove”. For Underhill LJ, this was the issue at the heart of the appeal, and it was a difficult issue.

## **Lewis-Ranwell v G4S Health Services (UK) Ltd and others [2024] EWCA Civ 138**

I do not doubt that it would - at least as a first reaction - stick in the throats of many people that someone who has unlawfully killed three innocent strangers should receive compensation for the loss of liberty which is a consequence of those killings, however insane he was and however negligent his treatment had been. To the extent that that reaction reflects, in Santow JA's language, "considered community values", we should be very slow to disregard it: the law ought so far as possible to give effect to such values.

However, I have come to the conclusion that, although that first reaction is entirely understandable, the values of our society are not reflected by debarring a claimant from seeking compensation in this kind of case. It is necessary, as Santow JA accepted, to go beyond "instinctive recoil" and to consider what justice truly requires in a situation which most humane and fair-minded people would recognise as far from straightforward.



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# Clinical Negligence



# Interim Payments

*XS1 v West Hertfordshire Hospitals NHS Trust [2024] EWHC 1865 (KB), [2025] PIQR Q1*

- 10 year old girl with severe disabilities, including cerebral palsy sought an interim payment to fund the purchase of a new property.
- £2.15m sought on top of £825,000 IP already made.
- Application adjourned due to gaps in the evidence.

# Interim Payments

- This decision of Master Stevens contains an important lesson for practitioners in the level of detail required in preparing to make or resist an interim payment application.
- D's application to adjourn on the basis that they did not have even draft care or accommodation expert evidence was refused - *Sellar-Elliott v Howling* [2016] EWHC 443 (QB) followed.
- If the Claimant wished to proceed with the application, the court invited the parties to provide a joint schedule of their respective positions on each head of loss.

# Pleadings

*Manv St George's University Hospital NHS Foundation Trust  
[2024] EWHC 1304*

- Para 13 PoC alleged that C told nurse she was in pain.
- *“Paragraphs 3 to 35 are admitted, insofar as they are consistent the medical records, which the Defendant will rely on at trial, and save aforesaid, they fall outside the knowledge of the Defendant and the Claimant is required to prove them.”*



# Pleadings

- D tried to rely on evidence from a nurse that if C had been in pain, she would have recorded something different from that which was contained in the notes.
- Master Sullivan held that that evidence did not go to matters properly in issue on the pleadings.
- D also criticised for a statement from a Bolitho witness which contained impermissible opinion evidence.





# Pleadings

Warning that the court will not tolerate blanket non-admissions.

- Speak to witnesses early – “It seems to me it is not appropriate for a NHS Trust, in a clinical negligence case, simply to say, “Oh well, we have not been able to ask” [31]
- If something is inconsistent with the medical records say so.
- Putting C to proof requires C to lead evidence on the issue but does not entitle D to lead evidence on it.
- Be alert to the need to amend pleadings, but N.B. this may involve withdrawing an admission.

# Paul v Royal Wolverhampton NHS Trust [2024] UKSC 1

- Claims were dismissed by CoA following *Taylor v A Novo (UK) Ltd [2013] EWCA Civ 194*.
- Supreme Court explained *Novo*. It was correctly decided because C was not present at the scene of the accident and what she witnessed was not an accident. [104]
- It was authority for the proposition that no claim could be brought in respect of psychiatric injury caused by a separate event removed in time from the accident. [92]



# Paul v Royal Wolverhampton NHS Trust [2024] UKSC 1

- *Novo* did not decide anything about distance in time between the event which caused psychiatric injury and the original negligence. [92]
- There was no authority to the effect that right to recovery for damages for witnessing a person's death or injury in an accident depended on closeness in space and time to D's breach of duty. [95]

# Paul v Royal Wolverhampton NHS Trust [2024] UKSC 1

- A person could not reasonably be expected to be shielded by the medical profession from exposure to the traumatic experience of witnessing the death or manifestation of disease in their relative. [139]
- The persons whom doctors should reasonably have in contemplation when directing their minds to a patient's care do not include members of the patient's family who might be psychologically affected by witnessing the effects of a disease which the doctor should have diagnosed and treated. [142]

# Paul v Royal Wolverhampton NHS Trust [2024] UKSC 1

- Liability does not depend on the Claimant experiencing a “sudden shock” [71]-[74], or witnessing a “horrifying event” [75]-[78].
- In developing those additional requirements the law had “taken an unfortunate wrong turn which these appeals enable us to correct.”



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# Travel Law

# Case List:

*Sherman v Reader Offers Limited* [2024] EWCA Civ 412

*Team4 Travel GMBH T/A Ski Team4 v Governors of St John Fisher and St Thomas More Catholic High School & Or.* (14 June 2024, Preston County Court)

*Nicholls & Anr v Mapfre* [2024] EWCA Civ

*Tidiman v TUI UK Ltd* [2023] WLUK 455 22 December 2023, County Court Basildon)

*Miller v Irwin Mitchell* [2024] EWCA Civ 53

Legal Framework: Hague Convention 2019; Retained EU Law

# ***Sherman***

- High Court wrong about a non-binding pre-contract.
- Issues decided on organiser's express Ts&Cs not PTR implied terms.
- No more 'flicker of hope'
- Unforeseeability divorced from predictability.
- A requirement to inform?
- Quantum principles – what would have happened?
- Implications for PTRs 2018?





## ***Team4***

- How to interpret regulation 12(7):
  - PTRs applicable: a ‘general agreement’?
  - ‘significantly affect’: Temporal issues?
  - ‘at the destination’: Geographic issues?
  - ‘in the event of’: Causation issues?



# ***Mapfre***

- Spanish penalty interest – procedural or substantive
- If procedural – judicial discretion?
- *Sedgwick* – standing to bring claim?



# *Tidiman*

- Holiday sickness claims following *Griffiths*.
- Pathogen isolated = liability established??
- *Entamoeba Histolytica* – caution!
- Expert battles.
- Evidence guidance – parameter reports, TripAdvisor reviews, hotel audits, uncovered foods, incubation periods.



# ***Miller***

- Professional Negligence
- Notification of Insurers – Is there a duty on a claimant's solicitors?
- Practical Tips: Start with enforcement

# Legislative Framework

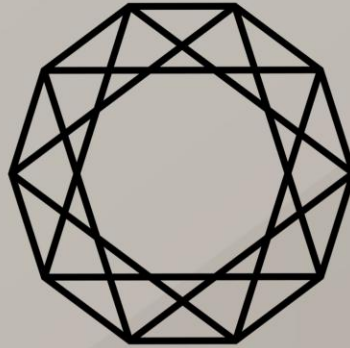
- Hague Convention: Ratified June 2024
- Includes Personal Injury. But:
  - Article 5(1)(j): act or omission in origin State;
  - Article 2(1)(f): passengers excluded;
  - Article 7: public policy basis for refusal (CFAs).
- Beyond the Sunset and the baths of all the Western stars:  
REUL(RR)A
  - The Civil Jurisdiction and Judgments (Saving Provision)  
Regulations 2023



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**Thank you for your attention.**

Questions?



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