BUILDING RULE-BASED EXPERT SYSTEMS
IN CASE-BASED LAW

by

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ABSTRACT

This thesis demonstrates that it is possible to build rule-based expert systems in case-based law using a deep-structure analysis of the law and commercially available artificial intelligence tools. Nervous shock, an area of the law of negligence, was the domain chosen. The expert whose knowledge was used to build the system was Professor J.C. Smith of the Faculty of Law at the University of British Columbia.
# TABLE OF CONTENTS

I. INTRODUCTION ........................................... 1

II. THE PRESENT STATUS OF ARTIFICIAL INTELLIGENCE AND LEGAL THEORY WITH RESPECT TO CASE-BASED LAW ........................................... 2

III. EXPERT SYSTEMS ........................................... 4

IV. KNOWLEDGE ENGINEERING ........................................... 7

V. THE DEVELOPMENT OF EXPERT SYSTEMS ........................................... 9

VI. THE EMERGENCE OF SHELL SYSTEMS ........................................... 10

VII. EXPERT SYSTEMS AND LEGAL REASONING ........................................... 14

VIII. THE ESSENTIAL IMPORTANCE OF UTILITY IN EXPERT SYSTEMS ........................................... 19

IX. THE BASIC THEORETICAL PRESUPPOSITION OF NERVOUS SHOCK ADVISOR ........................................... 21

X. TRADITIONAL LEGAL THEORY AND CASE-BASED LAW ........................................... 22
   A. The Problem of Hard Cases ........................................... 22
   B. Different Schools of Legal Thought ........................................... 25
      1. RULE SKEPTICISM ........................................... 25
         (a) American Legal Realism ........................................... 28
         (b) The Critical Legal Studies Movement ........................................... 29
      2. LEGAL POSITIVISTS ........................................... 31
      3. THE BALANCING OF INTEREST DOCTRINE OF SOCIOLOGICAL JURISPRUDENCE ........................................... 32
   C. The Distinction Between Private Law and Public Law ........................................... 34
   D. The Limits of Traditional Legal Theories ........................................... 37
   E. The Critical Issues of Legal Reasoning with Respect to Building Case-based Expert Systems ........................................... 41
BIBLIOGRAPHY

Books 104
Articles 110

APPENDICES

A. Sample Consultations 124
B. Knowledge Base 155
C. Case File Index 201
D. Case File 299
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I. INTRODUCTION

The purpose of this thesis is to demonstrate that it is possible to build a useful rule-based expert system in case-based law using readily available artificial intelligence technology.

I have not taken a traditional approach to the subject. In other words, I do not simply speculate about the pros and cons of building such a system and then reach some conclusion. Instead I have chosen to build a working system myself because that is the most graphic way of illustrating the validity of my assertion. It also reflects my primary concern which is to produce an end product which is of some use to practitioners.

The fact that I was able to do this proves a more general point; namely, that people outside the field of traditional Computer Science now have access to technology which will allow them to build expert systems if they are prepared to invest some time in learning the use of a very high level computer language and the skills required to debrief the human expert on whose knowledge any system must be based.

Since building an expert system necessarily involves a close collaboration between the domain expert and the person who debriefs him and designs the system (ie. the knowledge engineer), this thesis is also unusual in that it was very much a joint effort. I was the knowledge engineer and Professor J.C. Smith of the Faculty of Law was my domain expert. In the thesis, therefore, I frequently write in the second person and
talk about "our" beliefs and what "we" did. To do otherwise would be to deny that the whole enterprise was a partnership from start to finish.

The theoretical underpinning of the expert system is our conviction that legal decision making can be reduced to a rule-governed activity. Without this as a conceptual starting point, it would have been futile to even attempt to build a legal expert system because there would be no certainty that logical rules could be formulated to predict all possible outcomes. A corollary of this theory is that the methodology used to build the system in question, Nervous Shock Advisor, can be used with equal effectiveness to build other systems in different areas of case-based law.

II. THE PRESENT STATUS OF ARTIFICIAL INTELLIGENCE AND LEGAL THEORY WITH RESPECT TO CASE-BASED LAW

The latest research in artificial intelligence (AI) and legal reasoning in the area of case law makes it evident that we have only just begun to explore the possibilities offered by the marriage of this technology and legal theory. The latest efforts at duplicating case-based legal reasoning within a machine are not at all promising. Anne von der Lieth Gardner recently completed an extensive research project and wrote her dissertation entitled, AN ARTIFICIAL INTELLIGENCE APPROACH TO LEGAL REASONING, which is soon to be published. Gardner used case law reasoning as a domain to do work in AI. She attempted the construction of a program for a mid-size mainframe computer, which would duplicate legal reasoning regarding whether a particular set of facts or events would constitute an offer and an acceptance for the creation of a contract. The program was implemented in
a dialect of the LISP (List Processing) language, a computer language which has been a major development tool in AI. Her dissertation combined legal philosophy and computer science, with somewhat greater emphasis on the latter, and required an academic background in both disciplines. It "presents a computational framework for modeling legal reasoning." She assumes that:

Legal philosophy tell us, among other things, that legal rules do not dictate legal outcomes: there is more going on in the decision of a case than ordinary deduction. One extra element is that there is often room for choice about which, of several possible decisions, is to be preferred. Another is that the choice, once made, sets a precedent, which may change the space of choices available in later cases.

Her resulting program is consistent with her above assumption in that:

On some issues, the program reaches an answer deductively, determines that it knows nothing that might defeat the answer, and jumps to the conclusion that on this issue, the result is certain. On other issues, the program concludes that the human decision-maker has some room for choice.

She concludes that, "Reasoning about which would be the better choice remains a major research area for the future." Her over all conclusion is that legal problems are in general too complex and "open textured" to be modeled within an artificially thinking machine. At the level of hard cases a judge has discretion to choose between various alternatives, and it is this process of choice which cannot be machine duplicated. With this rather pessimistic assessment as our starting point, we began to explore the possibility of overcoming the problem by using different tools and a different methodology.
There has been a recent major development in the field of AI which raises some interesting possibilities for law. It used to be said that, "If it works, it's not AI", but that is no longer true. AI has moved out of the lab and into the market place. Research in the field has produced a new technology and methodology called "expert systems" which has already proved effective and efficient in many fields. One of its founders, Professor Edward Feigenbaum of Stanford University, has defined an expert system as:

...an intelligent computer program that uses knowledge and inference procedures to solve problems that are difficult enough to require significant human expertise for their solution. Knowledge necessary to perform at such a level, plus the inference procedures used, can be thought of as a model of the expertise of the best practitioners of the field.

The knowledge of an expert system consists of facts and heuristics. The "facts" constitute a body of information that is widely shared, publicly available, and generally agreed upon by experts in a field. The "heuristics" are mostly private. The performance level of an expert system is primarily a function of the size and the quality of a knowledge base it possesses.

Expert systems do not necessarily attempt to model the mental processes of the brain in the machine. The breaking free from this old AI paradigm and dream has permitted the development of new techniques which have tremendous practical value. The transition was one from general, domain-independent methods of solving problems typified by GPS (General Problem Solver), a program created by Newell, Shaw and Simon in 1957, to specific, domain-dependent methods. The paradigm shift was from power-based
techniques to knowledge-based ones. In fact, an essential characteristic of expert systems is that the knowledge which they contain is deep, but extremely narrow in its scope. Experience has shown that it is necessary for these systems to be confined to very narrow domains in order for them to be capable of giving advice at a level which is comparable to that at which a human expert operates. This change in approach in AI gave new meaning to the maxim "Knowledge is Power". General analytical skills which are not backed by extensive knowledge of a domain are useless when it comes to finding solutions to real problems. An interesting illustration of this shortcoming involving a human being's reasoning processes is given by former Liberal M.P., Donald Johnson, in his book UP THE HILL. Speaking of his former boss, Pierre Trudeau, Johnson says:

He is determined to rely upon his analytical equipment rather than a knowledge base and if he can destroy or wound an argument which he doesn't like with a quick, logical thrust he would rather do so than have to wrestle with the fundamental merits of his adversary's position.

In fact, we are now really in the Knowledge Age rather than the Information Age. Raw, undigested, unorganized information has limited usefulness. Knowledge, on the other hand, meaning information which has been processed by the human mind and structured in some usable way is powerful. Expert systems can reason with uncertain data and fuzzy concepts. They deliver advice rather than deductive conclusions. They embody the heuristic rules of an expert rather than the fundamental premises of a subject matter hard-coded into deductive procedures.
Expert systems are made up of a knowledge base, an inference engine, and may be linked to a data base. The knowledge base contains facts (or means of obtaining them) and rules. The inference engine is the piece of software that reasons logically about the rules and facts in order to solve problems. Unlike conventional computer programs, the path taken through the knowledge base is dynamic rather than predetermined. It depends entirely upon the facts provided by the user during the course of an interactive consultation. The inference engine applies the rules in the knowledge base to the facts elicited from the user and "reasons" about them as the consultation progresses. Different facts cause different rules to succeed or fail at any given stage in the consultation. The conclusions reached by the inference engine are stored in a working memory as they are made. This accumulation of intermediate results determines which further rules are invoked and which other facts are sought as the consultation continues. Once all the necessary facts have been obtained in a particular instance, the system gives its opinion which is usually weighted in terms of certainty. The optional data base is linked to the knowledge base and contains additional information that may be accessed at relevant points during a consultation. Inference engines called "shells", which can apply modus ponens ("if...then...") logic to rules and facts, are now commercially available.

There are presently a substantial number of expert systems operating in several different fields, and the expert system building industry is booming. Indeed, a sign of the times is what one author offers as a tongue-
in-cheek definition of an expert system.

An expert system is a piece of software that causes TV producers to lose all sense of proportion.\textsuperscript{12}

IV. KNOWLEDGE ENGINEERING

A new group of professionals have evolved, called "knowledge engineers", trained to debrief experts. The knowledge engineer extracts knowledge of the domain from the expert and organizes it into some logical overall structure. Once this has been done, the knowledge engineer translates the knowledge into a series of "if...then..." rules which form part of the knowledge base. There are other ways of representing knowledge in expert systems, but these so-called production rules have proved particularly successful. It is difficult to specify exactly what qualifications a knowledge engineer should have. The bottom line seems to be that it is more of an art than a science and that on-the-job experience is essential.

 Universities are doing very little to train knowledge engineers. "Universities are more interested in research," says Peter Hirsch, director of the knowledge engineering group at IBM's Science Centre in Palo Alto, Cal. Conventional computer science courses do not provide adequate preparation for the task. Knowledge engineering is a black art, demanding different types of skills and knowledge. Interviewing experts is one such skill. This requires the ability to find an automatic reasoning procedure that best matches the expert's thought processes. Practitioners learn the art by doing.\textsuperscript{13}

It has occurred to me that some of the skills which make a good lawyer are precisely those which knowledge engineering calls for. Lawyers need to be skilled at interviewing people - often experts - about a wide
range of different subjects and then to be capable of analyzing what they have been told so that the information can be ordered in some logical manner for incorporation into a document or presentation to a court. This also demands a good command of the language; in other words, an ability to use precise declarative semantics. It is no secret that there are far too many lawyers on the job market at the moment. Perhaps knowledge engineering can offer some of them an alternate career.

It may well be that universities will eventually offer formal courses in knowledge engineering. In the meantime, the private sector fills the gap and provides the necessary training in the same way as it did before computer science became a recognized academic discipline. A number of companies offer courses in knowledge engineering methodology. Even writers who are extremely skeptical about the potential of expert systems and who speak derisively of the label "knowledge engineering", concede that the field is a growing one.

To describe the process of designing, building, and testing expert systems and related AI software, the AI community has coined the term knowledge engineering. This pretentious term does have some advantages: it emphasizes that more than programming is involved; it's consistent with the term "knowledge base"; and it makes knowledge engineering sound more glamorous than usual. Indeed, knowledge engineering is widely touted as the most significant new result of computer technology, and it is the basis for a growing number of commercial ventures. Rather than deriding knowledge engineering in a conventional fashion, one writer has acknowledged that it is a growth industry while poking fun at it. Using the psuedonym Rock R. Farmer-Taylor (presumably a take-off on
Rick Hayes-Roth, one of the founders of knowledge engineering), he advocates an alternative: ignorance engineering.

Ignorance engineering was developed in part to solve the "knowledge engineering bottleneck". This problem arose because each knowledge-based expert system had to be hand-crafted over a long period of time by highly-paid knowledge engineers in consultation with scarce and uncooperative domain experts. The costs associated with this approach are not a problem because expert systems can be sold at any price. The problem is that there are too few knowledge engineers and, like engineers the world over, they much prefer to drink beer, so not enough expert systems can be produced and marketed to support the founders and stockholders of AI start-up companies.¹⁶

The point is that, regardless of what people may think about knowledge engineering, they are forced to admit that it is a burgeoning field.

V. THE DEVELOPMENT OF EXPERT SYSTEMS

The first expert system, DENDRAL, was built at Stanford in 1964.¹⁷ It was designed to determine the structure of organic molecules on the basis of information fed it regarding the mass-spectrum of the particles after the molecule has been broken up by bombardment in a mass-spectrometer. It now out performs all human experts in substantially less time. The same research group began work on another system in 1972 and produced MYCIN,¹⁸ which diagnoses and prescribes treatment for bacterial infections of the blood, and has also in a number of tests out performed human experts. PROSPECTOR, a diagnostic system developed from 1978 onwards for prospecting for minerals, was used to discover a hundred million dollar molybdenum deposit which had been missed by expert prospectors.¹⁹ There
are now a number of functioning expert systems in a variety for fields ranging from MOLGEN which was designed and constructed for giving expert advice in the field of molecular genetics, to MEES a system for teaching economics.

VI. THE EMERGENCE OF SHELL SYSTEMS

It was from MYCIN that the shell systems evolved. The developers of MYCIN realized that it could be emptied of its specific knowledge and that the inference engine could used to reason about problems in other domains. EMYCIN (the "E" stands for "empty"), the first shell system, was the result. There are now a number of different shells commercially available for constructing expert systems. The one which we used to build the Nervous Shock Advisor, M.I, marketed by Teknowledge Inc. of Palo Alto, California, is a direct descendant of EMYCIN.

Nowadays it makes no sense to build one's own inference engine from the ground up as some institutions have done in the past and some are still doing. Besides the fact that it would be incredibly time consuming and require considerable assistance from skilled computer scientists, there is little to be gained from it given that high quality shells which use standard methods of inference are readily available. It would be like creating your own custom-made word processor in order to write a book. The user of a shell need only create the knowledge base of rules and facts or meta-facts (ie. ways of determining facts). The knowledge base must be written in the special syntax of a computer language which the inference engine can
understand. The language is usually very high level and English-like; therefore, with a certain amount of effort, it can be learned by someone with little or no computing background. Furthermore, the knowledge base can generally be created using a standard text editor. The completed knowledge base is "loaded" into the inference engine which can then reason about its contents when a consultation is initiated.

The fundamental importance of shell systems is that they give people without any background in traditional computer science the capability of building useful rule-based systems provided that they are prepared to spend some time learning how to use the shell. To a non-computer scientist, it is intimidating to have to master the complex procedural syntax of the more common high level computer languages in order to be able to do something useful with a computer. However, this is no longer a necessary prerequisite when it comes to AI thanks to the advent of shells. What is now of paramount importance is the ability to think creatively and logically at a higher level of abstraction. This avoids the risk involved in expending a lot of energy on learning a means to an end; namely, that the means becomes an end in itself. Speaking about the student of traditional computer science, Joseph Weizenbaum, an eminent teacher of the subject, sounded the following cautionary note.

*He may so thoroughly commit himself to what he naively perceives to be computer science, that is, to the mere polishing of his programming skills, that he may effectively preclude studying anything substantive.*

*Unfortunately, many universities have "computer science" programs at the undergraduate level that permit and even*
encourage students to take this course. When such students have completed their studies, they are rather like people who have somehow become eloquent in some foreign language, but who, when they attempt to write something in that language, find they have literally nothing of their own to say.

While Weizenbaum's analogy makes a good point very forcefully, it is, however, somewhat misleading to equate what has become known as "computer literacy" with literacy in a natural language. The ability to read and write a natural language carries with it access to a culturally rich written tradition which is inaccessible to the illiterate. Compared to natural languages, computer languages are impoverished. They have virtually nothing to offer besides certain very application-specific advantages when it comes to communicating with the machine. Now that the first flush of enthusiasm about computer literacy has passed, serious questions are being raised about its value as an end in itself.

The primary emphasis in computer literacy should be in the historical, economic, legal and philosophical areas. Computers must be seen in their historical context - as part of an ongoing technological process. The economic and legal implications of their use are a rich source of material for exploring many important social issues. It would be a mistake to focus on the computer itself, because treating even such a marvelous machine in isolation can only result in superficial understanding. This is a real danger, if computer literacy courses are taught by programmers with little experience in other areas.

Shell systems allow substance to take precedence over form. They permit the knowledge engineer to focus on capturing the knowledge of the expert and getting a prototype system up and running as soon as possible. That is the strategy which we adopted. Throughout the development of our own system, we were guided by the following piece of very valuable advice.
The single most important piece of advice that one can give a model designer is to build a prototype model as soon as possible. Because expert reasoning problems are frequently poorly specified, one needs to have something concrete to view and "lay hands on." It is particularly important for the expert to see something running early. A running program is worth thousands of words from an unformalized interview with the expert. The initial prototype may be crude, will certainly be incomplete, and may contain inaccuracies, but at least it provides a focused point of departure from which the expert can make his suggestions. One of the sacrifices one has to make in building expert systems, is to be constantly told about the weaknesses and flaws in the system that is being designed. One has to expect that major revisions will have to be made in the system, particularly in the early stages. It is sometimes amazing to watch the pace of useful knowledge acquisition accelerate once a prototype model has been built. Instead of abstract suggestions from the expert and the model designers, one has a much more limited basis for converging to a practical system. And to those who point out that such constraints will fatally bias or limit the ultimate system design, the answer is that one must always keep an open mind to the need for making drastic changes of representation, and must be willing to put in the effort and resources to carry out these changes if they prove necessary.24

In fact, as the knowledge engineer, I had no idea just how difficult the foregoing advice would be to follow in practice. A well-recognized side effect of building an expert system is that the expert will often be forced to re-think her or his own ideas on the subject. This can be a very useful exercise in clarification for the expert, but enormously frustrating for the knowledge engineer who must be prepared to modify the original blueprint drastically to conform to the new reality, as is suggested above. However, it is very difficult for the knowledge engineer to resist the temptation to become attached to a model in which a lot of effort has been invested and which "works" as far as the computer is concerned even though the domain expert tells him that it is conceptually flawed. I was aware of a very strong resistance on my part when it came to making fundamental changes in the
system. Perhaps this is an innate psychological trait among humans when it comes to any sort of change; we prefer to stick with things to which we have become accustomed. However, no matter how traumatic for the knowledge engineer, it is critical that the system should truly represent the expert's knowledge and be free of any distortion dictated by expediency. If the expert gets up one morning and sees his world in a whole different light, the knowledge engineer must be prepared to scrap everything and begin again, no matter how distasteful he finds the prospect. The process of building an expert system seems deceptively simple at the outset. In fact, it is a difficult and time-consuming business, even using a shell. Wrestling with the conceptual structure of the system is every bit as demanding as coping with the relentless, unforgiving logic of the computer at the implementation stage.

VII. EXPERT SYSTEMS AND LEGAL REASONING

There are at present several research teams working on AI projects and expert systems in the field of law. A number of expert systems perform a simple form of legal reasoning in the area of corporate tax law. TAXMAN I and II combine the facts of tax cases and the relevant concepts of the Internal Revenue Service Code to produce an analysis of the tax consequences of corporate transactions through deductive inference procedures. JUDITH, developed in West Germany, gives simple advice in negligence questions on the basis of the German Civil Code. LDS uses expert systems techniques to give advice on whether a case should be litigated or settled. TAXADVISOR is an expert system which gives
accountancy advice in the area of estate planning.\textsuperscript{30} CCLIPS, a system based on the Louisiana Civil Code, is a project which seeks to develop drafting techniques capable of producing statutory texts that can be processed intelligently by computers, and thus, to produce a draft of the code which would allow legal consequences to be deduced by the computer from description of facts and the rules.\textsuperscript{31} NORMALIZER is a prototype of a rule-based automatic drafting system for drafting rules, legislation, agreements and related documents,\textsuperscript{32} and Professor James Sprowl has developed a system that uses regulations to draft legal documents.\textsuperscript{33} As well as the authors of the systems named above, there are also a number of other pioneers in the field of law and AI.\textsuperscript{34}

The only team to actually attempt to construct a rule based-expert system for case law legal reasoning is the team of Richard Susskind and David Gold at Oxford. Incidentally, unlike us, this group has decided to custom build its own inference engine. They are working on a project in the area of divorce law which involves provisions in the Scottish Civil Code and some case law. Like Ann von der Lieth Gardner, Susskind is also very much aware of the significance of legal theory for AI and legal reasoning. He writes in his article, \textit{Expert Systems in Law: A Juristsprudential Approach to Artificial Intelligence and Legal Reasoning}:\textsuperscript{35}

\begin{quote}
It is beyond argument, however, that all expert systems must conform to some jurisprudential theory because all expert systems in law necessarily make assumptions about the nature of law and legal reasoning. To be more specific, all expert systems must embody a theory of structure and individuation of laws, a theory of legal norms, a theory of descriptive legal science, a theory of legal reasoning, a theory of logic and the law, and a theory of legal systems, as well as elements of a semantic theory,
\end{quote}
a sociology and a psychology of law (theories that must all themselves rest on more basic philosophical foundations). If this is so, it would seem prudent that the general theory of law implicit in expert systems should be explicitly articulated...

After canvassing the field of AI and law Susskind concludes that,

"Despite growing awareness and interest in the application of AI to legal reasoning...there has not yet been developed a fully operational expert system in law that is of utility to the legal profession."

The reason why little progress has been made in law regarding the construction of expert systems when compared with the success of this technology in other areas of knowledge such as medicine and engineering, is that there is a wide divergence of views about the critical issues of legal theory referred to by Susskind. In law there is no consensus about what law is, nor about the true nature of legal reasoning. In the first place a legal expert in a particular area of law is likely not to have any particular expertise in jurisprudence. Merely introducing an expert in legal theory to a project will furnish no solution as the assumptions about legal decision making of the legal expert will not necessarily be the same as those of the expert in the domain of knowledge to be put into the system.

The solution adopted by the Oxford group is to find an area of consensus between the leading legal theorists, and use that as the foundation of the jurisprudential assumptions for the system. The problem with the consensus method, however, is that it will furnish no theoretical framework for dealing with hard cases as the issue of how hard cases are to be decided
is exactly where little consensus will be found between legal theorists, and it is in the area of hard cases when special expertise is required.

On the other hand while expert system building presents many challenges for legal theory, it also offers some interesting opportunities by way of testing propositions of legal theory. If someone constructed an expert system in an area of case law, which upon asking the user a series of questions to ascertain the facts, could then give the user a response in terms of the law, and cite the relevant cases for the legal issue, we could assume that "rule skepticism" is wrong, at least for that area of the law. Equally, if an expert system were successfully constructed upon the bases of certain jurisprudential assumptions about legal reasoning, we would have some evidence that those assumptions were valid.

The requirements for constructing expert systems in law raise some problems which are unique to this discipline. In other systems of knowledge from which one would wish to design a knowledge base for an expert system there is generally much more of a consensus about the nature of the theory which informs the discipline. Medical, dental, and engineering schools would generally not offer courses on the nature of medicine, dentistry or engineering because the practice of these professions seldom raises the kind of foundational questions which drives one back to basic theory about the discipline. Such issues, however, often arise in the legal practice, consequently, these are exactly the kinds of questions which a course in jurisprudence asks about law. In law there is no consensus about what law is, nor about the true nature of legal reasoning, but it is
nevertheless needed if legal rationality is to be self-conscious. Furthermore, lawyers have no body of scientific knowledge which lies at the core of their discipline as do the experts in the fields where expert systems have been successfully created. Rather, law rests upon sets of fundamental values about which there is a great deal of societal dissensus.\textsuperscript{39}

In the first place legal concepts and rules have areas of imprecision because the process of legal reasoning constantly entails extending concepts to new situations. Thus the concepts, in their application, are imprecise at their outer edges. Expert systems which must function with this type of imprecision are often referred to as "fuzzy systems".\textsuperscript{40} Expert systems for law, however, will have a further area of complexity in that the experts will have different, and often contradictory theories about the nature of law and legal reasoning. We might refer to systems such as these will be, having this second layer of uncertainty, as "hairy systems".\textsuperscript{41}

Hairy systems such as legal expert systems will require two levels of expertise. An expertise will be required in the area of substantive law which is the subject matter of the system, and an expertise in legal theory will also be necessary. The number of experts in specific areas of law, who also have true expertise in jurisprudence or legal theory, as contrasted with a mere smattering of knowledge, will be rather small. It was fortunate that my own expert, Prof. J.C. Smith, is one of that rare breed. One of the prime purposes of this undertaking is to aid the legal expert who lacks jurisprudential expertise to construct expert systems in case-based law, and
as well, to enable those experts with some theoretical background, to adapt and more efficiently use their jurisprudential knowledge.

VIII. THE ESSENTIAL IMPORTANCE OF UTILITY IN EXPERT SYSTEMS

My strongest motivation in undertaking this work was the desire to achieve a result that would be in some way useful to practitioners. After having worked as a litigation lawyer in the real world for almost 10 years, I had acquired a distinctively practical bent. I was disinclined to embark upon a graduate program that would culminate in a thesis that was an exercise in traditional scholarship and nothing more; hence my attraction to expert systems.

*Expert systems typically work in real-world problem domains, rather than what AI scientists call toy-domains. In a real-world domain, the problem solver applies actual data to a practical problem and produces solutions that are useful in some effective way. In a toy domain, the problem is usually a gross simplification or unrealistic adaptation of some complex real-world problem. The problem solver handles artificial data that are simplified to make the problem easier and produces solutions that are of theoretical interest only.*

Believing that the ultimate proof of the pudding is in the eating, I decided that I would try to build a useful legal expert system rather than simply speculate about whether one could be built. Moreover, the system itself would have to be capable of providing advice on a par with that which a practising generalist would expect to receive as a result of consulting an expert in a particular area of the law. In other words, a legal opinion about the strength of the case supported by appropriate authorities from the case
law. Anne Gardner chose to focus on the problems posed in the law examinations at the end of a first year contracts course. This is certainly not something that any practising lawyer would need to seek expert advice about. Indeed, Gardner concedes that, in a sense, the problems she tackled were "toy problems". However, she does insist that they are not trivial because their solution called for skills which all lawyers require and which, unlike interviewing, drafting, negotiating and trying cases, are not developed on the job. While there is merit in what she says, my interest was in creating a system which would be helpful to lawyers who have already acquired the necessary practical skills, but still need sound expert advice from time to time. After all, there is so much to know in law these days, that nobody can be an expert in every area. Indeed, most lawyers have enough trouble keeping up to date with the developments in their own specialty. J.J. Robinette is one of the elder statesmen of the Canadian bar. He is generally acknowledged to be the best all-round counsel of his day, an accomplishment due in no small measure to his legendary capacity for hard work. In a recent biography, a friend of Robinette's makes it plain that nowadays no amount of dedication will enable any one lawyer to achieve the kind of mastery of so many areas of the law as Robinette did. Times have simply changed.

Ed Sexton is similarly amazed at Robinette's range and sees it as something unique and special - and dying - in Canadian courtrooms.

"We won't see another John Robinette in this country," Sexton says. "That's partly because of the changing times. Law has become so specialized now that every corner has its experts. And clients are getting more sophisticated. It used to be that they just wanted a good counsel. Now they want a good counsel who's an expert in their particular problem. But the other reason we won't
In approaching my task of building an expert system, I was ever mindful of the following piece of advice offered to builders of expert systems.

One must also consider very carefully whether the proposed application system would be of significant value if implemented. While this may seem obvious, many systems have progressed to relatively advanced stages, before it is recognized that there is no market for the application system.

IX. THE BASIC THEORETICAL PRESUPPOSITION OF NERVOUS SHOCK ADVISOR

Having examined the available technology, let us now turn to look at the legal theoretical context. Professor J.C. Smith, my expert, and I chose as the domain of our expert system a narrowly circumscribed area of the law of negligence called nervous shock. We decided to call the system Nervous Shock Advisor. The decision to actually build a working system necessarily implied a belief on our part that it was theoretically possible to do so using a rule-based shell. In other words, the theoretical presupposition of the exercise was that, at some level, legal decision making can be reduced to a rule-governed activity. In this respect, our starting point was at odds with Anne Gardner's conclusion that there is no practical way of using a computer to overcome the problem of open texture. We felt that in any given case there is always a better answer when it comes to choosing between alternatives. Furthermore, we believed that that answer can be determined in a rule-governed way. I shall now go on to discuss at some
length how our ideas jibe with other theoretical approaches to case-based law.

X. TRADITIONAL LEGAL THEORY AND CASE-BASED LAW

A. The Problem of Hard Cases

The distinction between hard and easy cases is common in the parlance of jurisprudence. An easy case is one where the legal answer to the issue is clear and relatively undisputed. One generally assumes that easy cases are settled whenever the facts are clear. Easy cases which reach the point of litigation do so only in order that questions of fact can be resolved according to the legal rules of proof. Once the court has established the facts, the legal decision should be straightforward and easily reached by the application of the law to the facts according to well-recognized patterns of inference. Since easy cases by definition do not raise difficult legal issues, they are very seldom appealed.

Hard cases are an inevitable aspect of law. A hard case is one which does not fall under an existing rule of law, or which appears to fall under two rules, the application of which would lead to differing or opposing solutions one from the other, or a case which falls clearly under a rule of law, the application of which would produce an irrational result. Since the possibilities for human interaction are so varied and since we can never fully predict the future it is impossible to anticipate and create a useful rule which would anticipate and resolve every potential aspect of human interaction. When the vagaries and vicissitudes of life throw into the focus
of the legal system a unique kind of dispute, arising from a new kind of activity, a new technology, or a new perspective which creates a case which fails to fall comfortably under the existing rules, the law must deal with it within its existing conceptual structure, and hence we have a hard case for the law.

Sometimes the new situation falls quite well under the criteria of the old rules, but the situation is such that if we apply the old rule we would produce a very undesirable result. An example of this kind of hard case is Riggs v. Palmer where the beneficiary under his grandfather's will murdered his grandfather in order to receive his inheritance more quickly. This is a hard case because, while it falls clearly under the law of wills which prescribes that the person so named by the testator in a valid will is to take under that will, we encourage murder if we give a murderer the benefits of his crime under these conditions. It is impossible to foresee all the situations which can arise where applying a rule of law to a case which clearly falls under the rule will lead to an undesirable result because of one new unforeseen factor now present which had never arisen in the previous cases.

It is well known and frequently noted that legal principles often appear to exist in the form of contradictory and/or contrary pairs, or that a legal principle can always be stated in two mutually inconsistent ways, one favourable to the plaintiff's case, and the other favourable to that of the defendant. For example, an agreement for the use of land or premises might be classified either as a lease or a mere license, or a person may have
the exclusive right to information to a spectacle because it is their property, or not have an exclusive right because the subject matter is not capable of being a property interest. Legal reasoning often is thought to be circular because there appears to be no clear guide to which of two relevant opposing principles or conceptual categories should be applied to a particular set of facts.

While the bifurcation of legal categories is a part of the natural process of categorization involved in systematizing any area of knowledge, the indeterminacy between categories, and the choice offered a judge between inconsistent and alternative ways of categorizing, is an inevitable consequence of the adversarial method of litigation. Lawyers on each side of a legal issue will always state a relevant legal principle in such a way as to be favourable to their client's position. The judge will then generally choose the formulation which will fit the way he has concluded that the case should be decided. These various formulations get embedded in the jurisprudence in a bifurcated form. Consequently, it is not unusual for lawyers to find that there are two possible, opposing, and relevant principles which could reasonably be applied to the facts of their cases.

Generally only hard cases, that is to say cases which have no clear legal answer even when the facts have been established, reach the appeal stage. Since it is the established practice of case reporting to report only appeal cases, or cases at the trial level which raise interesting legal issues, nearly all the cases which make up the law reports are what would be called "hard cases". It is self evident that a useful rule-based expert system must
be able to handle or suggest legal solutions to hard cases, if it is to have much practical value.

Any comprehensive legal theory or philosophy of law must entail a theory about how hard cases are resolved within the law. In fact, how hard cases ought to be resolved is one of the central issues of jurisprudential dispute which underlies and is interrelated with many other issues of contention such as the relationship between law and morality, whether law is an autonomous or an open-ended system, and the nature and function of rights. One cannot have a theory of hard cases, however, unless there is first a theory about how easy cases are to be resolved. A theory of law, therefore, must entail a theory of legal reasoning which will explain the resolution of both hard and easy cases.

B. Different Schools of Legal Thought

1. RULE SKEPTICISM

The degree to which legal reasoning is rule based should determine the degree of difficulty we will be faced with in constructing expert systems in case-based law. If legal reasoning is highly rule determined and if most of those rules can be stated in the form of “if...then...” propositions, then legal expertise ought to be as capable of being captured in an expert system in the same way as any other form of expertise. Many lawyers, judges, and legal theorists, however, are convinced that legal reasoning is not highly rule-determined. While there are a variety of forms and degrees
of rule skepticism, the majority of the legal profession would probably consider themselves to be rule skeptics of one sort or another.

Rule skeptics hold in common the thesis that legal reasoning is not rule governed. Judges, some claim, start with a conclusion which they "reach" on intuitive grounds and then select the premises which will "justify" it. Radical rule skeptics such as the late professor Fred Rodell of the Yale Law School took the position that the entire legal conceptual structure is a morass of technical abstract concepts which have little to do with reality. "Legal words and concepts and principles," he states, "float in a purgatory of their own, halfway between the heaven of abstract ideals and the hell of plain facts and completely out of touch with both of them. And that is why, in the last analysis, the language of The Law is inherently meaningless." Rodell claimed and demonstrated that, given the facts of any case being appealed to the Supreme Court of the United States, and the judges who would hear the case, he could predict with ninety-percent accuracy the decision or outcome of the case. His predictions would be made on the basis of his study of the beliefs, prejudices and preferences of the judges based on his analysis of their decisions in past cases which he had analyzed according to a set of categories such as criminal, civil liberties, religious issues, or the rights of the accused. His viewpoint is similar to that of many lawyers who believe that the outcome of a jury case is virtually a foregone conclusion once the jurors have been selected because of their
prejudices. Hence the great importance which is attached to jury selection, especially in the United States where, unlike Canada, prospective jurors can be questioned at length by counsel.

One can easily see how an expert system could be constructed using Rodell as the expert, and creating rules of thumb which reflect his analysis. (A Rodell-like expert system could be made capturing the knowledge of an expert using methods of analysis similar to his.) Such a system would produce a prediction based on the make-up of the court. It assumes, as does most forms of skepticism, such a mammoth amount of social and personal self-delusion that it is not usefully entertainable. Rodell's theory will not tell one anything about the law, since it assumes that there is no law, or that whatever the judges decide is what the law is. It would, having such skepticism, be valueless for purposes of legal research. If an expert like Rodell could be found today and an expert system built upon the basis of his expertise in predicting the decision patterns of known judges, it would have little commercial value and be of little theoretical interest. Or it would be a fortuitous but mere epiphenomenon.

A useful expert system must be able to give predictions without information as to the personal identity of the judge because the decision to litigate or not must be made before the judge's identity becomes available. Secondly, an expert system, to be useful to lawyers, must produce information about relevant cases and statutes which support its predictions. In fact, the main value of experts systems to lawyers will lie in their potential as tools of research.
Rule skepticism has taken a number of forms during its history as a stream of American legal theory. Rule skepticism originally appeared in the United States in the form of a school of legal theory known as American Legal Realism. Legal realism in that form was an application of the philosophical school known as pragmatism, and incorporated the beliefs of the pragmatists about human reasoning in general. Pragmatism is the dominant American version of empiricism in that the basic epistemological and ethical premises are that experience is the source of knowledge, and ethical judgments are subjective in that they cannot be verified as true or false. In this tradition the American legal realists generally avoided systematic or formal analysis of law as such. They denied the applicability of logical deduction for legal reasoning, and in particular denied the assumption that law is certain, questioning certainty both at the level of determining facts, and determining the law. According to the realists legal rules are not the major determining factor in reaching a judicial decision, but are mere rationalizations of a decision reached for other (generally unarticulated) reasons. The judge first reaches a tentative conclusion and then attempts to find a premise in the form of a legal rule or rules which will justify the conclusion, thus moving from conclusion to premises.

The father of American legal realism itself was Oliver Wendell Holmes (1841-1935) who played an influential and active role in the development of pragmatism as a philosophical school of thought. The most important ideas which he contributed to the realists movement was his
theory of defining legal concepts in terms of the actual or predicted operations of the courts, and his belief that factors such as social policy or prejudices often play a more decisive role in the outcome of a case than do the legal rules. According to Holmes:

...a legal duty so called is nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court; and so of a legal right.\(^{51}\)

If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.\(^{52}\)

The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.\(^{53}\)

(b) The Critical Legal Studies Movement

There are very few legal theorists writing in the tradition of the American Legal Realists today. The most active contemporary school of rule skepticism is the Critical Legal Studies movement. The CRITS, as they have become known, are the intellectual heirs of legal realism enriched with a Marxist orientation, along with smatterings of continental European thought such as phenomenology, and sometimes a dash of liberation theology, the particular mixture depending upon the particular writer.\(^{54}\)

While they share the realist's views of legal decision making, they articulate more fully the underlying prejudices and beliefs which are the true motivating factors of decision, and explain them as the product of the class consciousness of that class from which most judges, legislators, and lawyers
are drawn. Duncan Kennedy, a professor at Harvard Law School, believes that the process of being socialized into accepting the values of the legal class begins at law school and continues throughout a lawyer’s professional career. His attitude towards judicial decision making is characteristic of the CRITS.

A second hierarchy is that of the judicial system, in which judges play the role of tin gods, exacting an extraordinary servility from their court personnel and the lawyers and litigants who appear before them. Judges are free to treat, and often do treat those who come before them with a degree of personal arrogance, a sense of entitlement to arbitrariness, and an insistence on deference that provide an extreme model of everything that is wrong with legal hierarchy.

Lawyers are complicit in this behavior: they expect it, and even enjoy the purity of the experience—the absolute character of the submission demanded, with its suggestion of playing a game which is really and truly for keeps. Beyond that, the judicial system is based on the same extreme specialization of function and differentiation of capacities as the hierarchy of the bar and the internal hierarchy of particular firms. All of this deforms the very idea of justice, rendering it at once impersonal, inaccessible to ordinary human understanding and ordinary human practice, and intensely personal, since everything depends, most of the time, on the crotchets and whims of petty dictators.

If the rule skeptics are right about legal reasoning, and it is the case that rules are irrelevant to the outcome of cases because judges can always construct out of the available legal materials a set of premises which will justify their conclusion, then there is no future for expert systems in law since Rodell’s methodology would be effective only in regard to a highly politicized court such as the Supreme Court of the United States where judges are deliberately selected and appointed by the President because of
their particular biases and beliefs which are generally known within legal circles.

2. LEGAL POSITIVISTS

The two most commonly accepted theories of how judges decide hard cases are the discretion theory entailed in most versions of legal positivism, and the balancing of interest theory which is the explanation generally accepted by most persons who would not consider themselves to be legal positivists. The statement of the discretionary theory which is most widely accepted by the positivists is that of H.L.A. Hart who drew the distinction between the core of a rule, and its penumbra. According to Hart every rule has a core of clear and settled meaning, and a surrounding penumbra where meaning drifts into ambiguity and uncertainty. When one is able to state the facts of a case in a form which corresponds to the core meaning of a rule, one has an easy case and the judge has no choice but to apply the rule. Where, however, the facts fall within the penumbra of the rule, the judge is bound by no standard, but must "legislature" the solution. He has, therefore, a discretion as to how the case is to be decided.

Hart gives an example of a law which prohibits bringing vehicles into parks. A motor car would fall within the core meaning of the rule, and so would, prima facie, be an easy case. Toy cars, bicycles, motorized wheel chairs, or even a World War II airplane put in as a showpiece, fall within the penumbra of uncertainty and are arguably vehicles. In those cases the judge must "legislature" or create the solution since one is not given
within the core meaning of the rule. This issue and its implications for artificial intelligence in law have been discussed at some length by Gardner.\textsuperscript{57}

Where a case falls within the core meaning of the rule, but an irrational result would be produced if the clear meaning of the rule is applied, the positivists' position would be that nevertheless the judge should consider the case to be a clear one and apply the rule in order that the clarity of the core meaning is not eroded. This is what is meant by the positivistic aphorism that hard cases make bad law.

Positivism can be seen to be a mild form of rule skepticism. Rules function in easy cases, but not in the hard cases. If the positivist view of legal reasoning is correct then expert systems can only be built to handle easy cases. If so, then expert systems have a somewhat limited utility in law since it is hard cases which are litigated and require legal research by the practitioner. At best they would be a means of familiarizing some lawyers with the conventional wisdom in areas of the law with which they are unfamiliar or of teaching law students the basics of the law as a form of computer-assisted instruction.

3. THE BALANCING OF INTEREST DOCTRINE OF SOCIOLOGICAL JURISPRUDENCE

Sociological jurisprudence developed in the United States, in part, as a response to the nihilism implicit in the rule skepticism of American Legal Realism. It attempted to furnish a theory of legal reasoning for judges to
follow in place of the application of rules. According to this theory it is the duty of the judge to weigh and balance the conflicting interests which are at stake in any particular dispute, and to decide the case accordingly. This view differs from that of the positivist view described above because on this view the judge would not have as full a discretion since his or her decision will be dictated by the relative weights of the interest. Rules may be applied where they represent or incorporate a correct weighing of interests, but not otherwise. Nevertheless the judge decides on which interest weighs more, at least in close cases.

One popular contemporary and more sophisticated version of this view is that of Ronald Dworkin. Dworkin uses Riggs v. Palmer as a paradigm example of a hard case decided by the application of a principle (a man shall not profit by his own wrong) rather than by a rule. According to Dworkin, proper legal premises consist of more than rules, and include principles and policies as well. The latter, unlike rules which according to Dworkin function in an all-or-nothing manner, must be weighed and balanced. While Dworkin believes that every case has a right answer, it is not always reached by the application of rules.

