

## Tort Law

### *Can agreement be found with Lord Oliver about the law relating to nervous shock?*

The purpose of this analysis is to establish to what extent agreement can be found with regard to Lord Oliver's judgement in *Alcock v Chief Constable of South Yorkshire*<sup>1</sup>. Before offering any conclusive opinion, there will be a contextual look at the history behind the formation of nervous shock as a right of claim, followed by an examination of current jurisprudence as expressed in the domestic and international courts. This will be followed by a consideration of the medico-legal conflicts observed around secondary nervous shock cases, accompanied by academic opinion and first-hand perspective garnered through the gathering of this research. Finally there will be a clear illustration of any agreement found when considering the views of Lord Oliver and any cogent argument to the contrary.

#### **A History of Nervous Shock**

The origin of nervous shock as a potential liability first became evident in *Byrne v Great Southern and Western Railway Company of Ireland*<sup>2</sup> when a telegraph superintendent working in his office suffered 'great fright and shock' after a train smashed through his wall at Limerick junction (that the case went unreported would appear indicative of the stance taken by the courts at the time). In *Victorian Railways Commissioner v Coultas*<sup>3</sup> a pregnant mother was wrongly advised to use a railway crossing, unaware that a train was travelling toward her at speed. Despite avoiding any physical injury to herself, the victim fainted at the scene and later suffered a miscarriage. Suing for 'severe nervous shock',<sup>4</sup> a tentative Privy Council ruled the claim too remote for damages to be awarded. 'Remoteness' aside, the closing statement by the court also revealed a reluctance to further widen judicial scope when Sir Richard Couch stated 'The difficulty which now often exists in cases of alleged physical injuries of determining whether they were caused by the negligent act would be greatly increased, and a wide field opened for imaginary claims'.<sup>5</sup>

*Dulieu v White & Sons*<sup>6</sup> (a case reminiscent of *Coultas*) involved another pregnant woman experiencing the sudden trauma of witnessing a horse-driven carriage ploughing into the public house she ran with her husband. Again there were no immediate physical injuries, yet the victim expressed shock from what she both witnessed and feared during the event; this preceding the (premature) birth of a mentally deficient boy several months later. The opening judgment of the court now carried a different, if not perhaps more sympathetic tone, noting 'If impact be not necessary, and if, as must be assumed here, the fear is proved to have naturally and directly produced physical effects...why should not an action for those damages lie just as well as it lies where there has been an impact?'<sup>7</sup> The decision to compensate for nervous shock absent of any physical injury, demonstrated a reformative parting from a stoic refusal to give weight to the effects of perceptual causation.

In *Hinz v Berry*,<sup>8</sup> another woman was witness to a terrible road accident that resulted in the death of her husband and serious injury to several of her children; later causing her to suffer from what the consultant psychiatrist<sup>9</sup> distinguished as 'morbid depression', and that in his opinion she was 'officially ill', rather than suffering grief for her deceased partner. Damages were subsequently awarded given that the secondary victim's symptoms were somewhat classifiable (although one has

<sup>1</sup> [1992] 1 AC 310.

<sup>2</sup> [1884] (26 LR IR428).

<sup>3</sup> [1888] 13 App Cas 222.

<sup>4</sup> Kristin Savell [1999] The Cambridge Law Journal, 58, pp627.

<sup>5</sup> *Victorian Railways Commissioner v Coultas* [1888] 13 App Cas 222 [226] (Sir Richard Couch)

<sup>6</sup> [1901] 2 KB 669.

<sup>7</sup> *Dulieu v White & Sons* [1901] 2 KB 669 [675] (Kennedy J)

<sup>8</sup> [1970] 2 QB 40.

<sup>9</sup> *Hinz v Berry* [1970] 1 ALL ER 1074 [43], [D]

to wonder if the impression put forward by the claimant appealed more to the judges sensibilities than judicial reasoning).

