

Compass Chambers



Secondary Victims: pre and post Paul

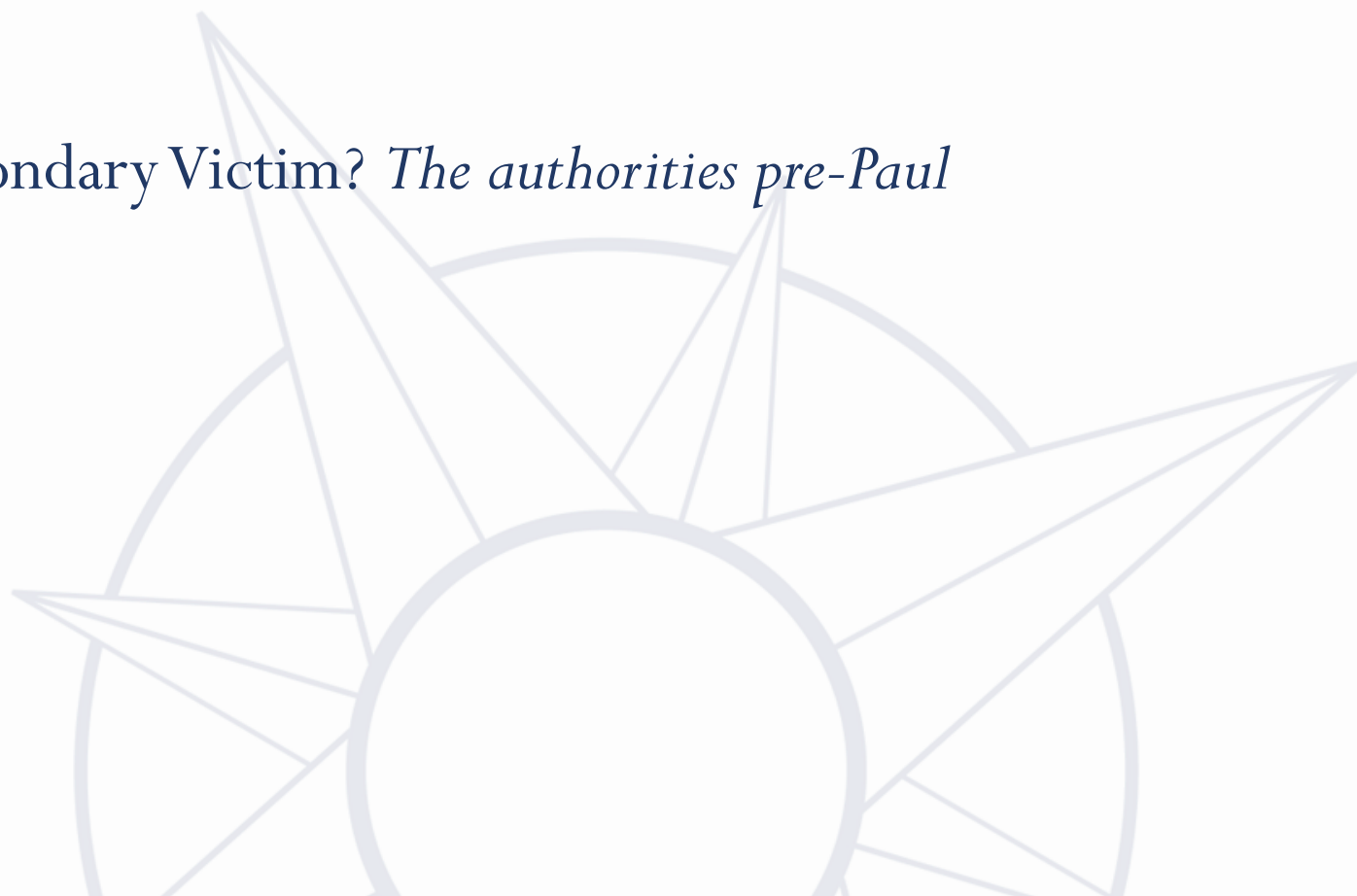
22 November 2024

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Running Order

1. What constitutes a Secondary Victim? *The authorities pre-Paul*
2. Paul & its' implications





What is a ~~secondary~~ victim?

- But first...
 - Primary victim
 - General rule – *no legally compensable interest in wellbeing of another (generally)*
- 



What is a secondary victim?