Non-positivist positions such as that of Dworkin entail that in hard cases the court should weigh and balance the conflicting interests which are at stake. According to this view the judge does not have a discretion but should rule for the more important of the conflicting interests. Balancing or weighing interests, however, is an unfortunate and misleading metaphor as it suggests the existence of an objective scale or of criteria where neither
are to be found. Since Dworkin's version of the balancing of interest model of judicial decision-making furnishes no order of precedence or criterion for the balancing or weighing process, in the final result, judicial decision-making is almost as discretionary as it is under positivism.59

C. The Distinction Between Private Law and Public Law

Traditional legal theories are unsuited for the theoretical foundations for expert systems in case-based law in an additional way. Whatever the particular jurisprudential assumptions which the legal expert may hold about the nature of a legal system, a rule of law, and judicial reasoning, they must be derived from the body of the law itself. Legal analysis ought to be the method by which our jurisprudential assumptions are clarified and critically examined. If we seek to build expert systems in case-based law then it should be case-based law and only case-based law from which we seek the theoretical presuppositions which will underlie the knowledge base of the expert system.

Case-based law deals principally with private transactions and interactions between individuals. Private transactions and interactions are governed and ordered by private law. Private law is judge made law or case law. Sometimes it has been necessary to alter or reform private law through legislation, in which case the legislature is carrying out a function which should have been carried out by the courts, and the specific piece of legislation incorporates private law principles which systematically fit in with the now modified case law.
On other occasions the legislature intervenes in private transactions by imposing on them a requirement of the public good. In this kind of situation the legislation need not be consistent with or systematically fit with the private law. Rather it sits above it as an imperative to which private transactions must conform. For example, the Wills Variation Act, R.S.B.C. 1979, c. 435 places limits on testamentary freedom by making provision for dependents of the deceased to make claims on the estate where they have been excluded from the will. Sometimes, such as in the Napoleonic or Germanic Civil Codes, or codes derived from them, the principles of private law receive their authoritative form through legislative actions. Civilians, however, are well aware of the difference between a code and a piece of legislation. Codes are a product of scholarly formulation, while legislation is a product of a political process.

The foundations of private law are to be found in two social practices, that of property, and that of contract. Property principles or law protect the means which we use in accomplishing our ends through our actions from wrongful interference. What constitutes wrongful interference is determined by the principles of tort law or delict. Contract law enables us to increase our potential for action and satisfying our own goals by the process of bargaining. Thus the overriding goal or function of private law is to protect and extend our free agency.60

The principles of private law have their origins in Classical Roman law. Classical Roman law is the foundation of all Western private law systems, whether common law or civil.61 Classical Roman law, the common
"Rights" and "obligations" are integral parts of the conceptual structure of private law. They are moral concepts, but their moral bases lie within and not outside the law. Private law must necessarily, therefore, have a foundation in moral principles, and it is these moral principles which furnish a meaning for "obligation". Law is the natural and inevitable expression of this particular set of moral principles. It is, at least in the area of private law, the morality of liberty.

One can disagree with this kind of morality. Or one can recognize its validity but argue that it is not sufficient. Its most outspoken critics are the Marxists. Those Marxists, however, who truly understand the nature and structure of private law, such as Pashukanis, recognize the necessary relationship between private law and rights and duties. Their critique of rights is based on their denial of the validity of the morality of individualism from which the rights are derived.

Private law forms a system within and of itself. Its individual parts are systematically related because they are deduced or inferred from a common set of interrelated principles. Private law is a teleological system because its over-all function, goal, or policy (in the sense of the policy of the law) is the extension of human agency. As argued above it is a moral system because it is the foundation of liberty, the equality of the
individual, and of fundamental rights. Since the morality of private law takes the freedom of the individual as basic, it is opposed to systems which take other values as fundamental. Nevertheless this morality of freedom is compatible with these other values such as those centering on community interests so long as they enter the system as the result of voluntary choice and are consistent with and supportive of the autonomy of each individual.

As a legal system private law forms what is often called by civilians, "the law of obligations". As such it forms a part, but only a part, of the legal systems of sovereign political bodies. As a juridical system within wider legal-political systems, the law of obligations is very similar in terms of basic principles whether or not it is the law of obligations of a Napoleonic or Germanic code or of the common law.

D. The Limits of Traditional Legal Theories

Legal theorists generally conceive of the law of particular sovereign political jurisdictions (of which the system known as the law of obligations is only a part) as a legal system. The parts of such a system, however, cannot be systematically teleologically related as there are fundamental teleological conflicts involved between the law of obligations and the statute law of legislative schemes. The theoretical presuppositions or assumptions which underlie a substantive area of law which has its foundations in legislation or a legislative scheme such as tax law, social welfare law, or regulatory bodies, are based on a totally different set of presuppositions than the presuppositions which underlie the law of
obligations. This reflects the conflict often referred to as between private rights and the public good, or between the values of individualism and the values of community.

Legal theorists traditionally have sought a single overriding unified theory of law which will treat the law of obligations as a part. Since there is no systematic teleological relationship between the law of obligations (whether judge made or codified) and the law of legislative schemes, or between the juridical paradigm of law and the political paradigm of law, any unified theory will either have to describe a non-existent ideal political process which would be consistent with private rights, or adopt a non-teleological basis for the systematic relations. This is why the most successful unified analytical theories of law are positivistic such as those of Bentham, Austin, Kelsen, Hart, or Raz. It also explains why the non-positivistic theories of law such as Pound, Laswell and McDougal, Stone, Fuller, Dworkin, or Finnis tend to be non-systematic and consequently non-analytic.

There is still another reason why we believe that traditional legal theories furnish an inadequate theoretical foundation for constructing expert systems in case-based law. No useful expert system can be built in the area of case law unless it can be shown that hard cases can be explained in a rule-governed manner. Traditional theories simply do not furnish adequate explanations for how hard cases are decided. If the rule skeptics are right, and it is correct that hard cases are discretionary for the judge, then the building of an expert system in law will be beyond the present
state of the art in AI. On the other hand, rule-based expert systems may be a way of testing legal theory. If a viable expert system can be developed which will predict the outcome of hard cases with a fair degree of accuracy, and will produce the relevant cases and statutes for the legal solution, we may have a method of testing the validity of theories about legal reasoning.

Even if traditional legal theories can furnish an adequate theoretical foundation for constructing expert systems in case-based law, the question arises as to which theory or theories should be used. One answer to this problem is the consensus model which Susskind has adopted, and has described as follows:65

...[I]t is submitted that the divergence of views within jurisprudence has been unrealistically accentuated by the typical foci of inquiry, in that legal theorists tend to concentrate on the inherently contentious issues while ignoring "straightforward" matters (which themselves may indeed raise insurmountable difficulties for the less capable). There may very well be consensus over many jurisprudential questions that has remained unarticulated on grounds of it being simplistic or mundane. Indeed, it may be in virtue of this presupposed, unifying substratum of concordance that dialogue between the various schools has been possible. For instance, theorists may all agree on the forms of legal argument that are both possible and desirable in the clearest of cases. This unanimity may not be apparent from the literature because "hard cases" and not crystal "clear cases" have invariably been jurists' object of study.

If there is such a concurrence of approach in relation to legal reasoning as well as to legal theory in general, then it is a model culled from that harmony that should be implemented in expert systems in law. If there is not, and if these conflicts affect the expert system enterprise, then a model that clashes as little as possible with the ruling theories should be developed. It is currently being endeavored to determine if a consensus theory of law (albeit of mundane and limited application), can be propounded.
The conventional wisdom in knowledge engineering circles is decidedly against the use of multiple experts in any single expert system. Experience has shown that to do so produces inconsistencies within the system. An expert system is simply a means of capturing the knowledge of an existing human expert. Experts typically differ at least on issues that are by no means straightforward. To expect an expert system to reconcile the views of all experts within any given domain is to attempt the impossible. Whether or not attempting to find a consensus among legal theoreticians will raise similar problems to that raised by the issue of a single expert versus multiple experts remains to be seen.

While it is highly likely that one can find some theoretical assumptions about which most legal theorists would agree, it seems to us that the principal difficulty with the consensus method is that it will not furnish an adequate theory of how hard cases are to be decided, since, as seen by Susskind, jurisprudential disputes tend to center on this question. Thus the most critical issue for expert systems is the very point upon which one is likely to achieve the lowest degree of consensus between legal theories and legal theorists. Furthermore, this approach seems to entail a departure from standard techniques for building expert systems. It is clear that expert systems for law require two kinds of expertise, expertise in an area of substantive law and expertise in legal theory. The ideal expert for a legal expert system would be one who had expertise in both areas, and who had applied the latter to the former.
We see a further difficulty with the consensus method. It is our present opinion that it is the jurisprudential assumptions of the particular expert which are important, and not those of anyone else. It is the theory of law to which the expert committed and uses in her or his analysis of the substantive law, which ought to be built into the expert system containing that person's legal expertise. If some kind of consensus theory of law is imposed on the expert, the system may contain contradictions if her or his own unarticulated jurisprudential assumptions are inconsistent with those of the consensus theory.

If the expert is an expert only in the area of substantive law, and is not an expert in legal theory, then the expert will need aid in clarifying and evaluating her or his own jurisprudential assumptions. The expertise of the legal theorist would aid the expert in legal doctrine in this process of clarification. In the first place doctrinal experts should clarify their position on rule skepticism. We should never lose sight of the fact that it is the explicit and implicit heuristic, meta-rules, and rules of the expert in the substantive law which must be built into the expert system. If the doctrinal expert is a rule skeptic she or he must have some theory of what drives decisions, if not rules. And if the doctrinal expert takes rules seriously she or he must have some idea about how rules function.

E. The Critical Issues of Legal Reasoning with Respect to Building Case-based Expert Systems

Issues in legal theory such as the relationship between law and politics, legal theory and political theory, the relationship of law morality,
and such questions as how hard cases are to be decided, have implications for work in expert systems. There are at least three critical theoretical issues so far as legal reasoning is concerned. These are:

1. **Is law an autonomous system of rules?**

If so, then law can be distinguished from other sets of norms such as morals or public policy. Law will be recognizable in a rule-governed manner, that is to say through rules of recognition. Anything which is not so recognizable will not be law. The idea of a rule of recognition was formulated by H.L.A. Hart. He drew a distinction between the primary rules which dictate human actions in terms of rights and duties or prohibitions, and secondary rules which function to create, change, or determine methods of adjudication of the primary rules. All of this assumes a theory of rule-governed social practices.

2. **Do judges have a discretion in deciding hard cases?**

If it is true that judges do have a discretion, then they are free to reach any particular decision on that point. That is to say that they are not bound by any particular standard. They are free to choose their own premises.

3. **Is law teleologically neutral?**

If law is not teleologically neutral then only certain purposes or goals will be appropriate for law, and certain others will not. If "legal obligation" is to be a meaningful concept then law must necessarily have a foundation in
some kind of moral principle or principles which can give "obligation" a normative as contrasted with a mere descriptive meaning.\textsuperscript{68}

Each of the above questions may be put in the form of propositions which may be true or false. In order for it to be possible to construct expert systems in the area of case law which will have the capacity to deal with "hard cases", the proposition that law is an autonomous system would need to be true. If we are not able to distinguish between what is law and what is not law, then there would be no limits on what could constitute a proper legal argument. We would not have a discrete body of legal material over which an individual could acquire an expertise if any kind of assertion can function as a legitimate premise in a legal argument. It would also seem necessary in order to construct the rules for an expert system that one be able to recognize what constitutes law in a rule-governed manner. Law, in other words, would need to be an autonomous system, and the expert would need to know the systematic relationship of its parts, at least in so far as her or his own areas of expertise are concerned.

If we are to be able to construct expert systems in case-based law, the proposition that judges do not have a discretion in deciding hard cases would need to be true. If judges have a discretion then decisions need not be rule-governed, and if decisions cannot be stated in the form of rules, then it would be most difficult to build a knowledge base for an expert system because the factors which direct a judge to exercise her or his discretion in any particular manner would be too complex and numerous.
If expert systems for case-based law are possible it would also need to be true that law is not teleologically neutral. Any knowledge base for an expert system in the area of case law, would have to, in one way or another, entail the doctrine of precedent that relevantly alike cases be decided alike. If this is so then a criterion of relevancy or a principle or principles for deciding relevancy would be necessary. It is difficult to imagine a criterion of relevancy which would not in someway be a teleological one so long as "legal obligation" is to remain a meaningful concept. If all of the above remains true, then the goals of the law should be considered to be a part of the law, and related to each other in a systematic way. It is the teleological aspects of the law which furnish the meaning for the normative legal concepts of "right", "duty", "obligation", and "justice".

Traditional legal theories all take positions in regard to one or more of the above three issues which would seem to be incompatible with the creation of expert systems in case-based law. Theories which entail a significant content of rule skepticism are not helpful. Theories which provide for a significant degree of judicial discretion in decision-making are unlikely to furnish an adequate foundation for the creation of expert systems in case-based law. Theories, such as traditional natural law, or sociological jurisprudence which recognize little distinction between what constitutes law and other matters of morality and social policy will also be inadequate. Theories such as the various forms of legal positivism which, while they recognize law as an autonomous system, hold that law is neutral so far as values are concerned, or to put it in a different way, hold that the
goals of the law are not to be considered as being a part of the law, will be unsuitable for expert systems building.

XI. THE FLEX METHODOLOGY AND ITS UNDERLYING ASSUMPTIONS

We have called our methodology FLEX (an acronym for Fast LEffective EXPert). FLEX methodology assumes that law is an autonomous system, that judges do not have a discretion in hard cases, and that the goals of the law are a necessary part of the law. It entails a legal theory which is like legal positivism in that it assumes that law is an autonomous system and can therefore be subject to rigorous analysis, but, unlike positivism, it does not need to assume judicial discretion to explain hard cases; and contrary to positivism, it considers the goals of the law to be a part of the law. Like the non-positivist theories, it assumes that law has a necessary teleology, but unlike the non-positivist theories, it is analytical. The FLEX methodology, assumes, therefore, an analytical-teleological theory of law. To the degree that FLEX methodology proves to be successful, we have evidence of the correctness of the assumptions which are entailed in its construction. It is in this manner that work in expert systems and artificial intelligence should shed light on the nature and structure of legal reasoning.

XII. THE ADVANTAGES OF THE FLEX APPROACH

The FLEX methodology offers an alternative to rule skepticism by offering an analysis of a system of laws, individual rules of law, and legal reasoning in terms of an underlying structure which may be assumed by but
not necessarily expressed at the doctrinal level. The deep-structure approach to legal reasoning is based on the assumption that judges decide even hard cases in a rule-governed manner even when they are not necessarily aware of the meta-rules which govern their decisions. An analogy can be drawn with the way children learn to speak a language. Most children learn to speak their native tongue, quite correctly, without any knowledge of the grammar of the language. Speaking a language, therefore, can be a rule-governed activity which people can carry out without being consciously aware of the rules. The rules are a presupposed part of the language.\textsuperscript{71}

The analogy can be carried over into law. The thesis would be that the law contains meta-rules for deciding hard cases which lawyers and judges unconsciously exhibit or otherwise adhere to in applying the law. The decision is then justified in the surface level rules and principles which make up the law, and in various ways reflect the meta-rules. Both the necessity for a deep-structure model of law for building expert systems, and the lack of such models in traditional jurisprudence and legal theory has been pointed out by Waterman, Paul, and Peterson, the creators of LDS (Legal decision making system) and SAL (System for Asbestos Litigation). They write:\textsuperscript{72}

\textit{Lack of a deep model}. The legal area doesn't have a clear and well understood underlying (deep) model of many of the mechanisms involved in decision making. Some domains do have a fairly clear model that can be used to predict activity and explain reasoning...Deep knowledge of this sort is not easy to find in the legal area. This makes the task of developing competent explanation facilities for legal expert systems somewhat difficult....
One might expect that the large body of legal rulings and regulations that have been accumulated and formalized in the legal domain would make expert system development easier. Unfortunately, this is not the case. Instead, this characteristic of the domain, having rules that already exist, has led to trouble.

It is our conclusion that traditional legal theories will not be of all that much use in the construction of expert systems in case-based law. In the first place, they generally present a unified theory for law as a whole, failing to draw any significant distinctions between legislation and case-based law, nor do they focus directly on the law of obligations which is the foundation for most case-based law. Secondly, traditional theories are either analytical or teleological, but not both. Thirdly, apart from Hart’s distinction between primary and secondary rules, there has been little search for or recognition of deep structure within traditional theories.

While this study presents a particular legal theory, it does so because that theory has been sufficiently rich to use as a theoretical basis for creating expert systems. FLEX methodology, however, does not necessarily presuppose the theoretical foundations of the Nervous Shock Advisor, rather we present it as a starting point, and as a set of assumptions which may be a useful starting point for doctrinal legal experts lacking jurisprudential expertise, or for legal theorists who find that their own jurisprudential assumptions are not helpful in constructing an expert system.

We will go on to examine a number of different kinds of indeterminacies which seem to support rule skepticism, which appear in the law of negligence, particularly that part which relates to nervous shock. We
will show how each of these kinds of indeterminacies were resolved or dealt with in a rule-governed fashion through the use of deep-structure in constructing the Nervous Shock Advisor.

XIII. THE UNDERLYING STRUCTURE OF THE NERVOUS SHOCK ADVISOR

A. Introduction

Rule skepticism is both an appealing and a popular view among members of the legal profession. One of the reasons why this is so is that there are so many different sources of indeterminacy in legal reasoning. Ambiguous concepts, conflicting principles, contrary doctrines, circular references, and abuses of logic are to name but a few. The nature of some of the kinds of indeterminacies will probably differ from one field of law to another while other patterns of indeterminacy may prevail throughout all parts of the law.

There are several different methods by which these various sources of indeterminacy may be described and categorized. The fact that there is no agreed taxonomy makes no difference to our analysis. What we have to say will be applicable whatever their source, or however they are described. From our point of view, what is important is that they all have in common the fact that the greater the degree of indeterminacy, the less rule-governed the area of law will be, and consequently the less will be the degree of predictability of outcome for any set of facts raising a legal issue.
It is generally conceded that if an area of law is in the main indeterminate, it would not be amenable to developing expert systems. If expert systems are to be constructed in case-based law, methods must be found for transforming what appear to be areas of indeterminacy into a rule-governed structure. The methods that work best may differ from one area of the law to the next, but in general, there should be a good deal of carry over. Methods that work in one area of the law should at least suggest solutions for another. Most of our examples in this study are drawn from the law of negligence, with an additional two or three from other areas of law.

We have set ourselves, as one of the goals of this project, the task of explaining the FLEX methodology in a way that will allow others to apply it in the areas of law of interest to them. The FLEX methodology has been developed for use in areas of case-based law that contain a high degree of indeterminacy. It is impossible to explain this methodology without furnishing a number of concrete examples. For those examples to be meaningful to the reader, it will be necessary to take the reader into the areas of indeterminacy within the scope of the examples, illustrate the indeterminacy and give the details of the method of solution which allows rules to be formulated. The examples are mainly drawn from the common law of the British Commonwealth of Nations. Civilians, however, should have no difficulty recognizing similar problems, which arise in the law of delict. Readers conversant with the American common law will find that all of our examples will have counterparts in their own system. Some of the English legal doctrines and cases will even be familiar to them. In several
of the examples American cases and doctrines will be used and referred to by way of comparison.

B. The Rule of Precedent

The principle of formal justice underlies the FLEX methodology. The underlying presupposition about legal reasoning in the area of case law is that legal judgments are universalizable. The doctrine of precedent which prescribes that like cases are to be decided alike can be restated in the form of a modus ponens rule which we will call the principle of formal justice:

If it is the case that in any judgment made in regard to a particular situation, that a particular person is or is not legally obligated to do a particular act, then it logically follows that anyone in a relevantly similar situation is or is not legally obligated to do the same act.

Thus each case or judgment which holds that a particular person has a legal obligation to do a particular act, instances a rule of law which applies to all other persons in a relevantly similar situation.

The universalizability of legal judgments is reflected in the practice of citing precedents from many different legal jurisdictions to show what the law is in the particular jurisdiction of the court, at least so far as the law of civil obligations is concerned. Thus in any civil jurisdiction of any province in Canada, the law of any other province will be cited, as well as decisions from England, Australia, New Zealand, and the United States. On occasions common law courts will even cite civilian codes, or even THE DIGEST. If, on the other hand, an issue arises that requires a court to
determine what the law is in a different jurisdiction, the law cannot be established by merely citing cases or precedents. One must bring in an expert to give testimony as to the law in the other jurisdiction. Thus a lawyer in British Columbia may cite English precedents to establish what the law of British Columbia is, but must call an expert witness to establish what the law of Great Britain is.

The universalizability of legal judgments is not only reflected in the doctrine of precedent, but is assumed by, or is entailed in many other legal principles and practices. For example: the courts' duty of impartiality; the rule of law (those who create and administer the law are subject to the law); the right to due process; equality before the law; and the reciprocal nature of rights and duties.\(^{77}\)

Use of the principle of formal justice often permits us to ignore the legal doctrine which a judge may cite to justify her or his opinion, while at the same time maintain continuity and consistency within the law. This underlying rule of legal reasoning along with the Boolean connectors "and", "or", and "not", can be used to deduce classes of factual situations from decided cases, and link them with legal conclusions. The principle of formal justice furnishes no criteria of relevancy for deciding when a particular factual situation is relevantly like another factual situation. The criteria of relevancy must, however, be teleological and the teleology must be derived from the law itself.\(^{78}\) The overriding goal or policy of the law of obligations made up of property, tort or delict, and contract, is the protection and extension of the agency of the individual.\(^{79}\) The teleology
which lies behind the law of negligence is the reduction of inadvertently caused harm to others as a result of people's actions, with as little interference as possible with the freedom of action.

C. The Rule of Relevancy

The FLEX methodology is based on the assumption that judges do take the doctrine of precedent seriously - that they do seek and try to follow "the law". It assumes that the criterion of relevancy is teleological and that judges do select between alternative lines of precedents in terms of the potential impact of the possibilities of decision as measured in terms of the goals of the legal practices (i.e. contract, property, etc.). This pattern of judicial decision-making can be stated in the form of a higher-order rule that we call the rule of relevancy:

If a case C1 arises having some facts identical with some facts in Precedent P1

and

If some other facts are identical with some facts in Precedent P2,

and

If the application of P1 would lead to different results from those that would follow the application of P2,

then

C1 should be decided according to the precedent which, if followed, will, when universalized as a rule of law, bring
about, because of the presence of the similar facts, the most desirable consequences in terms of the teleology of the legal system.

How such a meta-rule can function can be illustrated by a hypothetical example. Suppose facts (C1) that the plaintiff has been severely injured by a criminal assault, and that he discovers that the defendant, the lawyer of the person who committed the assault, had prior knowledge of the intent to commit the assault. Let us assume further that the basis of the claim of the plaintiff against the defendant is an alleged duty on the part of the defendant to take some action such as warning the plaintiff, or going to the police, to prevent the harm from happening. And finally let us assume that this is a new case for the law, as it must at some time have been, in that there is no precedent directly in point. The plaintiff's case is based on (P1) Tarasoff v. The Regents of the University of California, where the defendant psychiatrists was held liable for failing to warn that his patient intended to physically harm the plaintiff when he had prior knowledge. The defendant’s case is based on a clearly recognized legal principle (P2) that a lawyer owes no duty to warn others of an intent on the part of their clients to cause pure economic loss to others through a criminal act. P1, P2 and C1 are all alike in that they involve a relationship which entails a duty of confidentiality. In all three cases there is a foreseeable risk of harm if some action is not taken. In P1 and C1 the risk is of physical harm. In P2 the risk is of economic loss.

The legal issue is whether the lawyer-client relationship is to dominate or be dominated by the risk of physical harm to a third party, P2
inclining us toward the former, PI to the latter. In the teleology of the law of torts, however, it is quite clear that the prevention of physical injury is given a much higher priority than is the prevention of economic loss. Unless, therefore, the confidential relationship between a lawyer and his client can be seen to be relevantly different from the relationship between a psychiatrist and his patient, the case, C1, should fall under precedent PI rather than P2.

It is our contention that while a judge who decides such a case would not necessarily justify her or his decision in these terms, or might have difficulty explaining exactly why, she or he would probably follow the Tarasoff case, assuming it was accepted as correctly decided. The Tarasoff case is a precedent for the ordering of the goal of the prevention of physical harm in relationship to the goal of maintaining the confidentiality of professional relationships. It entails the proposition that preventing physical injury to persons is more important in terms of the teleology of the law, than the maintenance of professional confidentiality. In the absence of a relevant distinction between the two kinds of professional relationship, it is a precedent for the ordering of certain previously not explicitly ordered goals in relation to lawyer-client confidentiality. The current AIDS (Acquired Immune Deficiency Syndrome) crisis has sparked a lot of debate about whether physicians have a duty to warn the sex partners of people whom they diagnose as carriers of the virus. Since people who contract AIDS face virtually certain death, the Tarasoff case would undoubtedly apply.
D. The Ambiguity of the Concept of "Duty"

The FLEX methodology assumes that judges decide cases in accordance with an underlying goal-set revealed by teleological studies. These goals are systematically related. These teleological relationships are a part of what constitutes the "system" part of the concept of a "legal system". Expert systems in case-based law must take into account this teleology. They should not accept legal doctrine at face value.

The law of negligence, particularly that part centering around such concepts as "duty" and "remoteness" are just such areas where legal doctrine may not be trusted. This is why it makes an ideal area of the law for testing some of the assumptions which underlie the FLEX methodology. This is why an alternative analysis is needed.

The law of negligence, as a number of the following examples will show, is generally considered to be one of the most indeterminate areas of the law. If it is possible to build expert systems here, it should be possible to construct them in a good number of other areas of case-based law.

One of the best examples of the indeterminacies which plague the law of negligence is the concept of duty of care. The source of the indeterminacy is the multiple judicially determined meanings which the concept has been given in the law of negligence. Within this area of the law "duty" has at least four different judicially determined meanings or functions. The reason for this ambiguity lies in the historical distinction
made within the common law between questions of fact and questions of law. Questions of fact were to be decided by a jury, and the resolution of questions of law remained the prerogative of the judge. Where a judge was reluctant to leave a particular issue to the jury, he could avoid doing so by formulating the issue as a question of law. One way of transforming the issue into a question of law was to state it in terms of whether or not the defendant owed to the plaintiff, or was in breach of, a duty of care. A negligence case can raise a variety of quite different kinds of issues, many of them of a highly factual nature. When judges in the past wanted to keep some of these issues from the jury, and did so by framing them as issues of duty of care, a variety of issues were then stated in the same language framework—Did the defendant owe the plaintiff a duty of care?

The law of negligence deals with the question of unintentionally caused harm. If the harm suffered by a plaintiff was intended by the defendant, then the proper cause of action would lie in some nominate tort such as assault or battery, but not in negligence. The law of negligence does not place a prohibition on certain types of activities as do the nominate torts like assault, battery, defamation, or false imprisonment. The law of negligence prescribes that whatever actions we may take, we must carry them out in such a way that we do not cause harm to other persons: it prescribes an adverbial rather than a verbal prohibition.
I. THE EXTENSION ISSUE

Since failing to act does not cause harm, we generally need not concern ourselves with the consequences of not acting. While a failure to act may not be moral, it generally does not entail civil liability. An individual is generally not liable, in the absence of a special duty such as might lie in contract, for a failure to rescue a person in danger, since the person who fails to rescue is not the cause of the harm. If, however, the person who fails to rescue caused the danger in the first place, then that person might well be liable. If the failure to act is in the context of a wider action, and changes the nature of that act so that it has harmful consequences, such as failing to put one's foot on the brake while driving a car, then liability would lie for causing the accident. The distinction in the law of negligence between causing harm and failing to prevent harm from happening is often referred to as the distinction between misfeasance and non-feasance. The legal issue is often stated in the form of the question: Did the defendant owe the plaintiff a duty?—which would mean—Did the defendant owe the plaintiff a duty to perform the act which he or she did not perform, and which, if it had been performed, would have prevented the harm to the plaintiff.

The law of negligence does not require us to take care in regard to all possible harmful consequences of our actions, even though they may be quite foreseeable. Nearly every conceivable human action may have potentially harmful consequences for other people. If the law were to attempt to impose liability for all foreseeable harmful consequences of all
our actions, action itself would become intolerably restricted. There are several different kinds of harmful consequences which may follow action. The harm might be physical injury to persons or property, emotional suffering, or pure economic loss. Most human actions have economic consequences for other people. To prohibit the causing of pure economic loss to other people as a result of our actions would intolerably restrict action itself. Since, for instance, any business venture may well have negative economic consequences for some competitors, commerce and markets would not be possible if people were to be held liable for all of the economic consequences of their actions. Physical injury to persons or property, however, is not the general and necessary consequence of most action. Actions can generally take place without such consequences following. Therefore the law can require people to take care not to cause physical harm to others without unduly restricting action.

One is generally, therefore, liable for the physically harmful consequences caused by one's actions, but not generally liable for the purely economic consequences. The issue of whether the law requires a person to take care in regard to a particular set or kind of consequences is also often stated in the form of the question: Did the defendant owe the plaintiff a duty of care?---which would mean---Did the defendant owe the plaintiff a duty to take care not to cause the particular kind of loss suffered?---for example, a pure economic loss.
2. THE RISK ISSUE

The answer to the above question is determined within the law by the teleological considerations which underlie the structure of rules making up the law of negligence. The basic goal of the law of civil obligations is the facilitation of human action. The law of torts protects freedom of action from "wrongful" interference. The law of negligence imposes a standard of care on agents to require them to take reasonable precautions when acting so as not to interfere with the actions of other persons. That standard must not be so high as to obstruct action. A standard can be imposed regarding the prevention of physical harm without seriously limiting action. Therefore a duty of care is owed regarding the prevention of physical harm when we act. A standard cannot be imposed preventing economic loss to others when we act. Consequently, in general, no duty of care is owed to prevent economic loss to others when we act. Thus teleological considerations which are to be found within the law are the basis for the resolutions which the law produces.

The law of negligence imposes liability only for harm caused through or by our actions which we could have reasonably foreseen, and consequently could have prevented. Reasonable foreseeability of harm is, therefore, a necessary condition for responsibility and liability. We cannot be held responsible for harm which we could not reasonably foresee and, therefore, could not have prevented. In every negligence case, therefore, the question will arise as to whether the defendant could have reasonably foreseen the harm which resulted from her or his action. The answer to
this question often takes the form of a conclusion that: *The defendant owed no duty of care to the plaintiff*—because there was no foreseeable risk of harm. Where there is a foreseeable risk of harm as a potential result of a particular act, then a duty of care arises to see that the act is carried out in such a way that the harm does not materialize. The proximity of the plaintiff to the defendant is often a critical element in ascribing a duty in this sense of its usage. A postal clerk would owe no duty to handle a package with special care if he could not foresee that the package contained nitroglycerin.⁸⁴

3. THE STANDARD OF CARE ISSUE

Negligence is a normative concept in the sense that a person is only judged to be negligent if their conduct has fallen below a certain standard of care: thus the use of the qualifier "reasonable". The standard of care is the norm of conduct which ought to have been followed. Even though an agent may have been non-negligent with respect to foreseeability, the agent may be negligent with respect to the standard of care which ought to have been taken in the light of the foreseen risk. Even if a certain action entailed a foreseen risk of harm, the precautions which the defendant took in regard to it, might well have been reasonable, or, in other words, have met the standard of care. The standard of care sets the duty. The defendant owes a duty to meet that standard, and if the standard has not been met, then the defendant would be said to be in breach of a duty of care. A defendant who maintains a cricket field could be found by a court to owe no duty to a plaintiff struck by a cricket ball, to maintain a
sufficiently high fence to prevent balls from leaving the field where the probability is that balls would very seldom be struck that high or far.\textsuperscript{85}

4. **THE REMOTENESS ISSUE**

The harmful consequences of a negligent act are often themselves conditions for further harm. As a result of an accident caused by the defendant's negligence the plaintiff might require medical treatment. The medical treatment may produce further harmful complications which in turn may cause a further economic loss. Each particular harm must be dealt with separately. If, for example, the defendant, while driving negligently, hits the plaintiff and breaks his leg, and while the plaintiff is lying on the road, a third person steals his wallet, there would be no question of the defendant's liability for the broken leg. However, an issue would arise as to whether the defendant owed a duty of care in regard to the wallet. As a result of wearing a cast, the plaintiff might later fall and break his other leg. The issue of whether the defendant would be liable for the loss resulting from the second break would generally be phrased in terms of duty of care language.

5. **THE CONFUSION OF DIFFERENT KINDS OF ISSUES THROUGH THE USE OF DUTY LANGUAGE**

Where, for example, an experimental laboratory negligently allows a highly contagious virus to escape which results in the death by disease or by governmentally-required slaughter of all the cattle in a particular area, and an auctioneer suffers economic loss as a result of the closing of the cattle
market, the legal issue which would arise would be put in terms of whether or not the defendants owed the the auctioneer a duty of care in regard to his loss of business profits. This might mean, however, one or more of several different things:

1. It might raise the issue of whether or not people are required to exercise any care at all to prevent others from suffering an economic loss.

2. It might raise the issue of whether or not the economic loss was foreseeable.

3. It might raise the issue of whether, if the economic loss was foreseeable, the defendant did everything which she or he ought to have done to prevent the loss, or in other words whether the defendant met the required standard of care.

4. It might raise the issue of whether the economic loss was too remote from the original negligence relating to the spread of the infectious disease for the courts to award recovery.

The essential issue in this case, given that the escape of the virus was due to the negligence of the defendant, is one of remoteness. A finding of negligence is a necessary condition for an issue of remoteness to arise. Physical harm to some can often result in economic loss to others. Where the line for recovery is to be drawn must be determined by teleological considerations. It must be sufficiently wide as to affect people's behaviour
by inducing them to take care not to be negligent, but sufficiently narrow so as not to make the price of action so high that action itself is discouraged.

Because of the ambiguity of the concept of duty of care, one would not want to use it as a primary term in constructing the knowledge base of an expert system. Rather, one would want an analysis of the essential elements or issues in a negligence action which would be stateable in language independent of the concept of duty of care, but which could be related to it so as to justify outcomes with cases which use the standard duty language.

E. A Deep-structure Analysis of an Action in Negligence

The following analysis of a cause of action was developed in LIABILITY IN NEGLIGENCE as a result of the domain expert's attempt to make some sense of the law of negligence for law students. An action in negligence is broken into seven steps.87

1. The extension issue: Will the courts extend a standard of care to a particular kind of loss or activity?

2. The risk issue: Did the conduct of the defendant create a reasonably foreseeable risk of harm?

3. The standard of care issue: What is the standard of conduct which the courts will impose in respect to 2?

4. The negligence issue: Was the actual conduct of the defendant below the standard of care?
5. The causal issue: Was there a cause-effect relationship between the actual negligent conduct of the defendant and the loss or damage suffered by the plaintiff, or was the loss due to some other event?

6. The remoteness issue: How far down the chain of causation will the courts impose liability when the claim was occasioned by an act of negligence?

7. The damages issue: How are the damages to be measured?

The concept of a duty of care is used in the law of negligence to deal with four different kinds of legal issues, the extension issue, the risk issue, the standard of care issue, and the remoteness issue. Consequently these different issues are constantly being confused in the cases and literature. In particular, issues of extension and issues of remoteness are seldom clearly differentiated.

In constructing an expert system in an area of law which on the surface appears to have a high degree of indeterminacy, there is one cardinal rule which should be followed, and which we have complied with in constructing the Nervous Shock Advisor. That is: Do not build into it either the doctrinal legal rules of the subject area, nor use the legal concepts found in the doctrine if they are the source or the subject matter of the indeterminacy. One must use an analysis which is independent of the legal concepts where those concepts are ambiguous or have been the subject of conflicting judicial interpretation. If a concept is clear within the law, and the cases merely refine and develop the concept then there is no reason why that concept cannot be incorporated into the rules which lie at the heart of
the expert system, and if the rules of law in a particular area are relatively clear and straightforward, then one should be able to incorporate them and their correlative legal doctrine directly into the knowledge base. If, on the other hand, the concept is the subject of alternative or conflicting judicial interpretation, as is often the case in case-based law, one should seek an alternative conceptual structure for the foundations of the knowledge base. The futility of attempting to reconcile all the cases with one another if they are taken at face value inspired the poet Tennyson to write the following lines.

...

The lawless science of our law,  
That codeless myriad of precedent,  
That wilderness of single instances.  

Most lawyers have shared Tennyson’s sentiments about the common law at one time or another.

F. The Ambiguity of Duty in Nervous Shock

Where the subject area of the law that will be the object of the expert system contains basic concepts that have several different meanings, the area of law requires an analysis whereby these different meanings can be separated and clarified. The Nervous Shock Advisor is based on the above seven step analysis of a cause of action in negligence. It furnishes the foundation framework upon which the knowledge base was built. The knowledge base is linked to a data base which produces the right cases which will furnish both the precedents and the traditional doctrinal level of discourse which is generally used for arguing the legal issues. In the case of
nervous shock, the issues are generally argued in terms of duty and foreseeability.

Consider where, for example, a mother is watching her child on a roller coaster, and the car, as a result of a negligent design, leaves the track and the child is seriously injured in the fall. As a result of witnessing the accident, the mother suffers psychological trauma which prevents her from carrying out her profession for six months. The legal issue that would arise would be put in terms of whether or not the defendant owner and/or operator of the coaster owed the mother a duty of care in regard to her nervous shock. This might mean, however one or more of several different things:

1. It might raise the issue of whether or not the defendant, in the particular circumstances, is required to exercise any care at all to prevent others suffering from nervous shock.

2. The question might raise the issue of whether or not the nervous shock was foreseeable.

3. It might be asking the question of whether the nervous shock was too remote from the original negligence relating to the design of the coaster, for the courts to award recovery.

The law of nervous shock furnishes a paradigm example of the confusion of issues of extension with the remoteness issue. As stated by one
judge, "no absolutely clear picture emerges and many of the judgments speak with different voices." All of the judges repeat the litany that a plaintiff cannot recover from a defendant for nervous shock unless the defendant owed the plaintiff a duty of care. Some of the judges, however, treat nervous shock as a cause of action separate from the negligence which produced the harm which caused the shock, by using duty of care language to ask whether the defendant owed a duty to the particular plaintiff who suffered the nervous shock, to take care not to produce nervous shock. One judge phrased the question in this way:

*The first question which arises is whether nervous shock is a substantive tort or whether a particular instance of damage flowing from a particular tort. If the latter, recovery depends upon the question of remoteness. If the former, recovery depends upon a breach of duty. Legal writers and commentators have expressed contrary views, but in my opinion the authoritative view is that nervous shock, other than that flowing from a physical injury suffered by a claimant as a result of a negligent act, is a substantive tort. This then poses the problem of what is the duty the breach of which gives rise to a claim for damages for nervous shock.*

Other judges see the issue as one of remoteness. This perspective of the subject is taken by Lord Denning where he states:

*I cannot see why the duty of a driver should differ according to the nature of the injury. I should have thought that every driver was under a plain duty which he owed to everyone in the vicinity. He ought to drive with reasonable care. If he drives negligently with the result that a bystander is injured, then his breach of duty is the same, no matter whether the injury is a wound or is emotional shock. Only the damage is different...If you view the duty of care in this way, and yet refuse to allow a bystander to recover for shock, it is not because there was no duty owed to him...but simply because it was too remote to be admitted as a head of damage.*
A different result is reached by viewing the driver's duty differently. Instead of saying simply that his duty is to drive with reasonable care, you say that his duty is to avoid injury which he can reasonably foresee, or, rather, to use reasonably care to avoid it. Then you draw a distinction between physical injury and emotional injury, and impose a different duty on him in regard to each kind of injury, with the inevitable result that you are driven to say there are two different torts—one tort when he can foresee physical injury, and another tort when he can foresee emotional injury. I do not think that that is right. There is one wrong only, the wrong of negligence.

The contradiction between the above two views runs throughout the nervous shock cases. Often it is not clear from the words of many of the judgments just which view the judge is taking, or whether the judge is clear about the distinction in her or his own mind. The above analysis of the law of negligence, which underlies the construction of the Nervous Shock Advisor, dictates that nervous shock raises an issue of remoteness, since in the standard case of nervous shock, the shock is the result of a negligent act which causes some other physical injury or risk of such injury. Extension, risk, and a departure from a standard of care are generally assumed before a nervous shock issue can even arise. While the assumption that nervous shock cases give rise to a remoteness issue is an essential one for the organizational structure of the knowledge base and the data files, it would in no way hamper a user who wished to argue for the opposite point of view. The Nervous Shock Advisor does not furnish the user with legal arguments, but only the cases from which the argument should be made.
G. Contrary Doctrines of Remoteness

To categorize nervous shock as a remoteness issue, however, does not take one very far. The law relating to remoteness of damages arising from negligent acts is a paradigm example of bifurcated doctrines. For many years in both the United States and the Commonwealth there have always been two mutually inconsistent tests for whether or not a particular damage was too remote—the foreseeability test, and the causation test. The leading American decision which best illustrates the two different approaches is the decision of the New York Court of Appeals in *Palsgraf v. Long Island Railway Co.*94 A servant of the defendant railway company, in that case, while attempting to aid a passenger boarding the train, negligently dislodged a package which fell on the rails. The package contained fireworks which exploded when they fell. The shock of the explosion caused a scale to fall over on to the plaintiff, causing her injury. The majority judgment was written by Cardozo C.J. who applied the foreseeability test. He held that the defendant could not be held liable to the plaintiff unless he was in breach of a duty owed to her. Since it was not foreseeable that the package contained fireworks which would explode and cause the scales to fall, no duty to her was owed. *The conduct of the defendant's guard,* he wrote, *if a wrong in its relation to the holder of the package, was not a wrong in its relation to the plaintiff, standing far away. Relatively to her it was not negligence at all.*95 *The risk reasonably to be perceived defines the duty to be obeyed.*96
Andrews J., in his dissenting judgment, held that once a person is found to be negligent, they are liable for all the damage of which their negligence is the approximate cause, whether or not that damage was foreseeable. He wrote:\footnote{97}

\begin{quote}
As we have said, we cannot trace the effect of an act to the end, if end there is. Again, however, we may trace it part of the way....What we do mean by the word "proximate" is that, because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point. This is not logic. It is practical politics.
\end{quote}

For many years a parallel to these two approaches could be found in the law of England which was also followed, in this regard, in Canada, Australia, and New Zealand. The analogue of Andrew's test of approximate cause in \textit{Palsgraf} was the direct cause test of the English Court of Appeal in \textit{In Re An Arbitration Between Polemis and Furness, Withy & Co. Ltd.}\footnote{98} In that case the owners of a ship brought an action against the charterers of the ship whose servant had negligently dropped a plank into the hold of the ship causing an unforeseeable chain of events in which a spark ignited benzene fumes which caused an explosion and fire which destroyed the ship. Bankes L.J. described the two conflicting tests, stating:\footnote{99}

\begin{quote}
According to the one view, the consequences which may reasonably be expected to result from a particular act are material only in reference to the question whether the act is or is not a negligent act; according to the other view, those consequences are the test whether the damages resulting from the act, assuming it to be negligent, are or are not too remote to be recoverable.
\end{quote}
Warrington L.J. stated:

100

The presence or absence of reasonable anticipation of damage determines the legal quality of the act as negligent or innocent. If it be thus determined to be negligent, then the question whether particular damages are recoverable depends only on the answer to the question whether they are the direct consequences of the act.