This new interpretation translated that nervous shock or 'psychiatric injury' (much later referred to as post-traumatic stress disorder<sup>10</sup>) needed to be recognised as a *type*, rather than *cause*, of injury. Despite this new legal paradigm, it was still held that mental harm was less significant than physical harm, inasmuch that for the courts to be absolute in their findings, specific criteria needed to be met before a tortious claim could succeed. Adding further complexity was the rule that symptoms needed to be distinguishable as a recognised psychiatric illness rather than grief, anxiety or distress<sup>11</sup> bought about either by the first-hand witness of trauma, or as the result of information passed by a third party.

The judgment of Lord Steyn in *White v Chief Constable of South Yorkshire*<sup>12</sup> went on to set the justification of ground rules for qualification of claim against four notable characteristics or obstacles: the ability to distinguish between grief and genuine psychiatric illness, the impact of compensation provision versus general rehabilitation, broadening of claimant scope leading to over proliferation of claims, and the risk of disproportionate recovery increasing policy costs for the insured and insurers alike. In addition to those concerns was the filtering of victim-related proximity, a system that introduced *primary* and *secondary* categorisation in order to graduate severity and obstruct sham claims.<sup>13</sup>

Primary victims typically suffered extremes of trauma (car accidents<sup>14</sup> and disasters), while secondary victims comprised witnesses to<sup>15</sup> or recipients of, tragic news in relation to such events. Furthermore, there needed to be an existing relationship between the primary victim and claimant; one subject to condition and a largely definable quality as per Lord Ackner:

Whether the degree of love and affection in any given relationship, be it that of relative or friend, is such that the defendant...should reasonably have foreseen the shock induced psychiatric illness, has to be decided on a case by case basis.<sup>16</sup>

### **Domestic and International Jurisprudence**

Domestic 'nervous shock' jurisprudence currently rests upon the findings of *McLoughlin v O'Brian*<sup>17</sup> and *Alcock v Chief Constable of South Yorkshire Police*.<sup>18</sup> What distinguishes them both is that in *McLoughlin* the relationship of the claimant met the required precondition, whereas her proximity in relation to the accident itself pushed the scope of suffering to the threshold of 'immediate aftermath', with particular regard to the period between the trauma and the moment she saw her husband and children; whereas the delicate nature of *Alcock* established a precedent for future human tragedy. Yet despite a reasonable number of secondary victims claiming nervous shock, and with the majority of those having evidently close bonds with the primary victims, it became necessary for the qualifying criteria to undergo further scrutiny (if not for the reasons later put forward by Lord Steyn). This led to the formation by Lord Oliver of the *Alcock Mechanisms*: three elements that would support a valid claim for secondary nervous shock. The first was the claimant's relationship with the immediate victim, the second was the claimant's proximity in time and space, and the third was the means by

<sup>10</sup> *Kelly v Hennessy* [1995] 3 IR 253.

<sup>11</sup> *Hicks v Chief Constable of South Yorkshire Police* [1992] 2 ALL ER 65.

<sup>12</sup> [1998] 2 AC 455.

<sup>13</sup> *Mustapha v Culligan of Canada Ltd* [2008] 2 SCR 114.

<sup>14</sup> *Page v Smith* [1996] 1 WLR 855.

<sup>15</sup> *Bourhill v Young* [1943] AC 92.

<sup>16</sup> *Alcock v Chief Constable of South Yorkshire Police* [1991] 3 All ER 88.

<sup>17</sup> [1983] 1 AC 410.