- *“no more than the passive and unwilling witness of injury caused to others”*

– Lord Oliver in Alcock





Sufficient Proximity

- *“that description [“secondary victim”] must not be permitted to obscure the absolute essentiality of establishing a duty owed by the defendant directly to him – a duty which depends not only upon the reasonable foreseeability of damage of the type which has in fact occurred to the particular plaintiff but also upon the proximity or directness of the relationship between the plaintiff and the defendant.”*

– Lord Oliver in Alcock





Reasonable Foreseeability

- *“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”*

- Donoghue v Stevenson [1932] AC 562, 580





Immediate Aftermath Extension

- *McLoughlin v O'Brian* [1983] 1 AC 410
- 



Control Mechanisms

- *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310
 - *A marital or parental relationship between the claimant and the primary victim;*
 - *That the injury for which damages are claimed arose from the sudden and unexpected shock to the claimant's nervous system [emphasis added];*
 - *That the claimant was either personally present at the scene of the accident or was in more or less the immediate vicinity and witnessed the aftermath shortly afterwards;*
 - *That the injury suffered arose from witnessing the death of, extreme danger to, or injury and discomfort suffered by the primary victim;*
 - *Lastly, that there was not only an element of physical proximity to the event but a close temporal connection between the event and the claimant's perception of it, combined with a close relationship of affection between the claimant and the primary victim.*



Control Mechanisms

- *Frost v Chief Constable of South Yorkshire* [1999] 2 AC 455
 - “(1) The plaintiff must have close ties of love and affection with the victim. Such ties may be presumed in some cases (e.g. spouses, parent and child) but must otherwise be established by evidence.
 - (2) The plaintiff must have been present at the accident or its immediate aftermath.
 - (3) The psychiatric injury must have been caused by direct perception of the accident or its immediate aftermath and not upon hearing about it from someone else.”