The House of Lords, in the later case of Hav (or Bourhill) v. Young applied the foreseeability test, and in a judgment in every way consistent with that of Cardozo C.J. in Palsgraf, while not actually over-ruling Polemis gave a judgment quite incompatible with it.

101

The "proximate" or "direct" cause test for remoteness is hardly a test at all because there are no criteria for determining what is direct or proximate. It is quite understandable why judges have felt uneasy in applying it. The Privy Council, on an appeal from Australia, in Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd. (now commonly referred to as Wagon Mound No. 1) adopted the foreseeability test and expressly rejected the "direct" or "proximate" cause test, declaring Polemis to be wrong in law. The subsequent history of Wagon Mound No. 1 and Palsgraf are very similar. Both have been frequently cited and almost never actually applied or followed. Prosser and Smith stated in 1952 that since Palsgraf was reported in 1928 it had only actually been squarely applied in one case.103 Prosser describes how the foreseeability test has been applied in the United States as follows:

104

Such piecemeal foresight is a rope of sand, and offers neither certainty nor convenience, as the floundering in the cases seems to show. Here is Learned Hand, a great judge blandly assuring us
that it is beyond reasonable anticipation that a barge with which the defendant collides will sink, and will be carrying insurance. Here is Pennsylvania twice asserting that no reasonable man could foresee that any object struck by a speeding train or bus would fly off at an angle and hit a person not directly in its path. Here is Wisconsin, affirming that when a child is run down in the street there is no recognizable risk that its mother, in the vicinity, may suffer mental shock. Here is New York solemnly declaring that the foreseeability of the spread of the fire ends at the first adjoining house. I do not believe these things, I think they are rubbish. At the other extreme is another New York case, finding it all foreseeable when a collision forced a taxicab over a sidewalk and into a building and loosened a stone, which fell on a bystander and killed her, while the taxicab was being removed twenty minutes later by a wrecking car. There is also Texas, which had no difficulty at all in foreseeing that a mud hole left by a defendant in a highway would stall a car, that a rescuer attempting to tow it out would get his wooden leg stuck in the mud and that a loop in the tow rope would lasso his good leg and break it. Illustrations might be multiplied, as every negligence lawyer knows, but surely these are enough.

Similar examples can be found throughout the common law world. In Canada, for instance, one court found that it was not foreseeable that a mother would suffer nervous shock when told of the death of two of her children and the severe injury of the third in a motor vehicle accident,\textsuperscript{105} while another court found that it was reasonably foreseeable that when a driver negligently losses control of her vehicle when attempting to avoid a cat, she would run into a wire fence; that the impact would pop out the staples holding the wire; that two weeks later dairy cows would come along and eat the staples along with the grass, and contract "reticulitis" or "hardware disease" and would have to be slaughtered.\textsuperscript{106}

No sooner was \textit{Wagon Mound No. 1} reported than courts began to retreat from it.\textsuperscript{107} Just five years later, in \textit{Overseas Tankship (U.K.) Ltd. v. The Miller Steamship Co. Pty. Ltd.} (now commonly referred to as the \textit{Wagon...}
Mound No. 2), a case arising from exactly the same set of facts, only involving a different ship, the Privy Council subtly shifted the foreseeability test from reasonable foreseeability to foreseeable as possible. At the level of the legal language used by the courts in both cases the courts used a test of foreseeability of the damage or injury. If the injury was foreseeable then it is not too remote, and if it was not foreseeable then it is too remote. There are, however, two versions of the foreseeability test. If the court decides to find the particular damage too remote, it can justify the decision in terms of the Wagon Mound No. 1 test of reasonable foreseeability because the kind of damages which give rise to an issue of remoteness are seldom reasonably foreseeable. If they were, they would be a part of the initial risk of harm on which the judgment of negligence rests, and a question of remoteness would not arise. If the court finds the particular damage not too remote, it can justify the decision in terms of the Wagon Mound No. 2 test of foreseeable as possible because this will cover almost any kind of injury or damage which can follow negligence. Consequently experts in the field of negligence consider the law to be basically indeterminate and, therefore, unpredictable.

Commonwealth courts do not admit that they have available two conflicting tests of remoteness, and in the academic literature concerning this topic most authors will be found to consider remoteness issues to be a matter of policy, or within the discretion of the judges. Thus remoteness of damages is an area which appears to be one of the most discretionary and the least rule-governed of any part of case-based law.
H. The Reformulation of Remoteness Doctrines into a Deep-structure Rule

On the basis of the theory of negligence which was derived from the theory of action set out in LAW AND ITS PRESUPPOSITIONS, a deep-structure rule was clarified which reconciles the two inconsistent Wagon Mound decisions. It takes the form:

Physical damage to persons or property resulting from a negligent action are not too remote if they are reasonably foreseeable in the particular, or are one of a reasonably foreseeable class of injuries.

In particular it is reasonably foreseeable that:

1. Dangerous activities when carried out negligently create a wide variety of particular kinds of risks of harm;

2. Injury to persons can also result in further damage from particular susceptibilities or medical complication to the injured person or to others: and

3. The creation of a risk invites rescue.

It can be concluded from the decided cases that as a general rule:

1. No physical injury or property damage caused by a motor vehicle accident is too remote.

2. No physical injury or property damage caused by a highly dangerous activity such as that involving the handling of explosives, highly inflammable or toxic substances, high voltage electricity, fire, or use of dangerous objects or machinery is too remote.
3. No increased physical or emotional injury resulting from an unusual or particular susceptibility of a person suffering damage as a result of a negligent act is too remote.

4. No medical complication resulting from an injury to a person whether or not the complications are due to an act of a third party, whether negligent or not, is too remote.

5. No physical injury or nervous shock suffered by a rescuer is too remote.

6. Nervous shock resulting in some form of incapacity, suffered as a result of an injury or risk of injury to oneself or someone else is not necessarily too remote.

Ninety-two percent of the cases which raise issues of remoteness of damages, decided by the courts of England, Canada, Australia, and New Zealand from the latter part of the 19th century up to the present, conform to the above rules whatever legal doctrine was used to justify the outcome.¹¹¹

I. A Deep-structure Analysis of Nervous Shock

Nervous shock, as a class of injury, is foreseeable, even though the specific circumstances are often not foreseeable in the particular. However, the cases show that recovery is not always given. When nervous shock is or is not too remote cannot be justified or explained in terms of foreseeability, even though that is the rationale given for the decision in almost every decided case. Recovery is confined, however, to cases where there is a close family relationship between the person suffering the injury and the person suffering the shock, and to cases where the close relative had a certain
degree of visual exposure to the event which caused the shock. These limitations create an exception to the more general rule of remoteness stated above. Nervous shock is one of the foreseeable classes of injury which can follow from a negligent act, but it is subject to the qualification that:

Nervous shock resulting in some form of incapacity, is too remote unless it is inflicted on a near family relative as a result of witnessing or coming upon the immediate or near aftermath of a serious accident involving a family member.

Almost all the decided nervous shock cases are consistent with this principle.

An analysis of the decided cases dealing with nervous shock indicates that recovery is allowed only in a sub-class of cases within the general category of nervous shock. Nervous shock, at first glance, would thus appear to be an exception to the deep-structure remoteness rule in that, although the class of injury is foreseeable, not every case within the class is recoverable as not being too remote. There are two necessary conditions to recover in an action for nervous shock: a degree of visual exposure to the shock-producing event, and a degree of close family relationship. While at first such limitations may seem arbitrary, the consistency with which they are applied without ever being expressly articulated in the legal doctrine, would indicate that a teleological factor is at work, limiting the range of recovery. This should take us back to the two underlying policies which set the limits of remoteness, (a) the prevention of harm, with (b) the minimum limitation on freedom of action.
Life experience, as it is brought before the courts in the form of legal disputes, show that in general nervous shock is suffered only when these two factors, (1) a visual exposure, and (2) a close emotional or familial relationship is present. While nervous shock is a foreseeable consequence of the creation of a physical risk of harm to people, it is not foreseeable over the class of all persons, and under a wide variety of circumstances as is the case with the other foreseeable categories of injury such as dangerous substances or dangerous articles. A careful analysis of the cases leads us, therefore, to a redefinition of the foreseeable class. In the case of nervous shock, while it is never foreseeable in the particular, it is foreseeable that members of a family sometimes do suffer nervous shock if they are visually exposed to an accident or its close aftermath where someone dear and close to them is harmed. Nervous shock, therefore on a closer analysis turns out not to be an exception to the deep-structure remoteness rule after all since, the foreseeable class cannot be described merely in terms of the kind of injury, but must be described as well in terms of who suffers it and under what conditions.

J. Preparing to Build a Knowledge Base Using FLEX Methodology

The FLEX methodology consists of the following fundamental steps:

1. Define a narrow and deep universe of discourse for the advisor.

2. Build a data base by gathering all the case law which falls within the universe of discourse as far back in time as desired, and within the selected jurisdictions. Make a short brief of each case.
3. Select the goal of the advisor.

4. Analyze the cases in terms of the traditional doctrine as expounded in the cases and in the legal texts.

5. Organize the case data base according to the initial analysis in terms of traditional doctrine.

6. Ascertained to what degree the traditional analysis can account for the decided cases.

7. If the traditional analysis can, in general, account for most of the decided cases, isolate out the "hard" cases and seek underlying patterns which might account for or explain them.

8. If the traditional analysis cannot account for the decided cases, develop a second analysis which is independent of the conceptual terms of the traditional analysis, in terms of which the data base of cases can be explained.

9. Formulate the second analysis into deep structure rules or principles which would appear to explain those patterns of decisions.

10. Divide and analyze the data base of cases in terms of the second analysis.

11. Restructure the analysis and the deep structure rules until you are left with only a few random lower level decisions which may not fit the analysis. These can be assumed at this point to be wrongly decided.

12. Re-examine the cases in the data base and modify the briefs so that they include the relevant factors of the final analysis.

13. When this is done, the expert then conceives of possible hypothetical examples which might arise, and decides which to link into the system, and connects them to the cases which could be argued to be similar by analogy.
At this point the expert and the knowledge engineer should be ready to go on to start drafting the specific rules which will form part of the knowledge base. Standard expert system methodology, particularly that which is used for what is termed "fuzzy systems", should be quite adequate, and a good commercial shell such as M.1 should be sufficient.


There is a remarkable similarity between the way that lawyers reason and the goal-directed reasoning strategy used in rule-based expert systems like M.1. The pattern of inference entailed in expert systems starts with the identification of a goal that it wishes to achieve. It then moves back from the goal down paths of inference seeking a path to the facts which will sustain the goal (backward chaining), or seeks a path which will eventually reach the goal (forward chaining). Backward chaining is the preferred control strategy when it comes to rule-based expert systems. It can be explained in terms of the following set of rules which might represent the knowledge base of a mini expert system which will advise whether an applicant is qualified for admission to a graduate program.

\[ \text{GOAL} = \text{Is applicant qualified for the grad program?} \text{ (i.e. conclusion = applicant is qualified for the grad program or conclusion = applicant is NOT qualified for the grad program)} \]
Rule 1
if applicant has law degree from an accredited law school in Canada, U.S. or Commonwealth country
then applicant has undergrad law degree from a reputable institution

Rule 2
if applicant's overall average in each year of law school >70%
then applicant's academic performance was above average

Rule 3
If applicant has practiced law in Canada with a high degree of competence for > 5 years
then applicant has exceptional qualifications

Rule 4
if applicant has post-grad degree in area relevant to thesis topic
then applicant has exceptional qualifications

Rule 5
if applicant's thesis topic is in an area of interest to at least 2 faculty members and at least 2 faculty members are prepared to supervise the applicant
then applicant's thesis topic meets faculty guidelines

Rule 6
if applicant has undergrad law degree from a reputable institution and applicant's academic performance was above average or applicant has exceptional qualifications and applicants' thesis topic meets faculty guidelines
then applicant is qualified for the grad program
Rule 7
if applicant has NOT undergrad law degree from a reputable institution or applicant's academic performance was NOT above average and applicant has NOT exceptional qualifications or applicants' thesis topic does NOT meet faculty guidelines
then applicant is NOT qualified for the grad program

The inference engine will scan the knowledge base until it finds the first rule with a conclusion which satisfies its goal. In this case, that rule happens to be Rule 6. The inference engine will then attempt to satisfy in turn each of the premises of Rule 6 which precede the conclusion beginning at the first one. It will then wind its way back through the other rules seeking as sub-goals other premises it must satisfy in order to conclude that each of the premises which comprise Rule 6 are true. If any one of the premises of Rule 6 fail (except those connected by or which must both fail) the overall conclusion of the rule must fail and the inference engine passes on to consider Rule 7. Rule 7 will necessarily succeed if Rule 6 fails because failure to satisfy any of the premises of Rule 6 will satisfy the conclusion of Rule 7.

The illustration of back-chaining which follows is more interesting from a lawyer's point of view. It is a somewhat simplified but essentially accurate set of rules which could form the knowledge base of a mini-system which determines whether a client will be convicted of the criminal offence of driving with blood alcohol content in excess of .08%. The back-chaining reasoning pattern would be exactly the same in this case as in the previous example.
GOAL = will client be convicted of over .08? (i.e. conclusion = client will be convicted of over .08 or client will NOT be convicted of over .08)

Rule 1
if each breathalyzer test taken not less than 15 minutes apart and all tests completed as soon as practicable and all tests completed within 2 hours of detention then statutory time limits complied with.

Rule 2
if at least two breathalyzer tests taken and statutory time limits complied with and lowest breathalyzer reading over .08 then the certificate shows blood alcohol content over .08.

Rule 3
if copy of certificate handed personally to client and significance of certificate explained to client then proper service of true copy on client.

Rule 4
if clear photocopy of original certificate made or carbon copy compared and found identical then a true copy of original certificate made.

Rule 5
if client told of right to counsel and client understood rights then Charter rights were properly given when client detained.

Rule 6
if Charter rights were properly given when client detained and a true copy of original certificate made and proper service of true copy on client then the certificate of analyses is admissible.

Rule 7
if the certificate of analyses is admissible and the certificate shows blood alcohol content over .08 then it is proved client's blood alcohol content exceeded .08 at the time.
**Rule 8**

If the client was actually driving a motor vehicle or the client was sitting behind the wheel with the engine running then the client was in care and control of a motor vehicle.

**Rule 9**

If the client was in care and control of a motor vehicle and it is proved client's blood alcohol content exceeded .08 at the time then client will be convicted of over .08.

**Rule 10**

If the client was NOT in care and control of a motor vehicle or it is NOT proved client's blood alcohol content exceeded .08 at the time then client will NOT be convicted of over .08.

I should emphasize that a real knowledge base is much more complex. The rules would be formulated using the syntax of a very high level computer language rather than the abbreviated English I have chosen for the purposes of the example. The knowledge base would also contain means of generating questions to obtain necessary facts, as well as a whole host of other features. I present these two examples simply to illustrate how a back-chaining control strategy works.

When lawyers reason they follow a pattern of inference somewhat similar to back-chaining. The lawyer's goal in any particular case is dictated by the needs of the client. The lawyer starts with that as a given and then seeks means of achieving it. Although lawyers are constrained by the rules of the legal system and bound by a code of ethics, they are essentially intellectual mercenaries. They start with a specific goal such as recovery for a plaintiff in a specific cause of action. The particular cause
of action such as a tort will have certain necessary conditions. If, for example, the goal is a successful action in malicious prosecution, the lawyer will recall the necessary conditions such as:

1. The initiation of

2. judicial proceedings

3. which result in damage to the plaintiff's reputation, person, freedom, or property, and

4. which are terminated

5. in the plaintiff's favour, and

6. which were brought without reasonable cause, and

7. which were brought with malice.

Each of the above necessary conditions can be made the subject of rules or sets of rules, and each necessary condition can be linked with factual phenomena by rules which are of the form \((\text{facts } a, b, \text{ and } c) \text{ constitute (necessary condition No. } x \)\). The lawyer will reason back through each to discover if a particular set of facts contains all the necessary and sufficient conditions for a successful cause of action.

L. How The Nervous Shock Advisor Works

The Nervous Shock Advisor (NSA) has all the fundamental characteristics of a rule-based expert system which were discussed earlier,
and these will not be reiterated. At this point I shall limit myself to identifying its specific features. It is designed to act as an intelligent assistant to lawyers and others with some legal training. Particular facts are elicited from the user during the course of an interactive consultation which can be run on an IBM PC. The machine requires a minimum of 512K of RAM (Random Access Memory) if the latest version of M.1 is used and the knowledge base is loaded in a compressed form which has been previously saved to a file. If the knowledge base is loaded from source code or an older version of M.1 is used, 640K of RAM is needed. Consultations are initiated by simply typing "go" and then responding to the questions asked. On the basis of the facts provided, the user is advised whether or not a client has a good cause of action in nervous shock, together with the confidence level of the opinion in percentage terms. If there is no cause of action, NSA will inform the user which material element of the plaintiff's case is lacking. In either instance it will supply case citations and summaries of the case reports to justify its opinion if the user wishes to see them. The cases supplied are identified as falling into one or more of three categories: on point, relevant by analogy and contra. When NSA determines that there is a cause of action, it offers the user the option of seeing two additional groups of cases. First, the cases in which the courts have allowed recovery for the particular symptoms experienced by the client. Secondly, the cases on which the defendant is most likely to rely in order to defend the action. In every consultation, the user is given the opportunity of perusing the full text of the leading case on nervous shock. All cases are retrieved automatically from a data base which has been linked to the advisor. At any point during the consultation, the user can interrogate
the system and ask "why" in response to any question. NSA will provide a short text explanation of its reasons and then repeat the question. A hard copy of the consultation can be obtained if the computer being used is linked to a printer.

NSA was built at the Faculty of Law as part of the UBC-IBM Co-operative Project in Law and Computers. The initial planning of NSA began in May, 1986. The system was substantially completed in early January, 1987. Minor additions and refinements were finished by March, 1987.

Since copyrighted software is required to run NSA, the working system in electronic form cannot be incorporated into this thesis. Arrangements to have the system demonstrated may be made through Professor Robert T. Franson, Project Director. NSA has been demonstrated publicly at various stages of its development. A number of sample consultations in hard copy are contained in Appendix A. These have been included to give the reader a flavour of how NSA works in the absence of a hands-on demonstration.

Hard copies of the Knowledge Base, Case File Index and Case File are to be found in Appendices B, C and D respectively. The Knowledge Base has comments throughout which explain in general terms how it works. The Case File Index aggregates the groups of cases which apply to the conclusions reached by NSA at the end of each of its many paths of inference. The Case File contains summaries of all the relevant cases on
nervous shock decided since 1888 in Canada, Great Britain, Australia and New Zealand (74 in all), as well as full text of what is currently the leading case.

XIV. THE FUTURE OF LEGAL EXPERT SYSTEMS

Expert systems in law will not be quite the same as the old idea of a slot machine kind of justice where you feed in the facts and the law and the machine cranks out a conclusive decision. In the first place expert systems generally do not contain first principles. Rather they contain merely the heuristic rules of the expert. They, therefore, do not and will not contain "The Law" except as it might implicitly be assimilated in the expert's heuristic rules. Being idiosyncratic to the particular expert whose expertise is built into the advisors, they can have no authoritative standing. They are merely tools of research, but they could turn out to be very powerful and valuable tools, because they can be easily updated and modified with new law, and they can be comprehensive within the particular domain. In fact, expert systems may become indispensable tools of legal research. The writer of an article in the January, 1987, edition of the American Bar Association Journal has suggested that lawyers may be liable for malpractice if an expert system has been created to cover a particular area of the law and they fail to consult it. The other side of the coin, as another writer has recently pointed out, is that a lawsuit could arise if expert systems are consulted and fail to perform correctly, or give inaccurate or misleading answers leading to injury. I mention this
question of potential liability only in passing because it would make a thesis topic in itself.

It does not seem unreasonable to hold lawyers liable for failing to consult an expert system given that they are much more user friendly than existing methods of legal research and that they provide answers which are tailor-made to fit the facts provided by the user. Legal texts, by contrast, merely provide a general discussion of an area illustrated by a limited number of examples. QuicLaw and LEXIS are useful, but they just provide the lawyer with access to a list of cases which contain the key words or phrases specified by her or him. These computerized systems cannot distinguish the relevant cases from those not relevant. Furthermore, they tend to provide either too much or too little in the way of raw material.

Legal expert systems are about as close as one can get to the busy lawyer's favourite research tool: the telephone. For practising lawyers, time is of the essence. Their professional lives revolve around recording it in terms of billable hours or lamenting the lack of it. When an unusual problem arises, they do not waste time researching it from the ground up. They pick up the phone, run the facts by a friend with recognized expertise in the area, and get a quick opinion. Once they have some sort of answer which they know is basically correct, they can polish it up for themselves secure in the knowledge that they are on the right track. A legal expert system emulates this process with one important difference; namely, that the system is always available for a consultation whereas the friend might not be.
The most exaggerated claim made by a legal writer about expert systems is that made by John Miller, a lecturer in law from New Zealand. He predicts that they will eventually replace lawyers as a result of advanced expert systems which will be produced by the Fifth Generation Project in Japan. Miller seems to have failed to grasp the fundamental fact that expert systems are based on human expertise, or, if he has, he is unclear about how the human expert will be replaced by a machine.

However, as I indicated earlier, given the amount of talent and money being expended on developing Fifth Generation Systems, it is highly likely that some form of advanced expert system will be produced and I cannot see why legal reasoning would be too complex for such systems. ...

Nor can it be assumed that legal expert systems would not be created as a matter of priority. A state has an obligation to make details of its law available to all its citizens. This can only be done properly with expert systems. Furthermore, lawyers have never enjoyed great popularity with the public and their suggested replacement, especially by a user friendly expert system would be a popular move. ...

The only hope that I can see is for the legal profession to seize the opportunities offered by modern technology to provide inexpensive highly efficient comprehensive legal service to all sectors of society. If this was done, attitudes would change and they would be seen as the appropriate controllers of expert systems rather than as suitable for replacement by them.

His statements have the ring of political rhetoric rather than dispassionate analysis. It seems reasonable to conclude, therefore, that they are intended for the ears of his government which, having abolished the right to sue for negligently caused personal injury, would presumably be receptive to such ideas. In the course of his article, he does admit with respect to his predictions about expert systems and law that: "Most lawyers
of course think that this is nonsense." On this issue I am in agreement with the majority of my colleagues. A more realistic assessment of the Fifth Generation Project is given by Terry Winograd in a book he co-authored with Fernando Flores, UNDERSTANDING COMPUTERS AND COGNITION. Winograd's impeccable credentials put him in a much better position to give a balanced viewpoint than Miller. He has been actively engaged for many years in computer science and artificial intelligence research at the Massachusetts Institute of Technology, Stanford University, and Xerox Palo Alto Research Centre. His work has centred around designing systems for the representation and analysis of language and knowledge. His conclusion about the Fifth Generation Project is as follows.

*The grandiose goals, then, will not be met, but there will be useful spinoffs. In the long run, the ambitions for truly intelligent computers systems, as reflected in this project and others like it around the world, will not be a major factor in technological development. They are too rooted in the rationalistic tradition and too dependent on its assumptions about intelligence, language, and formalization.*

In essence, we must heed the old adage and know ourselves better before we put too much faith in expert systems. In a sense, these systems are a scam. They skim the cream from the surface of the human mind without being fully aware of how it floated to the top in the first place. Cognitive psychologists working in AI have had some useful insights about the nature of human expertise, but they are a long way from full understanding. By side stepping for the time being the issue of how the mind functions and instead making use of its end products in conjunction with relatively
straightforward techniques which were developed in the early days of AI, we have achieved an eminently pragmatic blend of human and machine.

In any event, in the long run, the real issue will be not whether human expertise can be removed from legal decision making but whether it ought to be. There are some human functions for which computers should not be substituted regardless of what they can or cannot be made to do. ¹²⁸

As intelligent assistants, legal expert systems can take lawyers very rapidly to a good jumping off point in their search for the solution to a particular problem. From that point onwards they can use their own creativity and ingenuity to reach a uniquely human solution to the problem. In this way, they will be spared the drudgery of sifting through a mass of irrelevant material and the stress of wondering whether they have overlooked some critical detail. Most lawyers I know have experienced the horror of waking up with the cold sweats in the early hours of the morning tormented by the thought that they have missed some vital point in their preparation of a case. They have also known the frustration of being bogged down in a morass of detail without being able to discern any unifying structure. In effect, the expert system reasons by analogy up to a point by fitting the user's facts into a framework constructed from the basic elements that are necessary to support a cause of action based on those particular facts. It is then left to the lawyer's own imagination to refine and extend the analogy in more subtle ways which will best support his client's case. Given the present state of the art in AI, this is the best that
can be done to overcome what has been seen to be a conceptual stumbling block in the way of the development of legal expert systems.

Most legal problems tend to be poorly defined and broad-ranging. Moreover, they typically involve large amounts of common sense and reasoning by analogy -- things that existing expert systems are unable to do.\(^{129}\)

The day when computer systems will be able to reason using analogy and common sense in a way that comes close to what humans do is a long way off. The most ambitious attempt to achieve this goal is the CYC Project undertaken by Microelectronics & Computer Technology Corp. of Austin, Texas.\(^{130}\) The project just began and has a 10-year life span. Basically, it involves building a massive knowledge base of real world facts, heuristics and methods for efficiently reasoning over the whole knowledge base which would themselves be contained within it. In effect, it is an attempt to simulate in a machine the rich background of information acquired over a lifetime which humans draw upon when they reason about anything, but which they take completely for granted.

In the final analysis, the validity of legal expert systems must be ascertained in terms of their practicality and usefulness. The test will thus be purely pragmatic. Practising lawyers are nothing if not pragmatic. Indeed, they are pragmatic to the point of being considered downright amoral by some people. If practitioners are showing an interest in expert systems - and they are, at least in the U.S. - it is safe to assume that the
technology has passed a fairly rigorous kind of acid test.

Despite the relatively small number of expert systems that now exist for the law there is much interest in developing commercial legal applications. Many law firms and insurance companies are seriously exploring this technology, some even creating expert system groups or departments to perform in-house research and development. We predict that within a few years most of the major insurance companies and many legal firms will be heavily involved in the building of expert systems.\(^{131}\)

Expert systems, therefore, present a unique opportunity to test theory in terms of practice.

Artificial Intelligence and legal reasoning is an area where theory meets practice with a vengeance and each stands to gain much from the interaction. Legal problems and patterns of reasoning have furnished an interesting body of material for testing and developing ideas in the field of artificial intelligence. Equally, the technology and tools developed in AI, in particular expert systems, furnish a new kind of empirical test for legal theory. It well may be that in the next few years as more and more AI methods are used in law to develop aids and tools for research, legal drafting, teaching, and prediction, the way we do legal theory may be fundamentally altered. And as jurisprudence may be transformed, the way we practice law may be transformed as well.
NOTES


2. Id. at 187.

3. Id.

4. Id. at 188.


I attended a course in December, 1985, at Teknowledge Inc., Palo Alto, California.

John Shore, THE SACHERTORTE ALGORITHM AND OTHER ANTIDOTES TO COMPUTER ANXIETY, (Viking, Markham, Ontario, 1985) at 241. See pp. 241-244 for this writer's negative views about expert systems. It seems to me that his arguments about expert systems being part of the software crisis are refuted by the fact that by their very nature expert systems are small enough to be testable. Furthermore, they are designed to assist human decision making rather than to supplant it.

Rock R. Farmer-Taylor, A Brief Review of Ignorance Engineering (June, 1985), CANADIAN ARTIFICIAL INTELLIGENCE 27 at 27.

Jackson, supra note 5 at 19. Harman and King, supra note 6 at 134.


Waterman, supra note 5 at 247. Hayes-Roth, Waterman, and Lenat, supra note 18 at 108.

Goodall, supra note 5 at 29.


30 Goodall, supra note 5 at 20. Waterman, supra note 5 at 269.


34 See for example, Carole D. Hafner, AN INFORMATION SYSTEM BASED ON A COMPUTER MODEL OF LEGAL KNOWLEDGE, (UMI Research Press,
Michigan, 1981) and the authors included in Walter, supra note 1, and in B. Niblet (ed.), supra note 27.

Richard E. Susskind, supra note 25 at 183.

Id. at 181.

Id. at 183-184.

The consensus as to what constitutes the proper practice of medicine is not as clear as one might think at first glance. As well as the standard medicine taught in the medical schools there are such methodologies as naturopathic medicine, holistic medicine or homeopathic medicine. The debates about what is the proper or best form of medicine, however, are different than the jurisprudential debates about law. The analogue of the medical debates would be disputes about whether mediation or adjudication is the best way to resolve disputes; or whether government regulation or adjudication is the best method of maintaining safety within an industry or protecting the environment. There is, on the other hand, no analogue in medicine to the issues in legal theory which separates positivists from realists or natural law theorists.


Constantin V. Negoita, supra note 11.

This term was coined by my expert, Professor J.C. Smith.

Donald A. Waterman, supra note 5, at 26-27.

Anne von der Lieth Gardner, AN ARTIFICIAL INTELLIGENCE APPROACH TO LEGAL REASONING, supra note 1 at 6.


A classic example is the courts’ attempt to deal with computer technology using a piece of legislation which was enacted decades before computers were even conceived of. The Copyright Act, R.S.C. 1970, c. C-30, was first adopted in 1921 and has remained
substantially unchanged ever since. In a recent case, the Federal Court (Trial Division) had to decide whether a computer program embodied in a silicon chip inside a computer is a subject matter in which copyright exists. The court found that it was by concluding that the original source code fell within the definition of "original literary work" and that the object code etched into the chip was a "translation" of that work. See: Apple Computer Inc. and Apple Canada Inc. v. Macintosh Computers Ltd. (1986), 3 F.T.R. 118.

115 N. Y. 506, 22 N.E. 188 (1889).

Fred Rodell, WOE UNTO YOU, LAWYERS!, (Pagent-Poseidon Ltd. Brooklyn, New York, 1959) at 136.

Rodell taught a seminar at the Yale Law School for many years. In this seminar, he taught and practiced his methodology by obtaining the briefs, factums, and material of cases before they were heard by the Supreme Court. Rodell then made his predictions and had his students make theirs by using his methods, and then verified the results by comparing them with the actual decisions of the Court when they were handed down.


Id. at 171.

Id. at 173.


Anne von der Lieth Gardner, AN ARTIFICIAL INTELLIGENCE APPROACH TO LEGAL REASONING, supra note 1 at 38-41.


Id. at 36.


S.C. Coval and J.C. Smith, supra note 60.


R.E. Susskind, supra note 25 at 183-84.

Paul Harmon and David King, supra note 6 at 199-200.

Hart, THE CONCEPT OF LAW, supra note 56 at 89-96.


Smith, supra note 46.

S.C. Coval and J.C. Smith, supra note 60 at 115-124.


N. Blodgett, Artificial Intelligence Comes of Age, (Jan. 1987) AMERICAN BAR ASSOCIATION JOURNAL 68 at 70.

J.C. Smith, LEGAL OBLIGATION, (Athlone Press of the University of London, 1976) at 88-108. The moral philosopher, R.M. Hare, in FREEDOM AND REASON (Oxford University Press, Oxford, 1965) at 35 argues that in contrast to moral judgments, legal judgments are not universalizable. He writes: "This is one reason why the word 'ought' cannot be used in making legal judgments; if a person has a certain legal obligation, we cannot express this by saying that he ought to do
such and such a thing, for the reason that 'ought'-judgments have to be universalizable, which, in the strict sense, legal judgments are not. The reason why they are not is that a statement of law always contains an implicit reference to a particular jurisdiction..." Hare is wrong in assuming that such judgments contain a specific reference to jurisdiction. One must distinguish between statements of judgments which contain a particular reference and are consequently not universalizable, and statements which, although they may contain a particular reference, are about judgments which do not. An example of the latter is the statement that "In England the judgment is held that one ought not to kill bulls for sport". While the statement itself is not universalizable, the judgment which it expresses, "One ought not to kill bulls for sport," is. Thus, while it is the case that it is the courts of particular legal jurisdictions which make judgments that some action ought or ought not to be done, the judgments themselves are universalizable. See also, S.C. Coval and J.C. Smith, LAW AND ITS PRESUPPOSITIONS, supra note 60.

76 J.C. Smith, ibid. at 89.
77 Ibid. at 90-97.
78 Ibid. at 174-189.
79 S.C. Coval and J.C. Smith, supra note 60.
80 J.C. Smith, supra note 46 at 185.
81 529 P. 2d. 553.
82 See for example, Joan Breckenbridge, AIDS carriers put doctors in dilemma, The Globe and Mail, Saturday, April 11, 1987, at 1.
86 Weller & Co. v. Foot and Mouth Disease Research Institute, [1966] 1 Q.B. 569.
87 J.C. Smith, supra note 83 at 3-7.
88 Id. at 7-13.
89 Alfred Lord Tennyson, Aylmer's Field, 1864.

91 See for example Hav (or Bourhill) v. Young, [1943] A.C. 92 (H.L.).


94 162 N.E. 99.

95 Ibid.

96 Id. at 100.

97 Id. at 103.

98 [1921] 3 K.B. 560.

99 Id. at 569.

100 Id. at 574.


103 Y.B. Smith and William L. Prosser, CASES AND MATERIALS ON TORTS (Foundation Press, Brooklyn, 1952) at 231.

104 William L. Prosser, SELECTED TOPICS ON THE LAW OF TORTS, (University of Michigan, Ann Arbor, 1954) at 219.


107 J.C. Smith, LIABILITY IN NEGLIGENCE, supra note 83 at 101-114.


109 J.C. Smith, LIABILITY IN NEGLIGENCE, supra note 83 at 112.

110 Ibid.

111 Id. at 140.

112 LAW AND ITS PRESUPPOSITIONS, supra note 75 at 21-25. LIABILITY IN NEGLIGENCE, supra note 83 at 131-161.

113 Constantin V. Negoita, supra note 11.
This fairly simple example was put together for a lecture which I gave on Expert Systems in a class on legal reasoning.

The linkage between the knowledge base and the data files was written in the C programming language by Doug Arnold, the Project Co-ordinator. Other valuable technical assistance was rendered by Don Johnson, the Project's Computer Systems Technician.


N. Blodgett, supra note 74 at 70.


Id. at 87-88.

Accident Compensation Act, 1972, No. 43. This Act erodes the philosophical basis of Western law by permitting individual freedom of action without imposing a corresponding personal liability for negligence.

John Miller, supra note 122 at 87.


Id. at 138-139.

Joseph Weizenbaum, COMPUTER POWER AND HUMAN REASON (W.H. Freeman and Co., New York, 1976) at 269-270. A full discussion of human versus machine decision making is beyond the scope of this paper. The subject is a highly controversial one. See for example: Anthony D'Amato, Can/Should Computers Replace Judges?, (1977) 11 GEORGIA LAW REVIEW at 1277; Albert J. Millus, Would You Settle for a
Robot on the Bench?, 57 NEW YORK STATE BAR JOURNAL at 22; and Joseph J. Spengler, Machine-Made Justice: Some Implications, 28 LAW AND CONTEMPORARY PROBLEMS at 37.

129 Paul Harmon and David King, supra note 6 at 7.


131 D.A. Waterman, J. Paul, and M. Peterson, supra note 72 at 224.
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APPENDIX A

SAMPLE CONSULTATIONS
SAMPLE CONSULTATION NO. 1

HYPOTHETICAL

A man is standing on a downtown street talking to a friend. His ten-year-old son is part way down the same block on the sidewalk watching workmen on a construction site where a new office tower is being built. The skeleton of the building is in place and work is going on at several different levels which are as yet unenclosed. On one of the upper floors, a workman has negligently failed to secure a piece of machinery properly. The machine begins to roll towards the edge of the building where it borders the street. One of the workmen yells a warning just before the machine rolls over the edge. The father turns and sees the machine fall and crush his son to death. He suffers nervous shock. He is often depressed about his son’s death and sometimes contemplates suicide. Can he recover?

CONSULTATION

FLEX >go

*.*.*.* Welcome to Nervous Shock Advisor *.*.*.*

I will tell you whether or not your client has a cause of action in nervous shock. Simply type your answers to my questions on the keyboard located below the screen. If you wish to know why a particular question is being asked, feel free to type "why" in response to the question. You may also type "unknown" if you are unable to answer a particular question. If so, I shall canvass whatever other options are available to me. [The banner appears whenever a consultation is started, but will not be duplicated in the subsequent examples.]

Was the incident which caused the nervous shock the result of an act on the part of the defendant which you, as a lawyer, would characterize as negligent or deliberate with respect to any of its harmful results?

1. negligent
2. deliberate

Was the nervous shock sustained as the result of an incident in which any person or persons, including the plaintiff, suffered physical harm or the risk of such harm?

(NOTE: Option No.3 necessarily implies that there was more than one victim).

1. harm
2. risk
3. both
4. neither

>>1
Who was the victim of the incident which caused the nervous shock: the plaintiff, a third-party or both?
(NOTE: If there was more than one third-party victim, your responses to any questions about a third-party should relate to the most serious case only).
1. plaintiff
2. third-party
3. both

Was the other person killed?

Was the other person killed?

Is your client closely related to the other person?

Is your client closely related to the other person?

Is the other person a member of your client's immediate family; namely, the child, spouse, parent or sibling of your client?
(NOTE: Regard a step-relationship as equivalent to a natural one if the person was treated like a member of the natural family and a grandparent as equivalent to a parent if the grandparent had been filling the role of a parent).
1. child
2. spouse
3. parent
4. sibling
5. neither

Did your client see the incident happen?

Did your client see the incident happen?

Did the nervous shock cause an expense, a loss of income or an incapacity which was sufficiently serious to support a claim for damages?

Did the nervous shock cause an expense, a loss of income or an incapacity which was sufficiently serious to support a claim for damages?

Into which of the following general categories did the symptoms of nervous shock fall: physical illness; mental disorder; sleep disturbance? Separate each option by a comma if more than one is applicable
1. physical-illness
2. mental-disorder
3. sleep-disturbance

JUDGMENT: an action lies 100 percent.

The following is a breakdown of the various elements involved in this decision. If any element has a certainty factor of less than 100% you should regard it as a weak link in the chain and focus on bolstering your case in that area.
Negligence established 100 percent.
Appropriate triggering event 100 percent.
Third-party principal victim 100 percent.
Certainty not increased because only one victim involved.
Sufficiently serious incident 100 percent.
Plaintiff connected to the victim 100 percent.
Plaintiff exposed to incident 100 percent.
Damage proved 100 percent.

I am pleased to inform you that your client has a cause of action for nervous shock.

Would you like to peruse the cases which support my decision?
>>yes Press Enter to continue...

THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

| * DEATH--CHILD--WITNESS |
| * CASES ON POINT: |
| * Other Family Relationships |
| * RELEVANT BY ANALOGY: |
| * Injury--Related--Witness |

Enter the number of the case you wish to see: 1
[When the selection is made and the "Enter" key pressed, the text of the case summary appears on a new screen.]


FACTS

The plaintiff mother was walking along the shoulder of a road holding her young daughter's hand when the girl was struck from behind by a
car driven negligently by the defendant. The brother and sister of
the victim were also walking with their mother and witnessed the
accident. The father came to the scene immediately and attempted to
give mouth to mouth resuscitation to his child but the young victim
died. The entire family sued and recovered for nervous shock.

SYMPTOMS

P. 452 . . . "As noted earlier, the attack is made on the awards to
Susan and David. Janet was five at the time of her death, Susan was
seven and David was sixteen.

(a) Susan
[In cases which are relevant for their FACTS, the full SYMPTOMS portion of
the case will not be shown.]
[Exit from data file.]

You said that your client had mental problems.

Would you like to peruse the cases which relate to these symptoms?
>>yes Press Enter to continue...

THE FOLLOWING CASES ARE RELEVANT TO MENTAL SYMPTOMS:

| E.R. 1074 (C.A.) (depression, suicidal ruminations). |
| (severe depression). |
| (depression). |
| 255 (S.C.) (intensified depression). |
| (H.L.) (personality change). |
| 8 Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, |
| 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.) |
| (loss of pride and self-respect). |
| 9 Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] |
| (amnesia). |

Enter the number of the case you wish to see: 2
FACTS

The plaintiff, her husband, and their children were on an outing. The plaintiff was picking flowers on the one side of the street while her husband was on the other near the parked van with the children. A car driven by the defendant went out of control and crashed into the husband and children. Upon hearing the crash, the plaintiff turned around and saw the aftermath of the accident. There was blood everywhere. She ran across the road to attend to her family. The husband died and the children were severely injured. As a result of witnessing this tragedy the plaintiff suffered a morbid depression and had frequent suicidal ruminations. Her claim for recovery in nervous shock was permitted.

SYMPTOMS

P. 43 ..."she is suffering from a morbid depression; she is now officially ill. ... irritable with the children ... exhausted, has frequent suicidal ruminations and at the same time is covered with guilt at being like this.

At the trial, five years after the accident, she frequently broke down when giving evidence."

P. 44 ... "period of not far short of six years, in a sad and depressed state. ... she has been and still is in a positively morbid state. There is a recognisable psychiatric illness. ... the lady is not only sad and depressed but is in a morbid state of depression..."

[Exit from data file.]

The most effective defence to an action in nervous shock is often that of insufficient proof of damages. Would you like to see the cases where this argument succeeded?

>>yes Press Enter to continue...
THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* NO PROOF OF LEGALLY RECOGNIZED DAMAGES

* Nervous shock is a legal, not a medical term. It includes a variety
  * of symptoms resulting from the mental trauma produced by an accident
  * or its aftermath. In contrast, damages are not recoverable for pure
  * grief and emotional suffering. Damages for nervous shock are often
  * difficult to prove so often the most effective defence is the argument
  * that there is insufficient proof of the kind of damages which are
  * recoverable in an action for nervous shock.