<sup>18</sup> [1991] 3 All ER 88.

which the 'shock' occurred.<sup>19</sup> This methodology remains good law, insofar as the rejection by the Ministry of Justice in 2009 of draft legislative reform proposals put forward by the Law Commission in 1998, demonstrated a conventional reluctance to extend the present scope of secondary nervous shock.<sup>20</sup>

In contrast, international jurisprudence suggested early signs of departure from *Alcock* when in *Coates v Government Insurance Office of New South Wales*<sup>21</sup> contemporary interpretation of s.4(1)(b) of the Law Reform (Miscellaneous Provisions) Act 1994 afforded recovery for the siblings of a father killed in a road accident. On this occasion, both children were nowhere near the scene of the accident, but were instead informed of the tragedy by a third party. Despite the respondents citing *Alcock*, the Appeal Court found that both foreseeability and proximity were relevant, inasmuch as the direct effect of being informed of their fathers passing had significant impact to uphold a claim for nervous shock. Furthermore, Judge Kirby P expressed that:

The English approach was *hopelessly out of contact with the modern world of telecommunications*...the law should now recognise that, at least from medical understanding of nervous shock it is as much the direct involvement of a plaintiff in an accident or perilous situation, as his or her physical presence at the scene directly or at its aftermath and nature of the injury suffered and the consequential psychological damage'.<sup>22</sup>

As far back as 1970, the Australian courts also adopted differing views in 'close bonds' determination of the right to claim for secondary nervous shock. In *Mount Isa Mines v Pusey*,<sup>23</sup> the relationship between primary and secondary victim was merely that of fellow employees, but the degree of psychiatric suffering experienced in the weeks following the accident was sufficient enough to warrant that the rhetoric of Lord Atkin<sup>24</sup> was at least in part, grounded upon the broader societal principle that those persons affected by a single act become in a sense 'close in bond', if only through the act itself. This sentiment was further elaborated by Windeyer J, who commented 'what began as an exception in favour of relatives to a doctrine now largely abandoned has now been seen as a restriction, seemingly illogical, of the class of persons who can today have damages for mental ills caused by careless conduct.'<sup>25</sup> This was a contrasting statement to that of Waller J in *Chadwick v British Railways Board*,<sup>26</sup> who noted 'The community is not formed of normal citizens, with all those who are less susceptible or more susceptible to stress to be regarded as extraordinary. There is an infinite variety of creatures, all with varying susceptibilities'. In addition, Antipodean statute (albeit extraneous to domestic legislature), in particular s.30(5)(d) of *Civil Liability Act 2002* NSW, allows tortious recovery for half-brothers, half-sisters, stepbrothers or stepsisters of primary victims, clearly demonstrating a notably progressive widening of scope, yet offering little relief to those struck off in *Alcock*.

Similarly, Tasmanian case *Benson v Lee*<sup>27</sup> showed a willingness of the court to compensate, despite the proximity of the mother at the time the trauma occurred. The claimant neither saw nor heard the accident that took her son's life, but sought proceedings on the fact that she had witnessed his unconscious body in the ambulance, and having been notified of his death while at the hospital. The

<sup>19</sup> Kate McKinlay 'Personal Injury - psychiatric harm', Zenith Chambers [2014]

<sup>20</sup> The Law Commission 'Liability for Psychiatric Illness' <[http://lawcommission.justice.gov.uk/docs/lc249\\_liability\\_for\\_psychiatric\\_illness.pdf](http://lawcommission.justice.gov.uk/docs/lc249_liability_for_psychiatric_illness.pdf)> Accessed 13 November 2014

<sup>21</sup> [1995] 36 NSWLR 1, 12.

<sup>22</sup> Michael Corby, International Insurance Law Review 'Australia: Nervous Shock' [1995] (emphasis added)

<sup>23</sup> [1970] HCA 60.

<sup>24</sup> *Donoghue v Stevenson* [1932] UKHL 100.

<sup>25</sup> *Mount Isa Mines v Pusey* [1970] HCA 60.

<sup>26</sup> [1967] 1 WLR 912.

<sup>27</sup> [1972] VR 879.

judge in this instance exercised the ‘thin skull’ rule,<sup>28</sup> regardless of evidence suggesting a predisposition to mental illness.

