

Bill and at risk of
physical harm,
regardless



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BILL V POWERPLUS PLC To begin with, the issue here is whether or not Bill can seek damages for negligence for psychiatric illness.

As shown in *Chadwick v British Railway Board*¹, to claim for psychiatric illness, the claimant must show a recognised medical condition usually induced by shock. In this case, Bill's depression is a recognised medical condition induced by the shock of Annie dying in his arms. In order to prove this however, the claim must fulfil the traditional requirements for an action for negligence². That is, the defendant must owe the claimant a duty of care, the defendant must be in breach of that duty and the claimant must have suffered damage as a consequence. DUTY OF CARE The defendant must owe the claimant a duty of care³. Duty of care is relatively difficult to prove in cases of psychiatric harm, as duty is usually owed if the claimant could be reasonably foreseeable as a victim. There are two major classifications for a victim namely; primary victim and secondary victim. In *Page v Smith* (1996)⁴ a primary victim is a victim who was directly involved in the accident and at risk of physical harm, regardless of whether or not it was actually suffered.

As long as physical harm is reasonably foreseeable, establishing foreseeability of psychiatric harm is unnecessary⁵. People that assist in an accident are secondary victims because they usually do not know the victims⁶. However, because of their response to the cry of distress, they are treated differently⁷. Lord Steyn, in *White v Chief Constable of South Yorkshire*⁸ Police established that a rescuer could only be considered as a primary victim if he 'objectively exposed himself to a danger or reasonably believed he was doing so'. The courts have usually concluded that

defendants don't only owe a duty of care to those who they have initially endangered by their negligence, but also to those who rescue those initially endangered victims⁹. In this case, Bill is primary victim as rescuer. It is reasonably foreseeable for a person, who is exposed to the negligent act of using faulty gas valves, to be at risk of suffering a physical harm.

He ran back into the house help and assist Annie after the explosion.

The house was devastated, and Annie was on fire, he proceeded to extinguish the fire, knowing it could burn him at any time, which would make the situation objectively dangerous. Although, he suffered no physical damage, the risk of it, is sufficient to make him a primary victim. The fact that it was the negligent act of fitting a faulty gas valve, that endangered Bill, establishes a duty of care between Power plus and Bill. In conclusion it can be said, that a duty of care is owed by Power plus to Bill, due to the fact that he is a primary victim as a rescuer. It is important to note however, that due to policy reasons, the courts can be quite reluctant to find a duty of care as rescuer, as shown in *Alcock*¹⁰.

This is due to the fact that, they wouldn't want to open floodgates for claims. However in *White*¹¹, the courts established that rescuers would only be considered primary victims if, they were objectively exposed to danger, even if the rescuer wasn't necessarily of this danger. BREACH OF THE DUTY OF CARE The next thing to consider is that there needs to be a breach of that duty. The claimant needs to show that the defendant was in breach of that duty.

A breach of duty can only be found if the defendant's conduct falls below that of the reasonable standard set by the law¹², as seen in *Blyth v Birmingham Waterworks*¹³. In other words, the defendant must be at fault. When Annie and Bill were called out to fix the gas leak, they found an old pipe which needed replacing. The fact that Power plus had installed a faulty gas valve in a house with an old gas pipe, is standard that falls well below the reasonable standards expected by a gas maintenance company. It is their job to maintain gas infrastructure within a home and install working gas valves without faults. Therefore, in conclusion, Power plus has simply breached their duty of care, as they had installed a faulty gas valve, which was conduct that was well below the standard expected of Gas Company.

CAUSATION. The final element needed for a claim to succeed is causation¹⁴, in other words, the damage the claimant suffered as a consequence of the negligent actions of the defendant. The defendant must have factually caused the damage, as shown in *Barnett v Chelsea*¹⁵. In addition, the defendant must also have legally caused the claimant's damage as seen in *McGhee v NCB*¹⁶, without being too remote. In application, but for the negligence of Powerplus in breaching their duty of care, would Bill's psychiatric harm have occurred? In other words, but for exposing Bill as a rescuer, to danger, by installing faulty gas valves, would Bill's psychiatric harm have occurred? The simple is yes.

If Power plus had done their job by making sure they installed proper gas valves, then Bill's psychiatric harm caused by the shock from trying to save Annie would not have occurred. In addition, Power plus's installation of faulty gas valves, did materially contribute, as it led to a dangerous situation for

Bill, who they sent to do his job. Finally, psychiatric harm must not be too remote. To prove this we must consult *Wagmound No 117*, which establishes that the damage must be one that is foreseeable.

If it is, then the defendant will be liable for all damages, regardless of the extent of it. When applied to this, it is reasonable to see that psychiatric harm could occur, as an explosion could lead to all sorts of trauma, be it physical or psychological. Although, the defendants could argue that they had reasonably foreseen that their negligence could cause the claimant some psychiatric harm, therefore their liability should be limited to the cost of the time taken off work¹⁸.

However, when the egg/thin skull rule as seen in *Smith v Leech Brain*, is applied, the defendant must take the victim as he finds him¹⁹. In other words, regardless of whether or not he already had depression prior to the accident, they would still be held liable. Therefore, in regards to Bill, it is quite clear that Powerplus's breach of their duty factually and legally caused Bill's psychiatric harm. It is also safe to conclude that the damage is not too remote. In conclusion, having proven that Powerplus owed Bill a duty of care, Powerplus was in breach of that duty, and breach was the not too remote cause of Bill's damages, it is safe to conclude that Bill will be able to sue for Negligence for Psychiatric illness and succeed. Bill will be able to claim general damages as shown in *Bennett v Greenland Houschen & Co*²⁰.