* Plaintiff Harmed And Third Party Harmed


* Plaintiff Risk And Third Party Harmed

Enter the number of the case you wish to see: 3


FACTS

The plaintiff was the owner of a car and reluctantly permitted her
friend to drive it. The plaintiff and her friend were involved in a
motor vehicle accident and, as a result, the plaintiff suffered some
physical injuries and her friend was rendered a quadriplegic. The
accident was due solely to the negligence of the plaintiff's friend
but the plaintiff suffered depressive neurosis as a result of her
feelings of guilt for having permitted her friend to drive the car.
Her claim for recovery on the basis of nervous shock was dismissed.
[Exit from data file.]

Would you like to read what is currently the leading case on the law of
nervous shock in order to get a good overview of the area?
>>yes Press Enter to continue...
LEADING CASE


* The following are also important and leading cases for the law of nervous shock. You may wish to look at their summaries.


Enter the number of the case you wish to see: 1


FACTS

Lord Wilberforce, Lord Edmund-Davies, Lord Russell of Killowen, Lord Scarman and Lord Bridge of Harwich

15, 16 February, 6 May 1982

APPEAL

The plaintiff, Rosina McLoughlin, appealed against the judgment of the Court of Appeal (Stephenson, Cumming-Bruce and Griffiths LJJ) ([1981] 1 All ER 809, [1981] QB 599) given on 16 December 1980 dismissing her appeal against the judgment of Boreham J on 11 December 1978 whereby the judge dismissed her claim against the defendants, Thomas Alan O'Brian, A E Docker & Sons Ltd, Raymond Sygrove and Ernest Doe & Sons Ltd, the respondents to the appeal, for damages for shock, distress and injury to her health. The facts are set out in the opinion of Lord Wilberforce.

Michael Ogden QC and Jonathan Haworth for the appellant.
Michael Turner QC and John Leighton Williams for the respondents.

Their Lordships took time for consideration.
The following opinions were delivered.

LORD WILBERFORCE. My Lords, this appeal arises from a very serious and tragic road accident which occurred on 19 October 1973 near Withersfield, Suffolk. The appellant's husband, Thomas McLoughlin, and three of her children, George, aged 17, Kathleen, aged 7, and Gillian, nearly 3, were in a Ford motor car; George was driving. A fourth child, Michael, then aged 11, was a passenger in a following motor car driven by Mr. Pilgrim; this car did not become involved in the accident. The Ford car was in collision with a lorry driven by the first respondent and owned by the second respondent. That lorry had been in collision with another lorry driven by the third respondent and owned by the fourth respondent. It is admitted that the accident to the Ford car was caused by the respondents' negligence. It is necessary to state what followed in full detail.

As a result of the accident, the appellant's husband suffered bruising and shock; George suffered injuries to his head and face, cerebral concussion, fractures of both scapulae and bruising and abrasions; Kathleen suffered concussion, fracture of the right clavicle, bruising, abrasions and shock; Gillian was so seriously injured that she died almost immediately.

At the time, the appellant was at her home about two miles away; an

[Note: The judgment continues for many more pages.]

Thank you for consulting Nervous Shock Advisor.
FLEX >
SAMPLE CONSULTATION NO. 2

HYPOTHETICAL

Jane is in her early twenties and lives with her boyfriend Dick who is approximately the same age. They both commute by bus to their jobs in different areas of the downtown core. They usually arrive home at their trendy townhouse at about the same time. One day Jane is walking home from the bus stop, when she sees a group of people standing around a person lying in the roadway who has been struck by a negligent driver some minutes earlier. Jane discovers that the victim is Dick and that he has been seriously injured. She suffers nervous shock. Dick ultimately makes a full recovery, but in the meantime Jane has recurring nightmares about this awful experience. Can she recover?

CONSULTATION

Was the incident which caused the nervous shock the result of an act on the part of the defendant which you, as a lawyer, would characterize as negligent or deliberate with respect to any of its harmful results?

1. negligent  
2. deliberate

Was the nervous shock sustained as the result of an incident in which any person or persons, including the plaintiff, suffered physical harm or the risk of such harm?
(NOTE: Option No.3 necessarily implies that there was more than one victim).

1. harm  
2. risk  
3. both  
4. neither

Who was the victim of the incident which caused the nervous shock: the plaintiff, a third-party or both?
(NOTE: If there was more than one third-party victim, your responses to any questions about a third-party should relate to the most serious case only).

1. plaintiff  
2. third-party  
3. both

Was the other person killed?

>>no

Did the other person suffer visibly serious injuries?

>>yes

Is your client closely related to the other person?

>>no

Did your client and the other person live together in an intimate personal relationship analogous to a marriage?

>>yes
Did your client see the incident happen?
» no
Did your client arrive at the scene right after the accident and see the condition of the other person?
» yes
Did the nervous shock cause an expense, a loss of income or an incapacity which was sufficiently serious to support a claim for damages?
» yes
Into which of the following general categories did the symptoms of nervous shock fall: physical illness; mental disorder; sleep disturbance? Separate each option by a comma if more than one is applicable
1. physical-illness
2. mental-disorder
3. sleep-disturbance
» 3

JUDGMENT: an action lies 70 percent.

The following is a breakdown of the various elements involved in this decision. If any element has a certainty factor of less than 100% you should regard it as a weak link in the chain and focus on bolstering your case in that area.

Negligence established 100 percent.
Appropriate triggering event 100 percent.
Third-party principal victim 100 percent.
Certainty not increased because only one victim involved.
Sufficiently serious incident 100 percent.
Plaintiff connected to the victim 70 percent.
Plaintiff exposed to incident 100 percent.
Damage proved 100 percent.

I am pleased to inform you that your client has a cause of action for nervous shock.

Would you like to peruse the cases which support my decision?
» yes Press Enter to continue...
THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

*THIRD PARTY INJURY-NEARBY AND ATTENDED-LIVING TOGETHER
* RELEVANT BY ANALOGY:


* Minor Injury--Lucky Escape--Related--Witness


* Death--Related--Plaintiff Nearby and Attended


Enter the number of the case you wish to see: 1


FACTS

The victim, husband of the plaintiff, purchased a snowmobile with a defective clutch from the defendant. The husband suffered grievous injury while riding the vehicle. The plaintiff did not see the actual accident but came upon the aftermath of it, saw her injured husband, and suffered nervous shock as a result. The defendants attempted to have the plaintiff's statement of claim struck but the court dismissed this motion.

[Exit from data file.]

You said that your client had sleep problems.

Would you like to peruse the cases which relate to these symptoms?
>>yes Press Enter to continue...
Enter the number of the case you wish to see: 3


**FACTS**

The plaintiff mother, who was inside her home, heard the noise of an accident from outside but did not know what it was. The plaintiff sibling, who had witnessed the accident, immediately informed her that her daughter had been struck by a truck outside the house. The plaintiff mother ran out to see her child squashed beneath a truck. Due to difficulties in releasing the trapped child, she was pinned beneath the truck for a good portion of an hour. The child victim died. As a result, the plaintiff mother fell in a state of reactive depression for a 15 month period following the death and suffered recurring nightmares. The plaintiff sibling showed a marked behavioural change and became silent, moody, depressive and apathetic. Both plaintiffs recovered for nervous shock.
SYMPTOMS

P. 267 ... "She suffers from a recurring nightmare... various sedatives have been prescribed. ... she is still in a state of reactive depression... pathological mourning.

...depressed, obsessed by the loss; she remains sleepless, agitated, tense. ...cried and displayed deep emotion."

P. 269 ... "The case of the boy Hendrikus is much more serious. ... a marked change in his personality. He became moody, silent, depressed and apathetic to work and play. His school work deteriorated. ... boy had suffered grave psychic injury,..."

[Exit from data file.]

The most effective defence to an action in nervous shock is often that of insufficient proof of damages. Would you like to see the cases where this argument succeeded?

>>no

Would you like to read what is currently the leading case on the law of nervous shock in order to get a good overview of the area?

>>no

Thank you for consulting Nervous Shock Advisor.

FLEX >
HYPOTHETICAL

Elmer is a bit of a wimp but his jock friends manage to persuade him to take up windsurfing by assuring him that the sport is perfectly safe. One day about a month later, Elmer is practising his rudimentary skills in an area just off the beach reserved for novice windsurfers. The area has been cordoned off by floats. Tony, a daredevil sailor, is out in the bay on his sail boat with a girlfriend. There is a stiff breeze blowing and Tony has one hand on the tiller and the other arm around the lady's waist. Turning to glance at his girlfriend, Tony becomes mesmerized briefly by her beauty. In the meantime, his speedy boat sails onward. He negligently fails to keep a proper lookout and sails into the supposedly safe area where Elmer is barely managing to balance on his board. When Elmer sees Tony's boat bearing down on him, he is paralyzed by fear. At the last moment Tony snaps out of his trance and takes evasive action. The hull of his boat strikes Elmer's windsurfer a glancing blow and Elmer falls into the water. As he flounders around in a panic, the mast of the windsurfer lands on his head and he suffers a small cut above the eye. The injury is not serious and no stitches are required. However because of his delicate disposition, Elmer suffers nervous shock. Every time thereafter that he sees a sailboard he feels nauseated. Eventually the strain gives him an ulcer and he requires surgery. Can he recover?

CONSULTATION

Was the incident which caused the nervous shock the result of an act on the part of the defendant which you, as a lawyer, would characterize as negligent or deliberate with respect to any of its harmful results?

1. negligent
2. deliberate

Was the nervous shock sustained as the result of an incident in which any person or persons, including the plaintiff, suffered physical harm or the risk of such harm?

(NOTE: Option No.3 necessarily implies that there was more than one victim).

1. harm
2. risk
3. both
4. neither

1
Who was the victim of the incident which caused the nervous shock: the plaintiff, a third-party or both?
(NOTE: If there was more than one third-party victim, your responses to any questions about a third-party should relate to the most serious case only).
1. plaintiff
2. third-party
3. both

Was your client injured, even slightly, in circumstances that could well have resulted in far more serious injury?
yes

Did the nervous shock cause an expense, a loss of income or an incapacity which was sufficiently serious to support a claim for damages?
yes

Into which of the following general categories did the symptoms of nervous shock fall: physical illness; mental disorder; sleep disturbance? Separate each option by a comma if more than one is applicable
1. physical-illness
2. mental-disorder
3. sleep-disturbance

JUDGMENT: an action lies 100 percent.

The following is a breakdown of the various elements involved in this decision. If any element has a certainty factor of less than 100% you should regard it as a weak link in the chain and focus on bolstering your case in that area.

Negligence established 100 percent.
Appropriate triggering event 100 percent.
Plaintiff principal victim 100 percent.
Certainty not increased because only one victim involved.
Sufficiently serious incident 100 percent.
Connection to a third-party victim not essential to recovery on these facts.
Plaintiff exposed to incident 100 percent.
Damage proved 100 percent.

I am pleased to inform you that your client has a cause of action for nervous shock.

Would you like to peruse the cases which support my decision?
yes Press Enter to continue...
THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF ONLY--HARM

* CASES ON POINT:


* RELEVANT BY ANALOGY:

* Plaintiff Only--Risk


* Plaintiff Harmed And Third Party Harmed

Pg Dn to continue ...

Enter the number of the case you wish to see: 1


FACTS

The plaintiff purchased bread from the defendant company and, while eating the bread, discovered broken pieces of glass. The plaintiff was able to remove the glass from within his mouth with no damage save a slight scratch of the throat. However, the plaintiff suffered extreme shock and excitement over the possible serious consequences and, from then on, he became nauseous whenever he attempted to eat bread. The plaintiff's claim for nervous shock was permitted and Coultas was not followed.

SYMPTOMS

P. 115 ... "The result of this excitement and fear of serious consequences and the shock suffered by finding himself in what he thought to be serious danger produced a deplorable condition of nausea which was renewed whenever he attempted to eat bread.

[Exit from data file.]
You said that your client had physical problems.

Would you like to peruse the cases which relate to these symptoms?
>>yes Press Enter to continue...

THE FOLLOWING CASES ARE RELEVANT TO PHYSICAL SYMPTOMS:

   (headaches, vomiting, weightloss).
   (nausea).
   1 All E.R. 169 (dermatitis).
   (exacerbation of thyroid condition).
5. McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
   the amount of damages 10 O.W.N. 135 (C.A.) (miscarriage).
   affirming 33 S.A.S.R. 254 (Sup. Ct. F.C)
   (gynaecological problems resulting in hysterectomy).
   (premature delivery).
   (hemorraging, stillbirth).

Enter the number of the case you wish to see: 5

McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
the amount of damages 10 O.W.N. 135 (C.A.).

FACTS

The plaintiff passenger in a night train belonging to the defendant
was hit by a metallic sign board which became detached from where it
was hanging in the car. The plaintiff's husband, sitting beside her,
received a serious cut on his head which had to be stitched. The plaintiff
wife was also struck but she sustained only a slight swelling
on the top of her head. The plaintiff alleged that she suffered
nervous shock and claimed that she miscarried as a result. Plaintiff's
claim was permitted.
SYMPTOMS

P. 407 ... "The wife was also struck, but the extent of her outward injury was a slight swelling on the top of her head, according to the evidence of a medical man to whom they repaired, before they went home, for the purpose of having the husband's head stitched up. The wife was then in a nervous and excited condition. She swore that she was pregnant at the time. The main contest was as to whether she was ever pregnant, and whether certain appearances which the medical man who attended her (the one who stitched her husband's head) described were consistent with a miscarriage produced by the accident or were attributable to some diseased condition of the uterus."

The learned Chief Justice finds that the injury which she suffered, of whatever nature, it was, was the result of (1) the physical injury and (2) of shock resulting therefrom and (3) of the nervous excitement and shock caused by her being present while her husband's injuries were being attended to; but is unable to determine the respective proportions in which these three elements were contributing causes - he attaches more importance to the first and second than to the third."

**N.B. The case is not clear as to whether the nervous shock suffered was a result of the plaintiff's own injuries or as a result of witnessing the more serious injuries sustained by her husband. I would assert that it is more likely the former because of the date of the case; Coultas was still being followed and it mentions that the defendant was attempting to argue that the nervous shock was a result of seeing a doctor attend to her husband's injuries. [Exit from data file.]

The most effective defence to an action in nervous shock is often that of insufficient proof of damages. Would you like to see the cases where this argument succeeded?
>>no

Would you like to read what is currently the leading case on the law of nervous shock in order to get a good overview of the area?
>>no

Thank you for consulting Nervous Shock Advisor.
FLEX >
HYPOTHETICAL

Mother is in the kitchen preparing lunch. Her four-year-old daughter is playing outside on the unfenced front lawn a few feet from the sidewalk. A car being driven at excessive speed rounds a nearby corner and the negligent driver loses control. The vehicle mounts the sidewalk and its wheels cross the lawn about a foot from where the child is playing. The driver regains control of the car and brings it safely to a stop back on the pavement. He is shaken up but the child is unhurt and not particularly alarmed. While the driver is making sure that no damage has been done, a neighbour who witnessed the incident runs into the house and tells the mother exactly what happened. The mother rushes outside, becomes distraught at the prospect of what might have happened and suffers nervous shock. She suffers from periodic attacks of acute anxiety as a result of the incident. Can she recover?

CONSULTATION

Was the incident which caused the nervous shock the result of an act on the part of the defendant which you, as a lawyer, would characterize as negligent or deliberate with respect to any of its harmful results?
1. negligent
2. deliberate

Was the nervous shock sustained as the result of an incident in which any person or persons, including the plaintiff, suffered physical harm or the risk of such harm?
(NOTE: Option No.3 necessarily implies that there was more than one victim).
1. harm
2. risk
3. both
4. neither

Who was the victim of the incident which caused the nervous shock: the plaintiff, a third-party or both?
(NOTE: If there was more than one third-party victim, your responses to any questions about a third-party should relate to the most serious case only).
1. plaintiff
2. third-party
3. both

Is your client closely related to the other person?
yes

Is the other person a member of your client's immediate family; namely, the child, spouse, parent or sibling of your client?
(NOTE: Regard a step-relationship as equivalent to a natural one if the person was treated like a member of the natural family and a grandparent as equivalent to a parent if the grandparent had been filling the role of a parent).

1. child
2. spouse
3. parent
4. sibling
5. neither

Did your client see the incident happen?

JUDGMENT: no cause of action.
REASON: plaintiff not exposed incident.

I regret to inform you that the damage is too remote to permit recovery for nervous shock because your client was not sufficiently involved in the incident.

Would you like to peruse the cases which support my decision?

THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF HAD INSUFFICIENT EXPOSURE TO INCIDENT


Enter the number of the case you wish to see: 3

FACTS

The defendant negligently backed his car into a parked car in which the plaintiff's infant son and mother were seated. The defendant dented the parked car and shattered glass into the interior. No physical injuries were sustained as a result of the accident. The plaintiff mother of the infant was in a nearby building at the time of the accident and upon hearing the commotion, came out to see people gathered around her vehicle and hear her baby screaming. As a result of the accident, the plaintiff mother alleged nervous shock evidenced by her need to take tranquilizers. The mother's claim for nervous shock as a result of the incident was dismissed.

SYMPTOMS

P. 755 ... "From the foregoing it seems reasonably clear that the condition of emotional upset of which she justly complains was caused by the constant obligation of having to cope with Brent and not by the initial upset which she underwent immediately following the accident and, as such, is not recoverable (Hinz v. Berry, supra) but further, as indicated, I doubt whether, on the evidence, it qualifies as legally compensable nervous shock."

[Exit from data file.]

Would you like to read what is currently the leading case on the law of nervous shock in order to get a good overview of the area?

>>why

There are usually one or two cases from the highest courts in jurisdictions governed by comparable law which review and restate the law on a particular subject. The persuasive force of these leading cases makes it essential that a lawyer dealing with a similar sort of case be aware of them. Judges assume that lawyers have read these cases. To be unfamiliar with them can be a source of considerable embarrassment.

Would you like to read what is currently the leading case on the law of nervous shock in order to get a good overview of the area?

>>no

Thank you for consulting Nervous Shock Advisor.

FLEX >
SAMPLE CONSULTATION NO. 5

HYPOTHETICAL

Max prides himself on being a practical joker. On April 1st he is walking past a restaurant in Whistler Village carrying his skis over his shoulder after a beautiful day of skiing in the spring sunshine. Crowds of people are sitting at tables outside enjoying drinks in the sun. As he passes by, Judy, the wife of Max's good friend John, calls him over. She tells him that she is waiting for John who is late and wonders whether Max has seen him. Being a quick thinker, Max immediately assumes a tragic air and says to Judy, "Didn't you hear about the avalanche?" Judy's face turns ashen. Max goes on to say that he last saw John heading towards the West Bowl with a group of other skiers and that a ski patroller subsequently told him that there was a massive slab avalanche over there just afterwards. At this point Judy becomes hysterical and collapses. Max tries to explain that it is an April Fool's joke, but by then Judy requires medical attention. John arrives shortly afterwards and his friendship with Max ends on the spot when he finds out what has happened. Judy needs bed rest for several days because of the nervous shock she has suffered. Can she recover?

CONSULTATION

Was the incident which caused the nervous shock the result of an act on the part of the defendant which you, as a lawyer, would characterize as negligent or deliberate with respect to any of its harmful results?

1. negligent
2. deliberate

JUDGMENT: an action may well lie for causing nervous shock.

REASON: in general, nervous shock resulting from an intentional wrong is not considered to be too remote.

However, I am afraid that Nervous Shock Advisor limits itself to providing advice about cases where the nervous shock was suffered as a result of the defendant's negligence. The intentional infliction of nervous shock falls within a different realm of the law of torts.
Would you like to peruse the cases which support my decision?

>>yes  Press Enter to continue...

THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* INTENTIONALLY INDUCED NERVOUS SHOCK


* NERVOUS SHOCK RESULTING FROM AN INTENTIONAL WRONGFUL ACT


* HELD FOR DEFENDANT:

Enter the number of the case you wish to see: 1


FACTS

The defendant had the intention of playing a practical joke on the plaintiff and he told her that he had been sent to inform her that her husband had just been hit in a accident and suffered two broken legs. The defendant instructed the plaintiff to fetch pillows and go the accident site to retrieve her husband. The statements were false; however the plaintiff acted on the words spoken by the defendant. As a result of the news, the plaintiff suffered nervous shock to her system, displaying symptoms of vomiting and other effects on her reason. The court held that there is liability for the intentional infliction of nervous shock where there is an element of wilfulness on the part of the defendant and the plaintiff's illness is a direct consequence of the defendant's conduct. The court found that the defendant's intent to play a practical joke in making the statements sufficient to constitute the element of wilful infliction of nervous shock.
SYMPTOMS

The plaintiff suffered nervous shock to her system, displaying symptoms of vomiting and other effects on her reason.

[Exit from data file.]

Would you like to read what is currently the leading case on the law of nervous shock in order to get a good overview of the area?

>>no

Thank you for consulting Nervous Shock Advisor.

FLEX >
SAMPLE CONSULTATION NO. 6

HYPOTHETICAL

Joe, a mild-mannered bank clerk on his summer vacation, arrives at the scene of a serious accident. A crowded tour bus has been struck by a negligently driven train at a crossing in the rural part of beautiful British Columbia. A number of people have been killed and there are severely injured survivors trapped in the mangled wreckage. Joe offers his assistance to the lone RCMP officer who is doing his best to cope with the situation. Needless to say, the offer is gratefully accepted. His exposure to this gruesome scene causes Joe to suffer nervous shock. His mind attempts to suppress the awful memory, resulting in periods of amnesia. The victims were all strangers to him. Can he recover?

CONSULTATION

Was the incident which caused the nervous shock the result of an act on the part of the defendant which you, as a lawyer, would characterize as negligent or deliberate with respect to any of its harmful results?
   1. negligent
   2. deliberate

Was the nervous shock sustained as the result of an incident in which any person or persons, including the plaintiff, suffered physical harm or the risk of such harm?
   (NOTE: Option No.3 necessarily implies that there was more than one victim).
   1. harm
   2. risk
   3. both
   4. neither

Who was the victim of the incident which caused the nervous shock: the plaintiff, a third-party or both?
   (NOTE: If there was more than one third-party victim, your responses to any questions about a third-party should relate to the most serious case only).
   1. plaintiff
   2. third-party
   3. both

Was the other person killed?
   >> yes

Is your client closely related to the other person?
   >> no

Did your client and the other person live together in an intimate personal relationship analogous to a marriage?
   >> no
Were your client and the other person engaged to be married?
>>no
Did your client attempt to assist the other person after the incident?
>>yes
Did the nervous shock cause an expense, a loss of income or an incapacity which was sufficiently serious to support a claim for damages?
>>yes
Into which of the following general categories did the symptoms of nervous shock fall: physical illness; mental disorder; sleep disturbance? Separate each option by a comma if more than one is applicable
1. physical-illness
2. mental-disorder
3. sleep-disturbance
>>2

JUDGMENT: an action lies 70 percent.

The following is a breakdown of the various elements involved in this decision. If any element has a certainty factor of less than 100% you should regard it as a weak link in the chain and focus on bolstering your case in that area.

Negligence established 100 percent.
Appropriate triggering event 100 percent.
Third-party principal victim 100 percent.
Certainty not increased because only one victim involved.
Sufficiently serious incident 100 percent.
Plaintiff connected to the victim 70 percent.
Plaintiff exposed to incident 100 percent.
Damage proved 100 percent.

I am pleased to inform you that your client has a cause of action for nervous shock.

Would you like to peruse the cases which support my decision?
>>yes Press Enter to continue...
THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY-RESCUER
* CASES ON POINT:


Enter the number of the case you wish to see: 1


FACTS

Following a train collision near his home, the plaintiff voluntarily took an active part in rescue operations at the scene of the accident. The accident claimed ninety lives and many others were trapped and injured. As a result of the horror of the experience, the plaintiff suffered a prolonged and disabling anxiety neurosis which required hospital treatment. The plaintiff's claim for nervous shock was allowed.

SYMPTOMS

P. 948-9 ..."After the accident, he started sleeping badly, waking up in the night and talking of the little boy whom he had seen. Mrs. Chadwick found that he was not sleeping and about Christmas time, that is to say four or five weeks after the accident, he stopped working. He was shaking. Mrs. Mills, another witness, whom Mr. Chadwick had helped with whist drives, also described how she saw him change. She
You said that your client had mental problems.

Would you like to peruse the cases which relate to these symptoms?

>> yes Press Enter to continue...

THE FOLLOWING CASES ARE RELEVANT TO MENTAL SYMPTOMS:


 Enter the number of the case you wish to see: 9


FACTS

The plaintiff mother was strolling with her family when a streetcar belonging to the defendant was negligently backed into them. The streetcar ran over and killed two of the plaintiff's children and knocked the plaintiff down so that she was brought to her hands and knees. However, the plaintiff did not sustain any physical injuries as a result of the fall. The plaintiff sued on the basis that she suffered nervous shock at seeing her two children killed. Her nervous shock manifested itself in symptoms of headaches, dizziness, insomnia, loss of memory and bodily weakness. The plaintiff recovered on the basis that the jury found that physical injury was sustained.
SYMPTOMS

P. 311 ..."The evidence, however, showed that prior to the accident Mrs. McNally's health had been good, that she had been strong and well, but that ever since the accident she had been suffering from nervous shock, from headaches and dizziness, and from insomnia and loss of memory, as well as bodily weakness. Dr. Rothwell, in his evidence, stated that, while there had been no organic injury, that is, no destruction of any part of the body, Mrs. McNally appeared to him to be suffering from a form of neurosis called neurasthenia, and he gave it as his opinion that this condition was due to the "experience of the shock of the accident, and also the mental worry that continued on after the accident", and he pointed out that from the shock there might be a real physical reaction. He further said that a woman in pregnancy, as Mrs. McNally was at the time, was more susceptible to nervous shock and permanent nervous disabilities than she otherwise would be, and he intimated that Mrs. McNally's condition, if allowed to become permanent, might lead to insanity."

P. 317 ..."According to her own evidence, she has been nervous since the accident; somewhat sleepless at night; cannot do her work as well as usual, but in reality has taken charge of her home and family; suffers from headaches and is dizzy at times. Dr. Rothwell testified that she was suffering from functional neurosis, which means that the nervous element in the body is not acting as it ordinarily would, and that such condition generally follows a great muscular and nervous exhaustion, or exhaustion of the body from sickness, and also from emotional shock; that there was no organic destruction or symptoms of any organic charge and that he believed the plaintiff was suffering from emotional shock."

P. 319 ... "It has been pointed out in recent judicial decisions that the nervous system is just as much a part of man's physical system as an arm or a limb, perhaps very much more important. The relation between fright or shock and the nervous structure of the body is a matter which depends upon scientific and medical testimony, and I do not see how a Court can lay down as a matter of law that, if negligence causes fright, and such fright in turn affects the nervous structure of the body in such a way as to cause injury to health, such injury cannot be a consequence which, in the ordinary course of things, would flow from the negligence of the defendant. On this point I agree with the reasoning and the conclusion of my brother Lamont."

**N.B. In this case, the court followed Coulitas and stated that the law required physical injury to the plaintiff before recovery for nervous shock would be permitted. Here the jury found that the plaintiff did sustain physical injuries though the evidence clearly states that she did not suffer any physical injuries as a result of being knocked down by the streetcar. There was impact however. There is no evidence as to whether the plaintiff feared for her own safety.
No damages were awarded on the basis of near-miss of serious injury.

[Exit from data file.]

The most effective defence to an action in nervous shock is often that of insufficient proof of damages. Would you like to see the cases where this argument succeeded?

>>>no

Would you like to read what is currently the leading case on the law of nervous shock in order to get a good overview of the area?

>>>no

Thank you for consulting Nervous Shock Advisor.
FLEX >
APPENDIX B

KNOWLEDGE BASE
NERVOUS SHOCK ADVISOR
CAL DEEDMAN, MARCH 18, 1987
UBC LAW SCHOOL
COMPUTERS AND THE LAW PROJECT

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"Flesh and blood is weak and frail
susceptible to nervous shock ..."

T.S.Eliot, "The Hippopotamus".

This system is designed to provide advice to a legally trained user about whether or not, on a given set of facts, a plaintiff has a cause of action for negligently inflicted nervous shock. The domain expert on whose knowledge the system was based, is Professor J.C.Smith of the Faculty of Law at the University of British Columbia. The knowledge engineer who designed and built the system was G.C.Deedman.

The knowledge base is largely self-documenting because of the declarative semantics used to formulate the rules and the text explanations linked to all the questions which the advisor can ask through the rules which trigger them. Additional comments have been added where necessary to clarify the way in which the system operates.

initialdata = [advice-given].

/* ------------------ CONFIGURATION------------------ */

configuration(banner) = [nl, nl,
'UNIVERSITY OF BRITISH COLUMBIA',nl,nl,
'FACULTY OF LAW',nl,nl,
'IBM-UBC',nl,
'JOINT PROJECT ON COMPUTERS IN LAW', nl,nl,nl].

configuration(prompt) = 'FLEX > '.
/* NEGLIGENCE */

automaticmenu(negligence).
enumeratedanswers(negligence).

question(negligence) =
'Was the incident which caused the nervous shock the result of an act on the part of the defendant which you, as a lawyer, would characterize as negligent or deliberate with respect to any of its harmful results?'.

legalvals(negligence) =
[negligent, deliberate].

rule-001: if negligence = negligent
then right-tort.

explanation(rule-001) =
[nl, 'There is a fundamental distinction to be drawn in law between cases of negligently inflicted nervous shock and cases where the nervous shock suffered by the victim was attributable to a deliberate unlawful act on the part of the defendant. This Advisor limits itself to giving advice on the law as it relates to negligence.', nl].

rule-002: if negligence is unknown and
display([nl, 'Let us proceed with the consultation anyway, but please understand that the results you will get are predicated on the assumption that there WAS indeed negligence. I hope that is clear!', nl, nl])
then right-tort.

rule-003: if negligence = deliberate
then wrong-tort.

/* HARM-TYPE */

automaticmenu(harm-type).
enumeratedanswers(harm-type).
presupposition(harm-type) = right-tort.

question(harm-type) =
'Was the nervous shock sustained as the result of an incident in which any person or persons, including the plaintiff, suffered physical harm or the risk of such harm? (NOTE: Option No.3 necessarily implies that there was more than one victim).'.

legalvals(harm-type) =
[harm, risk, both, neither].
presupposition(false-report) = (harm-type = neither) or
(harm-type is unknown).
presupposition(false-report) = not(cached(victim-type = X)).
presupposition(false-report) = not(cached(victim-type is unknown)).

question(false-report) =
'Was the nervous shock caused by the reception of a false report of some matter
seriously affecting the plaintiff?
(e.g. That a close relative had been killed).'

legalvals(false-report) =
[yes, no].

rule-004: if harm-type = harm or
  harm-type = risk or
  harm-type = both
  then valid-harm-claim.

explanation(rule-004) =
[nl,
'The basic dichotomy in nervous shock cases is between those where there was
actual harm and those where there was simply a risk of harm. Where there was
harm, the extent of the harm must be determined.',nl].

rule-005: if false-report
  then valid-news-claim.

explanation(rule-005) =
[nl,
'In a limited number of cases, the courts have allowed recovery for nervous
shock where it was caused by the reception of a particularly distressing piece
of false news.',nl].

rule-006: if harm-type = neither or
  harm-type is unknown
  then invalid-harm-claim.

rule-007: if false-report = no or
  false-report is unknown
  then invalid-news-claim.

presupposition(publication) = false-report.

question(publication) =
'Did the defendant disseminate or cause the dissemination of the false report?'

legalvals(publication) =
[yes, no].
rule-008: if publication 
    then false-news.

explanation(rule-008) = 
[nl,
'In cases of nervous shock induced by the reception of a false report, it must be 
established that the defendant was responsible for the report being "published" 
in the legal sense of the word.',nl].

rule-009: if false-report and 
    publication = no or 
    publication is unknown 
    then false-news = no.

rule-010: if false-news 
    then serious-incident cf 55.

rule-011: if false-news 
    then connection-to-victim.

rule-012: if false-news 
    then exposure-to-incident.

/* ---------------------------------------- BEST-DEFENCE ----------------------------------------*/

presupposition(best-defence) = cached(judgment = an-action-lies cf X).

question(best-defence) =
'The most effective defence to an action in nervous shock is often that of 
insufficient proof of damages. Would you like to see the cases where this 
argument succeeded?'.

legalvals(best-defence) = 
[yes, no].

rule-013: if best-defence = no or 
    best-defence is unknown 
    then defences-given.

explanation(rule-013) = 
[nl,
'It is important for lawyers to understand the arguments on both sides of a case 
if they are to be fully prepared. Even if you are acting for the plaintiff, you 
should be aware of the standard defence to this kind of action. If you are 
acting for the defendant, it goes without saying that you should be familiar 
with these cases.',nl].

/* The following rule accesses a linkage to an external data file from which 
cases are retrieved if the user wishes to examine them. Subsequent rules with 
similar syntax perform the same function. */
rule-014: if best-defence and
text(defence-cases) = [DEFENCE] and
stringof(DEFENCE) = CASELIST and
external(selectcases, [CASELIST]) = YSTRING
then defences-given.

/* ----------------------- TEXT(DEFENCE-CASES) -----------------------*/
nocache(text(defence-cases)).
text(defence-cases) = [7].

/* ----------------------- LATEST-CASE -----------------------*/
question(latest-case) =
'Would you like to read what is currently the leading case on the law of nervous shock in order to get a good overview of the area?'.
legalvals(latest-case) =
[yes, no].
nocache(overview).

rule-015: if latest-case = no or
latest-case is unknown and
display([nl,
'Thank you for consulting Nervous Shock Advisor.', nl])
then overview.

explanation(rule-015) =
[nl,
'There are usually one or two cases from the highest courts in jurisdictions governed by comparable law which review and restate the law on a particular subject. The persuasive force of these leading cases makes it essential that a lawyer dealing with a similar sort of case be aware of them. Judges assume that lawyers have read these cases. To be unfamiliar with them can be a source of considerable embarrassment.',nl].

rule-016: if latest-case and
full-text(leading-cases) = [TEXT] and
stringof(TEXT) = CASELIST and
external(selectcases, [CASELIST]) = YSTRING and
display([nl,
'Thank you for consulting Nervous Shock Advisor.', nl])
then overview.

/* ----------------------- FULL-TEXT(LEADING-CASES) -----------------------*/
nocache(full-text(leading-cases)).
full-text(leading-cases) = [1].
/*  -  VICTIM-TYPE  */

presupposition(victim-type) = right-tort.
presupposition(victim-type) = valid-harm-claim.
presupposition(victim-type) = not(cached(harm-type = both)).
automaticmenu(victim-type).
enumeratedanswers(victim-type).

question(victim-type) =
'Who was the victim of the incident which caused the nervous shock: the plaintiff, a third-party or both?
(NOTE: If there was more than one third-party victim, your responses to any questions about a third-party should relate to the most serious case only).'

legalvals(victim-type) =
[plaintiff, third-party, both].

rule-017: if victim-type = plaintiff
  then primary-victim.

explanation(rule-017) =
[nl,
'The elements which need to be established to support a case of this kind differ depending on the identity of the victim of the primary event which caused the nervous shock.',nl].

rule-018: if victim-type = third-party
  then secondary-victim.

rule-019: if harm-type = both
  then multiple-victim.

rule-020: if victim-type = both
  then multiple-victim.

rule-021: if primary-victim or secondary-victim or multiple-victim or cached(false-news)
  then victim = ascertained.

rule-022: if not(primary-victim) and not(secondary-victim) and not(multiple-victim)
  then victim = unascertained.
/* ------------------------- OTHER-HARM ----------------------------------------*/

presupposition(other-harm) = \neg(cached(harm-type = risk)).
presupposition(other-harm) = multiple-victim.
presupposition(other-harm) = poor-plaintiff.
presupposition(other-harm) = \neg(harm-type = both and plaintiff-harmed)).

question(other-harm) =
'Was the other person injured?'.
legalvals(other-harm) =
[yes, no].

/* ------------------------- OTHER-RISK ----------------------------------------*/

presupposition(other-risk) = multiple-victim.
presupposition(other-risk) = \neg(cached(harm-type = harm)).
presupposition(other-risk) = \neg(cached(other-harm)).
presupposition(other-risk) = poor-plaintiff.
presupposition(other-risk) = \neg(harm-type = both and plaintiff-at-risk)).

question(other-risk) =
'Did the other person narrowly escape being seriously injured?'.
legalvals(other-risk) =
[yes, no].

rule-023: if other-harm or
       other-risk
       then serious-incident.

rule-024: if other-harm = no and
       other-risk = no and
       \neg(cached(poor-plaintiff))
       then serious-incident = no.

rule-025: if multiple-victim and
       plaintiff-harmed or
       plaintiff-at-risk and
       \neg(cached(other-harm)) and
       \neg(cached(other-risk))
       then connection-to-victim.

/* -------------------------- FATALITY ----------------------------------------*/

presupposition(fatality) = valid-harm-claim.
presupposition(fatality) = (victim = ascertained).
presupposition(fatality) = secondary-victim or
       poor-plaintiff = no.
presupposition(fatality) = \neg(primary-victim).
presupposition(fatality) = \neg(cached(harm-type = risk)).
presupposition(fatality) = \neg(cached(harm-type = neither)).
presupposition(fatality) = \neg(cached(other-X = no)).
presupposition(fatality) = \neg(cached(serious-incident = yes cf X)).
question(fatality) =
'Was the other person killed?'.
legalvals(fatality) =
[yes, no].

/* --------------------- SERIOUS-INJURIES ---------------------------------* /

presupposition(serious-injuries) = not(cached(harm-type = risk)).
presupposition(serious-injuries) = not(cached(harm-type = neither)).

presupposition(serious-injuries) = poor-plaintiff = no or secondary-victim.
presupposition(serious-injuries) = not(primary-victim).
presupposition(serious-injuries) = (victim = ascertained).
presupposition(serious-injuries) = not(cached(other-X = no)).
presupposition(serious-injuries) = not(cached(serious-incident = yes cf X)).

question(serious-injuries) =
'Did the other person suffer visibly serious injuries?'.
legalvals(serious-injuries) =
[yes, no].

/* --------------------- LUCKY-ESCAPE ------------------------------------- */

presupposition(lucky-escape) = not(cached(harm-type = risk)).
presupposition(lucky-escape) = not(cached(harm-type = neither)).

presupposition(lucky-escape) = poor-plaintiff = no or secondary-victim.
presupposition(lucky-escape) = not(primary-victim).
presupposition(lucky-escape) = (victim = ascertained).
presupposition(lucky-escape) = not(cached(other-X = no)).

question(lucky-escape) =
'Was the other person slightly injured in a narrow escape from death or serious injury?'.
legalvals(lucky-escape) =
[yes, no].

/* --------------------- NEARMISS ----------------------------------------- */

presupposition(nearmiss) = valid-harm-claim.
presupposition(nearmiss) = (harm-type = risk) or (harm-type = both).
presupposition(nearmiss) = (poor-plaintiff = no) or secondary-victim.
presupposition(nearmiss) = not(cached(primary-victim)).
presupposition(nearmiss) = (victim = ascertained).
presupposition(nearmiss) = not(cached(lucky-escape)).
presupposition(nearmiss) = not(cached(other-X = no)).
question(nearmiss) =
'Did the other person come very close to being killed or seriously injured?'.
legalvals(nearmiss) =
[yes, no].

rule-026: if primary-victim and
         plaintiff-harmed
         then serious-incident.

explanation(rule-026) =
[nl,
'The basic dichotomy in nervous shock cases is between those where there was
actual harm and those where there was simply a risk of harm. Where there was
harm, the extent of the harm must be determined.',nl].

rule-027: if primary-victim and
         plaintiff-at-risk
         then serious-incident cf 80.

explanation(rule-027) =
[nl,
'The basic dichotomy in nervous shock cases is between those where there was
actual harm and those where there was simply a risk of harm. In the case of a
risk, the victim must have come very close to being injured.',nl].

rule-028: if multiple-victim and
         plaintiff-harmed or
         plaintiff-at-risk and
         not(cached(other-harm)) and
         not(cached(other-risk))
         then serious-incident.

rule-029: if harm-type = harm or
         harm-type = both and
         fatality or
         serious-injuries
         then has-incident.

explanation(rule-029) =
[nl,
'The basic dichotomy in nervous shock cases is between those where there was
actual harm and those where there was simply a risk of harm. Where there was
harm, the extent of the harm must be determined.',nl].

rule-030: if harm-type = harm or
         harm-type = both and
         lucky-escape
         then has-incident cf 80.
explanation(rule-030) =
[nl,
'The basic dichotomy in nervous shock cases is between those where there was actual harm and those where there was simply a risk of harm. Where there was harm, the extent of the harm must be determined.',nl].

rule-031: if harm-type = risk or
harm-type = both and
not(primary-victim) and
nearmiss
then has-incident cf 50.

explanation(rule-031) =
[nl,
'The basic dichotomy in nervous shock cases is between those where there was actual harm and those where there was simply a risk of harm. In the case of a risk, the victim must have come very close to being seriously injured.',nl].

rule-032: if has-incident
then serious-incident.

rule-033: if not(cached(primary-victim)) and
not(cached(poor-plaintiff)) and
not(cached(serious-incident = yes cf X)) and
fatality is unknown and
serious-injuries is unknown and
lucky-escape is unknown and
nearmiss is unknown
then serious-incident = no.

rule-034: if not(cached(primary-victim)) and
not(cached(serious-incident = yes cf X)) and
not(has-incident)
then serious-incident = no.

rule-035: if primary-victim
then connection-to-victim.

rule-036: if primary-victim
then exposure-to-incident.

/* ------------------ PLAINTIFF-INVOLVED -------------------------------*/

rule-037: if multiple-victim
then plaintiff-involved.

rule-038: if primary-victim
then plaintiff-involved.
rule-039: if plaintiff-involved
    then exposure-to-incident.

/* ------------------------ PLAINTIFF-HARMED --------------------------*/
presupposition(plaintiff-harmed) = plaintiff-involved.
presupposition(plaintiff-harmed) = not(cached(harm-type = risk)).

question(plaintiff-harmed) =
  'Was your client injured, even slightly, in circumstances that could well have
  resulted in far more serious injury?'.
legalvals(plaintiff-harmed) =
  [yes, no].

/* ------------------------ PLAINTIFF-AT-RISK --------------------------*/
presupposition(plaintiff-at-risk) = plaintiff-involved.
presupposition(plaintiff-at-risk) = not(cached(plaintiff-harmed)).
presupposition(plaintiff-at-risk) = not(cached(harm-type = harm)).
question(plaintiff-at-risk) =
  'Did your client narrowly escape being seriously injured?'.
legalvals(plaintiff-at-risk) =
  [yes, no].

rule-040: if plaintiff-harmed = no and
    plaintiff-at-risk = no and
    not(cached(multiple-victim))
    then serious-incident = no.

rule-041: if plaintiff-harmed or
    plaintiff-at-risk and
    not(cached(primary-victim))
    then poor-plaintiff.

rule-042: if plaintiff-harmed = no and
    plaintiff-at-risk = no and
    not(cached(primary-victim))
    then poor-plaintiff = no.