The legal position on nervous shock in New Zealand almost parallels domestic opinion, with claimants seeking damages for personal injury having little to no chance, as per the communitarian stance of the courts and binding legislation.<sup>29</sup> The introduction of the Accident Rehabilitation & Compensation Insurance Act 1992, which relied upon the Woodhouse Report<sup>30</sup> for its non-litigious and ‘no fault’ approach, circumvented the barring of claim under common law, but was limited in scope, relying instead upon long-term fiscal support plans over large awards. It was the benchmark *Palmer v Danes Shotover Rafts Ltd*<sup>31</sup> case which later forced the courts to consider that perhaps secondary nervous shock could be claimable through insurance. There was also solid moral argument for the right to award, given that to deny a victim compensation would stand directly against the principle of ACC<sup>32</sup> policy. With minor reformation in 2008,<sup>33</sup> specific legislative changes allowed secondary trauma victims to claim for nervous shock, although the scope is still restricted to workplace incidents only. This narrowness offers stark evidence that things have not legally evolved in New Zealand, and there is opinion<sup>34</sup> that perhaps the common law position requires urgent review.

In *Barnard v Santum Bpk*,<sup>35</sup> the South African Supreme Court of Appeal agreed recovery following the onset of psychiatric illness shown by a mother after being informed of her son’s death in a road accident. Despite proximation caveats, the court held ‘that it was possible to claim for psychiatric conditions which have not been induced by nervous shock, which was said to be an outmoded and misleading term’.<sup>36</sup> In *Pang Koi Fa v Lim Djoe Phing*,<sup>37</sup> the Singapore High Court awarded the primary victim’s mother damages, although the development of her psychiatric symptoms were the result of grief, guilt and distress arising from her encouragement and endorsement of her daughter undergoing surgery; an event that excluded the mother from being within sight or hearing of the procedure. Awarding Judge Singh A defended the decision to grant recovery by distinguishing what he considered nervous shock from an emotional responses to loss:

I view it as a claim for the psychiatric illness she now suffers as a result of the trauma and shock she underwent when her daughter suffered and died from an operation negligently performed by the defendant and the defendant’s other negligent acts—events of which she was a percipient witness in terms of the elements of immediacy, closeness of time and space, visual and aural perception.<sup>38</sup>

In *Kately v Wilkinson*,<sup>39</sup> the North American phrase ‘negligently inflicted emotional distress’ (NIED) replaces nervous shock, but fails to diminish the psychiatric impact placed upon witnesses to traumatic events. In this instance, the claimant was a childhood friend of the primary victim and witness to a particularly grisly death. In addition, she had long been considered a ‘filial’ member of

<sup>28</sup> *Smith v Leech Brain & Co* [1962] 2 QB 405.

<sup>29</sup> Accident Compensation Act 1982 s.27 (1)(a).

<sup>30</sup> Report of the Royal Commission of Enquiry ‘Compensation for Personal Injury in New Zealand’ (1967).

<sup>31</sup> CP 10/97.

<sup>32</sup> Accident Compensation Corporation.

<sup>33</sup> The Injury Prevention, Rehabilitation, and Compensation Amendment Act 2008.

<sup>34</sup> Geoff McLay ‘Nervous Shock, Tort and Accident Compensation: Tort Required?’ [1999].

<sup>35</sup> [1999] (1) SA.

<sup>36</sup> K. Wheat ‘Proximity and Nervous Shock’ 32 Comm. L. World Rev. 313 (2003)

<sup>37</sup> [1993] 3 SLR 317.

<sup>38</sup> *Pang Koi Fa v Lim Djoe Phing* [1993] 2 SLR(R) 366; [1993] SGHC 153 <<http://www.lawnet.com.sg/sglaw/laws-of-singapore/commercial-law/chapter-20?id=1584>> Accessed 13 November 2014

<sup>39</sup> [1983] Cal. App. 3d.

the family and as such was awarded damages, albeit through manufacturer liability, rather than any single *Alcock* 'mechanism' (or *Dillon*<sup>40</sup> as referred to in the U.S courts). Later in *Thing v La Chusa*,<sup>41</sup> the Californian courts showed further indifference by attempting to limit scope for secondary nervous shock through a questioning of the 'zone of danger' mechanism of *Dillon*, thus avoiding any obligation to compensate a bereaved mother whose son had been killed in an automobile accident just yards from her home.