PC KEANE V POWERPLUS PLC To begin with, the issue here is whether or not PC Keane can seek damages for negligence for psychiatric illness. To claim for psychiatric illness, the claimant must show a recognised medical condition usually induced by shock²¹. In this case PC Keane's

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depression is a recognised medical condition induced by the shock of Annie dying in his arms.

In order to prove this however, the claim must fulfil the certain requirements.

DUTY OF CARE The defendant must owe the claimant a duty of care. Duty is usually owed if the claimant could be reasonably foreseeable as a victim²².

It has generally been established, that the defendant would usually owe a duty of care, to those, that would respond to an emergency²³. There are two major classifications for a victim namely; primary victim and secondary victim. In *Page v Smith* (1996)²⁴ a primary victim is a victim who was directly involved in the accident and at risk of physical harm, regardless of whether or not it was actually suffered.

In this case, PC Keane does not fulfil the requirements of a primary victim, as he was not directly involved in the accident, and according to *White*²⁵, he could not be a rescuer, as he was not within the zone of danger. There was no risk of harm to him, as the fire had been extinguished, and the situation was no longer objectively dangerous. Therefore, the only other way he could claim is a secondary victim. "A secondary victim is a victim who suffers psychiatric injury as a result of witnessing someone else being harmed or endangered"²⁶. There are certain requirements that must be fulfilled for a secondary victim²⁷, if duty of care is to be found.

These requirements include; psychiatric harm must be foreseeable as seen in *McLoughlin v O'Brian* (1982)²⁸, the relationship between the victim and claimant must have been a close "of love and affection" as shown in *Alcock v Chief Constable of South Yorkshire Police* (1992)²⁹, a proximity in time and

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space³⁰, and finally there must be proximity of perception, as seen in *Sion v Hampstead Health Authority*³¹. The claimant must prove that psychiatric illness was reasonably foreseeable. This connotes showing that a person of "ordinary fortitude" or "customary phlegm" might reasonably have suffered psychiatric illness in the circumstances³². When the facts are considered, it is reasonably foreseeable that a police officer or a person responding to an emergency call of an explosion, where he witnesses distressing and extreme circumstances, would suffer a psychiatric illness. This can be supported by consulting *Bourhill v Young*³³.

However, to find duty of care as a secondary victim, we would need more than just reasonable foreseeability³⁴. We would need to consider the relationship between Annie the victim and PC Keane. The only relationship PC Keane has with Annie, is the relationship between a police officer and victim, which as a matter of fact, does not fall under the class of persons whose claim would be recognised as a result of their relationship with the victim. The class that would be recognised is that of "love and affection".

There is no evidence to show that this existed. This is shown in *Alcock*³⁵, where people who tried to claim psychiatric injury from seeing people die, saw their claim rejected, due to the fact that they did not have the requirement of a close relationship of "love and affection" with the "immediate" victim. The courts require that the close relationship must at least mirror that between a spouse, husband, parent or child³⁶. The next requirement would be that of proximity in time and space. The Lords in *Alcock*, said that succeeding as a secondary victim requires the defendant to show a high degree of proximity to the accident in time and space³⁷. In other

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words, they have to either witness the accident as it goes on, or witness its immediate aftermath. PC Keane, did not witness the accident, however he did witness a burnt Anna literally dying in Bill's arms. In other words, he did witness the immediate aftermath.

Therefore, this would suffice, as meeting the requirement, as he was within proximity in time and space. The last requirement to meet is that there must be a proximity of perception³⁸. In other words, As Lord Jauncey put it in *Alcock*³⁹. The means by which the shock is caused constitutes a second control, although in these appeals I find it difficult to separate this from Proximity." This is quite similar to proximity in time and space requirement, except the courts added " sudden shock⁴⁰" to it. In other words, as said in *Alcock*⁴¹, " the psychiatric illness in question must result from the sudden psychological impact of, witnessing a single event or in its immediate aftermath". When we consider the facts, we can find that the depression could be said to have resulted from the traumatic psychological impact of seeing a burnt Annie, being comforted and eventually dying in Bill's arm. In conclusion, however, due to the fact, that PC Keane did not fulfil the requirement of a close relationship with the victim of " love and affection", we cannot find duty of care.

If duty of care cannot be found, Power Plus cannot be held to liable; as the courts would require all the elements for negligence to be fulfilled before liability can be found. Therefore, PC Keane's claim would fail. EDWARD V POWERPLUS PLC The issue here is whether Edward can claim damages in negligence for psychiatric harm. To prove this, Edward must show that he is suffering from a recognised medical condition usually induced by shock. This <https://assignbuster.com/bill-and-at-risk-of-physical-harm-regardless/>

is a basic requirement and it is proven in *Alcock*⁴² where Lord Ackner says “the law gives no damages if the psychiatric injury was not induced by shock. Psychiatric illnesses caused in other ways, such as from the experience of having to cope with the deprivation consequent upon the death of a loved one, attract no damages”.

When the facts are applied, we find that it needs to be a recognised psychiatric harm. As shown in *Hicks v Chief constable of South Yorkshire Police* (1992)⁴³, the law does not regard grief or anxiety, which is the psychiatric effect Edward experienced, as a recognised psychiatric harm. It is possible to note that, although with the facts presented, had he suffered from a recognised psychiatric illness, we would have had to identify what sort of victim he was. However, the first requirement is that the psychological harm must be a medically recognised one⁴⁴. Overwhelming grief is not a medically recognised.

Although, grief was seen to be recognised as a medically recognised illness in *Kralj v Mcgrath*⁴⁵, this will not apply to this case, as the claimant in that case suffered from “Pathological grief”, which is a medically recognised.

Therefore, due to the fact that all Edward suffered was just grief, he will not be able to claim negligence for psychiatric harm, due to the fact that he was not suffering a recognisable psychiatric harm. 1