/*--------------------------- AGGRAVATED-INCIDENT ----------------------*/

rule-043: if multiple-victim and
    plaintiff-harmed and
    other-harm
    then aggravated-event.

explanation(rule-043) =
  [nl,
  'In cases where multiple victims were involved in the incident which caused the
  nervous shock, there need only have been relatively minor injury.',nl].
rule-044: if multiple-victim and
    plaintiff-harmed and
    other-risk
    then aggravated-event.

explanation(rule-044) =
[nl,
 'In cases where multiple victims were involved in the incident which caused the
 nervou s shock, there need only have been relatively minor injury or a risk of
 injury.',nl].

rule-045: if multiple-victim and
    plaintiff-at-risk and
    other-harm
    then aggravated-event.

explanation(rule-045) =
[nl,
 'In cases where multiple victims were involved in the incident which caused the
 nervous shock, there need only have been relatively minor injury or a risk of
 injury.',nl].

rule-046: if multiple-victim and
    plaintiff-at-risk and
    other-risk
    then aggravated-event.

explanation(rule-046) =
[nl,
 'In cases where multiple victims were at risk in the incident which caused the
 nervous shock, there need only have been a risk of injury.',nl].

rule-047: if aggravated-event
    then aggravated-incident.

rule-048: if not(aggravated-event)
    then aggravated-incident = no.

/*------------------------ CERTAINTY-AUGMENTED -----------------------------*/

The following rules increase the certainty of recovery in aggravated incidents
once it has been established that all the requisite elements of a cause of action
are present and that the increase would raise the pre-existing factor.*/
rule-049: if aggravated-incident and close-relationship and not(cached(associated)) and cached(judgment = an-action-lies cf X) and X < 100 and do(reset judgment = an-action-lies cf X) and do(set judgment = an-action-lies cf 100 because aggravated) then certainty-raised.

rule-050: if aggravated-incident and not(cached(close-relationship)) and associated and cached(judgment = an-action-lies cf X) and X < 100 and do(reset judgment = an-action-lies cf X) and do(set judgment = an-action-lies cf 100 because aggravated) then certainty-raised.

rule-051: if aggravated-incident and not(cached(close-relationship)) and not(cached(associated)) and harm-last-resort and cached(judgment = an-action-lies cf X) and X < 100 and do(reset judgment = an-action-lies cf X) and do(set judgment = an-action-lies cf 100) then certainty-raised.

rule-052: if aggravated-incident and not(cached(close-relationship)) and not(cached(associated)) and not(cached(harm-last-resort)) and risk-last-resort and cached(judgment = an-action-lies cf X) and X < 100 and do(reset judgment = an-action-lies cf X) and do(set judgment = an-action-lies cf 100) then certainty-raised.

rule-053: if aggravated-incident and close-relationship and not(cached(associated)) and cached(judgment = an-action-lies cf X) and X = 100 then certainty-raised = no.
rule-054: if aggravated-incident and
    not(cached(close-relationship)) and
    associated and
    cached(judgment = an-action-lies cf X) and
    X = 100
then certainty-raised = no.

rule-055: if aggravated-incident and
    not(cached(close-relationship)) and
    not(cached(associated)) and
    harm-last-resort and
    cached(judgment = an-action-lies cf X) and
    X = 100
then certainty-raised = no.

rule-056: if aggravated-incident and
    not(cached(close-relationship)) and
    not(cached(associated)) and
    not(cached(harm-last-resort)) and
    risk-last-resort and
    cached(judgment = an-action-lies cf X) and
    X = 100
then certainty-raised = no.

rule-057: if certainty-raised
    then certainty-increase.

rule-058: if certainty-raised = no
    then certainty-increase = no.

rule-059: if certainty-increase or
    certainty-increase = no
then certainty-augmented.

/* ------------------------ CONNECTION-TO-VICTIM ---------------------------------------*/

presupposition(connection-to-victim) = valid-harm-claim.
presupposition(connection-to-victim) = secondary-victim or multiple-victim.
presupposition(connection-to-victim) = serious-incident.

/* ------------------------ RELATED -----------------------------------------------*/

presupposition(related) = valid-harm-claim.

question(related) =
'Is your client closely related to the other person?'.
legalvals(related) =
[yes, no].
presupposition(type-relationship) = valid-harm-claim.
automaticmenu(type-relationship).
enumeratedanswers(type-relationship).

question(type-relationship) =
'Is the other person a member of your client’’s immediate family; namely, the
child, spouse, parent or sibling of your client?
(NOTE: Regard a step-relationship as equivalent to a natural one if the person
was treated like a member of the natural family and a grandparent as
equivalent to a parent if the grandparent had been filling the role of a
parent).’.

legalvals(type-relationship) =
[child, spouse, parent, sibling, neither].

presupposition(cohabitation) = valid-harm-claim.

question(cohabitation) =
'Did your client and the other person live together in an intimate personal
relationship analogous to a marriage?'.

legalvals(cohabitation) =
[yes, no].

presupposition(engaged) = valid-harm-claim.

question(engaged) =
'Were your client and the other person engaged to be married?'.

legalvals(engaged) =
[yes, no].

presupposition(rescuer) = valid-harm-claim.

question(rescuer) =
'Did your client attempt to assist the other person after the incident?'.

legalvals(rescuer) =
[yes, no].
/ * ----------------- HARM-LAST-RESORT ------------------------------- */

presupposition(harm-last-resort) = multiple-victim.
presupposition(harm-last-resort) = plaintiff-harmed.
presupposition(harm-last-resort) = not(cached(close-relationship)).
presupposition(harm-last-resort) = not(cached(associated)).

question(harm-last-resort) =
'Did the plaintiff suffer the nervous shock all or in part because of injury to himself?'.
legalvals(harm-last-resort) =
[yes, no].

/ * ----------------- RISK-LAST-RESORT ------------------------------- */

presupposition(risk-last-resort) = multiple-victim.
presupposition(risk-last-resort) = plaintiff-at-risk.
presupposition(risk-last-resort) = not(cached(close-relationship)).
presupposition(risk-last-resort) = not(cached(associated)).

question(risk-last-resort) =
'Did the plaintiff suffer the nervous shock all or in part because of a fear of injury to himself?'.
legalvals(risk-last-resort) =
[yes, no].

rule-060: if harm-type = harm and
fatality or
serious-injuries
then bodily-harm.

rule-061: if related and
type-relationship = child or
type-relationship = spouse or
type-relationship = parent or
type-relationship = sibling
then close-relationship.

explanation(rule-061) =
[nl,
'The closest relationship recognized by the law is that between members of the so-called nuclear family.',nl].

rule-062: if related and
type-relationship = neither
then close-relationship = no.
rule-063: if related and
   close-relationship
    then connection-to-victim.

explanation(rule-063) =
[nl,
'Some sort of proximate relationship must be established between the person who suffered the nervous shock and the victim of the event which triggered it. Generally speaking, a plaintiff cannot recover for nervous shock arising out of a traumatic incident which involved a stranger. A close family tie is the strongest legal relationship.',nl].

rule-064: if cohabitation or
   engaged
    then associated.

explanation(rule-064) =
[nl,
'Some sort of proximate relationship must be established between the person who suffered the nervous shock and the victim of the event which triggered it. Generally speaking, a plaintiff cannot recover for nervous shock arising out of a traumatic event which involved a stranger.',nl].

rule-065: if cohabitation = no and
   engaged = no
    then associated = no.

rule-066: if related and
   close-relationship = no or
   close-relationship is unknown and
   associated and
   cached(cohabitation)
    then connection-to-victim cf 70.

rule-067: if related and
   close-relationship = no or
   close-relationship is unknown and
   associated and
   cached(engaged)
    then connection-to-victim cf 60.

rule-068: if related = no or
   related is unknown and
   associated and
   cached(cohabitation)
    then connection-to-victim cf 70.
rule-069: if related = no or
    related is unknown and
    associated and
    cached(engaged)
    then connection-to-victim cf 60.

rule-070: if related = no or
    close-relationship = no and
    associated = no and
    fatality and
    rescuer
    then connection-to-victim cf 70.

explanation(rule-070) =
[nl,
 'While there must generally be a legally proximate relationship between the
person who suffers the nervous shock and the victim of the event which
triggers it, the law makes a policy exception in the case of rescuers. This
policy is obviously designed to encourage good Samaritans.',nl].

rule-071: if related = no or
    close-relationship = no and
    associated = no and
    fatality = no and
    serious-injuries and
    rescuer
    then connection-to-victim cf 50.

explanation(rule-071) =
[nl,
 'While there must generally be a legally proximate relationship between the
person who suffers the nervous shock and the victim of the event which
triggers it, the law makes a policy exception in the case of rescuers. This
policy is obviously designed to encourage good Samaritans.',nl].

rule-072: if related is unknown and
    associated is unknown and
    fatality and
    rescuer
    then connection-to-victim cf 70.

rule-073: if related is unknown and
    associated is unknown and
    fatality = no and
    serious-injuries and
    rescuer
    then connection-to-victim cf 50.
rule-074: if harm-last-resort or risk-last-resort then connection-to-victim.

explanation(rule-074) =
[nl,
'Even in the absence of some sort of proximate relationship between a thirdparty victim of nervous shock and the plaintiff, recovery is usually allowed where the plaintiff was injured or nearly injured.',nl].

rule-075: if harm-last-resort = no and risk-last-resort = no then connection-to-victim = no.

rule-076: if related = no or close-relationship = no and associated = no and not(rescuer) then connection-to-victim = no.

rule-077: if related is unknown and associated is unknown and not(rescuer) or rescuer is unknown then connection-to-victim = no.

/* --------------------------- EXPOSURE-TO-INCIDENT ---------------------------*/
presupposition(exposure-to-incident) = valid-harm-claim.
presupposition(exposure-to-incident) = secondary-victim.
presupposition(exposure-to-incident) = connection-to-victim.

/* -------------------------- EYEWITNESS --------------------------*/
question(eyewitness) =
'Did your client see the incident happen?'.
legalvals(eyewitness) = [yes, no].

/* -------------------------- IMMINENT-ACCIDENT --------------------------*/
question(imminent-accident) =
'Did your client see the accident about to happen, but not the accident itself or its aftermath?'.
legalvals(imminent-accident) = [yes, no].
question(nearbystander) =
'Did your client arrive at the scene right after the accident and see the condition of the other person?'.
legalvals(nearbystander) =
[yes, no].

presupposition(traces) = imminent-accident = no.
question(traces) =
'Did your client arrive at the accident scene not long after the other person had been removed and, knowing who that person must have been, see obvious signs of a serious accident having taken place?'.
legalvals(traces) =
[yes, no].

presupposition(hospital-visit) = traces = no.
question(hospital-visit) =
'Did your client see the other person at hospital before the injuries were treated or the dead body cleaned up?'.
legalvals(hospital-visit) =
[yes, no].

presupposition(deformity) = (hospital-visit = no).
question(deformity) =
'Was the other person so permanently disfigured, deformed or otherwise altered by the harm they suffered that their appearance would be shocking to the average person?'.
legalvals(deformity) =
[yes, no].

rule-078: if related = no or
      close-relationship = no and
      associated = no and
      rescuer
  then saw-victim.

rule-079: if related is unknown and
      associated is unknown and
      rescuer
  then saw-victim.

rule-080: if eyewitness
  then saw-victim.
explanation(rule-080) =
[nl,
'In order to make out a successful case of nervous shock, the plaintiff must have had some visual exposure to the incident itself or its after-effects.',nl]

rule-081: if bodily-harm and
    nearby-stander
    then saw-victim.

explanation(rule-081) =
[nl,
'In order to make out a successful case of nervous shock, the plaintiff must have had some visual exposure to the incident itself or its after-effects.',nl]

rule-082: if bodily-harm and
    imminent-accident
    then saw-victim cf 50.

explanation(rule-082) =
[nl,
'In order to make out a successful case of nervous shock, the plaintiff must have had some visual exposure to the incident itself or its after-effects. At the very least, this would involve seeing the accident about to happen, although not the actual accident, provided a serious accident did in fact occur.',nl]

rule-083: if bodily-harm and
    traces
    then saw-victim cf 70.

explanation(rule-083) =
[nl,
'In order to make out a successful case of nervous shock, the plaintiff must have had some visual exposure to incident itself. Seeing the gruesome after effects of a serious accident meets this criterion.',nl]

rule-084: if bodily-harm and
    hospital-visit
    then saw-victim.

explanation(rule-084) =
[nl,
'In order to make out a successful case of nervous shock, the plaintiff must have had some visual exposure to the incident itself. The shock of seeing an untreated victim satisfies this requirement.',nl]

rule-085: if bodily-harm and
    deformity
    then saw-victim cf 60.
explanation(rule-085) =
[nl,
'In order to make out a successful case of nervous shock, the plaintiff must have had some visual exposure to the incident itself. In these unusual circumstances, although there was a delay between the incident and the exposure, the horror of the visual impact satisfies this requirement.',

rule-086: if eyewitness is unknown and
    bystander is unknown and
    imminent-accident is unknown and
    traces is unknown and
    hospital-visit is unknown and
    deformity is unknown
then saw-victim = no.

rule-087: if saw-victim
    then exposure-to-incident.

rule-088: if not(saw-victim)
    then exposure-to-incident = no.

/* ---------------------- INCAPACITY -------------------------------*/

presupposition(incapacity) = right-tort.
presupposition(incapacity) = valid-harm-claim or
    valid-news-claim.
presupposition(incapacity) = serious-incident.
presupposition(incapacity) = connection-to-victim.
presupposition(incapacity) = exposure-to-incident.

question(incapacity) =
'Did the nervous shock cause an expense, a loss of income or an incapacity which was sufficiently serious to support a claim for damages?'.

legalvals(incapacity) =
[yes, no].

/* ---------------------- AFTER-EFFECTS -----------------------------*/

presupposition(after-effects) = incapacity.
automaticmenu(after-effects).
enumeratedanswers(after-effects).
multivalued(after-effects).

question(after-effects) =
'Into which of the following general categories did the symptoms of nervous shock fall: physical illness; mental disorder; sleep disturbance? Separate each option by a comma if more than one is applicable'.

legalvals(after-effects) =
[physical-illness, mental-disorder, sleep-disturbance].
rule-089: if incapacity
    then affected-by-incident.

explanation(rule-089) =
[nl,
'Every successful lawsuit requires proof of legally claimable damages. In this respect, nervous shock is no different from any other case.',nl].

rule-090: if incapacity = no
    then affected-by-incident = no.

rule-091: if after-effects is unknown
    then affected-by-incident = no.

rule-092: if affected-by-incident = no
    then disability = no.

rule-093: if incapacity and
    after-effects is known
    then disability.

explanation(rule-093) =
[nl,
'In order to recover damages in a case of nervous shock, the plaintiff must have displayed symptoms which fall into one of the categories which the courts will recognize as legitimate manifestations of nervous shock.',nl].

rule-094: if incapacity is unknown or
    after-effects is unknown
    then disability = no.

/* ------------------------ SYMPTOM ----------------------- */

multivalued(symptom).

rule-095: if disability and
    after-effects = physical-illness
    then symptom = physical.

rule-096: if disability and
    after-effects = mental-disorder
    then symptom = mental.

rule-097: if disability and
    after-effects = sleep-disturbance
    then symptom = sleep.
/* SYMPTOMS-MESSAGE */

The following set of rules ensures that the exact symptoms or combinations thereof entered by the user are referred to when the user is given the option of perusing the cases.

presupposition(sympotms-message) = disability.

rule-098: if disability and
    listof(X,(symptom) = X) = [ONE] and
    display([nl,'You said that your client had ',ONE,' problems.',nl,nl])
then symptoms-message.

rule-099: if disability and
    listof(X,(symptom) = X) = [ONE,TWO] and
    display([nl,'You said that your client had ',ONE,' and ',TWO,' problems.',nl,nl])
then symptoms-message.

rule-100: if disability and
    listof(X,(symptom) = X) = [ONE,TWO,THREE] and
    display([nl,'You said that your client had ',ONE,', ',TWO,' and ',THREE,' problems.',nl,nl])
then symptoms-message.

/* VIEW-CASES */

presupposition(view-cases) = symptoms-message.

question(view-cases) =
'Would you like to peruse the cases which relate to these symptoms?'.

legalvals(view-cases) =
[yes, no].

/* GET-X-CASES */

rule-101: if symptoms-message and
    view-cases and
    casesfor(physical) = [PHYSICAL] and
    stringof(PHYSICAL) = CASELIST and
    external(selectcases, [CASELIST]) = YSTRING
then get-physical-cases.
explanation(rule-101) =
[nl,
'I can provide you with cases in which the courts allowed recovery for the
general type of symptoms which your client suffered. Furthermore, within the
overall category, specific symptoms are clearly identified. If you choose
to read the case digests, you will find verbatim quotes from the judgments. In
this way, you can be sure about how closely the symptoms of the successful
litigant resembled those of your client.',nl].

rule-102: if symptoms-message and
view-cases and
casesfor(mental) = [MENTAL] and
stringof(MENTAL) = CASELIST and
external(selectcases, [CASELIST]) = YSTRING
then get-mental-cases.

explanation(rule-102) =
[nl,
'I can provide you with cases in which the courts allowed recovery for the
general type of symptoms which your client suffered. Furthermore, within the
overall category, specific symptoms are clearly identified. If you choose to
read the case digests, you will find verbatim quotes from the judgments. In
this way, you can be sure about how closely the symptoms of the successful
litigant resembled those of your client.',nl].

rule-103: if symptoms-message and
view-cases and
casesfor(sleep) = [SLEEP] and
stringof(SLEEP) = CASELIST and
external(selectcases, [CASELIST]) = YSTRING
then get-sleep-cases.

explanation(rule-103) =
[nl,
'I can provide you with cases in which the courts allowed recovery for the
general type of symptoms which your client suffered. Furthermore, within the
overall category, specific symptoms are clearly identified. If you choose to
read the case digests, you will find verbatim quotes from the judgments. In
this way, you can be sure about how closely the symptoms of the successful
litigant resembled those of your client.',nl].

rule-104: if not(cached(get-physical-cases)) and
not(cached(get-mental-cases)) and
not(cached(get-sleep-cases)) or
view-cases = no
then get-no-cases.
/* --------------------- SYMPTOMS-FOUND ------------------------------*/

multivalued(symptoms-found).

rule-105: if disability and
    symptom = physical and
    casesfor(physical) = PHYSICAL and
    get-physical-cases and
    do(reset casesfor(physical))
then physical-search.

rule-106: if disability and
    symptom = mental and
    casesfor(mental) = MENTAL and
    get-mental-cases and
    do(reset casesfor(mental))
then mental-search.

rule-107: if disability and
    symptom = sleep and
    casesfor(sleep) = SLEEP and
    get-sleep-cases and
    do(reset casesfor(sleep))
then sleep-search.

rule-108: if disability and
    get-no-cases
then no-search.

rule-109: if physical-search is sought and
    mental-search is sought and
    sleep-search is sought and
    no-search is sought
then symptoms-found.

rule-110: if disability = no
then symptoms-found.

/ * --------------------- CASESFOR(SYMPTOM) ------------------------------*/

multivalued(casesfor(X)).
nocache(casesfor(X)).
casesfor(physical) = [2].
casesfor(mental) = [3].
casesfor(sleep) = [4].
rule-111: if right-tort and
   valid-harm-claim and
   victim = ascertained and
   aggravated-event is sought and
   serious-incident and
   connection-to-victim and
   exposure-to-incident and
   disability
then judgment = an-action-lies.

rule-112: if right-tort and
   valid-news-claim and
   false-news and
   serious-incident and
   disability
then judgment = an-action-lies.

rule-113: if wrong-tort or
   (invalid-harm-claim and not(valid-news-claim)) or
   victim = unascertained or
   serious-incident = no or
   connection-to-victim = no or
   exposure-to-incident = no or
   disability = no
then judgment = no-cause-of-action.

rule-114: if wrong-tort or
   (not(valid-harm-claim) and invalid-news-claim) or
   false-news = no or
   disability = no
then judgment = no-cause-of-action.

/* -------------------------- GREETING-DONE -------------------------------*/
nocache(greeting-done).

rule-115: if display([nl
   '  *.*.*.* Welcome to Nervous Shock Advisor *.*.*.*', nl, nl,

'I will tell you whether or not your client has a cause of action in nervous
shock. Simply type your answers to my questions on the keyboard located
below the screen. If you wish to know why a particular question is being
asked, feel free to type "why" in response to the question. You may also type
"unknown" if you are unable to answer a particular question.
If so, I shall canvass whatever other options are available to me.', nl, nl])
then greeting-done.
/* RESULTS-SHOWN */

The following variable rule calls up appropriate text messages which describe the outcome of a particular consultation. As the consultation progresses, the user is informed when his case fails for lack of a material element. If his case succeeds, he is advised accordingly. */

nocache(results-shown).

rule-116: if event = EVENT and event-description(EVENT) = DESCRIPTION and display(DESCRIPTION) then results-shown.

rule-117: if wrong-tort then event = tort-wrong.

rule-118: if invalid-harm-claim and invalid-news-claim then event = no-claim.

rule-119: if false-news = no then event = not-spread.

rule-120: if primary-victim and plaintiff-harmed = no and not(cached(plaintiff-at-risk)) and not(cached(false-news)) then event = no-incident.

rule-121: if primary-victim and plaintiff-at-risk = no and not(cached(plaintiff-harmed)) and not(cached(false-news)) then event = no-incident.

rule-122: if victim = unascertained and not(cached(false-news)) then event = no-victim.

rule-123: if serious-incident = no and not(cached(false-news)) then event = no-incident.

rule-124: if connection-to-victim = no and not(cached(false-news)) then event = no-connection.
rule-125: if exposure-to-incident = no and
    not(cached(false-news))
    then event = no-exposure.

rule-126: if disability = no
    then event = no-disability.

rule-127: if right-tort and
    valid-harm-claim and
    victim = ascertained and
    serious-incident and
    connection-to-victim and
    exposure-to-incident and
    disability
    then event = recovery.

rule-128: if right-tort and
    valid-news-claim and
    false-news and
    disability
    then event = recovery.

/* ------------------------- DECISION-GIVEN ---------------------------------------------------------------------*/

The following set of rules display messages which tell the user either why a case has failed or that there is good cause of action. */

nocache(decision-given).

rule-129: if wrong-tort and
    display([nl,
    'JUDGMENT: an action may well lie for causing nervous shock.',nl,
    ' REASON: in general, nervous shock resulting from an intentional wrong is not considered to be too remote.',nl])
    then decision-given.

rule-130: if invalid-harm-claim and
    not(cached(valid-news-claim)) and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: event not a legally recognized cause of nervous shock.',nl])
    then decision-given.

rule-131: if invalid-news-claim and
    not(cached(valid-harm-claim)) and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: event not a legally recognized cause of nervous shock.',nl])
    then decision-given.
rule-132: if false-news = no and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: defendant not responsible for publishing the false report.',nl])
    then decision-given.

rule-133: if victim = unascertained and
    not(cached(false-report)) and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: victim"s identity unknown.',nl])
    then decision-given.

rule-134: if primary-victim and
    not(cached(false-report)) and
    plaintiff-harmed = no and
    not(cached(plaintiff-at-risk)) and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: incident not serious enough.',nl])
    then decision-given.

rule-135: if primary-victim and
    not(cached(false-report)) and
    plaintiff-at-risk = no and
    not(cached(plaintiff-harmed)) and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: incident not serious enough.',nl])
    then decision-given.

rule-136: if serious-incident = no and
    not(cached(false-report)) and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: incident not serious enough.',nl])
    then decision-given.

rule-137: if connection-to-victim = no and
    not(cached(false-report)) and
    display([nl,
    'JUDGMENT: no cause of action.',nl,
    ' REASON: no connection between plaintiff and victim.',nl])
    then decision-given.
rule-138: if exposure-to-incident = no and
    not(cached('false-report)) and
    display([nl,
        'JUDGMENT: no cause of action.',',',nl,
        ' REASON: plaintiff not exposed incident.',',',nl])
    then decision-given.

rule-139: if disability = no and
    display([nl,
        'JUDGMENT: no cause of action.',',',nl,
        ' REASON: damage not proved.',',',nl])
    then decision-given.

/*--------------------------------- X-FACTOR ----------------------------------*

The following set of rules builds a profile of the constituent elements of the
successful cause of action which is tailored to fit the particular fact pattern
supplied by the user. Certainty factors are attached to each element
so that the user can see the weak points in his case at a glance. Generally
speaking, the overall chance of success will be no stronger than the weakest
link in the chain. However, in cases in which the plaintiff was also a victim
of the primary event which caused the nervous shock, the total chance of
recovery is greater. In these cases, propagation of the weak link is avoided by
rules which increase the certainty factor. */

nocache(X-factor).

rule-140: if judgment = an-action-lies cf X and
    display([nl,
        'JUDGMENT: an action lies ','X',' percent.',',',nl,nl]) and
    display([nl,
        'The following is a breakdown of the various elements involved in this decision.
        If any element has a certainty factor of less than 100% you should regard it as
        a weak link in the chain and focus on bolstering your case in that area.',',',nl,nl])
    then judgment-factor.

rule-141: if right-tort cf X and
    display([n
        'Negligence established ','X',' percent.',',nl]
    then negligence-factor.

rule-142: if valid-harm-claim cf X or
    valid-news-claim cf X and
    display([n
        'Appropriate triggering event ','X',' percent.',',nl]
    then claim-factor.
rule-143: if false-news cf X and 
   display(['Dissemination of false news ',X,' percent.',',nl])
   then news-factor.

rule-144: if primary-victim cf X and 
   not(cached(false-news)) and 
   display(['Plaintiff principal victim ',X,' percent.',',nl])
   then victim-factor.

rule-145: if secondary-victim cf X and 
   not(cached(false-news)) and 
   display(['Third-party principal victim ',X,' percent.',',nl])
   then victim-factor.

rule-146: if multiple-victim cf X and 
   not(cached(plaintiff-harmed)) and 
   not(cached(plaintiff-at-risk)) and 
   not(cached(false-news)) and 
   display(['Third-party principal victim ',X,' percent.',',nl])
   then victim-factor.

rule-147: if multiple-victim cf X and 
   plaintiff-harmed or 
   plaintiff-at-risk and 
   not(cached(other-harm)) and 
   not(cached(other-risk)) and 
   not(cached(false-news)) and 
   display(['Plaintiff principal victim ',X,' percent.',',nl])
   then victim-factor.

rule-148: if multiple-victim cf X and 
   poor-plaintiff and 
   not(cached(false-news)) and 
   display(['Multiple victims ',X,' percent.',',nl])
   then victim-factor.

rule-149: if serious-incident cf X and 
   display(['Sufficiently serious incident ',X,' percent.',',nl])
   then incident-factor.
rule-150: if aggravated-incident and 
certainty-raised cf X and 
not(cached(false-news)) and 
display([ 
'Certainty increased because of multiple victims.','nl]) 
then aggravation-factor.

rule-151: if aggravated-incident and 
certainty-raised = no cf X and 
not(cached(false-news)) and 
display([ 
'Certainty not increased because high enough already.','nl]) 
then aggravation-factor.

rule-152: if aggravated-incident = no cf X and 
not(cached(false-news)) and 
display([ 
'Certainty not increased because only one victim involved.' ,nl]) 
then aggravation-factor.

rule-153: if connection-to-victim cf X and 
not(cached(false-news)) and 
not(cached(primary-victim)) and 
not(cached(harm-last-resort)) and 
not(cached(risk-last-resort)) and 
display([ 
'Plaintiff connected to the victim ','X,' percent.','nl]) 
then connection-factor.

rule-154: if connection-to-victim and 
cached(primary-victim) or 
cached(harm-last-resort) or 
cached(risk-last-resort) and 
display([ 
'Connection to a third-party victim not essential to recovery on these facts.' ,nl]) 
then connection-factor.

rule-155: if exposure-to-incident cf X and 
not(cached(false-news)) and 
display([ 
'Plaintiff exposed to incident ','X,' percent.','nl]) 
then exposure-factor.

rule-156: if disability cf X and 
display([ 
'Damage proved ','X,' percent.','nl]) 
then disability-factor.
rule-157: if judgment = an-action-lies and
valid-harm-claim and
judgment-factor and
negligence-factor and
claim-factor and
victim-factor and
aggravation-factor and
incident-factor and
connection-factor and
exposure-factor and
disability-factor
then decision-given.

rule-158: if judgment = an-action-lies and
valid-news-claim and
judgment-factor and
negligence-factor and
claim-factor and
news-factor and
incident-factor and
disability-factor
then decision-given.

/* ---------------------------------- EVENT-DESCRIPTION ----------------------------------*/

The following table contains the text messages which describe the outcome of the consultation to the user in plain English. */

nocache(event-description(X)).

event-description(tort-wrong) = [nl,'However, I am afraid that Nervous Shock Advisor limits itself to providing advice about cases where the nervous shock was suffered as a result of the defendant's negligence. The intentional infliction of nervous shock falls within a different realm of the law of torts.',nl,nl].

event-description(no-claim) = [nl,'I regret to inform you that your client cannot recover for nervous shock because the event in question does not fall within the category events which the law recognizes as legitimate causes of nervous shock.',nl,nl].

event-description(not-spread) = [nl,'I regret to inform you that your client cannot recover for nervous shock because there is no proof that the defendant was responsible for publishing the false report which caused the nervous shock.',nl,nl].

event-description(no-victim) = [nl,'I regret to inform you that your client cannot recover for nervous shock because the identity of the victim is unknown.',nl,nl].
event-description(no-incident) = [nl,
'I regret to inform you that your client cannot recover for nervous shock because the incident was not of sufficient gravity.', nl,nl].

event-description(no-connection) = [nl,
'I regret to inform you that the damage is too remote to permit recovery for nervous shock because there was not a close enough relationship between your client and the victim.', nl,nl].

event-description(no-exposure) = [nl,
'I regret to inform you that the damage is too remote to permit recovery for nervous shock because your client was not sufficiently involved in the incident.', nl,nl].

event-description(no-disability) = [nl,
'I regret to inform you that your client cannot recover for nervous shock because there is insufficient proof of damage.', nl,nl].

event-description(recovery) = [nl,
'I am pleased to inform you that your client has a cause of action for nervous shock.', nl,nl].

/* -------------------------- CASE-VARIABLE-RULES ----------------------------------------

The following rules translate the declarative semantics used elsewhere in the knowledge base to describe particular facts into terse descriptors which permit the construction of a concise case profile table. */

rule-159: if cached(right-tort)
then tort = ok.

rule-160: if cached(wrong-tort)
then tort = nix.

rule-161: if right-tort is sought and
wrong-tort is sought
then tort = whatever.

rule-162: if cached(harm-type = harm) or
    cached(harm-type = risk) or
    cached(harm-type = both) or
    cached(false-report)
then act = valid.

rule-163: if cached(harm-type = neither) or
    cached(harm-type is unknown) and
    cached(false-report = no) or
    cached(false-report is unknown)
then act = null.
rule-164: if harm-type is sought and
       false-report is sought
       then act = whatever.

rule-165: if cached(primary-victim)
       then party = one.

rule-166: if cached(secondary-victim) or
       cached(multiple-victim) and
       not(cached(plaintiff-harmed)) and
       not(cached(plaintiff-at-risk))
       then party = two.

rule-167: if cached(multiple-victim) and
       cached(poor-plaintiff)
       then party = both.

rule-168: if cached(false-report)
       then party = two.

rule-169: if cached(victim = unascertained)
       then party = no.

rule-170: if party is sought
       then party = whatever.

rule-171: if cached(primary-victim) and
       cached(plaintiff-harmed)
       then incident = harm.

rule-172: if cached(primary-victim) and
       cached(plaintiff-at-risk)
       then incident = risk.

rule-173: if cached(other-harm)
       then incident = harm.

rule-174: if cached(other-risk)
       then incident = risk.

rule-175: if cached(fatality)
       then incident = death.

rule-176: if cached(serious-injuries)
       then incident = injury.

rule-177: if cached(lucky-escape)
       then incident = lucky.
rule-178: if cached(nearmiss)  
then incident = miss.

rule-179: if cached(false-news)  
then incident = news.

rule-180: if cached(false-news = no)  
then incident = nonews.

rule-181: if cached(primary-victim) and  
cached(plaintiff-harmed = no) and  
not(cached(plaintiff-at-risk))  
then incident = no.

rule-182: if cached(primary-victim) and  
cached(plaintiff-at-risk = no) and  
not(cached(plaintiff-harmed))  
then incident = no.

rule-183: if cached(serious-incident = no)  
then incident = no.

rule-184: if cached(multiple-victim) and  
cached(serious-incident) and  
not(cached(other-harm)) and  
not(cached(other-risk))  
then incident = no.

rule-185: if incident is sought  
then incident = whatever.

rule-186: if cached(plaintiff-harmed) and  
not(cached(primary-victim))  
then other-incident = harm.

rule-187: if cached(plaintiff-at-risk) and  
not(cached(primary-victim))  
then other-incident = risk.

rule-188: if cached(primary-victim)  
then other-incident = no.

rule-189: if not(cached(plaintiff-involved)) or  
not(cached(plaintiff-harmed)) and  
not(cached(plaintiff-at-risk))  
then other-incident = no.

rule-190: if other-incident is sought  
then other-incident = whatever.
rule-191: if cached(primary-victim)  
then relationship = yes.

rule-192: if cached(type-relationship = child)  
then relationship = child.

rule-193: if cached(type-relationship = spouse)  
then relationship = spouse.

rule-194: if cached(type-relationship = parent)  
then relationship = parent.

rule-195: if cached(type-relationship = sibling)  
then relationship = sibling.

rule-196: if cached(cohabitation)  
then relationship = live-in.

rule-197: if cached(engaged)  
then relationship = fiance.

rule-198: if cached(rescuer)  
then relationship = rescuer.

rule-199: if cached(false-report)  
then relationship = oui.

rule-200: if cached(harm-last-resort) or  
cached(risk-last-resort)  
then relationship = yes.

rule-201: if cached(multiple-victim) and  
cached(plaintiff-harmed) or  
cached(plaintiff-at-risk) and  
not(cached(other-harm)) and  
not(cached(other-risk))  
then relationship = yes.

rule-202: if cached(connection-to-victim = no)  
then relationship = no.

rule-203: if relationship is sought  
then relationship = whatever.

rule-204: if cached(primary-victim)  
then exposure = yes.

rule-205: if cached(rescuer)  
then exposure = yes.
rule-206: if cached(plaintiff-involved)
    then exposure = witness.

rule-207: if cached(eyewitness)
    then exposure = witness.

rule-208: if cached(nearbystander)
    then exposure = nearby.

rule-209: if cached(imminent-accident)
    then exposure = imminent.

rule-210: if cached(traces)
    then exposure = traces.

rule-211: if cached(hospital-visit)
    then exposure = hospital.

rule-212: if cached(deformity)
    then exposure = deformed.

rule-213: if cached(false-report)
    then exposure = heard.

rule-214: if cached(exposure-to-incident = no)
    then exposure = no.

rule-215: if exposure is sought
    then exposure = whatever.

rule-216: if cached(disability)
    then damage = yes.

rule-217: if cached(disability = no)
    then damage = no.

rule-218: if disability is sought
    then damage = whatever.

/* ------------------------ CASE ----------------------------------------------

This variable rule matches the pattern of facts supplied by the user during the consultation with a corresponding profile in the case table which follows. */
rule-219: if tort = T and act = A and party = P and incident = I and other-incident = O and relationship = R and exposure = E and damage = D and case(T,A,P,I,O,R,E,D) = [C] then case = [C].

noautomaticquestion(case(TORT, ACT, PARTY, INCIDENT, OTHER-INCIDENT, RELATIONSHIP, EXPOSURE, DAMAGE)).

nocache(case(X)).

case(nix, GET, WHICH, ONE, THAT, YOU, LIKE, HERE) = [5].
case(ok, valid, two, news, no, oui, heard, yes) = [6].
case(ok, valid, two, nonews, THAT, YOU, LIKE, HERE) = [6].
case(JUST, GET, WHICH, ONE, THAT, YOU, LIKE, no) = [7].
case(JUST, null, WHICH, ONE, THAT, YOU, LIKE, HERE) = [8].
case(JUST, GET, WHICH, no, THAT, YOU, LIKE, HERE) = [8].

case(JUST, GET, WHICH, ONE, THAT, no, LIKE, HERE) = [9].
case(JUST, GET, WHICH, ONE, THAT, YOU, no, HERE) = [10].
case(JUST, GET, no, ONE, THAT, YOU, LIKE, HERE) = [11].
case(ok, valid, both, no, harm, yes, witness, yes) = [12].
case(ok, valid, one, harm, no, yes, yes, yes) = [12].
case(ok, valid, both, no, risk, yes, witness, yes) = [13].
case(ok, valid, one, risk, no, yes, yes, yes) = [13].
case(ok, valid, both, harm, harm, child, witness, yes) = [14].
case(ok, valid, both, harm, harm, spouse, witness, yes) = [15].
case(ok, valid, both, harm, harm, parent, witness, yes) = [16].
case(ok, valid, both, harm, harm, sibling, witness, yes) = [17].
case(ok, valid, both, harm, harm, live-in, witness, yes) = [18].
case(ok, valid, both, harm, harm, fiance, witness, yes) = [19].

case(ok, valid, both, harm, harm, yes, witness, yes) = [20].

case(ok, valid, both, harm, risk, child, witness, yes) = [21].
case(ok, valid, both, harm, risk, spouse, witness, yes) = [22].
case(ok, valid, both, harm, risk, parent, witness, yes) = [23].
case(ok, valid, both, harm, risk, sibling, witness, yes) = [24].

case(ok, valid, both, harm, risk, live-in, witness, yes) = [25].
case(ok, valid, both, harm, risk, fiance, witness, yes) = [26].

case(ok, valid, both, harm, risk, yes, witness, yes) = [27].

case(ok, valid, both, risk, harm, child, witness, yes) = [28].
case(ok, valid, both, risk, harm, spouse, witness, yes) = [29].
case(ok, valid, both, risk, harm, parent, witness, yes) = [30].
case(ok, valid, both, risk, harm, sibling, witness, yes) = [31].

case(ok, valid, both, risk, harm, live-in, witness, yes) = [32].
case(ok, valid, both, risk, harm, fiance, witness, yes) = [33].

case(ok, valid, both, risk, harm, yes, witness, yes) = [34].

case(ok, valid, both, risk, risk, child, witness, yes) = [35].
case(ok, valid, both, risk, risk, spouse, witness, yes) = [36].
case(ok, valid, both, risk, risk, parent, witness, yes) = [37].
case(ok, valid, both, risk, risk, sibling, witness, yes) = [38].

case(ok, valid, both, risk, risk, live-in, witness, yes) = [39].
case(ok, valid, both, risk, risk, fiance, witness, yes) = [40].

case(ok, valid, both, risk, risk, yes, witness, yes) = [41].

case(ok, valid, two, death, no, child, witness, yes) = [42].
case(ok, valid, two, death, no, spouse, witness, yes) = [43].
case(ok, valid, two, death, no, parent, witness, yes) = [44].
case(ok, valid, two, death, no, sibling, witness, yes) = [45].

case(ok, valid, two, death, no, live-in, witness, yes) = [46].
case(ok, valid, two, death, no, fiance, witness, yes) = [47].

case(ok, valid, two, death, no, child, nearby, yes) = [48].
case(ok, valid, two, death, no, spouse, nearby, yes) = [49].
case(ok, valid, two, death, no, parent, nearby, yes) = [50].
case(ok, valid, two, death, no, sibling, nearby, yes) = [51].

case(ok, valid, two, death, no, live-in, nearby, yes) = [52].
case(ok, valid, two, death, no, fiance, nearby, yes) = [53].
case(ok, valid, two, death, no, child, traces, yes) = [54].
case(ok, valid, two, death, no, spouse, traces, yes) = [55].
case(ok, valid, two, death, no, parent, traces, yes) = [56].
case(ok, valid, two, death, no, sibling, traces, yes) = [57].

case(ok, valid, two, death, no, live-in, traces, yes) = [58].
case(ok, valid, two, death, no, fiance, traces, yes) = [59].

case(ok, valid, two, death, no, child, hospital, yes) = [60].
case(ok, valid, two, death, no, spouse, hospital, yes) = [61].
case(ok, valid, two, death, no, parent, hospital, yes) = [62].
case(ok, valid, two, death, no, sibling, hospital, yes) = [63].

case(ok, valid, two, death, no, live-in, hospital, yes) = [64].
case(ok, valid, two, death, no, fiance, hospital, yes) = [65].

case(ok, valid, two, death, no, child, imminent, yes) = [66].
case(ok, valid, two, death, no, spouse, imminent, yes) = [67].
case(ok, valid, two, death, no, parent, imminent, yes) = [68].
case(ok, valid, two, death, no, sibling, imminent, yes) = [69].

case(ok, valid, two, death, no, live-in, imminent, yes) = [70].
case(ok, valid, two, death, no, fiance, imminent, yes) = [71].

case(ok, valid, two, injury, no, child, witness, yes) = [72].
case(ok, valid, two, injury, no, spouse, witness, yes) = [73].
case(ok, valid, two, injury, no, parent, witness, yes) = [74].
case(ok, valid, two, injury, no, sibling, witness, yes) = [75].

case(ok, valid, two, injury, no, live-in, witness, yes) = [76].
case(ok, valid, two, injury, no, fiance, witness, yes) = [77].

case(ok, valid, two, injury, no, child, nearby, yes) = [78].
case(ok, valid, two, injury, no, spouse, nearby, yes) = [79].
case(ok, valid, two, injury, no, parent, nearby, yes) = [80].
case(ok, valid, two, injury, no, sibling, nearby, yes) = [81].

case(ok, valid, two, injury, no, live-in, nearby, yes) = [82].
case(ok, valid, two, injury, no, fiance, nearby, yes) = [83].

case(ok, valid, two, injury, no, child, traces, yes) = [84].
case(ok, valid, two, injury, no, spouse, traces, yes) = [85].
case(ok, valid, two, injury, no, parent, traces, yes) = [86].
case(ok, valid, two, injury, no, sibling, traces, yes) = [87].

case(ok, valid, two, injury, no, live-in, traces, yes) = [88].
case(ok, valid, two, injury, no, fiance, traces, yes) = [89].
case(ok, valid, two, injury, no, child, hospital, yes) = [90].
case(ok, valid, two, injury, no, spouse, hospital, yes) = [91].
case(ok, valid, two, injury, no, parent, hospital, yes) = [92].
case(ok, valid, two, injury, no, sibling, hospital, yes) = [93].
case(ok, valid, two, injury, no, live-in, hospital, yes) = [94].
case(ok, valid, two, injury, no, fiance, hospital, yes) = [95].
case(ok, valid, two, injury, no, child, deformed, yes) = [96].
case(ok, valid, two, injury, no, spouse, deformed, yes) = [97].
case(ok, valid, two, injury, no, parent, deformed, yes) = [98].
case(ok, valid, two, injury, no, sibling, deformed, yes) = [99].
case(ok, valid, two, injury, no, live-in, deformed, yes) = [100].
case(ok, valid, two, injury, no, fiance, deformed, yes) = [101].
case(ok, valid, two, injury, no, child, imminent, yes) = [102].
case(ok, valid, two, injury, no, spouse, imminent, yes) = [103].
case(ok, valid, two, injury, no, parent, imminent, yes) = [104].
case(ok, valid, two, injury, no, sibling, imminent, yes) = [105].
case(ok, valid, two, injury, no, live-in, imminent, yes) = [106].
case(ok, valid, two, injury, no, fiance, imminent, yes) = [107].
case(ok, valid, two, lucky, no, child, witness, yes) = [108].
case(ok, valid, two, lucky, no, spouse, witness, yes) = [109].
case(ok, valid, two, lucky, no, parent, witness, yes) = [110].
case(ok, valid, two, lucky, no, sibling, witness, yes) = [111].
case(ok, valid, two, lucky, no, live-in, witness, yes) = [112].
case(ok, valid, two, lucky, no, fiance, witness, yes) = [113].
case(ok, valid, two, miss, no, child, witness, yes) = [114].
case(ok, valid, two, miss, no, spouse, witness, yes) = [115].
case(ok, valid, two, miss, no, parent, witness, yes) = [116].
case(ok, valid, two, miss, no, sibling, witness, yes) = [117].
case(ok, valid, two, miss, no, live-in, witness, yes) = [118].
case(ok, valid, two, miss, no, fiance, witness, yes) = [119].
case(ok, valid, two, death, no, rescuer, yes, yes) = [120].
case(ok, valid, two, injury, no, rescuer, yes, yes) = [120].