The Canadian case of *Vanek v Great Atlantic & Pacific Co of Canada Ltd*<sup>42</sup> remains relevant to this discussion irrespective of legal hierarchy, because although there was clear evidence of close bonds between the primary and secondary victims, there was no judicial requirement to demonstrate that a psychiatric illness existed, subject to claim qualification. The sentiment of the courts decision was later underpinned by Allen Linden, who wrote:

Tort law was slow to grant protection to the interest in mental tranquility. The phrase "nervous shock" which was used to describe this type of damage, is no longer in favour; it is now preferable to refer to this kind of loss as 'psychiatric damage', which includes "all relevant form of mental illness, neurosis and personality change".<sup>43</sup>

In Hawaii, *Campbell v Animal Quarantine Station*<sup>44</sup> ventured further afield when a dog's owner was notified of its death from heat exhaustion over a telephone. What makes this case so notable is that despite having no medical evidence of psychiatric shock or illness<sup>45</sup>, and the fact that the primary victim was an animal, the court agreed to compensate for what was described as 'serious mental distress resulting from the negligent destruction of the plaintiffs property.'<sup>46</sup> The basis for such direction was founded in *Leong v Takasaki*,<sup>47</sup> therefore the court felt confident when allowing for such an atypical claim. The unorthodox outcome of *Campbell* also bears similarity to *Attia v British Gas*,<sup>48</sup> where the claimant had witnessed the destruction (through fire) of her home following a blunder on the part of a visiting gas engineer. The defendants attempted to obstruct on the grounds that no physical harm had occurred, yet Bingham LJ awarded in favour, adding 'the mental or emotional trauma which precipitated the plaintiffs psychiatric damage was caused by her witnessing the destruction of her home and property rather than apprehending or witnessing personal injury or the consequences of personal injury.'<sup>49</sup>

### Medico-Legal Conflict

The medical position on 'nervous shock' or psychiatric illness as a whole remains as inconsistent as the legal procedures that seek to apply them. The medical distinction of psychiatric disorders is subject to strict categorisation, but is currently submitted by two conflicting bodies of knowledge, namely the ICD-10<sup>50</sup> and the DSM-IV.<sup>51</sup> What has inevitably become the focus of academic

<sup>40</sup> SOCAL Ochoa v Superior Court, 39 Cal. 3d 159 <<http://social.stanford.edu/opinion/ochoa-v-superior-court-30715>> accessed 17 November 2014

<sup>41</sup> 771 P.2d 814 (Cal 1989).

<sup>42</sup> [1999] 2863 ON CA.

<sup>43</sup> A M Linden, B Feldthusen *Canadian Tort Law* (6th Edn, Butterworth-Heinemann 1997)

<sup>44</sup> 632 P.2d 1066 [1981].

<sup>45</sup> 4 U Haw L Rev 207 (1982).

<sup>46</sup> *Campbell v Animal Quarantine Station* 632 P.2d 1066 [1981].

<sup>47</sup> 55 Haw 398, 520 P.2d 758 (1974).

<sup>48</sup> [1988] QB 304.

<sup>49</sup> *Attia v British Gas* [1988] QB 304 [320], [B] (Bingham LJ)

<sup>50</sup> World Health Organisation 'International Statistical Classification of Mental and Behavioural Disorders' 10th Rev [1992]

<sup>51</sup> American Psychiatric Association 'American Diagnostic and Statistical Manual of Mental Disorders' 5th Edn [2013]

analysis<sup>52</sup> is the disparity between medical models of psychiatric illness and the self-appointed judicial qualification to determine them; this is largely because the diagnoses of many psychiatric disorders are inclined to cover numerous spectral elements, rather than a single determinable source. This inconsistency has permitted an enduring judicial reluctance to acknowledge nervous shock, or nervous stress claims that only demonstrate extremes of trauma and *not*, as required, *de minimis* evidence of any diagnosable illness.