- Lord Hoffmann at 502G-H



The Paul cases

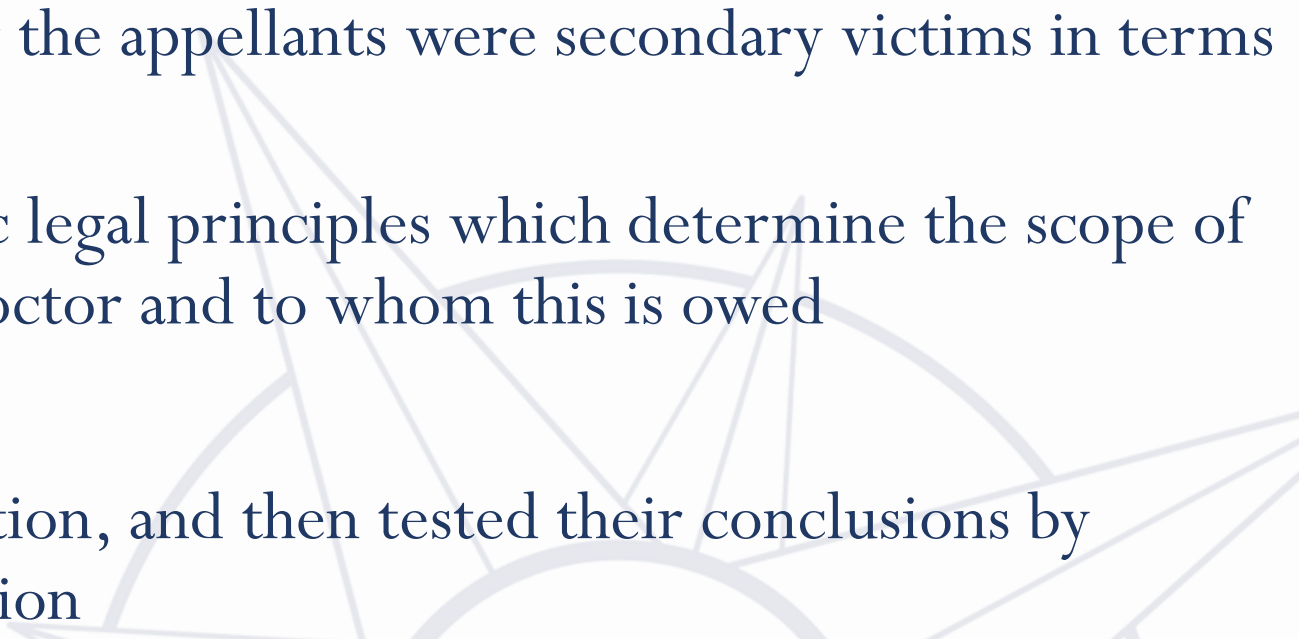
- January 2024: Supreme Court decisions

3 cases [2024] UKSC 1

- 1- *Paul and another v Royal Wolverhampton NHS Trust*
 - 2- *Polmear and another v Royal Cornwall NHS Trust*
 - 3- *Purchase v Ahmed*
- Key issue: ‘Whether this exceptional category [secondary victims claims] includes- or can and should be extended to include- cases where the claimant’s injury is caused by witnessing the death or injury of a close relative, not in an accident, but from a medical condition which the defendant had negligently failed to diagnose and treat.’

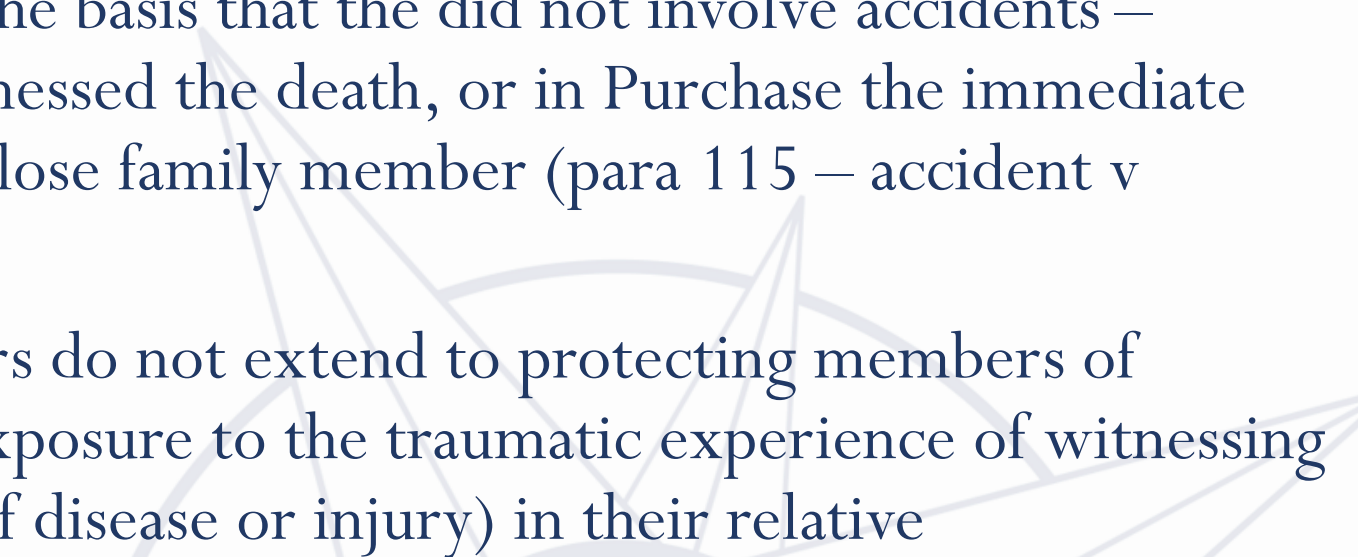


Paul cases (cont)

- Court approached from two angles:
 - 1- By considering whether the appellants were secondary victims in terms of the existing authority
 - 2- By considering the basic legal principles which determine the scope of the duty of care owed by a doctor and to whom this is owed
 - They looked at the first question, and then tested their conclusions by considering the second question
- 



Decision

- The claimants were not secondary victims in terms of the existing rules – the cases were distinguished on the basis that they did not involve accidents – rather, the claimants had witnessed the death, or in *Purchase* the immediate aftermath of the death, of a close family member (para 115 – accident v medical crisis)
 - The responsibilities of doctors do not extend to protecting members of patients' close family from exposure to the traumatic experience of witnessing the death (or manifestation of disease or injury) in their relative
- 



Other clarifications

- Nervous shock
- Horrifying events
- Immediate aftermath



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