/* ------------------------ PARAMETERS -------------------------------*/

rule-220: if judgment is sought
    then parameters-found.
/* FACTS-REVIEWED */

This is the high level rule which determines whether or not the material elements of a cause of action are present on the facts provided by the user and states the system's conclusions. */

rule-221: if greeting-done and
parameters-found and
aggravated-incident is sought and
certainty-augmented is sought and
decision-given and
results-shown
then facts-reviewed.

/* SEE-CASE */

question(see-case) =
'Would you like to peruse the cases which support my decision?'.
legalvals(see-case) =
[yes, no].

/* SELECT-CASE */

The following rules either access the external data file and retrieve the cases which correspond to the entry in the case profile table or bypass the external function if the user does not wish to see the cases. */

nocache(select-case).

rule-222: if see-case and
case = [X] and
stringof(X) = CASELIST and
external(selectcases, [CASELIST]) = YSTRING
then select-case.

explanation(rule-222) =
[nl,
'I am prepared to justify my decision in terms of the case law. However, if you are not particularly interested in looking at the cases, I do not wish to bore you with unnecessary detail.',nl].

rule-223: if see-case = no or
see-case is unknown
then select-case.
CASES-MATCHED

This is the high level rule that supplies case authority to support the conclusions reached by the advisor. It also supplies the best defence cases and full text of the leading case on nervous shock. */

rule-224: if case is sought and select-case is sought and symptoms-found or cached(judgment = no-cause-of-action) and defences-given is sought and overview then cases-matched.

ADVICE-GIVEN

This is the top level control rule which drives the system. The premises of this rule and the various sub-goals they generate through the back-chaining process dictate the course of the entire consultation. */

rule-225: if facts-reviewed and cases-matched then advice-given.
APPENDIX C

CASE FILE INDEX
#1. LEADING CASE

Full Text: McLoughlin v. O’Brian, [1982] 2 All E.R. 298 (H.L.);

* The following are also important and leading cases for the law
* of nervous shock. You may wish to look at their summaries.

  affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
  E.R. 1074 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
  E.R. 617 (C.A.);
Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396
  (H.L.).

#2. THE FOLLOWING CASES ARE RELEVANT TO PHYSICAL
  SYMPTOMS:

  (headaches, vomiting, weightloss);
  (nausea);
  1 All E.R. 169 (dermatitis);
  (exacerbation of thyroid condition);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
  the amount of damages 10 O.W.N. 135 (C.A.) (miscarriage);
  affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.)
  (gynaecological problems resulting in hysterectomy);
Dulieu v. White & Sons, [1901] 2 K.B. 669
  (premature delivery);
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.)
  (hemmorraging, stillbirth);
  (tachycardia, inability to work for three months);
  404, [1957] 1 All E.R. 583 (C.A.) (bed rest for one week);
#3. THE FOLLOWING CASES ARE RELEVANT TO MENTAL SYMPTOMS:

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.) (depression, suicide);
Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.) (insanity);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.) (severe depression);
Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.) (depression);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.) (loss of pride and self-respect);
Purdy v. Woznesensky, [1937] 2 W.W.R. 116 (Sask. C.A.) (hysteria);
Chadwick v. British Transport Commission, [1967] 2 All E.R. 945 (Q.B.) (anxiety);
Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.) (flashbacks);
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.) (exacerbation of nervous condition);
Timmermans v. Buelow (1984), 38 C.C.L.T. 136 (Ont. H.C.) (panic attacks);

#4. THE FOLLOWING CASES ARE RELEVANT TO SLEEP SYMPTOMS:

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.) (insomnia);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.) (sleeplessness, nightmares);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.) (nightmares);
#5. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* INTENTIONALLY INDUCED NERVOUS SHOCK

Wilkinson v. Downton, [1897] 2 Q.B. 57.;
Janvier v. Sweeney, [1919] 2 K.B. 316, affirmed [1919] 2 K.B. 326 (C.A.);
Bielitzki v. Obadisk, [1922] 2 W.W.R. 238 (Sask. C.A.);
Timmermans v. Buelow (1984), 38 C.C.L.T. 136 (Ont. H.C.);

* NERVOUS SHOCK RESULTING FROM AN INTENTIONAL WRONGFUL ACT

Purdy v. Woznesensky, [1937] 2 W.W.R. 116 (Sask. C.A.);

* HELD FOR DEFENDANT:
Radovskis v. Tomn (1957), 65 Man. R. 61, 9 D.L.R. (2d) 751 (Q.B.);

#6. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DISSEMINATING FALSE REPORTS

Barnes v. Commonwealth of Australia (1937), 37 S.R. (N.S.W.) 511 (S.C.);

* CONTRA:
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);

#7. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* NO PROOF OF LEGALLY RECOGNIZED DAMAGES

* Nervous shock is a legal, not a medical term. It includes a variety
* of symptoms resulting from the mental trauma produced by an accident
* or its aftermath. In contrast, damages are not recoverable for pure
* grief and emotional suffering. Damages for nervous shock are often
* difficult to prove so often the most effective defence is the argument
* that there is insufficient proof of the kind of damages which are
* recoverable in an action for nervous shock.
* Plaintiff Harmed And Third Party Harmed
Griffiths v. C.P.R. (1978), 6 B.C.L.R. 115 (C.A.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);

* Plaintiff Risk And Third Party Harmed
Beaulieu v. Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

* Plaintiff Nearby And Attended
Willis v. Talbot (1981), 98 A.P.R. 245, 50 N.S.R. (2d) 245 (C.A.);

* Third Party—Disfigurement Or Permanent Alteration

* Symptoms Were Not Produced By The Shock Of The Incident
* But By Later Events Such As The Giving Of Care.
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
Shewan v. Sellars (No. 1), [1963] Q.W.N. 48 (S.C.);

* Intentional Tort
Radovskis v. Tomn (1957), 65 Man. R. 61, 9 D.L.R. (2d) 751 (Q.B.);

#8. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* INSUFFICIENTLY SERIOUS INCIDENT
McMullin v. F.W. Woolworth Co. (1974), 9 N.B.R. (2d) 214 (Q.B.);
#9. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* NOT A CLOSE ENOUGH RELATIONSHIP TO THE VICTIM

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v. Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

* CONTRA:


#10. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF HAD INSUFFICIENT EXPOSURE TO INCIDENT

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#11. YOU NEED TO KNOW THE IDENTITY OF THE VICTIM

* Common sense should tell you that you lack a material fact.

#12. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF ONLY--HARM

* CASES ON POINT:

* RELEVANT BY ANALOGY:
* Plaintiff Only--Risk

Dulieu v. White & Sons, [1901] 2 K.B. 669.;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* Plaintiff Harmed And Third Party Harmed

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to the amount of damages 10 O.W.N. 135 (C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktisidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);

* CONTRA:

Taylor v. British Columbia Electric Railway Co. (1911), 16 B.C.R. 109, 17 W.L.R. 470 (C.A.);
Victorian Railways Commissioners v. Coulta (1888), 13 App. Cas. 222 (P.C.);

#13. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF ONLY--RISK
* CASES ON POINT:

Dulieu v. White & Sons, [1901] 2 K.B. 669.;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158
(Sask. Dist. Ct.);

* CONTRA:

Victorian Railways Commissioners v. Coultas (1888), 13 App. Cas. 222
(P.C.);
Taylor v. British Columbia Electric Railway Co. (1911), 16 B.C.R. 109,
17 W.L.R. 470 (C.A.);

#14. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY HARMED--CHILD
* CASES ON POINT:

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Other Family Relationships

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
(H.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
the amount of damages 10 O.W.N. 135 (C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);

* Engaged

255 (S.C.);

* RELEVANT BY ANALOGY:

* Plaintiff Near Miss and Third Party Harmed
* Child

C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924]
2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);

* Other Family Relationships

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
404, [1957] 1 All E.R. 583 (C.A.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;
D.L.R. (3d) 424 (C.A.);

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
E.R. 1074 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90,
73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
(S.C.);

* CONTRA:

Spencer v. Associated Milk Services Pty. Ltd. and McNamara, [1968] Qd.
R. 393 (S.C.);

#15. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY HARMED--SPOUSE
* CASES ON POINT:

1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to the amount of damages 10 O.W.N. 135 (C.A.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Other Family Relationships

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Cameron v. Maraccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);

* Engaged


* RELEVANT BY ANALOGY:

* Plaintiff Near Miss and Third Party Harmed

* Spouse

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Other Family Relationships

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] 2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* CONTRA:

Spencer v. Associated Milk Services Pty. Ltd. and McNamara, [1968] Qd. R. 393 (S.C.);

#16. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY HARMED--PARENT
* CASES ON POINT:

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Other Family Relationships

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
the amount of damages 10 O.W.N. 135 (C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
* Engaged


* RELEVANT BY ANALOGY:
* Plaintiff Near Miss and Third Party Harmed

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669.;

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);

* Later Visual and Relative


* CONTRA:

#17. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY HARMED--SIBLING

* CASES ON POINT:

Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* Other Family Relationships

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
(H.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
the amount of damages 10 O.W.N. 135 (C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richards v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);

* Engaged

255 (S.C.);

* Other Sibling Cases

C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* RELEVANT BY ANALOGY:

* Plaintiff Near Miss and Third Party Harmed

C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
404, [1957] 1 All E.R. 583 (C.A.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924]
2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669.;

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative


* CONTRA:

Spencer v. Associated Milk Services Pty. Ltd. and McNamara, [1968] Qd. R. 393 (S.C.);

#18. The following cases are relevant to your fact situation:

* Plaintiff harmed and third party harmed—living together

* Relevant by analogy:

* Spouse

Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to the amount of damages 10 O.W.N. 135 (C.A.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);
* Other Family Relationships

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Cameron v. Maraccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);

* Engaged


* RELEVANT BY ANALOGY:
* Plaintiff Near Miss and Third Party Harmed

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] 2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);

* Other Family Relationships

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
(S.C.);

* CONTRA:

Spencer v. Associated Milk Services Pty. Ltd. and McNamara, [1968] Qd.
R. 393 (S.C.);

#19. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* PLAINTIFF HARMED--THIRD PARTY HARMED--ENGAGED
* CASES ON POINT:

255 (S.C.);

* RELEVANT BY ANALOGY:

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;
D.L.R. (3d) 424 (C.A.);

* Plaintiff Harmed And Third Party Harmed

* Spouse

1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
(H.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
the amount of damages 10 O.W.N. 135 (C.A.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Other Family Relationships

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);

* CONTRA:

Spencer v. Associated Milk Services Pty. Ltd. and McNamara, [1968] Qd. R. 393 (S.C.);

#20. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF HARMED—THIRD PARTY HARMED—UNRELATED
* RELEVANT BY ANALOGY:

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* CONTRA:

Victorian Railways Commissioners v. Coultas (1888), 13 App. Cas. 222 (P.C.);
Taylor v. British Columbia Electric Railway Co. (1911), 16 B.C.R. 109, 17 W.L.R. 470 (C.A.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);

#21. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF NEAR MISS AND THIRD PARTY HARMED—CHILD
* CASES ON POINT:

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] 2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);

* Other Family Relationships

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative


#22. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF NEAR MISS AND THIRD PARTY HARMED--SPOUSE
* CASES ON POINT:

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Other Family Relationships

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] 2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);
Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative


#23. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF NEAR MISS AND THIRD PARTY HARMED--PARENT
* CASES ON POINT:
* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] 2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);

* RELEVANT BY ANALOGY:
* Other Parent Cases

Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff Nearby and Attended Relative

Hamilton v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative


#24. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF NEAR MISS AND THIRD PARTY HARMED--SIBLING
* CASES ON POINT:

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Other Family Relationships

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] 2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);

* RELEVANT BY ANALOGY:
* Other Sibling Cases

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Maracci (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

#25. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINIFF NEAR MISS AND THIRD PARTY HARM--LIVING TOGETHER

* RELEVANT BY ANALOGY:

* Spouse

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Hogan v. City of Regina (sub. nom. McNally v. City of Regina), [1924] 2 W.W.R. 307, 18 Sask L.R. 423, [1924] 2 D.L.R. 1211 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;
* Plaintiff Nearby and Attended Relative

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90,
73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Later Visual and Relative

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

#26. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF NEAR MISS AND THIRD PARTY HARMED—ENGAGED
* RELEVANT BY ANALOGY:

* Plaintiff Only


* Spouse

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669.;
* CONTRA:
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);

#27. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF NEAR MISS AND THIRD PARTY HARMED--UNRELATED
* RELEVANT BY ANALOGY:

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* CONTRA:

Victorian Railways Commissioners v. Coultas (1888), 13 App. Cas. 222 (P.C.);
Taylor v. British Columbia Electric Railway Co. (1911), 16 B.C.R. 109, 17 W.L.R. 470 (C.A.);

#28. PLAINTIFF HARMED AND THIRD PARTY RISK--CHILD

* RELEVANT BY ANALOGY:
* Plaintiff Only--Harm


* Plaintiff Only--Risk

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* Plaintiff Harmed And Third Party Harmed
* Child

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);
Other Family Relationships

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
(H.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
the amount of damages 10 O.W.N. 135 (C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);

* Engaged

255 (S.C.);

#29. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY RISK--SPOUSE
* RELEVANT BY ANALOGY:
* Plaintiff Only--Harm

(C.A.);

* Plaintiff Only--Risk

Dulieu v. White & Sons, [1901] 2 K.B. 669;
D.L.R. (3d) 424 (C.A.);
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158
(Sask. Dist. Ct.);

* Plaintiff Harmed And Third Party Harmed
* Spouse

1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
(H.C.).
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to the amount of damages 10 O.W.N. 135 (C.A.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Other Family Relationships

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);

* Engaged


#30. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY RISK--PARENT
* RELEVANT BY ANALOGY:
* Plaintiff Only--Harm


* Plaintiff Only--Risk

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* Plaintiff Harmed And Third Party Harmed

* Parent

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Other Family Relationships

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
1 O.R. 394, 54 D.L.R. (2d) 15 (C.A.);
1 All E.R. 169;
Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
(H.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to
the amount of damages 10 O.W.N. 135 (C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);

* Engaged

255 (S.C.);

#31. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY RISK--SIBLING
* RELEVANT BY ANALOGY:
* Plaintiff Only--Harm

(C.A.);

* Plaintiff Only--Risk

Dulieu v. White & Sons, [1901] 2 K.B. 669;
D.L.R. (3d) 424 (C.A.);
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158
(Sask. Dist. Ct.);

* Plaintiff Harmed and Third Party Harmed
* Sibling

Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* Other Family Relationships

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to the amount of damages 10 O.W.N. 135 (C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Engaged

* Other Sibling Cases
Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

#32. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINIFF HARMED AND THIRD PARTY RISK--LIVING TOGETHER
* RELEVANT BY ANALOGY:
* Plaintiff Only--Harm


* Plaintiff Only--Risk
Dulieu v. White & Sons, [1901] 2 K.B. 669.;

* Plaintiff Harmed And Third Party Harmed
* Spouse
Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to the amount of damages 10 O.W.N. 135 (C.A.);
Gannon v. Gray, [1973] Qd. R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Other Family Relationships

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Cameron v. Maraccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);

* Engaged


#33. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF HARMED AND THIRD PARTY RISK--ENGAGED
* RELEVANT BY ANALOGY:
* Plaintiff Only--Harm


* Plaintiff Only--Risk

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* Plaintiff Harmed--Third Party Harmed

* Engaged

* **Spouse**

Montgomery v. Murphy (1982), 37 O.R. (2d) 631, 136 D.L.R. (3d) 525 (H.C.);
McLaughlin v. Toronto Railway Co. (1916), 9 O.W.N. 407, varied as to the amount of damages 10 O.W.N. 135 (C.A.);
Gannon v. Gray, [1973] Qd R. 411 (S.C.);
Richters v. Motor Tyre Service Pty. Ltd., [1972] Qd. R. 9 (S.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* **Other Family Relationships**

Brice v. Brown, [1984] 1 All E.R. 997 (Q.B.);
Austin v. Mascarin, [1942] O.R. 165, [1942] 2 D.L.R. 316 (H.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);

#34. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* **PLAINTIFF HARMED AND THIRD PARTY RISK--UNRELATED**
* **RELEVANT BY ANALOGY:**
* **Plaintiff Only--Harm**


* **Plaintiff Only--Risk**

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* **CONTRA:**

Victorian Railways Commissioners v. Coultas (1888), 13 App. Cas. 222 (P.C.);
Taylor v. British Columbia Electric Railway Co. (1911), 16 B.C.R. 109, 17 W.L.R. 470 (C.A.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
#35. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF AND THIRD PARTY AT RISK--CHILD
* RELEVANT BY ANALOGY:

* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff--Near Miss--Third Party Harmed

* Child

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Other Family Relationships

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Third Party--Child--Minor Injury--Lucky Escape--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:

* Third Party--Child--Minor Injury--Lucky Escape--Witness


#36. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF AND THIRD PARTY AT RISK--SPOUSE
* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;
* Plaintiff Near Miss and Third Party Harmed

* Spouse

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Third Party—Child—Minor Injury—Lucky Escape—Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:

* Third Party—Child—Minor Injury—Lucky Escape—Witness


#37. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF AND THIRD PARTY AT RISK—PARENT
* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff—Near Miss—Third Party Harmed

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
* Other Parent Cases

Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* Third Party—Minor Injury—Lucky Escape—Witness—Child

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:

* Third Party—Child—Minor Injury—Lucky Escape—Witness


#38. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF AND THIRD PARTY AT RISK—SIBLING
* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff—Near Miss—Third Party Harmed

* Sibling

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* Other Family Relationships

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Third Party—Minor Injury—Lucky Escape—Witness—Child

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
* CONTRA:

* Third Party--Child--Minor Injury--Lucky Escape--Witness


#39. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF AND THIRD PARTY AT RISK--LIVING TOGETHER
* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;

* Plaintiff--Near Miss-Third Party Harmed
* Spouse

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Third Party--Minor Injury--Lucky Escape--Witness--Child

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:

* Third Party--Child--Minor Injury--Lucky Escape--Witness


#40. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF AND THIRD PARTY AT RISK--ENGAGED
* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* Engaged


* Plaintiff—Near Miss—Third Party Harmed

* Spouse

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

#41. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* PLAINTIFF AND THIRD PARTY AT RISK--UNRELATED
* RELEVANT BY ANALOGY:
* Plaintiff Only

Dulieu v. White & Sons, [1901] 2 K.B. 669;
Taylor v. Weston Bakeries Ltd. (1976), 1 C.C.L.T. 158 (Sask. Dist. Ct.);

* CONTRA:

Victorian Railways Commissioners v. Coulta (1888), 13 App. Cas. 222 (P.C.);
#42. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--CHILD--WITNESS

* CASES ON POINT:

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Other Family Relationships

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* RELEVANT BY ANALOGY:

* Injury--Related--Witness

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Not Witnessed--Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
#43. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SPOUSE--WITNESS
* CASES ON POINT:

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* RELEVANT BY ANALOGY:

* Injury--Related--Witness

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Not Witnessed--Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
(S.C.).

#44. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* DEATH—PARENT—WITNESS
* CASES ON POINT:

* Other Family Relationships

C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* RELEVANT BY ANALOGY:

* Other Parent Cases

Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);

* Injury—Related—Witness

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death—Related—Plaintiff Nearby and Attended

E.R. 1074 (C.A.);
C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90,
73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);

* Injury—Related—Plaintiff Nearby and Attended

141 (H.C.).
* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

#45. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--DEATH--WITNESS--SIBLING

* CASES ON POINT:

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Other Family Relationships

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* RELEVANT BY ANALOGY:

* Other Sibling Cases

Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* Injury--Related--Witness

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related or Injury--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

#46. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--LIVING TOGETHER--WITNESS
* RELEVANT BY ANALOGY:

* Spouse

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* RELEVANT BY ANALOGY:

* Injury--Related--Witness

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

#47. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* RELEVANT BY ANALOGY:
* DEATH--WITNESS--ENGAGED

* Spouse

Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Witness

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);

* Death or Injury--Not Witnessed--Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Engaged

* Plaintiff Harmed--Third Party Harmed--Engaged


* Not Related


* CONTRA:

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Beaulieu v. Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

#48. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--PLAINTIFF NEARBY AND ATTENDED--CHILD

* CASES ON POINT:

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* RELEVANT BY ANALOGY

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);
#49. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SPOUSE--PLAINTIFF NEARBY AND ATTENDED
* CASES ON POINT:

Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);
#50. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--PARENT--PLAINTIFF NEARBY AND ATTENDED
* CASES ON POINT:

* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

#51. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SIBLING--PLAINTIFF NEARBY AND ATTENDED
* CASES ON POINT:

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Other Family Relationships

C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);

* RELEVANT BY ANALOGY

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Sibling Cases

Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:
Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94,
39 S.R. (N.S.W.) 173 (H.C.);

#52. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--LIVING TOGETHER--PLAINTIFF NEARBY AND ATTENDED
* RELEVANT BY ANALOGY:

* Spouse
* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

#53. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--ENGAGED--PLAINTIFF NEARBY AND ATTENDED
* RELEVANT BY ANALOGY:

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death or Injury--Related--Not Witnessed

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Plaintiff Harmed--Third Party Harmed--Engaged

15 S.A.S.R. 255 (S.C.);

* Not Related


* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94,
39 S.R. (N.S.W.) 173 (H.C.);

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396
(H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);

#54. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--CHILD--TRACES OF INCIDENT
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Other Family Relationships


* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#55. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SPOUSE--TRACES OF INCIDENT
* RELEVANT BY ANALOGY:


* Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#56. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--PARENT--TRACES OF INCIDENT
* RELEVANT BY ANALOGY:

* Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Other Parent Cases

Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#57. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SIBLING--TRACES OF INCIDENT
* RELEVANT BY ANALOGY:

* Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Sibling Cases

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94,
39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
#58. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--LIVING TOGETHER--TRACES OF INCIDENT
* RELEVANT BY ANALOGY:

  affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94,
  39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident

  C.A.);
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R.
  (2d) 715 (C.A.);
  D.L.R. (3d) 424 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
  (B.C.S.C.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
  119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#59. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--ENGAGED--TRACES OF INCIDENT
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
  affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Plaintiff Harmed--Third Party Harmed--Engaged


* Not Related


* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v. Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

#60. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--CHILD--HOSPITAL VISIT
* CASES ON POINT:

* RELEVANT BY ANALOGY:

* Injury--Related--Hospital Visit

* Child


* Other Family Relationships

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident


Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);


Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);


Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);

Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#61. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SPOUSE--HOSPITAL VISIT

* RELEVANT BY ANALOGY


affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Family Relationships

* CONTRA:
* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#62. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:
* DEATH--PARENT--HOSPITAL VISIT
* RELEVANT BY ANALOGY
* Other Family Relationships
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
* Other Parent Cases
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);
* CONTRA:
* Plaintiff Had Insufficient Exposure to Incident
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#63. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SIBLING--HOSPITAL VISIT
* RELEVANT BY ANALOGY

* Other Family Relationships

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Sibling Cases

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#64. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY DEATH--HOSPITAL VISIT--LIVING TOGETHER
* RELEVANT BY ANALOGY:
* Spouse

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

Other Family Relationships

(S.C.);

* CONTRA:
* Plaintiff Had Insufficient Exposure to Incident

C.A.);
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R.
(2d) 715 (C.A.);
D.L.R. (3d) 424 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
(B.C.S.C.).
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#65. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* THIRD PARTY DEATH--HOSPITAL VISIT--ENGAGED
* RELEVANT BY ANALOGY:

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
(S.C.);

* Plaintiff Harmed--Engaged

15 S.A.S.R. 255 (S.C.);

* CONTRA:
* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396
(H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.).
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v. Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#66. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH—CHILD—IMMINENT ACCIDENT
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
#67. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SPOUSE--IMMINENT ACCIDENT
* RELEVANT BY ANALOGY:
  * Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:
  * Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);

#68. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--PARENT--IMMINENT ACCIDENT
* RELEVANT BY ANALOGY:
  * Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Other Parent Cases

Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#69. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--SIBLING--IMMINENT ACCIDENT
* RELEVANT BY ANALOGY:

* Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Other Sibling Cases

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
#70. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--LIVING TOGETHER--IMMINENT ACCIDENT
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#71. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* DEATH--ENGAGED--IMMINENT ACCIDENT
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Plaintiff Harmed--Third Party Harmed--Engaged


* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v. Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

#72. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

*INJURY--CHILD--WITNESS
* CASES ON POINT:

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Spouse


* RELEVANT BY ANALOGY:

* Death--Related--Witness

* Child

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Other Family Relationships

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);

* Injury--Related--Plaintiff Nearby and Attended

* Minor Injury—Lucky Escape—Related—Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death—Related—Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Death or Injury—Not Witnessed—Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

#73. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY—WITNESS—SPOUSE

* CASES ON POINT:


* Other Family Relationships

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* RELEVANT BY ANALOGY:

* Death—Related—Witness

* Spouse

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Walker v. Broadfoot, [1938] O.W.N. 173 (H.C.);
* Other Family Relationships

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);

* Death or Injury--Not Witnessed--Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

#74. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--WITNESS--PARENT
* RELEVANT BY ANALOGY


* Death--Related--Witness

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Injury--Related--Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90,
73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Death or Injury--Not Witnessed--Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
(S.C.);

* Other Parent Cases

Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

#75. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--WITNESS--SIBLING

* CASES ON POINT:

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);
* RELEVANT BY ANALOGY:

* Death--Related--Witness

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
  C.C.L.T. 60 (C.A.);

* Injury-Related-Plaintiff Nearby and Attended

  141 (H.C.);

* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

  E.R. 1074 (C.A.);
  C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90,
  73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Death or Injury--Not Witnessed--Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
  affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
  (S.C.);

* Other Sibling Cases

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);
#76. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY—WITNESS—LIVING TOGETHER
* RELEVANT BY ANALOGY:

* Spouse


* Other Family Relationships

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related—Witness

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Injury--Related—Plaintiff Nearby and Attended


* Minor Injury--Lucky Escape—Related—Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related—Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Death or Injury--Not Witnessed--Related

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

#77. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--WITNESS--ENGAGED
  * RELEVANT BY ANALOGY:
    Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* RELEVANT BY ANALOGY:

* Death--Related--Witness
  Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
  Walker v. Broadfoot, [1958] O.W.N. 173 (H.C.);
  Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);

* Injury--Related--Plaintiff Nearby and Attended

* Minor Injury--Lucky Escape--Related--Witness
  Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
  Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended
  Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
  Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
  Benson v. Lee, [1972] V.R. 879 (S.C.);
  Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Death or Injury--Not Witnessed--Related
  Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
avfirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
(S.C.);

* Plaintiff Harmed--Third Party Harmed--Engaged

15 S.A.S.R. 255 (S.C.);

* CONTRA:

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396
(H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v. Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

#78. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* THIRD PARTY INJURY--NEARBY AND ATTENDED--CHILD
* RELEVANT BY ANALOGY

141 (H.C.);

* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Plaintiff Nearby and Attended

* Child

E.R. 1074 (C.A.);
C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90,
73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

#79. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* CASES ON POINT:
* THIRD PARTY INJURY--NEARBY AND ATTENDED--SPOUSE


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

#80. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--NEARBY AND ATTENDED--PARENT
* CASES ON POINT


* Minor Injury--Lucky Escape--Related--Witness

Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Other Parent Cases

Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

#81. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--NEARBY AND ATTENDED--SIBLING
* CASES ON POINT:


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
* Other Sibling Cases

Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

#82. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--NEARBY AND ATTENDED--LIVING TOGETHER
* RELEVANT BY ANALOGY:


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);
#83. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--NEARBY AND ATTENDED--ENGAGED
* RELEVANT BY ANALOGY:


* Minor Injury--Lucky Escape--Related--Witness

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Death--Related--Plaintiff Nearby and Attended

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Fenn v. City of Peterborough (1976), 14 O.R. (2d) 137, 1 C.C.L.T. 90, 73 D.L.R. (3d) 177, varied 25 O.R. (2d) 399, 9 C.C.L.T. 1 (C.A.);
Benson v. Lee, [1972] V.R. 879 (S.C.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* Plaintiff Harmed--Third Party Harmed--Engaged


* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
#84. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--TRACES OF INCIDENT--CHILD
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Other Family Relationships
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* CONTRA:
Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#85. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--TRACES OF INCIDENT--SPOUSE
* RELEVANT BY ANALOGY:

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Family Relationships
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#86. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--TRACES OF INCIDENT--PARENT
* RELEVANT BY ANALOGY:

* Other Family Relationships
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Plaintiff Harmed and Third Party Harmed--Parent
Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);
* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#87. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--TRACES OF INCIDENT--SIBLING
* RELEVANT BY ANALOGY:

* Other Family Relationships
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);
* Plaintiff--Near Miss--Third Party Harmed--Sibling

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94, 39 S.R. (N.S.W.) 173 (H.C.);
* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
(B.C.S.C.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#88. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* THIRD PARTY INJURY--TRACES OF INCIDENT--LIVING TOGETHER
* RELEVANT BY ANALOGY:

* Spouse
affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Family Relationships
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
(S.C.);

* CONTRA:
Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94,
39 S.R. (N.S.W.) 173 (H.C.);

* Plaintiff Had Insufficient Exposure to Incident
C.A.);
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R.
(2d) 715 (C.A.);
D.L.R. (3d) 424 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
(B.C.S.C.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
#89. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--TRACES OF INCIDENT--ENGAGED

* RELEVANT BY ANALOGY:

* Spouse

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Family Relationships

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Not Related


* Plaintiff Harmed—Third Party Harmed—Engaged

15 S.A.S.R. 255 (S.C.);

* CONTRA:

Chester v. Waverley Municipal Council (1938), 62 C.L.R. 1, 56 W.N. 94,
39 S.R. (N.S.W.) 173 (H.C.);

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

* Plaintiff Had Insufficient Exposure to Incident

C.A.);
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R.
(2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
(B.C.S.C.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#90 THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT
SITUATION:

* THIRD PARTY INJURY--HOSPITAL VISIT--CHILD

* CASES ON POINT:

(S.C.);

* Other Family Relationships

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* RELEVANT BY ANALOGY:

* Third Party Injury--Imminent Accident

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

C.A.);
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R.
(2d) 715 (C.A.);
D.L.R. (3d) 424 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
(B.C.S.C.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.)
119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
#91. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* CASES ON POINT:
* THIRD PARTY INJURY--HOSPITAL VISIT--SPOUSE


* Other Family Relationships


* RELEVANT BY ANALOGY:

* Third Party Injury--Imminent Accident
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#92. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* CASES ON POINT:
* THIRD PARTY INJURY--HOSPITAL VISIT--PARENT

* Other Family Relationships
* RELEVANT BY ANALOGY:

* Third Party Injury—Imminent Accident
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

*Other Parent Cases
* Plaintiff Harmed and Third Party Harmed

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident
Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#93. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--HOSPITAL VISIT--SIBLING

* CASES ON POINT:

* Other Family Relationships

* RELEVANT BY ANALOGY:

* Third Party Injury—Imminent Accident
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
*Other Sibling Cases
* Plaintiff—Near Miss—Third Party Harmed

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#94. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--HOSPITAL VISIT--LIVING TOGETHER
* RELEVANT BY ANALOGY:

*Spouse

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Other Family Relationships


* Third Party Injury--Imminent Accident

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);
* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#95. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--HOSPITAL VISIT--ENGAGED
* RELEVANT BY ANALOGY:

* Spouse


* Other Family Relationships

affirming 33 S.A.S.R. 254 (Sup. Ct. F.C.);

* Third Party Injury--Imminent Accident
Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Not Related


* Other Engaged Cases
* Plaintiff Harmed--Third Party Harmed

* CONTRA:
* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);

#96. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--DISFIGUREMENT OR PERMANENT ALTERATION--CHILD
* RELEVANT BY ANALOGY:

S. v. Distillers Co. (Biochemicals) Ltd., [1970] 1 W.L.R. 114,

* The following two cases deal with alteration or possible alteration to dead bodies. By analogy if one can recover for shock in the following situations one should be able to recover for the shock resulting from a drastic change in a living human being.

* CONTRA:


* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);

#97. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--DISFIGUREMENT OR PERMANENT ALTERATION--SPOUSE
* RELEVANT BY ANALOGY:


* The following two cases deal with alteration or possible
* alteration to dead bodies. By analogy if one can recover
* for shock in the following situations one should be able to
* recover for the shock resulting from a drastic change in
* a living human being.


* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#98. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--DISFIGUREMENT OR PERMANENT ALTERATION--PARENT
* RELEVANT BY ANALOGY:


* The following two cases deal with alteration or possible alteration to dead bodies. By analogy if one can recover for shock in the following situations one should be able to recover for the shock resulting from a drastic change in a living human being.

Owens v. Liverpool Corporation, [1939] 1 K.B. 394 (C.A.);

* Other Parent Cases
* Plaintiff Harmed and Third Party Harmed

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#99. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--DISFIGUREMENT OR PERMANENT ALTERATION--SIBLING
* RELEVANT BY ANALOGY:

* The following two cases deal with alteration or possible alteration to dead bodies. By analogy if one can recover for shock in the following situations one should be able to recover for the shock resulting from a drastic change in a living human being.

Edmonds v. Armstrong Funeral Home Ltd., [1931] 1 D.L.R. 676 (Alta. S.C-A.D.);
Owens v. Liverpool Corporation, [1939] 1 K.B. 394 (C.A.);

* Other Sibling Cases
* Plaintiff--Near Miss--Third Party Harmed

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#100. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--DISFIGUREMENT OR PERMANENT ALTERATION--LIVING TOGETHER
* RELEVANT BY ANALOGY:


* The following two cases deal with alteration or possible alteration to dead bodies. By analogy if one can recover for shock in the following situations one should be able to recover for the shock resulting from a drastic change in a living human being.

Owens v. Liverpool Corporation, [1939] 1 K.B. 394 (C.A.);

* CONTRA:


* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
The following cases are relevant to your facts:

* THIRD PARTY - DISFIGUREMENT OR PERMANENT ALTERATION - ENGAGED


* The following two cases deal with alteration or possible alteration to dead bodies. By analogy if one can recover for shock in the following situations one should be able to recover for the shock resulting from a drastic change in a living human being.

Owens v. Liverpool Corporation, [1939] 1 K.B. 394 (C.A.);

* Plaintiff harmed - Third Party harmed


* Not related


* CONTRA:


* Plaintiff had insufficient exposure to incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, (1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

#102. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--IMMINENT ACCIDENT--CHILD
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
#103. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--IMMINENT ACCIDENT--SPOUSE
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#104. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--IMMINENT ACCIDENT--PARENT
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Other Parent Cases
* Plaintiff Harmed and Third Party Harmed

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#105. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--IMMINENT ACCIDENT--SIBLING

* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Other Sibling Cases
* Plaintiff--Near Miss--Third Party Harmed

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
#106. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--IMMINENT ACCIDENT--LIVING TOGETHER
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);

#107. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY INJURY--IMMINENT ACCIDENT--ENGAGED
* RELEVANT BY ANALOGY:

Hambrook v. Stokes Brothers, [1925] 1 K.B. 141 (C.A.);

* Plaintiff Harmed--Third Party Harmed
* Engaged


* Not Related


* CONTRA:

* Plaintiff Had Insufficient Exposure to Incident

Babineau v. MacDonald (No. 2) (1975), 59 D.L.R. (3d) 671, 10 N.B.R. (2d) 715 (C.A.);
Bourque v. Surette (1978), 23 N.B.R. (2d) 357, 44 A.P.R. 357 (Q.B.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Pratt and Goldsmith v. Pratt, [1975] V.R. 378 (Sup. Ct. F.C.);
* Not a Close Enough Relationship to the Victim
Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

#108. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--MINOR INJURY--LUCKY ESCAPE--WITNESS--CHILD
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:

#109. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--MINOR INJURY--LUCKY ESCAPE--WITNESS--SPOUSE
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:
#110. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--MINOR INJURY--LUCKY ESCAPE--WITNESS--PARENT
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Other Parent Cases
* Plaintiff Harmed and Third Party Harmed

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);

* CONTRA:


#111. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--MINOR INJURY--LUCKY ESCAPE--WITNESS--SIBLING
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Other Sibling Cases
* Plaintiff--Near Miss--Third Party Harmed

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);

* CONTRA:

#112. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--MINOR INJURY--LUCKY ESCAPE--WITNESS--LIVING TOGETHER
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:


#113. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--MINOR INJURY--LUCKY ESCAPE--WITNESS--ENGAGED
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Plaintiff Harmed--Third Party Harmed
* Engaged


* Not Related


* CONTRA:


* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);
#114. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--NEAR MISS--WITNESS--CHILD
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:

#115. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--NEAR MISS--WITNESS--SPOUSE
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:

#116. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--NEAR MISS--WITNESS--PARENT
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Other Parent Cases
  * Plaintiff Harmed and Third Party Harmed

Canada Trust Co. v. Porter (1980), 2 A.C.W.S. (2d) 428 (Ont. C.A.);
Andrew v. Williams, [1967] V.R. 831 (Sup. Ct. F.C.);
Tsanaktsidis v. Oulianoff (1980), 24 S.A.S.R. 500 (S.C.);

* CONTRA:
#117. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--NEAR MISS--WITNESS--SIBLING
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Other Sibling Cases
* Plaintiff--Near Miss--Third Party Harmed

Howes v. Crosby (1984), 45 O.R. (2d) 449, 6 D.L.R. (4th) 698, 29 C.C.L.T. 60 (C.A.);
Storm v. Geeves, [1965] Tas. S.R. 252 (S.C.);
Cameron v. Marcaccini (1978), 87 D.L.R. (3d) 442 (B.C.S.C.);

* CONTRA:


#118. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--NEAR MISS--WITNESS--LIVING TOGETHER
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* CONTRA:


#119. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY--NEAR MISS--WITNESS--ENGAGED
* RELEVANT BY ANALOGY:

Boardman v. Sanderson, [1964] 1 W.L.R. 1317 (C.A.);
Pollard v. Makarchuk (1958), 26 W.W.R. 22 (Alta. S.C.);

* Plaintiff Harmed--Third Party Harmed
* Engaged


* Not Related


* CONTRA:


* Not a Close Enough Relationship to the Victim

Hay (or Bourhill) v. Young, [1943] A.C. 92, [1942] 2 All E.R. 396 (H.L.);
Bunyan v. Jordan (1937), 57 C.L.R. 1, 54 W.N. 61, 37 S.R. (N.S.W.) 119 (H.C.);
Rowe v. McCartney, [1976] 2 N.S.W.L.R. 72 (C.A.);
Beaulieu v Sutherland (1986), 35 C.C.L.T. 237 (B.C.S.C.);

#120. THE FOLLOWING CASES ARE RELEVANT TO YOUR FACT SITUATION:

* THIRD PARTY-RESCUER
* CASES ON POINT:

Chadwick v. British Transport Commission, [1967] 2 All E.R. 945 (Q.B.);
Mount Isa Mines Ltd. v. Pusey (1970) 45 ALJR 88;

#121. Nothing at all

nix;
APPENDIX D

CASE FILE
CASE FILE

CANADA/PLAINTIFF


FACTS

The mother plaintiff was sitting beside her young son in a motor vehicle which was negligently struck by the defendant. The son died as a result of the accident and the mother sought damages for nervous shock in witnessing the death of her son. The plaintiff herself sustained injuries as a result of the accident and also physical ill-health as a result of the shock. The defendant attempted to have the statement of claim struck on the basis that the court was bound by Coulta but the court refused to grant the motion.

#

CANADA/PLAINTIFF


FACTS

The defendant told a person that the plaintiff's son, who was at that time absent from home, had hanged himself from a telephone pole. The recipient of the news asked the defendant whether it was true, to which the defendant replied, "yes." The recipient of the information told a third person who told a fourth person who told a fifth person. Ultimately, the plaintiff received the news and, believing it to be true, suffered nervous shock which resulted in a physical illness. The story started by the defendant was wholly false. The court held the defendant liable for inflicting intentional nervous shock upon the plaintiff. The failure of the defendant to deny originating the false story or to explain it persuaded the court to impute intention on the part of the defendant.

#

CANADA/PLAINTIFF

FACTS


The plaintiff, her sister and her young niece were riding in a motor vehicle which was negligently struck by the defendant. The plaintiff witnessed her sister bleeding profusely while pinned in the wreckage of the car. The plaintiff sustained her own injuries but was able to accompany her sister to the hospital and attend to her in the
ambulance. The plaintiff was informed that her sister had died shortly after treatment in the hospital. The plaintiff recovered damages for the nervous shock sustained: in witnessing the accident scene and condition of her injured sister and niece; in accompanying her sister in the ambulance; and, in being informed of her sister's death in the hospital.