This broad cross section of cases and medically based evidence demonstrates that despite a meticulous yet complex control mechanism borne from the public tragedy at Hillsborough, there remains a domestic inability to achieve certainty of law where emotional impact is discussed; yet numerous international courts faced with blurring lines of anguish have by majority, shown greater willingness to adopt a more progressive, and perhaps humanistic approach to psychological trauma. Further still is the seemingly unshakable ‘floodgates’<sup>53</sup> argument, which serves to avoid any weakening of defence against an as yet undemonstrated slew of unmerited nervous shock claims. This principle has obviously not been tested for validity, which in itself cannot justify continued reluctance from the courts to delve further into how emotional trauma causes deep mental scarring to both primary and secondary victims. There are already a considerable number of recognised fail<sup>54</sup> cases in the United Kingdom, and so one has to ask how many more judicial oversights will it require to tip the balance back in favour of the ‘bystander’ and away from the want of policy? There are also numerous academic articles expressing strong disagreement with current domestic jurisprudence; an example being the conclusive comments of Nicholas J. Mullaney and Dr. Peter Handford, who write:

The common law remains very far from the position it ought to be in. Indeed, in terms of doctrinal maturation, psychiatric damage law is still, after a century, to some degree in its *embryonic stages*. The relatively recent sophistication of this branch of medical science provides part of the explanation for the immaturity of the law, but the more telling reason is society’s failure to appreciate, or refusal to admit, that serious disruption to peace of mind is no less worthy of community, and legal support than physical injury to the body, even given that priorities in accident compensation require careful thought in the face of limited resources.<sup>55</sup>

## Conclusion

The design of this article was to establish if agreement can be found with the statement of Lord Oliver and the confluence between legal precedent and symptomatic nervous shock claims. With that purpose in mind, any conclusion offered remains appreciative of the traditional view taken since *Alcock*, yet in the face of overwhelming evidence gathered from personal research, unable to ignore the need for urgent legislative review in order to broaden the scope of both primary and secondary nervous shock recovery without fear of exploitation. With psychiatric efforts toward reconciliation,<sup>56</sup> and growing argument that human emotions, illnesses and neurological trauma models almost always overlap, it is imperative to allow for judicial adaptation if the very essence of tort law is to provide genuine restorative justice.

Should this empirical disparity remain unaddressed, it is plausible to imagine a tragedy of magnitude inevitably strong-arming a compulsory review of *Alcock*’s validity; an image that could perhaps be

<sup>52</sup> Rachael Mulheron, ‘Rewriting the Requirement for a ‘Recognized Psychiatric Injury’ in Negligence Claims’ Oxford Journal of Legal Studies [2012] 32 (1): 77

<sup>53</sup> Toby J Stern, ‘Federal Judges and Fearing the Floodgates of Litigation’ Journal of Constitutional Law vol 6:2 [2003] 377

<sup>54</sup> *Hambrook v Stoke Bros* [1925] 1 KB; *Taylor v Somerset Health Authority* [1993] 4 Med LR 34; *Reilly v Merseyside Health Authority* [1994] 23 BMLR 26; *Sion v Hampstead Health Authority* [1994] 5 Med LR 170; *Bancroft v Harrogate Health Authority* [1997] 8 Med LR 378; *Galli-Atkinson v Seghal* [2003] EWCA Civ 697; *Julia Ward v Leeds Teaching Hospitals NHS Trust* [2004] EWHC 2106; *Younger v Dorset and Somerset Health Authority* [2006] Lloyd’s Rep Med 489.

