
ACTIVITY 150

The Law Commission Report (allow 1 hour)

In this activity we would like you to consider the reforms to claims for psychiatric damage which are suggested by the Law Commission in their report, 'Liability for Psychiatric Illness' (No. 249 1998). In particular we would ask you to consider sections A, C and D of the report. This report can be accessed and downloaded. The Law Commission is a Government body and so the report is widely available. Please answer the following questions.



Online

- 1 Does the Law Commission think it necessary to codify the law on psychiatric damage?**
(Codify means produce one statute which will contain all the law for this type of claim.)
How do they think statute and common law will work in this area?
- 2 If the Law Commission's proposals are followed, which of the tests in *Alcock* would no longer be applicable?**
- 3 If the Law Commission's proposals are followed which test in *Alcock* would remain?**
- 4 How would a potential claimant know whether or not they satisfied the test of close ties of love and affection under the Law Commission's proposals?**

- 5 Would the position of the bystander alter under the Commission's proposals?
- 6 How would rescuers be dealt with under the Commission's proposals?
- 7 If the Law Commission's proposals had been effective at the time the case of *Alcock* was decided, would there be any alteration to the decision reached in that case?
- 8 Do the proposals affect the criteria that the shock must be induced by the sudden sight or sound of a horrifying event? If so, how?
- 9 Under the Law Commission's proposals, would it still be necessary for the claimant to show that a person of reasonable fortitude would suffer psychiatric illness in a similar situation?
- 10 The Commission's proposals are that the duty of care regarding psychiatric damage should not be imposed on the defendant unless it is just and reasonable to do so. **In what circumstances do they consider it might not be just and reasonable to impose a duty?**

COMMENT

- 1 No, the Law Commission does not think it is necessary to codify the law on psychiatric damage. It did, however, propose a statutory duty of care regarding psychiatric damage which would co-exist with the common law on psychiatric damage as far as the statutory duty did not cover some potential claimants in psychiatric damage.
- 2 If the Law Commission's proposals are followed, the tests in *Alcock* which would no longer be applicable would be proximity in time and space and witnessing the event with your own unaided senses.
- 3 If the Law Commission's proposals are followed, the test in *Alcock* which would remain would be the test of close ties of love and affection to the victim.
- 4 A claimant would know whether he or she satisfied the test of close ties of love and affection under the Commission's proposals as the Commission suggests that a statutory list would detail all those who would automatically qualify. Those outside the list would have to prove the close ties, as they do now.
- 5 No, the position of bystanders would not alter under the Law Commission's proposals — they still would not be able to claim.
- 6 Under the Commission's proposals, rescuers would continue to be dealt with under common law. Note that the Commission was reporting on the law as it stood before the decision in *White*.
- 7 If the Law Commission's proposals had been effective at the time the case of *Alcock* was decided, those relations with a sufficiently close tie of love and affection with the victims who witnessed the event on the television would have been able to claim.
- 8 Yes, the proposals do affect the criteria that the shock must be induced by the sudden sight or sound of a horrifying event. The proposals state that this is no longer a necessary criteria and therefore those claimants who suffer trauma, for example, because of their long-term care of an injured victim, would be able to claim.
- 9 Yes, under the Law Commission's proposals it would still be necessary for the claimant to show that a person of reasonable fortitude would suffer psychiatric illness in a similar situation.
- 10 The Commission considered it might not be just and reasonable to impose a duty of care on the defendant for psychiatric damage in several situations, e.g. where the injured victim was volenti.