# CANADA/PLAINTIFF


FACTS

The defendant nightclub negligently supplied liquor to a patron to the extent that he was intoxicated, drove his car through a stop sign, and struck another car. The child plaintiff and his parents were riding in the car which the defendant struck. The child was injured and also suffered nervous shock as a result of learning of his parents' deaths.

# CANADA/PLAINTIFF


FACTS

The plaintiff was negligently and erroneously informed by the defendant that she no longer owned a piece of land. As a result of the news she received, the plaintiff suffered nervous shock and recovered damages.

# CANADA/PLAINTIFF


FACTS

The defendant negligently backed his car into a parked car in which the plaintiff infant and grandmother were seated. The defendant dented the parked car and shattered glass into the interior. No physical injuries were sustained as a result of the accident but subsequently the plaintiff infant displayed a personality change marked by a refusal to eat and sleep properly, anxiety and hyperkinesis. The court allowed the infant plaintiff's claim for mental anxiety.
SYMPTOMS

P. 738 ... "My reading of the evidence, particularly that of Dr. Patterson, leads me to conclude that the infant plaintiff's initial state of anxiety was not merely continued as the result of his mother's inability to cope, but was exacerbated by it and developed into what Dr. Patterson described as "a behaviour disorder." The infant, who prior to the collision had manifested no symptoms of a behaviour disorder became, after the accident, a hyperkinetic child. I believe that the legal effect of the mother's role has to be determined in the context of that reality.

Dealing with the first question, it would appear from the evidence of Dr. Patterson that the infant's restless, negative, hyperkinetic behaviour is indeed a manifestation or expression of a high degree of anxiety and insecurity."

P. 742 ... "For at least a month after the accident Brent would wake up crying. It would make Mrs. Duwyn between one-half hour to two hours to get him back to sleep. During the days he was not sleeping as he had been before the accident. He would not eat his meals. Before the accident he had always been a good eater. Also, before the accident he had been an affectionate child. After it his parents could not get close to him to hold him or kiss him goodnight. He ceased being affectionate. His personality changed in other ways. I will not go into all the details respecting his behaviour beyond saying that it was very bizarre and destructive. He was continually on the go. When restrained by his parents he would start to scream and yell until the perspiration poured down his face."

CANADA/PLAINTIFF

FACTS


The defendants permitted an autopsy to be performed on the body of the deceased without the consent of the plaintiff, the husband of the deceased. As a result of the unauthorized autopsy, the plaintiff claimed mental anguish and suffering. The court permitted recovery but did not base its reasoning on Wilkinson v. Downton.

#
FACTS

As a result of the defendant's negligence in excavating, a gas explosion destroyed the plaintiff's house. The plaintiff's wife and three children were inside the home at the time of the accident. His children were killed and his wife was seriously injured. The plaintiff arrived home minutes after the explosion and witnessed his wife and one dead child being loaded into an ambulance. The plaintiff recovered for the nervous shock he suffered as a result of seeing his wife and dead child following the accident. The plaintiff suffered from a loss of pride, self-respect and a sense of blame as well as fear of the future as a result of sustaining the shock.

SYMPTOMS

P. 168 ... "Mr. and Mrs. Fenn lived together in their apartment from September, when she was discharged from hospital, until November, when Gerard attempted suicide. He was hospitalized and so was she.

After the explosion, Mr. Fenn began to drink excessively and was taking tranquilizers and sleeping pills. Part of the reason for taking pills and alcohol was to try to avoid the recurring nightmares he had in which his children, caught in some trap or danger, would cry out to him and he would not be able to reach them.

He is a different person now then he was before January 8, 1973; he does not seem to have the will to succeed at life. He has moved through several jobs since the explosion. Before the accident he was steadily employed as an electro-plater. He has also undergone a vasectomy, an operation occasioned by his fear of having children and some catastrophe befalling them.

I accept the opinion of Dr. Hull, a psychiatrist, that the trauma of the explosion and fire was the specific trigger that produced Mr. Fenn's mental illness. ...

There is no doubt that Mr. Fenn suffered, and still suffers, from grief and for this he cannot recover. He has suffered much more than grief, however, by having been present at the scene of the accident shortly after the explosion and by attempting to rescue his children and being thwarted in his attempts. After the initial grief had begun to wear away, the plaintiff's state of mind could be summarized as loss of pride, self-respect and a sense of blame as well as fear of the future. He has become unstable and is no longer the well-adjusted, hard-working young man that he was before the accident."
The plaintiff mother was strolling with her family when a streetcar belonging to the defendant was negligently backed into them. The streetcar ran over and killed two of the plaintiff's children and knocked the plaintiff down so that she was brought to her hands and knees. However, the plaintiff did not sustain any physical injuries as a result of the fall. The plaintiff sued on the basis that she suffered nervous shock at seeing her two children killed. Her nervous shock manifested itself in symptoms of headaches, dizziness, insomnia, loss of memory and bodily weakness. The plaintiff recovered on the basis that the jury found that physical injury was sustained.

SYMPTOMS

P. 311 ..."The evidence, however, showed that prior to the accident Mrs. McNally's health had been good, that she had been strong and well, but that ever since the accident she had been suffering from nervous shock, from headaches and dizziness, and from insomnia and loss of memory, as well as bodily weakness. Dr. Rothwell, in his evidence, stated that, while there had been no organic injury, that is, no destruction of any part of the body, Mrs. McNally appeared to him to be suffering from a form of neurosis called neurasthenia, and he gave it as his opinion that this condition was due to the "experience of the shock of the accident, and also the mental worry that continued on after the accident", and he pointed out that from the shock there might be a real physical reaction. He further said that a woman in pregnancy, as Mrs. McNally was at the time, was more susceptible to nervous shock and permanent nervous disabilities than she otherwise would be, and he intimated that Mrs. McNally's condition, if allowed to become permanent, might lead to insanity."

P. 317 ..."According to her own evidence, she has been nervous since the accident; somewhat sleepless at night; cannot do her work as well as usual, but in reality has taken charge of her home and family; suffers from headaches and is dizzy at times. Dr. Rothwell testified that she was suffering from functional neurosis, which means that the nervous element in the body is not acting as it ordinarily would, and that such condition generally follows a great muscular and nervous exhaustion, or exhaustion of the body from sickness, and also from emotional shock; that there was no organic destruction or symptoms of any organic charge and that he believed the plaintiff was suffering from emotional shock."
P. 319 ... "It has been pointed out in recent judicial decisions that the nervous system is just as much a part of man's physical system as an arm or a limb, perhaps very much more important. The relation between fright or shock and the nervous structure of the body is a matter which depends upon scientific and medical testimony, and I do not see how a Court can lay down as a matter of law that, if negligence causes fright, and such fright in turn affects the nervous structure of the body in such a way as to cause injury to health, such injury cannot be a consequence which, in the ordinary course of things, would flow from the negligence of the defendant. On this point I agree with the reasoning and the conclusion of my brother Lamont."

**N.B. In this case, the court followed Coultas and stated that the law required physical injury to the plaintiff before recovery for nervous shock would be permitted. Here the jury found that the plaintiff did sustain physical injuries though the evidence clearly states that she did not suffer any physical injuries as a result of being knocked down by the streetcar. There was impact however. There is no evidence as to whether the plaintiff feared for her own safety. No damages were awarded on the basis of near-miss of serious injury.

# CANADA/PLAINTIFF


FACTS

The plaintiff mother was walking along the shoulder of a road holding her young daughter's hand when the girl was struck from behind by a car driven negligently by the defendant. The brother and sister of the victim were also walking with their mother and witnessed the accident. The father came to the scene immediately and attempted to give mouth to mouth resuscitation to his child but the young victim died. The entire family sued and recovered for nervous shock.

SYMPTOMS

P. 452 ... "As noted earlier, the attack is made on the awards to Susan and David. Janet was five at the time of her death, Susan was seven and David was sixteen.

(a) Susan

Janet had just started kindergarten and she and her sister Susan were very close. Living as they did in a rural setting, there were no
girls of their age in the immediate vicinity so they did everything together - sleeping, bathing, playing and attending school and Sunday school. The evidence was that Susan had not been able to replace her sister with friends. When she came to the hospital where Janet was, she acted "abnormally". In the early weeks after the accident Susan would wake up screaming. She still has nightmares sometimes and has to be awakened to stop the screaming."

(b) David

P. 453 ... "David witnessed his sister being hit and flying through the air some 20 ft. after the impact. He was hysterical at the scene of the accident and he still has "flashbacks" of the accident and the funeral. He remained away from school one week and he continues to have dreams and has difficulty sleeping some two years after the accident. His academic performance dropped in the year of the accident and he remains afraid to walk down the road: "I keep thinking it's going to happen again."

#

CANADA/PLAINTIFF


FACTS

The plaintiff passenger in a night train belonging to the defendant was hit by a metallic sign board which became detached from where it was hanging in the car. The plaintiff's husband, sitting beside her, received a serious cut on his head which had to be stitched. The plaintiff's wife was also struck but she sustained only a slight swelling on the top of her head. The plaintiff alleged that she suffered nervous shock and claimed that she miscarried as a result. Plaintiff's claim was permitted.

SYMPTOMS

P. 407 ... "The wife was also struck, but the extent of her outward injury was a slight swelling on the top of her head, according to the evidence of a medical man to whom they repaired, before they went home, for the purpose of having the husband's head stitched up. The wife was then in a nervous and excited condition. She swore that she was pregnant at the time. The main contest was as to whether she was ever pregnant, and whether certain appearances which the medical man who attended her (the one who stitched her husband's head) described were consistent with a miscarriage produced by the accident or were attributable to some diseased condition of the uterus."
The learned Chief Justice finds that the injury which she suffered, of whatever nature, it was, was the result of (1) the physical injury and (2) of shock resulting therefrom and (3) of the nervous excitement and shock caused by her being present while her husband's injuries were being attended to; but is unable to determine the respective proportions in which these three elements were contributing causes - he attaches more importance to the first and second than to the third."

**N.B. The case is not clear as to whether the nervous shock suffered was a result of the plaintiff's own injuries or as a result of witnessing the more serious injuries sustained by her husband. I would assert that it is more likely the former because of the date of the case; Coultas was still being followed and it mentions that the defendant was attempting to argue that the nervous shock was a result of seeing a doctor attend to her husband's injuries. #

**CANADA/PLAINTIFF**


**FACTS**

The victim, husband of the plaintiff, purchased a snowmobile with a defective clutch from the defendant. The husband suffered grievous injury while riding the vehicle. The plaintiff did not see the actual accident but came upon the aftermath of it, saw her injured husband, and suffered nervous shock as a result. The defendants attempted to have the plaintiff’s statement of claim struck but the court dismissed this motion. 

**CANADA/PLAINTIFF**


**FACTS**

The plaintiff and his wife were walking on the roadside when they were negligently struck by the defendant's vehicle. As a result, the plaintiff's wife was killed and the plaintiff was thrown to the ground and suffered some serious injuries to his lower back. The plaintiff also suffered severe depression and sought to recover damages for his mental injuries. The court held that the plaintiff was entitled to recover for any losses caused by his depression attributable to his own physical injuries and to the plaintiff's shock at actually
witnessing his wife being killed.

SYMPTOMS

P. 633 ... "There is another factor which seriously complicates this case. Since the accident he has suffered from a serious depression, which is well documented in the medical reports, all of which are exhibits and I do not intend to review them. His supervisor at Telesat, a Mr. Hollis, gave evidence of the change following the accident. He said that his performance after the accident was sub-par and that it was materially different than it was before the accident. He was aware of the plaintiff's complaints of low-back pain, but Mr. Hollis' major concern was the plaintiff's lack of enthusiasm and apparent lack of will to get at things and to get them done. He noticed substantial change in his attitude to work. He had sufficient misgivings about the plaintiff's capacity to carry on and adequately complete the tasks assigned to him, that he had the plaintiff replaced on August 18, 1978. It is my opinion that the decision by Mr. Hollis was a reasonable one in that, in the condition that the plaintiff was then in, he would not have been able to adequately perform the tasks that were ahead of him.

As I mentioned a moment ago, I do not intend to review the medical reports in any detail. All of them are exhibits, and in my opinion, the overwhelming burden of the medical evidence is that this man has been dramatically and seriously damaged as an economic entity. I find the opinion of Dr. Lim, set out on p. 2 of his report of March 2, 1981, to be very significant indeed. In the last paragraph of that report, which forms part of exhibit No. 4, he said in part as follows:

...I would emphasise that this unfortunate man has suffered a catastrophic loss of functional ability in his usual professional capacity, at least for the past three years and probably extending for years to come.

I think it fair to say that the burden of the medical evidence is that a very significant portion of his loss of functional ability is attributable to his depression. I do not doubt that there is a substantial amount of emotional overlay to his physical problems from his back.

... I keep in mind that in law no damages are recoverable for grief or sorrow caused by the death of another person. I would think it a reasonable corollary of that legal proposition, that damages are not recoverable for a depression which results from grief or sorrow caused by a person's death.

I am completely satisfied that this depression is factually, solely the result of this accident. I recognize and accept, that in part,
that depression results from grief and sorrow on the part of the plaintiff over the tragic loss of his wife. I think that the plaintiff cannot in law be compensated for that part of the depression which results from his grief and sorrow. As I said a moment ago, that depression in its entirety is factually directly the result of the defendants negligence. The depression, in my opinion, has made it completely unreasonable and unrealistic for anyone to expect that this plaintiff would have made the same efforts to find work that would be expected of him were he in good mental health."

CANADA/PLAINTIFF


FACTS

The plaintiff purchased bread from the defendant company and, while eating the bread, discovered broken pieces of glass. The plaintiff was able to remove the glass from within his mouth with no damage save a slight scratch of the throat. However, the plaintiff suffered extreme shock and excitement over the possible serious consequences and, from then on, he became nauseous whenever he attempted to eat bread. The plaintiff's claim for nervous shock was permitted and Coultas was not followed.

SYMPTOMS

P. 115 ... "The result of this excitement and fear of serious consequences and the shock suffered by finding himself in what he thought to be serious danger produced a deplorable condition of nausea which was renewed whenever he attempted to eat bread."

CANADA/PLAINTIFF


FACTS

The plaintiff mother suffered nervous shock upon seeing her daughter thrown out of her car when it was involved in an accident. The daughter's body came to rest very close to the wheel of another vehicle and the mother believed that her daughter had died although the daughter in fact suffered only superficial injuries. The mother recovered damages for nervous shock which manifested in symptoms of headaches, nausea and weight loss.
SYMPTOMS

P. 24 ... "Five days after the accident Mrs. Makarchuk consulted Dr. Shandro. ... At that time there was no manifestation of mental shock. Between October 5, 1955, and April 6, 1956, Mrs. Makarchuk saw Dr. Shandro and his associate Dr. Johnson, many times. During this time she was in a highly nervous and agitated condition, there were also severe headaches and a tendency to vomiting. Except for a brief period following discharge from a short stay in the hospital in March, 1956, there was no improvement. She went down in weight from 125 pounds to 90 pounds. The only treatment given by Drs. Shandro and Johnson was mild sedation. The slight physical injuries suffered in the accident had disappeared shortly after the accident.

On April 26, 1956, she was referred by Dr. Shandro to a psychiatrist, Dr. X, who examined her on April 30. He described her condition as being very bad - "in a mess", to use his own words. His diagnosis was an anxiety state with secondary depression and his secondary diagnosis was schizophrenia arrested short of psychotic. He placed her in the hospital and gave her electric shock therapy, insulin therapy and sedation, as well as psycho-assurance. She was readmitted to hospital twice later, apparently for insulin treatments. At the date of the trial she had recovered to the extent that her physical condition was good and her lost weight had been recovered. There remained a lack or slowness of memory. All of the medical witnesses commented on this and it was quite apparent from her evidence and her demeanor in the witness box. Dr. X estimated that there is a permanent reduction of from 30 per cent to 50 per cent of her original ability.

I find that Mrs. Makarchuk suffered mental shock which caused the condition that Dr. X. found when he examined her and which I have briefly described. I also find that it was as a result of seeing her daughter, apparently dead, on the pavement following the accident. Some of the condition was undoubtedly the result of a "compensation neurosis" - a condition frequently associated with pending claims for damages. I am not satisfied that this played a significant part in her condition. Both Dr. Hamilton and Dr. Spaner emphasized the importance of settlement and termination of litigation as a principal cure for such a condition. It is evident that a very marked improvement had taken place in this patient before the date of the trial.

I also find that there was no justification for the diagnosis of schizophrenia and there was certainly not sufficient evidence of depression to warrant the number of shock treatments that were given this patient. Whatever may be the extent of the injury remaining in the form of loss or slowness of memory, I am satisfied it is solely attributable to the treatment - electric shock and coma-inducing insulin - given by Dr. X. and cannot be referable to the accident or the shock she suffered at that time."
The plaintiff's husband was assaulted without provocation by the defendant. The husband was knocked down and rendered temporarily unconscious. The plaintiff, witnessing the incident, began to scream and then collapsed to the floor. The plaintiff sued for nervous shock which rendered her nervous and bedridden for a long period. The court awarded damages for the plaintiff's nervous shock and refused to follow Coultas.

**SYMPTOMS**

P. 118 ... "The injuries sustained by the female plaintiff were much more serious and permanent. She had to be carried home and put to bed. A physician was called who found her in a state of severe nervous excitement, crying bitterly and repeating the thought that her husband had been killed. Her heart rate was extremely high and her blood pressure was also high. Her face was badly swollen and she was rolling and tossing about in her bed. She remained under the physician's care for the period of some weeks during part of which she was in charge of a nurse. Then she was taken to a hospital where she was under further treatment for four weeks. Though her condition has since improved to some extent she has never completely recovered owing to the fact her nervous system has been permanently impaired. She is still under the care of her physician, who testified that it would have been absolutely impossible for her to attend the trial."

P. 119 ... "The learned trial Judge found .... that the shock which the female plaintiff sustained when she witnessed the assault had undermined her health and rendered her unable to perform her household duties."

P. 125 ... "It is not shown definitely that the wife actually saw the blows struck but she saw her husband fall to the floor and knew instantly what had happened. She fainted and was unconscious for some time. The next morning she was placed under the doctor's care and he called a graduate nurse to look after her. Later she was taken to the hospital for about a month but was still so ill at the time of the trial, three years after the event, that she was in no condition to attend and give evidence and is still under the doctor's care. Her heart rate and blood pressure are extremely high and she has suffered a complete nervous collapse."
FACTS

The plaintiff suffered nervous shock as a result of opening a package of bread in which several slices were blue in colour and two slices contained metal pieces in them. The plaintiff did not eat the bread and suffered no physical injury but she suffered from nervousness and emotional depressions and the shock intensified her existing mental ill-health. The plaintiff recovered for the nervous shock sustained.

SYMPTOMS

The shock intensified the plaintiff's existing mental ill-health and caused her to suffer from nervousness and emotional depressions.

FACTS

The plaintiff, tenant of an apartment owned by the defendants, was given notice of eviction, and consulted his solicitors, who advised him to remain in occupation. When the plaintiff refused to leave on the appointed day, the defendant B advised him by telephone that unless he was out by 5 p.m., B would "bring some guys over" and the plaintiff would "be in the hospital." There was a confrontation, designed by B to intimidate the plaintiff into vacating the premises speedily. In particular there was more talk of hospitalization.

The plaintiff had since adolescence been prone to acute panic attacks, attended by blackouts, vomiting and other physical symptoms. For these disorders he had latterly been receiving psychiatric care and medication. The defendant S did not know of this, but B did, having on occasion discussed the plaintiff's medical problem with him. On this occasion, the immediate confrontation was resolved by the arrival of the plaintiff's lawyer and the police.

The plaintiff brought an action for damages in tort, as well as for unlawful breach of the lease, and recovered. The behaviour of the defendant B, done with intent to effect the unlawful eviction of the plaintiff, was tortious. It was not, in the present case, necessary to consider the trespassory action of assault, for the facts brought the situation within the rule in Wilkinson v. Downton, [1897] 2 Q.B. 57,
governing the "intentional infliction of nervous shock".

SYMPTOMS

In the ensuing hours and days, the plaintiff suffered several blackouts and much vomiting, shaking and mental confusion. Despite the efforts of his doctors, his mental condition became progressively worse, leading to prolonged and total withdrawal, five suicide attempts, and successive periods in hospital. One consequence of all this was a protracted loss of income, a situation which the recurrence of panic attacks was threatening to render permanent.

P.146..."Since age 17, the plaintiff has been subject to acute panic panic attacks. He testified that such attacks are characterized by brief blackouts, vomiting, nausea, shaking and difficulty in focusing and in concentration, usually lasting between an hour and an hour and a half. The plaintiff also suffers from epilepsy, but the nature of his attacks from that ailment is different from acute panic attacks. Before 1980, the plaintiff controlled his panic attacks without psychiatric attention and without medication. Following his return to Ottawa from Halifax, for a 7-month period beginning in 1980, the plaintiff consulted Doctor Yvon LaPierre, a psychiatrist in the Department of Psychiatry and Pharmacology at the University of Ottawa, who was conducting research into acute panic disorders and who saw the plaintiff for regular visits, gradually decreasing in frequency, and placed him on a regime of medication..."

P.147-148..."The plaintiff gave evidence as to the effect which he said the events of October 1 had upon him. His evidence as to his symptoms was confirmed in some respects by friends who saw him on and after that date. The plaintiff said that, on that day, he experienced blackouts for brief periods, vomiting, uncontrollable shaking and confused thinking and expression. He spent much of that night in the bathroom vomiting and had three or four blackouts. On or about October 5, he saw Doctor LaPierre, who increased his medication. Over the next 3 months, he withdrew, remaining isolated with virtually no contact with the outside world. He stopped seeing his psychiatrist, his son and his friends. He was panicking up to 8 hours out of every 24. He felt incapable of writing and experienced an inability to concentrate or to focus. He made five suicide attempts before March 4, 1982, after the last of which he admitted himself to the Royal Ottawa Hospital, where he stayed from March 4 to April 15 under the care of a psychiatrist, Doctor Medina. Doctor Medina changed the medication the plaintiff was taking. Because of a reaction to his medication, the plaintiff was readmitted to the Royal Ottawa Hospital on May 3, 1982 and stayed until May 14, 1982, again under Doctor Medina's care. He was subsequently readmitted for a 3-day period to adjust the level of his medication."

..."His evidence was that, as a result of the events described, he could not work. He received, but turned down, a couple of job offers, because he felt incapable of working. He had no employment until January 1983,
when he worked for 3 weeks for Canada Post. Thereafter, he started getting severe panic attacks again, and he has not been employed since."

**CANADA/PLAINTIFF**


**FACTS**

The plaintiff, his wife and children were involved in a motor vehicle collision due to the defendant's negligence. The wife was thrown out of the vehicle and died as a result. The plaintiff suffered severe injuries and his children sustained minor injuries. After the collision, the plaintiff saw his wife lying outside the car bleeding profusely. As a result of seeing his wife's injuries the plaintiff suffered nervous shock and recovered.

**CANADA/PLAINTIFF**


**FACTS**

The plaintiff was driving a car in which her husband was a passenger. Owing to the negligence of the defendant, the plaintiff's car was struck by an oncoming train. As a result, the plaintiff's husband died. The plaintiff suffered nervous shock as a result of witnessing her husband's death and had to be admitted to a mental hospital. She suffered from severe depression and took her own life. The plaintiff's estate's claim for damages for mental shock was sustained.

**SYMPTOMS**

P. 173 ... "This to me is a very difficult case in which to assess the damages, mainly because of the death of the wife, that followed, and her illness immediately following this accident. We are told by medical experts that her mind was affected to such an extent that within a couple of weeks she was sent to the Ontario Hospital, which treats those mentally ill."

P. 174 ... "It would appear that at the time the wife was not seriously injured. No doubt she was frustrated and mentally worried about the outcome, but, as I said before, that is a matter that I am not allowed to take into consideration. Neither do I think I should take into consideration the fact that she afterwards died as the result of this collision."
"This unfortunate woman had to go to the mental hospital. She was allowed home on two or three occasions. There is evidence that she made attempts on her life on at least two occasions, and that she was a very depressed woman at times. There is no evidence to contradict the evidence of the psychiatrists, and they ascribed her resulting condition to the strain and stress caused by this terrible accident. I think I must find that she came to her death by reason of that accident and that it is the only logical conclusion I can come to."

CANADA/DEFENDANT


FACTS

The defendant was driving the plaintiff's three children to church when she negligently collided with a train. As a result of the collision, two of the plaintiff's children were killed and the third was seriously injured. The plaintiff's husband drove to the accident scene and saw the dead children. He then immediately drove home and told the plaintiff of the tragedy. Although the plaintiff's husband returned to the accident site, the plaintiff never went to the collision site. The plaintiff suffered nervous shock as a result of receiving the news. The plaintiff's claim was dismissed.


The victim was killed in an automobile accident for which the defendant was solely responsible. The victim's family was not at the scene of the accident. Upon being informed of the victim's death the plaintiff's mother and daughter of the victim, sought to recover damages for nervous shock. The action for damages for nervous shock was dismissed.


FACTS

The plaintiff and her two friends were walking at night along a road, three abreast when a vehicle driven by the 16-year-old defendant, struck and killed one of the plaintiff's companions. As her other
friend was hysterical, and the defendant had not stopped, the plaintiff was compelled to summon help. She saw the body and the pool of blood in which it lay. She now claimed damages for nervous shock and post-traumatic depression, sustained as a result of witnessing the accident and her friend's death. The dead girl had been a co-worker, some years younger than the plaintiff, whom the plaintiff had known for approximately 9 months. It was found that their friendship had been "good" but not "close". While there was conflicting evidence, it could not be concluded that the plaintiff had suffered post-traumatic stress disorder.

CANADA/DEFENDANT


FACTS

The victim, a passenger in a car driven negligently by the defendant, was killed as a result of an accident. The plaintiffs, parents of the victim, were not involved in the accident nor did they attend at the scene. They were advised of their son's death by the Parish priest. The plaintiffs' claim in damages for nervous shock suffered upon being informed of their son's death was dismissed.

CANADA/DEFENDANT


FACTS

The plaintiff's daughter was killed due to the defendant's negligent operation of a motor vehicle. The plaintiff was informed of the accident by telephone. He went to the scene of the accident and saw his daughter in a very serious condition. He attempted to give her medical attention as he saw a large pool of blood behind her head but he formed the impression that she was dead. He was subsequently informed that she died upon arrival at the hospital. As a consequence of witnessing the aftermath of the accident and of attempting to assist his daughter (the latter resulting in his arrival home covered in her blood) the plaintiff suffered nervous shock which prolonged his recovery from an earlier heart attack. The plaintiff's claim for nervous shock was denied.

**N.B. This case was decided before McLaughlin v. O'Brian, [1982] 2 W.L.R. 982, [1982] 2 All E.R. 298 (H.L.). It is doubtful that it would be decided the same way today.**
CANADA/DEFENDANT


FACTS

The plaintiff's husband was the sole occupant of a car which was involved in an accident caused by the negligence of the defendant. As a result of the collision the husband sustained serious injuries including a marked personality change. The plaintiff claimed that, as a result of her husband's injuries, she required psychiatric treatment for the nervous shock she suffered. The plaintiff's claim was not allowed.

#

CANADA/DEFENDANT


FACTS

The defendant negligently backed his car into a parked car in which the plaintiff's infant son and mother were seated. The defendant dented the parked car and shattered glass into the interior. No physical injuries were sustained as a result of the accident. The plaintiff mother of the infant was in a nearby building at the time of the accident and upon hearing the commotion, came out to see people gathered around her vehicle and hear her baby screaming. As a result of the accident, the plaintiff mother alleged nervous shock evidenced by her need to take tranquilizers. The mother's claim for nervous shock as a result of the incident was dismissed.

SYMPTOMS

P. 755 ... "From the foregoing it seems reasonably clear that the condition of emotional upset of which she justly complains was caused by the constant obligation of having to cope with Brent and not by the initial upset which she underwent immediately following the accident and, as such, is not recoverable (Hinz v. Berry, supra) but further, as indicated, I doubt whether, on the evidence, it qualifies as legally compensable nervous shock."
FACTS

The plaintiff mother was standing outside the door of her home anticipating the arrival of her son when she witnessed him being struck down by a truck. The child sustained a laceration at the base of his skull and his leg required amputation. The plaintiff claimed damages for nervous shock as a result of witnessing the accident but her claim was dismissed on the basis that she failed to prove nervous shock.

FACTS

The plaintiff sustained physical injuries and his wife was killed as a result of an accident for which the defendants were partly responsible. The plaintiff’s claim for damages for nervous shock was denied on the basis that the emotional condition of the plaintiff was not caused by either his own injuries or by witnessing his wife injured and dying before his eyes.

FACTS

The defendant newspaper negligently published an erroneous story that the plaintiff’s family had been killed in an accident. The plaintiff read the story and suffered nervous shock.

Kerwin J. and Locke J. held that no cause of action would lie for a negligent statement resulting in nervous shock.

Cartwright J. and Rinfret C.J.C. held that a cause of action would so lie and found the defendant in this case in breach of its duty to take care.

Estey J. found it unnecessary to decide whether or not a duty of care would lie regarding negligently made statements resulting in nervous shock, as the plaintiff failed to prove damages.
**N.B.** It would appear, therefore, that while the plaintiff's claim was dismissed, the question of whether or not a cause of action lies for negligently disseminated news has been left open by the Supreme Court of Canada.

**FACTS**

The plaintiff and her family were involved in a motor vehicle accident in which her husband and daughter were killed and she and her son were injured. The plaintiff alleged that she suffered nervous shock as a result of being present and involved in the accident in which her husband and child died. The plaintiff's claim was dismissed on the basis of lack of proof of nervous shock.

**FACTS**

The plaintiff purchased pet turtles from the defendant for her two children. The turtles were diseased and the children developed salmonella as a result. One child responded well to treatment and was quarantined for a few months; the other required hospitalization and isolation. However, both children fully recovered. The plaintiff mother claimed for nervous shock suffered as a result of the children contracting the disease but her claim was dismissed.

**FACTS**

The defendant was convicted of the rape of the plaintiff's infant child. The plaintiff sought to recover damages for nervous shock suffered as a result of the crime perpetrated on her daughter. The assaulted child was found by the plaintiff lying in mud in the lane behind her home with a scarf knotted around her neck and crying. The child was visibly bruised and scratched. The plaintiff did not give evidence to support her claim and her husband stated to the court that she had not good nerves before the incident. The court dismissed the plaintiff's claim on the basis that no visible and provable illness
was shown.
#

CANADA/DEFENDANT


FACTS

The plaintiff was a passenger on the defendant's train when he was seriously injured as a result of a collision. The impact of the collision came suddenly so that there was no terror or fright prior to the injury. The plaintiff lost consciousness immediately and remained unconscious for several days. The nervous symptoms did not manifest until several weeks following the accident. The plaintiff's claim for nervous shock as a head of damages was denied.
#

CANADA/PLAINTIFF


FACTS

The plaintiff mother alleged nervous shock as a result of seeing her son's thumb being pulled from his hand by a rope which was caught between the thumb and the drive shaft of the plaintiff's car. The court dismissed the mother's claim on the basis that no nervous shock was proved.
#

CANADA/DEFENDANT


FACTS

The defendant doctor negligently failed to diagnose the pregnancy of twins before the plaintiff gave birth. As a result, one of the twins suffered cerebral palsy due to lack of oxygen during the birth process and was seriously handicapped both physically and mentally. The parents, who were both present during the delivery, claimed for nervous shock sustained upon discovering the baby's condition. The claim was dismissed on the basis that there was no evidence of a proven psychiatric disorder.
#
CANADA/DEFENDANT


FACTS

The plaintiff's daughter was injured when the vehicle in which she was a passenger was struck by a vehicle driven by the defendant. The plaintiff arrived at the scene of the accident after the collision and saw her daughter lying on the road covered by a blanket and bleeding profusely about the face. The plaintiff claimed that she suffered nervous shock as a result of witnessing her daughter's injuries. As a consequence of the nervous shock, the plaintiff experienced nightmares, depression, weight loss and fatigue. Her claim was dismissed on the basis of evidence that stated that the plaintiff's mental ill health was not caused by the accident though it might have aggravated her existing condition.

GREAT BRITAIN/PLAINTIFF


FACTS

The plaintiff circus performer and his wife were on display in a booth when, owing to the negligence of the defendant, circus elephants were startled and ran loose, knocking over the booth in which the plaintiff and his wife were situated. The plaintiff's wife was seriously injured by falling parts of the booth. The plaintiff was in bed for a week and claimed nervous shock as a result of the accident. The court awarded damages under the claim.

SYMPTOMS

P. 28 ... "It is said in the medical report that thereafter he went to bed for a week. I think it would not be unreasonable if I were to treat that as some form of nervous prostration which amounted to ill-health. He was thus unable to earn money during that period."

GREAT BRITAIN/PLAINTIFF


FACTS

The defendant negligently backed his car out of the garage injuring the plaintiff's infant son. The plaintiff was within the vicinity,
having accompanied the defendant to the garage, and upon hearing his child's scream he ran to the garage to see his son's foot trapped under a front wheel. The father showed symptoms of nervous shock for which he recovered damages in court.

GREAT BRITIAN/PLAINTIFF


FACTS

The plaintiff and her daughter were passengers in a taxi which was involved in a collision with an oncoming bus. The plaintiff sustained relatively minor injuries. Her daughter was badly cut on the forehead and seemed at the time to have suffered serious injuries. The daughter made a rapid recovery but the plaintiff mother suffered mental shock as a result of the incident and became very moody, showing unsocial and bizarre behaviour. The plaintiff claimed against the defendant for the nervous shock suffered as a result of her own involvement in the accident.

SYMPTOMS

P. 999 ..."The plaintiff sustained relatively trivial physical injuries. Her daughter was quite seriously injured, and I dealt with her case before the trial of this action. There is no doubt now that the plaintiff suffers a severe mental illness, and she is severely disabled by it. There is no dispute between the parties that that illness is a genuine one. The plaintiff's case is that it has resulted from the accident, from stress caused by that accident to her vulnerable personality, it being a hysterical reaction to that accident." The defendants, on the other hand, say that it is unconnected with the accident, either that it is an endogenous depression or that it is a hysterical reaction, possibly brought on initially by the accident but now superseded by the endogenous depression."

P. 1000 ..."In February (the exact date is now known) the plaintiff wrote a letter to her solicitors giving a graphic description of the accident, of her fears at the time and of her concern and apprehension about Susan. It is not necessary to read it, but it speaks eloquently of her fear and panic at the time. It also describes her state of physical shock at the time and refers to a trivial injury to her hand.

Following the accident both Susan and the plaintiff were taken to hospital. Susan was detained for two or three nights. the plaintiff spent the first night in hospital and visited her until she came out. In fact Susan made a relatively rapid recovery. The plaintiff's husband described the situation following the accident in these terms. He said the child recovered very quickly: 'Within a few days all the
stress had gone out. We relaxed, or at least I did. I think she was still in a state of shock. [That is referring to the plaintiff.] She did not sleep, certainly. Within a week she was complaining of heart pains and dizziness.’ He said that he dismissed that as being of no significance.

On 8 February 1980 she consulted a partner of the general practitioner’s practice and was prescribed an analgesic, presumably for the chest pain of which she was complaining. According to the plaintiff’s husband, in the weeks that followed his wife did not seem to sleep at all. At that time his brother-in-law was staying and she spent the night talking to him, and so far as he could see she never slept at all, although plainly she must have done. After two to three weeks he described her, and it is confirmed by Julie, as being very moody and very snappy. According to the husband, at the end of February they went to the general practitioner to get some better tablets for sleeping. They previously used Panadol but they were having no effect. There is no record of that visit, but I have no reason to doubt the husband’s evidence about it. They appear to have had very little effect on the position. He described her at that time, that is to say at about the end of February, as suffering from tiredness, loss of energy, very snappy and she neglected the housework and the cooking. Both the husband and the daughter say that she was complaining of being frightened about the accident and she could not get it out of her mind. She told Julie that she kept seeing the bus coming in slow motion.

On 1 April 1980 she again consulted a partner in the general practitioner’s practice who recorded a reactive depression to a road traffic accident. He prescribed anti-depressants and a sedative. He does not record what she actually said, but it is quite clear from that note that she must have related her symptoms to the road traffic accident.

The family went for a holiday in Italy shortly after this time but it was not a success. On 28 April she again consulted her general practitioner and different drugs were prescribed. She went again on 2 May. It is quite clear that by this time her condition had reached a somewhat worrying state. She describes seeing or dreaming about evil spirits. She thought she was dying, and she believed she had got cancer. She was prescribed Mogadon for sleeping and anti-depressants. By this time her husband described her condition as very bad. She appears to have thought that both her husband and Julie were trying to poison her. On 29 May she attempted suicide by drinking a bottle of wine after she had taken a large quantity of tablets. There is no reason to suppose that that was anything other than a genuine attempt to take her life. She was admitted to hospital, the Queen Elizabeth II hospital, and the in-patient note which seems to have been taken at that time records under ‘History from the patient’:

‘It all started following the car accident. The patient
felt sorry about the daughter getting hurt. She became worried that the daughter would suffer after the effects of injury and this kept her getting depressed. Insomnia with loss of appetite and interest, tearful on and off.'

Then it goes on to describe the holiday in Italy which was not a success, and she believed that her husband was trying to kill her. Thereafter the hospital notes indicate violent changes of mood and bizarre behaviour on the part of the plaintiff. The hospital seems to have diagnosed a depressive illness, seemingly brought about by the accident. Towards the end of her stay there she was allowed home at the weekends. On 22 June another serious attempt at suicide was made. She was returned to hospital. There appears to have been a further attempt on 30 June. Early in July she was found in a compromising position with a male patient. It seems that she had sexual relations with him. This got back to the plaintiff's husband, who was extremely angry both with her and with the hospital. She appears to have made another, probably this time half-hearted, attempt at suicide, and on 10 July to the evident relief of the hospital she discharged herself. I think they were thankful to get rid of a troublesome patient."

Over the next few months she continued to behave in a most bizarre way. She wandered off for sometimes weeks at a time and sometimes days. She probably behaved like a prostitute in London and elsewhere. She slept rough in the woods and did not take any proper food. The hospital were reluctant to take her back. She was rejected at home for her unsocial behaviour and because her husband, understandably I think, thought that she was some sort of moral danger to the girls. On 14 September she was again admitted to the Queen Elizabeth II hospital pursuant to s. 136 of the Mental Health Act 1959, having been found in a destitute state. She remained there until 29 October. The picture again presented by the notes is one of changing moods but on the whole, isolated, sullen, uncooperative, secretive and not taking drugs. The plaintiff's husband described her as being unrepentant, aggressive and like a nasty spoilt child. On the final night of her stay there she disappeared, apparently hiding on the sixth floor of the hospital. She was discharged the next day, once again the hospital being clearly relieved to get rid of a troublesome patient.

Shortly before her admission the second occasion to the Queen Elizabeth II hospital the plaintiff's husband met a divorced lady, Mrs. Clay. She had three children. The two eldest were grown up. She was living with the youngest one in a council house. An attachment began to form between them and increasingly from that time onwards Mrs. Clay came to the house to help out with the housework and to help look after Susan. Mrs. Clay, who gave evidence, is a sensible, understanding and forebearing lady. About this time, possibly a little earlier, Julie left to go and live at her boyfriend's house with his family. She had been very close to her mother. She described their relationship as being like sisters. After leaving school at Easter she had looked after her mother and the house for some months until
August, when she got a job. She found life in the house absolutely intolerable. Since then she has become married to her boyfriend.

On her discharge from the Queen Elizabeth II hospital on the second occasion the plaintiff lived at home. Her husband described her as awful. He said: 'The intensity of crying and screaming got worse; I could not bear it.' On 10 November he came home to find the house in darkness. The plaintiff was in the hall. She had pulled out the main cable where the electricity comes into the junction box in an attempt to kill herself. He found her shaking and she would not let him near her. She was admitted to Hillend hospital following that, under s. 29 of the Mental Health Act 1959. Again her history was taken from the patient and she appears to have related her symptoms to the accident. Her behaviour in hospital as recorded in the hospital notes continued to be bizarre. She was convinced that she was suffering from venereal disease. She certainly had some infection in the genital region but it does not appear to have been venereal disease. The hospital appears to have diagnosed recurrent depression in a neurotic personality following the road traffic accident. She was allowed home over Christmas 1980. The plaintiff and her husband were in the house alone. He said that the time was absolutely miserable. She was crying and tearing her clothes and scratching her chest. In fact she must have been somewhat variable because in the hospital notes her husband is said to have describe her as better at some stage. In any event she was discharged from Hillend hospital early in January 1981, and since that time she has lived at home. There have been two subsequent occasions when there were short admissions to hospital when she had been found wandering on a railway line, probably contemplating suicide, although not having made any attempt to do so.

Since January 1981 her condition has to some extent stabilised though her behaviour remains highly abnormal. Her present state is described by her husband. She spends most of her time in one room. She covers the window with a blanket, and even in the extremely hot which we have been experiencing recently she does not open the window and she stays in there, the room being like an oven. In the winter time she is in there nearly all the time. In the summer she will go out for walks in the fields. She goes uninvited into the neighbours’ gardens and is often most inappropriately dressed, wearing either a bra and knickers or in hot weather one or two hot jerseys. She is unable to cook or wash her own clothes. She can now take a bath and does bath herself, but until comparatively recently she had to be bathed, and her husband described it in a graphic phrase, ‘like bathing a cat’. She has peculiar habits in relation to her toilet. She apparently was reluctant to use the WC and would urinate on the floor. Her husband could not understand this until Dr. green suggested that a bucket should be provided, and she now for the most part uses the bucket. She does not do it on the floor. She lives largely on biscuits. She very rarely eats with the family and she takes food which they leave out for her. She pleads with people in a pathetic way to cut off her
head and kill her. She wrings her hands and appears to be miserable a great deal of the time. She seems to want to play with children and continues to do bizarre and inappropriate things like untying the laces of her son-in-law's shoes; but there is no doubt that there has been some improvement. She is no longer vicious or aggressive. She is slightly less reluctant to mix with the family, and she seems to be making some response at last to overtures of affection. But there is no doubt that at the moment she is severely deranged. She needs supervision. She cannot be left alone for long. She has caused damage with matches. She is inclined to leave the cooker on. She breaks up the children's things and Susan's room and the plaintiff's husband's and Mrs. Clay's room have to be locked to keep her out. She has to be cooked for, tidied after, shopped for and have her clothes washed.