<sup>55</sup> Nicholas J Mullaney, Peter R Handford, *Tort Liability for Psychiatric Damage: The Law of Tort Rules: OK?* (Sweet & Maxwell 1993). (emphasis added)

<sup>56</sup> Nigel Eastman, ‘Assessing for psychiatric injury and nervous shock’ *Advances in Psychiatric Treatment* (1995) vol 1 pp154-160.

avoided by proactive measures taken now, rather than as a consequence of resisted volition. It is also interpreted that Lord Oliver appears notably understated in his reluctance to condone current thinking in relation to nervous shock, but nonetheless wholly correct to dispute the logic of such a 'mechanism,' when there appears no real grounds for its existence. With such a conflict of interests weakening the fabric of tort principle, there emerge the organic questions of just who should draw the proximation or diagnosis line, and are these complex issues best decided by specialists beyond the courts? From the authors viewpoint, these international case examples lend definitive support for reformative change and overall concurrence with Lord Oliver.

In summary there is clearly no sound argument to challenge revision of the law surrounding nervous shock, but there is certainly much to be said for the antiquated stance of domestic tort law today. With that glaring disparity in clear need of redress, the words of Professor Sir Geoffrey Palmer (who wrote with regard to this tortious dilemma) 'before anything good can happen, the beast *must* be slaughtered'<sup>57</sup> seem a fitting way to close.

---

<sup>57</sup> Geoffrey Palmer, 'The Design of Compensation Systems: Tort Principles Rule, OK?', 29 Val. U.L. Rev. 1115 (1995) < <http://scholar.valpo.edu/vulr/vol29/iss3/1>> (emphasis added)

## Bibliography

### Books

Bermingham V, Brennan C, *Tort Law Directions* (4th edn, 2014)  
 Finn PD, *Essays on Torts* (Law Book Company Ltd 1989)  
 Harvey B, Marston J, *Cases and Commentary on Torts* (6th edn, OUP 2009)  
 Horsey K, *Tort Law* (3rd edn, OUP 2013)  
 Kane P, Monaghan J, *The New Oxford Companion to Law* (OUP 2009)  
 Kidner R, *Casebook on Torts* (12th edn, OUP 2012)  
 Linden M, Feldthusen B, *Canadian Tort Law* (6th edn, Butterworths 1997)  
 Mullaney NJ, Handford PR, *Tort Liability for Psychiatric Damage: The Law of Tort Rules: OK?* (Sweet & Maxwell 1993)

### Cases

Alcock v Chief Constable of South Yorkshire Police [1991] 3 All ER 88  
 Attia v British Gas [1988] QB 304  
 Barnard v Santum Bpk [1999] SA 20  
 Benson v Lee [1972] VR 879  
 Bourhill v Young [1943] AC 92  
 Byrne v The Great Southern & Western Railway Company [1884] (26 LR IR428)  
 Campbell v Animal Quarantine Station 632 P.2d 1066 (1981)  
 Chadwick v British Railways Board [1967] 1 WLR 912  
 Coates v Government Insurance Office of New South Wales [1995] 36 NSWLR  
 Donoghue v Stevenson [1932] UKHL 100  
 Dulieu v White & Sons [1901] 2 KB 669  
 Galli-Atkinson v Seghal [2003] EWCA Civ 697  
 Hambrook v Stokes [1925] 1 KB  
 Hicks v Chief Constable of South Yorkshire Police [1992] 2 ALL ER 65  
 Hinz v Berry [1970] 1 ALL ER 1074  
 Kelly v Hennessy [1995] 3 IR 253  
 Julia Ward v Leeds Teaching Hospitals NHS Trust [2004] EWHC 2106  
 Leong v Takasaki 520 P.2d 758 (1974)  
 McLoughlin v O' Brian [1983] 1 AC 410  
 Mount Isa Mines v Pusey [1970] HCA 60  
 Mustapha v Culligan of Canada Ltd [2008] 2 SCR 114  
 Page v Smith [1996] 1 WLR 855  
 Pang Koi Fa v Lim Djoe Phing [1993] 3 SLR 317  
 Sion v Hampstead Health Authority [1994] 5 Med LR 170  
 Smith v Leech Brain & Co [1962] 2 QB 405  
 Taylor v Somerset Health Authority [1993] 4 Med LR 34  
 Vane v Great Atlantic & Pacific Company of Canada Ltd [1999] ON CA  
 Victorian Railways Commissioners v Coultas [1888] 13 App Cas 222  
 White v Chief Constable of South Yorkshire [1988] 2 AC 455

### Journal Articles

American Psychiatric Association 'American Diagnostic and Statistical Manual of Mental Disorders' 5th edn [2013]  
 Bosley A, 'Secondary victim claims for nervous shock' British Journal of Neuroscience Nursing Vol 9 [2013]  
 Corby M, 'Australia - nervous shock' International Insurance Law Review [1995]  
 Feng T K, 'Nervous Shock to Primary Victims' Singapore Journal of Legal Studies Vol 649 [1995]  
 Janssens M, 'Nervous shock liability: A comparative study of the law governing the principles of nervous shock in England, the Netherlands, Germany and France' European Review of Private Law Issue 1, Kluwer Law International [1998]  
 Kuan L H, 'Nervous Shock - Extending the Boundaries' Singapore Journal of Legal Studies Vol.171 [1994]  
 McKinlay K, 'Personal Injury - psychiatric harm' Zenith Chambers [2014]  
 McLay, G 'Nervous Shock, Tort and Accident Compensation: Tort Required?' Wellington Law Review Rev197 [1999]

Mulheron R, 'Rewriting the Requirement for a 'Recognized Psychiatric Injury' in Negligence Claims' Oxford Journal of Legal Studies [2012] 32 (1): 77  
Savell K, The Cambridge Law Journal [1999] 58, pp627  
Wheat K, 'Proximity and Nervous Shock' 32 Comm. L. World Rev 313 [2003]  
World Health Organisation 'International Statistical Classification of Mental and Behavioural Disorders' 10th Rev [1992]

### Legislation

Accident Compensation Act 1982 NZ  
Accident Rehabilitation & Compensation Insurance Act 1992 NZ  
Civil Liability Act 2002 NSW  
Fatal Accidents Act 1976  
Injury Prevention, Rehabilitation, and Compensation Amendment Act 2008 NZ  
Law Reform (Miscellaneous Provisions) Act 1944 NSW

### Online Articles

Pang Koi Fa v Lim Djoe Phing [1993] 2 SLR(R) 366; [1993] SGHC 153 <<http://www.lawnet.com.sg/sglaw/laws-of-singapore/commercial-law/chapter-20?id=1584>> accessed 14 November 2014  
SCOCAL Ochoa v Superior Court, 39 Cal.3d 159 <<http://social.stanford.edu/opinion/ochoa-v-superior-court-30715>> accessed 17 November 2014  
The Law Commission 'Liability for Psychiatric Illness' <[http://lawcommission.justice.gov.uk/docs/lc249\\_liability\\_for\\_psychiatric\\_illness.pdf](http://lawcommission.justice.gov.uk/docs/lc249_liability_for_psychiatric_illness.pdf)> accessed 11 November 2014  
Palmer G, 'The Design of Compensation Systems: Tort Principles Rule, OK?', 29 Val. U.L. Rev 1115 (1995) <<http://scholar.valpo.edu/vulr/vol29/iss3/1>> accessed 24 November 2014  
Stern TJ, 'Federal Judges and Fearing the Floodgates of Litigation' <[https://www.law.upenn.edu/journals/conlaw/articles/volume6/issue2//Stern6u.Pa.J.Const.L.377\(2003\).pdf](https://www.law.upenn.edu/journals/conlaw/articles/volume6/issue2//Stern6u.Pa.J.Const.L.377(2003).pdf)> accessed 27 November 2014  
Eastman N, 'Assessing for psychiatric injury and nervous shock' <<apt.rpsych.org/content/1/6/154.full.pdf>> accessed 27 November 2014