The plaintiff's case in summary is this: that she had pre-existing the accident a personality disorder probably stemming from her traumatic childhood. That disorder was relatively well managed so that some signs and symptoms remained latent. Others appeared at infrequent intervals and at a relatively moderate level so that she was able to lead a happy and socially acceptable life, particularly in the last few years before the accident. The accident, so it is said, applied a stress to a vulnerable aspect of her personality so as to aggravate and make patent the underlying disorder, producing with increasing intensity signs and symptoms of a hysterical personality disorder; that in the six months following the accident her resultant behaviour was markedly variable reflecting possibly the inner struggle with her personality disorder, but thereafter the disorder was effectively uncontrolled so that she was driven away from the world into childhood and seeks to drive away the world by anti-social behaviour. With the passage of time and increased patience and understanding by those who look after her and love her there has been some slight improvement, but the prognosis is very uncertain.

I am satisfied that in fact she sustained shock at the time, that she suffered from insomnia, that within two to three weeks at the most she manifested uncharacteristic neglect of her household duties, became snappy and moody during the day but with periods of lovingness at night. She also was experiencing or claimed to be experiencing pains in the chest, and whether or not those pains were initially organically based there is no evidence, but she appears to have been complaining of them still when she was admitted to hospital and they are referred to in October 1980 in the hospital notes. I do not find it surprising in the context of her history that she did not go earlier to see her general practitioner about the effects of this accident, or at any rate there is no record of her having attributed her complaints towards it."

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FACTS

Following a train collision near his home, the plaintiff voluntarily took an active part in rescue operations at the scene of the accident. The accident claimed ninety lives and many others were trapped and injured. As a result of the horror of the experience, the plaintiff suffered a prolonged and disabling anxiety neurosis which required hospital treatment. The plaintiff's claim for nervous shock was allowed.

SYMPTOMS

P. 948-9 ..."After the accident, he started sleeping badly, waking up in the night and talking of the little boy whom he had seen. Mrs. Chadwick found that he was not sleeping and about Christmas time, that is to say four or five weeks after the accident, he stopped working. He was shaking. Mrs. Mills, another witness, whom Mr. Chadwick had helped with whist drives, also described how she saw him change. She first noticed him shaking about five weeks after the accident, and there is no doubt that a marked change was noticed within a few weeks of the accident. Mr. Chadwick consulted his doctor, who prescribed tablets; but eventually in May, 1958, he went to the Miller General Hospital. The doctor who attended him there (Dr. Grace) has retired and is not available, but the whole of the hospital notes have been made an exhibit in this case. Mr. Chadwick was treated for a gastric ulcer, the history showing that he was saying that he had lost weight since the Lewisham train disaster, and eventually on July 27, 1958, he had an operation for this ulcer. By Oct. 2, Dr. Grace was describing his condition as anxiety neurosis, mentioning the Lewisham train disaster and noting that 'the effects of the incident have been considerable as regards his psychological state.' [His Lordship referred to the medical evidence afforded by the hospital notes, stated that on Jan. 8, 1959, Mr. Chadwick was admitted to Belmont Hospital as an in-patient, to evidence afforded by hospital notes there, and to the oral evidence of Dr. Kendall, consultant in neurology to the South West Regional Hospital Board, which included Belmont hospital. Dr. Kendall never saw Mr. Chadwick, but saw the hospital notes, and was of opinion that the train disaster caused Mr. Chadwick's condition. His Lordship said that he accepted the evidence of Dr. Kendall and continued:] I find that Mr. Chadwick was a man who had suffered psycho-neurotic symptoms in 1941 when he was twenty-eight years old; that for the next sixteen years he suffered no such symptoms; that although he was a man who might break down under stress, having regard to his age, he was not someone who would be likely to relapse under the ordinary stresses of life and that this illness was a major stress reaction, or what used to be called a...
"catastrophic neurosis", but to stress of quite unusual proportions, namely, his experiences in the Lewisham train disaster. I also accept Dr. Kendall's evidence that this is something which is known to result from major catastrophes such as earthquakes, fires, floods and major accidents or disasters. Furthermore, although there was clearly an element of personal danger in what Mr. Chadwick was doing, I think that I must deal with this case on the basis that it was the horror of the whole experience which caused his reaction."

P. 952 ... "Mr. Chadwick was a man who had lived a normal busy life in the community with no mental illness for sixteen years. He was, said Dr. Kendall, not likely to relapse under the ordinary stresses of life. Indeed, the evidence showed that during those sixteen years he had on one occasion been attacked by a gang of youths with bicycle chains, without any mental illness or injury resulting. This illness, according to Dr. Kendall, is a sufficiently common accompaniment of catastrophes to be given a name ('catastrophic neurosis'). In my opinion, there was nothing in Mr. Chadwick's personality to put him outside the ambit of contemplation."

P. 953 ... "This illness started in early 1958 and required hospital treatment for approximately six months in 1959. Thereafter Mr. Chadwick was able to work but was never the same man as he had been before the accident. He died from causes unconnected with the accident in December, 1962. He lost wages as a result of this illness."

GREAT BRITAIN/PLAINTIFF


FACTS

The plaintiff and her fiance were walking arm-in-arm along the side of a road when a bus came up behind them and knocked them both down. The fiance was struck by the omnibus and sustained serious physical injuries. The plaintiff was thrown down as well and received some bruises and suffered nervous shock. The plaintiff recovered for nervous shock sustained as a result of her apprehension for her own safety and as a result of witnessing the injuries of her fiance.

SYMPTOMS

P. 539 ... "She developed tachycardia and tremors owing to the shock received and was unable to do any work for 3 1/2 months after the accident."
GREAT BRITIAN/PLAINTIFF


FACTS

The plaintiff crane operator suffered nervous shock when he witnessed some cargo drop, because of a defective rope, into the hold of a ship. The plaintiff feared that a workman would be injured although no one actually sustained injuries as a result of the mishap.

SYMPTOMS

P. 272 ... "the plaintiff was suddenly put into a state of apprehension and acute anxiety, and thereby suffered severe nervous shock."

P. 278 ... "My findings on this point are as follows:

(1) The plaintiff suffered from neurasthenia before the accident.

(2) The attack of sciatica, ... made his neurasthenia worse, but the evidence did not establish that this sciatica was due to the accident.

(3) The nervous shock suffered by the plaintiff as a result of the accident ... made his neurasthenia worse and has brought the plaintiff prematurely to his present state."

GREAT BRITAIN/PLAINTIFF


FACTS

The pregnant plaintiff was inside her husband's tavern when an employee of the defendant negligently drove a horse-driven van into the bar. The plaintiff did not sustain any physical injuries but suffered nervous shock and gave birth prematurely to a mentally handicapped child. The court awarded damages for the plaintiff's nervous shock based on the reasonable fear of immediate personal injury to herself.

SYMPTOMS

P. 672 ... "We must, therefore, take it as proved that the negligent driving of the defendants' servant reasonably and naturally caused a nervous or mental shock to the plaintiff by her reasonable apprehension of immediate bodily hurt, and that the premature childbirth, with the physical pain and suffering which accompanied it, was a natural and a direct consequence of the shock."
GREAT BRITAIN/PLAINTIFF


FACTS

The defendants negligently left a lorry with its engine running. It started off by itself down an incline. The plaintiff’s wife had just parted with her children a little below the point where the street bends when she saw the runaway lorry rushing around the bend towards her. She was very frightened for the safety of her children, who were by this time out of sight, and whom the lorry must have passed in its course. The plaintiff’s wife did not sustain any physical injuries but she was immediately informed by bystanders that a child matching the description of one of her own had been injured by the lorry. One of her children had in fact been seriously injured. The plaintiff’s wife, who was pregnant at the time of the incident, suffered nervous shock which brought about severe hemorrhaging and stillbirth. The plaintiff’s wife subsequently died and the plaintiff brought an action for the nervous shock suffered by his wife. The claim for nervous shock was permitted.

SYMPTOMS

P. 142 ..."Mrs. Hambrook was at the time three or four months advanced in pregnancy, and in consequence of what had happened she had a serious nervous shock, which brought about a severe hemorrhage.... On July 11 she was operated upon and a dead fetus was removed, and on July 16 she died."

GREAT BRITAIN/PLAINTIFF


FACTS

The plaintiff, her husband, and their children were on an outing. The plaintiff was picking flowers on the one side of the street while her husband was on the other near the parked van with the children. A car driven by the defendant went out of control and crashed into the husband and children. Upon hearing the crash, the plaintiff turned around and saw the aftermath of the accident. There was blood everywhere. She ran across the road to attend to her family. The husband died and the children were severely injured. As a result of witnessing this tragedy the plaintiff suffered a morbid depression and had frequent suicidal ruminations. Her claim for recovery in nervous shock was permitted.
SYMPTOMS

P. 43 "she is suffering from a morbid depression; she is now officially ill. ... irritable with the children ... exhausted, has frequent suicidal ruminations and at the same time is covered with guilt at being like this.

At the trial, five years after the accident, she frequently broke down when giving evidence."

P. 44 "period of not far short of six years, in a sad and depressed state. ... she has been and still is in a positively morbid state. There is a recognisable psychiatric illness. ... the lady is not only sad and depressed but is in a morbid state of depression..."

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GREAT BRITAIN/PLAINTIFF


FACTS

The plaintiff had a German fiance who was interned. The plaintiff worked as a live-in maid. The defendant, a detective, wished to retrieve some letters in the possession of the plaintiff's employer and posed as a detective inspector from Scotland Yard. He falsely told her that he represented the military authorities and that she was being sought for corresponding with a German spy. As a result, the plaintiff became extremely frightened and suffered nervous shock. The symptoms of her illness included neurasthenia, shingles and other ailments. The court held that the defendant was liable to the plaintiff for the deliberately false statements calculated to cause physical injury to the person. Further the illness suffered by the plaintiff was directly attributable to the effect of the utterance of the statements. The court applied Wilkinson v. Downton and stated that this case was even stronger for imposing liability because in the present case, there was an intention to terrify the plaintiff to effect an unlawful purpose whereas in Wilkinson v. Downton, the defendant only intended to play a practical joke.

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GREAT BRITAIN/PLAINTIFF


FACTS

The plaintiff's husband and four children were involved in a motor
vehicle accident. At the time of the collision, the plaintiff was home and was told of the accident by a neighbour. The plaintiff went to the hospital to see her family and there she was informed that one of her daughters had been killed and she saw her husband and the other children and witnessed the nature and extent of their injuries. When the plaintiff saw her family in the hospital they had not yet been cleaned up by the hospital staff. The plaintiff claimed that she suffered nervous shock, manifested in depression and an adverse change in personality, as a result of what she witnessed upon arriving at the hospital. Her claim was permitted.

SYMPTOMS

The plaintiff's nervous shock manifested itself in depression and an adverse change in personality.

GREAT BRITAIN/PLAINTIFF


FACTS

A negligently driven tramcar collided with a hearse causing the coffin inside to be overturned and in danger of being ejected onto the road. The plaintiffs were following the hearse in a carriage. The plaintiff uncle of the deceased witnessed the collision and the other plaintiffs, the deceased's mother, cousin and cousin's husband, saw the effects immediately after the accident. As a result of the accident the mother of the deceased collapsed. All sued for nervous shock. The court permitted recovery for nervous shock sustained as a result of seeing the damage done to the hearse and the displacement of the coffin containing the body of a near relative.

GREAT BRITAIN/PLAINTIFF


FACTS

The plaintiff mother recovered for nervous shock sustained upon giving birth to infants who suffered deformities during embryonic development due to the taking of the drug thalidomide by the mother. The mother suffered from depression and anxiety.

SYMPTOMS

P. 119 ... "Mrs. S. is obviously far from well. She is anxious, depressed and dependent on drugs to relieve her symptoms. She was
grievously shocked at the birth of R.S. and she lives with a permanent cloud over her head. Sadness is the order of the day. She is constantly reminded of the deprivations suffered by her son. She told the court that she feels "up against the wall". She said that she has more problems than most. She was broken-hearted at the birth and has never recovered from the awful shock. I have seen her and she is obviously completely genuine. She has done and is doing the best that she can for the boy. It goes without saying that she will continue to do so in the future. R.S. has not much to be thankful for, but he certainly has a happy home and devoted parents. It was Mrs. S.'s intention to resume her employment; now this is out of the question."

P. 126 ... "So far as Mrs. S.'s claim is concerned, it is plain that this lady suffered a grievous shock. For a happily married woman, it is difficult to comprehend any greater shock than seeing your child born misshapen and deformed. The fun and joy of motherhood is partially destroyed. Instead of enjoying and being able to show off the baby to your friends there is a natural reluctance to do so. This has not been the sort of shock which has worn off like so many cases of shock that come before the courts; this is permanent. Ever since the birth Mrs. S. has been depressed, anxious and worried. She is daily reminded of her handicap. There is always a cloud over her happiness. She now has to take drugs prescribed by her doctor and she has a sense of guilt which makes it harder for her to recover, although Heaven knows she has nothing to blame herself for."

GREAT BRITAIN/PLAINTIFF


FACTS

The plaintiff and her husband were passengers in a motor vehicle driven negligently by the defendant. The car struck a tree and the plaintiff's husband was thrown out and killed instantly. The plaintiff was injured and rendered unconscious as a result of the collision and was taken to the hospital where she was later informed that her husband had been killed. She suffered nervous shock due both to her own injuries and to being informed of her husband's death.

SYMPTOMS

P. 436 ... "She developed neuro-dermatitis (that is, dermatitis brought about by mental shock) affecting her face, ears, scalp and neck and later her chest. The original attack died down fairly shortly but continued to exist in a mild form with flare-ups every now and again. It when on longer than might be expected and was worse than would be expected, even taking into consideration the shock of
the accident and the shock of her husband's death. She became depressed; the depression continued, varying in intensity, and has lately got worse. In addition to Dr. Paul, she has seen a dermatologist and has also been under a psychiatrist, Dr. Doris Small.

GREAT BRITAIN/PLAINTIFF


FACTS

The defendant had the intention of playing a practical joke on the plaintiff and he told her that he had been sent to inform her that her husband had just been hit in an accident and suffered two broken legs. The defendant instructed the plaintiff to fetch pillows and go to the accident site to retrieve her husband. The statements were false; however the plaintiff acted on the words spoken by the defendant. As a result of the news, the plaintiff suffered nervous shock to her system, displaying symptoms of vomiting and other effects on her reason. The court held that there is liability for the intentional infliction of nervous shock where there is an element of wilfulness on the part of the defendant and the plaintiff's illness is a direct consequence of the defendant's conduct. The court found that the defendant's intent to play a practical joke in making the statements sufficient to constitute the element of wilful infliction of nervous shock.

SYMPTOMS

The plaintiff suffered nervous shock to her system, displaying symptoms of vomiting and other effects on her reason.

GREAT BRITAIN/DEFENDANT


FACTS

The defendant motorcyclist, while driving negligently, collided with a car and was killed. The pregnant plaintiff was disembarking from a bus and retrieving her basket when she heard the sounds of the collision. The plaintiff did not witness the accident or fear any injury to herself at any time. However, after the body was removed, the plaintiff did see blood left on the roadway. The plaintiff alleged that she suffered nervous shock as a result of the incident and that this led to the stillbirth of her child. The claim for
recovery in nervous shock was denied.
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GREAT BRITAIN/DEFENDANT


FACTS

The taxicab driven by the defendant backed up into a small boy on a tricycle. The child screamed and his mother, hearing the sound, looked out of a window at some distance from the incident. She could see only the tricycle under the car. The boy escaped without any serious injury and ran home but the plaintiff mother suffered nervous shock due to her belief that her child had been injured under the cab. The plaintiff suffered trembling fits and became tearful. Recovery was denied.

SYMPTOMS

The plaintiff suffered trembling fits and became tearful.
#

AUSTRALIA/PLAINTIFF


FACTS

The plaintiff and her mother were involved in a car accident due to the negligence of the defendant. The plaintiff was injured and her mother was killed. The plaintiff suffered anxiety and depression due to her own physical injuries and these symptoms were exacerbated upon being informed of her mother's death. Although she was rendered unconscious by the collision and only informed of it at the hospital the plaintiff suffered nervous shock because of her mother's death.

SYMPTOMS

P. 831 ..."the news of her mother's death was a contributing factor to a reaction of anxiety and depression, which was a direct consequence of the accident and the injuries she received therein."
AUSTRALIA/PLAINIFF


FACTS

An employee of the defendant was negligent in writing a note to the plaintiff erroneously stating that the plaintiff's husband had been admitted to a mental asylum. The defendant attempted to have the statement of claim struck for failing to disclose a cause of action. The court held that the alleged facts did constitute a valid cause of action and refused to strike out the statement of claim.

#AUSTRALIA/PLAINIFF


FACTS

The plaintiff was the mother of a child who was struck by a car driven negligently by the defendant. At the time of the accident, the plaintiff was in her home about 100 yards away and did not see or hear the accident. She was informed of the accident by another child and immediately ran out to the scene to witness her son lying on the ground, unconscious. She accompanied the child to the hospital where he was pronounced dead shortly thereafter. The plaintiff mother recovered for nervous shock as a result of seeing her injured child.

#AUSTRALIA/PLAINIFF


FACTS

The plaintiff mother was in a separate ward when her infant child was burned in a fire in the hospital nursery. While the mother was not present at the time of the fire, she was informed of her baby's injuries and nursed her child afterwards. The infant suffered burns to her left hand and arms and lost a finger. The plaintiff suffered nervous shock in the form of extreme nervousness. The court noted and distinguished Coultas and permitted recovery for the nervous shock suffered.

SYMPTOMS

The plaintiff suffered nervous shock in the form of extreme nervousness.

#
FACTS
The plaintiff and her husband were involved in a car accident. She suffered injuries to her arm which precipitated a nervous condition. The plaintiff was informed of her husband's death and, although she did not see the body, she developed a depressive reaction. She was awarded damages for the nervous shock suffered as a result of her own injuries.

SYMPTOMS
"nervous condition"

FACTS
The plaintiff's husband was seriously injured in a motorcycle accident caused by the defendant's negligence. The plaintiff was informed of the accident by the hospital staff, saw her husband at the hospital, and witnessed her husband's pain and suffering. The plaintiff, who feared her husband might die based on what she saw and was told at the hospital, suffered nervous shock for which she recovered.

SYMPTOMS
P. 418: "The respondent developed a psychiatric illness, characterized by anxiety and depression."

P. 424: "After her experience at the hospital, Mrs. Coffey suffered severe anxiety and depression. Her psychiatric condition caused gynaecological problems and a hysterectomy was later performed. Bollen J found 'that the things which she saw and heard on the night of 2nd/3rd June 1979 and during 3rd June after she had gone to the hospital in response to a telephone call at about 8:30 a.m. caused her psychiatric illness -- anxiety and depression'. Although Mrs. Coffey's early life had predisposed her to anxiety and depression, his Honour found that she was a person of normal fortitude".

P. 447: "Some six days after the accident, however, the first symptoms of an anxiety depressant state began to emerge. Serious psychiatric illness, involving admission on one occasion to a psychiatric ward at
Royal Adelaide Hospital, followed. Mrs. Coffey's relationship with her husband and their four month's old child was affected. More than a year later, she experienced internal pain and uterine bleeding which eventually led to a hysterectomy. This was diagnosed as being caused by stress and anxiety. The appellant does not contest the learned trial judge's finding that the things seen and heard by Mrs. Coffey on the day of the accident, and on the next day, caused her psychiatric illness and the later internal pain and bleeding."

AUSTRALIA/PLAINTIFF


FACTS

The teenage plaintiff and her male friend, whom she had hoped to marry, were involved in a car accident. The plaintiff suffered physical injuries in the form of brain damage and depression. When the plaintiff was informed of her friend's death, she suffered nervous shock. The court awarded damages for her nervous shock.

SYMPTOMS

P. 257 "...report of his death caused her distress, affected her health, intensified her depression and was connected with her attempts at suicide. ... mental and psychological ill health and instability,..."

AUSTRALIA/PLAINTIFF


FACTS

The plaintiff was an employee of the defendant company and due to the latter's negligence, two electricians were seriously electrocuted by wires. The plaintiff, who was working in the vicinity of the accident, heard a loud noise and hastened to the area. The plaintiff saw the electricians, blackened and naked. The plaintiff assisted one of the victims to the ambulance. As a result of the rescue and witnessing the injuries sustained by the victims (who subsequently died), the plaintiff suffered nervous shock and developed a schizophrenic reaction. The court permitted recovery on the basis that a rescuer who witnesses the injuries may foreseeably suffer nervous shock.

SYMPTOMS

P. 89 "But after that time he developed symptoms which indicated
that he was suffering from a serious mental disturbance. According to the medical evidence produced at the trial he developed a profound psychiatric disability broadly comprehended in the term 'schizophrenia.' This according to that evidence as a 'severe type of mental disturbance including disturbance of thought, disturbance of mood and disturbance of behaviour and personality.'

P. 92 ... "After some days the shock of the event with the added knowledge that both men had died began to tell. He became depressed and suffered a severe schizophrenic reaction, with acute depression and an acute anxiety state. He became unable to do the skilled work on which he had been employed and was put by the appellant to routine tasks. He was away from work for considerable periods and under psychiatric treatment."

AUSTRALIA/PLAINTIFF


FACTS

The plaintiff was walking hand in hand with her young son along a highway when he was negligently struck by a car. Following the accident the plaintiff carried her child to medical help but the child died shortly thereafter. The plaintiff's thyroid problem was exacerbated by the nervous shock she suffered as a result of her child's death. Her condition existed for over one year. The plaintiff's claim for nervous shock was permitted. The court applied a statutory provision for recovery (s.19 of the Wrongs Act, 1936) which was enacted to overcome the limitations of Coultas.

SYMPTOMS

P. 253 ... "a serious shock would be likely to induce that consequence, and I do not doubt that in this case the shock, suffered by reason of the female plaintiff's close association with the accident, followed by the added shock upon the death of the child, has resulted in the development of toxicosis and also produced sub-acute neurasthenia.

... as to the past, the pain, as well as her terror and despair, her extreme emotionalism, and the incidental discomforts, such as the attack of paroxysmal tachycardia, and her respiratory stridor must be brought into account."
AUSTRALIA/PLAINTIFF


FACTS

The plaintiff sustained physical injuries in an accident caused by the defendant's negligence. She also suffered nervous shock from remaining conscious at the scene of the accident, seeing her injured husband, and being informed subsequently of his death. General damages awarded to the plaintiff took account of the shock suffered by the plaintiff due to her own injuries and loss of her husband.

SYMPTOMS

"... she nurtured and often expressed a horrifying recollection of the accident. ...anxiety ... developed into a morbid depression...

...she was experiencing nightmares almost every night, and if she saw anything or read anything in the paper about an accident she would cry and want to talk about the accident and tell me the details."

#

AUSTRALIA/PLAINTIFF


FACTS

The plaintiff mother, who was inside her home, heard the noise of an accident from outside but did not know what it was. The plaintiff sibling, who had witnessed the accident, immediately informed her that her daughter had been struck by a truck outside the house. The plaintiff mother ran out to see her child squashed beneath a truck. Due to difficulties in releasing the trapped child, she was pinned beneath the truck for a good portion of an hour. The child victim died. As a result, the plaintiff mother fell in a state of reactive depression for a 15 month period following the death and suffered recurring nightmares. The plaintiff sibling showed a marked behavioural change and became silent, moody, depressive and apathetic. Both plaintiffs recovered for nervous shock.

SYMPTOMS

P. 267 ... "She suffers from a recurring nightmare... various sedatives have been prescribed. ... she is still in a state of reactive depression... pathological mourning."
...depressed, obsessed by the loss; she remains sleepless, agitated, tense. ...cried and displayed deep emotion."

P. 269 ... "The case of the boy Hendrikus is much more serious. ... a marked change in his personality. He became moody, silent, depressed and apathetic to work and play. His school work deteriorated. ... boy had suffered grave psychic injury,..."

AUSTRALIA/PLAINTIFF


FACTS

The plaintiff was driving a car which was involved in a motor vehicle accident caused partially by the defendant's negligence. The plaintiff was severely injured and rendered unconscious at the scene of the accident. His wife, child and mother, who were passengers in the car, were killed. Upon being informed of their deaths, the plaintiff suffered severe depression due to grief and recovered.

SYMPTOMS

Severe depression.

AUSTRALIA/DEFENDANT


FACTS

The defendant employer was intoxicated and threatened to kill himself or shoot someone. The plaintiff employee overheard this remark and also saw the defendant in possession of a loaded revolver. The court found no evidence that the plaintiff, at any time, apprehended any personal injury to herself. The plaintiff heard a gunshot coming from the adjoining building to which the defendant had gone. Although her employer emerged unharmed and no injuries were suffered by anyone else the plaintiff suffered nervous shock as a result of the defendant's behaviour. The plaintiff alleged symptoms of shakiness and nervousness for six months. Her claim for recovery was denied.
FACTS

The plaintiff's young child was playing and fell into a large trench which had been dug by the defendant Council. The trench had been filled with water from a recent rainfall and was left unattended. The plaintiff mother witnessed her child's drowned body being removed from the trench and she suffered nervous shock as a result. Recovery for shock was denied.

**N.B.** The law in this case in New South Wales was eventually altered by Part III of the "Law Reform (Miscellaneous Provisions) Act 1944, Act No. 28 which provides:

4.1(1) The liability of any person in respect of injury caused after the commencement of this Act by an act, neglect or default by which any other person is killed, injured or put in peril, shall extend to include liability for injury arising wholly or in part from mental or nervous shock sustained by -

(a) a parent or the husband or wife of the person so killed, injured or put in peril; or

(b) any other member of the family of the person so killed, injured or put in peril where such person was killed, injured or put in peril within the sight or hearing of such member of the family.

(4) Any action in respect of a liability arising by operation of subsection one of this section shall be taken in the Supreme Court.

(5) In this section --

"Member of the family" means the husband, wife, parent, child, brother, sister, half-brother or half-sister of the person in relation to whom the expression is sued.

"Parent" includes father, mother, grandfather, grandmother, stepfather, stepmother and any person standing in loco parentis to another.

"Child" includes son, daughter, grandson, granddaughter, stepson, stepdaughter and any person to whom another stands in loco parentis.
AUSTRALIA/DEFENDANT


FACTS

The plaintiff's daughter was involved in a motor vehicle accident and suffered severe injuries. The plaintiff mother was not present at the accident and knew of the seriousness of her daughter's injuries at the time she came to care for her. The plaintiff alleged nervous shock which arose some months after initially seeing her daughter. Her claim was dismissed. The Court held that while she suffered a recognizable psychiatric illness after attending to her daughter, it was not reasonably contemporaneous with the initial accident.

#

AUSTRALIA/DEFENDANT


FACTS

The plaintiff was the owner of a car and reluctantly permitted her friend to drive it. The plaintiff and her friend were involved in a motor vehicle accident and, as a result, the plaintiff suffered some physical injuries and her friend was rendered a quadriplegic. The accident was due solely to the negligence of the plaintiff's friend but the plaintiff suffered depressive neurosis as a result of her feelings of guilt for having permitted her friend to drive the car. Her claim for recovery on the basis of nervous shock was dismissed.

#

AUSTRALIA/DEFENDANT


FACTS

The plaintiff was involved in an accident in which he and his family were injured. While recovering from his injuries, the plaintiff was informed of the injuries sustained by the rest of his family which were quite severe. The plaintiff claimed that he suffered a nervous breakdown as a result; however, the court held that the plaintiff could not recover.

#
AUSTRALIA/DEFENDANT

#Spencer v. Associated Milk Services Pty. Ltd. and McNamara, [1968] Qd. R. 393 (S.C).

FACTS

The teenage plaintiff and his parents were involved in a motor vehicle accident and the plaintiff was injured and hospitalized. Several days after the accident, the plaintiff was informed that his parents had died from their injuries. As a result of the news, the plaintiff suffered severe trauma in the form of headaches and recurring nightmares. Recovery was not permitted for the claim in nervous shock.

SYMPTOMS

Severe trauma in the form of headaches and recurring nightmares.

AUSTRALIA/DEFENDANT

#Victorian Railways Commissioners v. Coultas (1888), 13 App. Cas. 222 (P.C).

FACTS

The plaintiff was riding in a horse drawn carriage and was negligently instructed by an employee of the defendant railway company to proceed at a railway crossing. As a result, the plaintiff was placed in imminent danger of being struck by a train although no accident occurred and no injury was sustained. The plaintiff, who was pregnant at the time, fainted and later miscarried her fetal child. The plaintiff alleged nervous shock from the near miss. The court held that damage for nervous shock, unaccompanied by any physical injury, is too remote for recovery.

**N.B. This case has seldom been followed and much criticized by later Courts. It is no longer considered to be sound law.

NEW ZEALAND/PLAINTIFF


FACTS

The defendant visited the home of the plaintiff and demanded that possession of the premises be given to him. The defendant stated to the plaintiff's husband that the place must be vacated within 24 hours
or else they would be burned out. The plaintiff was in bed when this statement was uttered and did not see the defendant but was within earshot. The plaintiff was three months pregnant at the time. As a consequence of overhearing the threat, she became hysterical. The next day she was ill with a high temperature and was taken to the hospital when the possibility of a miscarriage was detected by a doctor. She did in fact have a miscarriage. The court found as a fact that the defendant was aware of the plaintiff's presence in the home when he issued his threat. The court held that though he was ignorant of her state of pregnancy, he knew, or should have known, that his boisterous and threatening behaviour was calculated to frighten a person. The miscarriage was found to have resulted from the shock and fear sustained by the plaintiff.


FACTS

Lord Wilberforce, Lord Edmund-Davies, Lord Russell of Killowen, Lord Scarman and Lord Bridge of Harwich
15, 16 February, 6 May 1982

APPEAL
The plaintiff, Rosina McLoughlin, appealed against the judgment of the Court of Appeal (Stephenson, Cumming-Bruce and Griffiths LJJ) ([1981] 1 All ER 809, [1981] QB 599) given on 16 December 1980 dismissing her appeal against the judgment of Boreham J on 11 December 1978 whereby the judge dismissed her claim against the defendants, Thomas Alan O'Brien, A E Docker & Sons Ltd, Raymond Sygrove and Ernest Doe & Sons Ltd, the respondents to the appeal, for damages for shock, distress and injury to her health. The facts are set out in the opinion of Lord Wilberforce.

Michael Ogden QC and Jonathan Haworth for the appellant.
Michael Turner QC and John Leighton Williams for the respondents.

Their Lordships took time for consideration.

6 May. The following opinions were delivered.

LORD WILBERFORCE. My Lords, this appeal arises from a very serious and tragic road accident which occurred on 19 October 1973 near Withersfield, Suffolk. The appellant's husband, Thomas McLoughlin, and three of her children, George, aged 17, Kathleen, aged 7, and Gillian, nearly 3, were in a Ford motor car; George was driving. A fourth child, Michael, then aged 11, was a passenger in a following motor car driven by Mr. Pilgrim; this car did not become involved in the accident. The Ford car was in collision with a lorry driven by the first respondent and owned by the second respondent. That lorry had been in collision with another lorry driven by the third...
respondent and owned by the fourth respondent. It is admitted that
the accident to the Ford car was caused by the respondents' negligence. It is necessary to state what followed in full detail.

As a result of the accident, the appellant's husband suffered bruising and shock; George suffered injuries to his head and face, cerebral concussion, fractures of both scapulae and bruising and abrasions; Kathleen suffered concussion, fracture of the right clavicle, bruising, abrasions and shock; Gillian was so seriously injured that she died almost immediately.

At the time, the appellant was at her home about two miles away; an hour or so afterwards the accident was reported to her by Mr. Pilgrim, who told her that he thought George was dying, and that he did not know the whereabouts of her husband or the condition of her daughter. He then drove her to Addenbrooke's hospital, Cambridge. There she saw Michael, who told her that Gillian was dead. She was taken down a corridor and through a window she saw Kathleen, crying, with her face cut and begrimed with dirt and oil. She could hear George shouting and screaming. She was taken to her husband who was sitting with this head in his hands. His shirt was hanging off him and he was covered in mud and oil. He saw the appellant and started sobbing. The appellant was then taken to see George. The whole of his left face and left side was covered. He appeared to recognise the appellant and then lapsed into unconsciousness. Finally, the appellant was taken to Kathleen who by now had been cleaned up. The child was too upset to speak and simply clung to her mother. There can be no doubt that these circumstances, witnessed by the appellant, were distressing in the extreme and were capable of producing an effect going well beyond that of grief and sorrow.

The appellant subsequently brought proceedings against the respondents. At the trial, the judge assumed, for the purpose of enabling him to decide the issue of legal liability, that the appellant subsequently suffered the condition of which she complained. This was described as severe shock, organic depression and a change of personality. Numerous symptoms of a physiological character are said to have been manifested. The details were not investigated at the trial, the court being asked to assume that the appellant's condition had been caused or contributed to by shock, as distinct from grief or sorrow, and that the appellant was a person of reasonable fortitude.

On these facts, or assumed facts, the trial judge, Boreham J, gave judgment for the respondents holding, in a most careful judgment reviewing the authorities, that the respondents owed no duty of care to the appellant because the possibility of her suffering injury by nervous shock, in the circumstances, was not reasonably foreseeable.

On appeal by the appellant, the judgment of Boreham J was upheld, but not on the same ground (see [1981] 1 All ER 809, [1981] QB 599). Stephenson LJ took the view that the possibility of injury to the appellant by nervous shock was reasonably foreseeable and that the respondents owed the appellant a duty of care. However, he held that considerations of policy prevented the appellant from recovering. Griffiths LJ held that injury by nervous shock to the appellant was 'readily foreseeable' but that the respondents owed no duty of care to
the appellant. The duty was limited to those on the road nearby.
Cumming-Bruce LJ agreed with both judgments.
The appellant now appeals to this House. The critical question to be
decided is whether a person in the position of the appellant, ie one
who was not present at the scene of grievous injuries to her family
but who comes on those injuries at an interval of time and and space,
can recover damages for nervous shock.

Although we continue to use the hallowed expression 'nervous shock',
English law, and common understanding, have moved some distance since
recognition was given to this symptom as a basis for liability.
Whatever is unknown about the mind-body relationship (and the area of
ignorance seems to expand with that of knowledge), it is now accepted
by medical science that recognisable and severe physical damage to the
human body and system may be caused by the impact, through the senses,
of external events on the mind. There may thus be produced what is as
identifiable an illness as any that may be caused by direct physical
impact. It is safe to say that this, in general terms, is understood
by the ordinary man or woman who is hypothesised by the courts in
situations where claims for negligence are made. Although in the only
case which has reached this House (HAY (OR BOURHILL) V. YOUNG
[1942] 2
All E.R. 396, [1943] A.C. 92) a claim for damages in respect of
'nervous shock' was rejected on its facts, the House gave clear
recognition to the legitimacy, in principle, of claims of that
character. As the result of that and other cases, assuming that they
are accepted as correct, the following position has been reached:

1. While damages cannot, at common law, be awarded for grief and
sorrow, a claim for damages for 'nervous shock' caused by negligence
can be made without the necessity of showing direct impact or fear of
immediate personal injuries for oneself.

2. A plaintiff may recover damages for 'nervous shock' brought on
by injury caused not to him or herself but to a near relative, or by
the fear of such injury.

3. Subject to the next paragraph, there is no English case in
which a plaintiff has been able to recover nervous shock damages where
the injury to the near relative occurred out of sight and earshot of
the plaintiff.

In HAMBROOK V STOKES BROS an express distinction was made between
shock caused by what the mother saw with her own eyes and what she
might have been told bystanders, liability being excluded in the
latter case.

4. An exception from, or I would prefer to call it an extension
of, the latter case has been made where the plaintiff does not see or
hear the incident but comes on its immediate aftermath. In BOARDMAN V
SANDERSON the father was within earshot of the accident to his child
and likely to come on the scene; he did so and suffered damage from
what he then saw. In MARSHALL V LIONEL ENTERPRISES (1971) 25
DLR (3d)
141 the wife came immediately on the badly injured body of her
husband. And in BENSON V LEE [1972] VR 879 a situation existed with
some similarity to the present case. The mother was in her home 100
yards away, and, on communication by a third party, ran out to the
scene of the accident and there suffered shock. Your Lordships have
to decide whether or not to validate these extensions.

5. A remedy on account of nervous shock has been given to a man
who came on a serious accident involving people immediately thereafter
and acted as a rescuer of those involved (CHADWICK V BRITISH
TRANSPORT
COMMISSION [1967] 2 All ER 945, [1967] 1 WLR 912). ‘Shock’ was caused
neither by fear for himself nor by fear or horror on account of a near
relative. The principle of ‘rescuer’ cases was not challenged by the
respondents and ought, in my opinion, to be accepted. But we have to
consider whether, and how far, it can be applied to such cases as the
present.

Throughout these developments, as can be seen, the courts have
proceeded in the traditional manner of the common law from case to
case, on a basis of logical necessity. If a mother, with or without
accompanying children, could recover on account of fear for herself,
how can she be denied recovery on account of fear for her accompanying
children? If a father could recover had he seen his child run over by
a backing car, how can he be denied recovery if he is in the immediate
vicinity and runs to the child’s assistance? If a wife and mother
could recover if she had witnessed a serious accident to her husband
and children, does she fail because she was a short distance away and
immediately rushes to the scene? (CF BENSON V LEE). I think that,
unless the law is to draw an arbitrary line at the point of direct
sight and sound, these arguments require acceptance of the extension
mentioned above under principle 4 in the interests of justice.

If one continues to follow the process of logical progression, it is
hard to see why the present plaintiff also should not succeed. She
was not present at the accident, but she came very soon after on its
aftermath. If, from a distance of some 100 yards (CF BENSON V. LEE),
she had found her family by the roadside, she would have come within
principle 4 above. Can it make any difference that she comes on them
in an ambulance, or, as here, in a nearby hospital, when, as the
evidence shows, they were in the same condition, covered with oil and
mud, and distraught with pain? If Mr. Chadwick can recover when,
acting in accordance with normal and irresistible human instinct, and
indeed moral compulsion, he goes to the scene of an accident, may not
a mother recover if, acting under the same motives, she goes to where
her family can be found?

I could agree that a line can be drawn above her case with less
hardship than would have been apparent in BOARDMAN’S and HINZ’S
cases,
but so to draw it would not appeal to most people’s sense of justice.
To allow her claim may be, I think it is, on the margin of what the
process of logical progression would allow. But where the facts are
strong and exceptional, and, as I think, fairly analogous, her case
ought, prima facie, to be assimilated to those which have passed the
test.

To argue from one factual situation to another and to decide by
analogy is a natural tendency of the human and legal mind. But the
lawyer still has to inquire whether, in so doing, he has crossed some critical line behind which he ought to stop. That is said to be the present case. The reasoning by which the Lords Justices decided not to grant relief to the plaintiff is instructive. Both Stephenson and Griffiths LJ accepted that the 'shock' to the plaintiff was foreseeable; but from this, at least in presentation, they diverge. Stephenson LJ considered that the defendants owed a duty of care to the plaintiff, but that for reasons of policy the law should stop short of giving her damages: it should limit relief to those on or near the highway at or near the time of the accident caused by the defendants' negligence. He was influenced by the fact that the courts of this country, and of other common law jurisdictions, had stopped at this point: it was indicated by the barrier of commercial sense and practical convenience. Griffiths LJ took the view that, although the injury to the plaintiff was foreseeable, there was no duty of care. The duty of care of drivers of motor vehicles was, according to decided cases, limited to persons and owners of property on the road or near to it who might be directly affected. The line should be drawn at this point. It was not even in the interest of those suffering from shock as a class to extend the scope of the defendants' liability: to do so would quite likely delay their recovery by immersing them in the anxiety of litigation.

I am deeply impressed by both of these arguments, which I have only briefly summarised. Though differing in expression, in the end, in my opinion, the two presentations rest on a common principle, namely that, at the margin, the boundaries of a man's responsibility for acts of negligence have to be fixed as a matter of policy. Whatever is the correct jurisprudential analysis, it does not make any essential difference whether one says, with Stephenson LJ that there is a duty but, as a matter of policy, the consequences of breach of it ought to be limited at a certain point, or whether, with Griffiths LJ, one says that the fact that consequences may be foreseeable does not automatically impose a duty of care, does not do so in fact where policy indicates the contrary. This is an approach which one can see very clearly from the way in which Lord Atkin stated the neighbour principle in DONOGHUE V STEVENSON [1932] AC 462 at 580, [1932] All ER Rep 1 at 11: '... persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected...'

This is saying that foreseeability must be accompanied and limited by the law's judgment as to persons who ought, according to its standards of value or justice, to have been in contemplation. Foreseeability, which involves a hypothetical person, looking with hindsight at an event which has occurred, is a formula adopted by English law, not merely for defining, but also for limiting the persons to whom duty may be owed, and the consequences for which an actor may be held responsible. It is not merely an issue of fact to be left to be found as such. When it is said to result in a duty of care being owed to a person or a class, the statement that there is a 'duty of care' denotes a conclusion into the forming of which considerations of policy have entered. That foreseeability does not
of itself, and automatically, lead to a duty of care is, I think,
clear. I gave some examples in ANNS V MERTON LONDON BOROUGH
[1977] 2 All ER 492 at 498, [1978] AC 728 at 752, ANNS (SCOTLAND) LTD
[1969] 3 All ER 1621 at 1623: 'A defender is not liable for a consequence
of a kind which is not foreseeable. But it does not follow that he is
liable for every consequence which a reasonable man could foresee.'

We must then consider the policy arguments. In doing so we must
bear in mind that cases of 'nervous shock' and the possibility of
claiming damages for it are not necessarily confined to those arising
out of accidents in public roads. To state, therefore, a rule that
recoverable damages must be confined to persons on or near the highway
is to state not a principle in itself but only an example of a more
general rule that recoverable damages must be confined to those within
sight and sound of an event caused by negligence or, at least, to
those in close, or very close, proximity to such a situation.

The policy arguments against a wider extension can be stated under
four heads. First, it may be said that such extension may lead to a
proliferation of claims, and possibly fraudulent claims, to the
establishment of an industry of lawyers and psychiatrists who will
formulate a claim for nervous shock damages, including what in America
is called the customary miscarriage, for all, or many, road accidents
and industrial accidents. Second, it may be claimed that an extension
of liability would be unfair to defendants, as imposing damages out of
proportion to the negligent conduct complained of. In so far as such
defendants are insured, a large additional burden will be placed on
insurers, and ultimately on the class of persons insured: road users
or employers. Third, to extend liability beyond the most direct and
plain cases would greatly increase evidentiary difficulties and tend
to lengthen litigation. Fourth, it may be said (and the Court of
Appeal agreed with this) that an extension of the scope of liability
ought only to be made by the legislature, after careful research.
This is the course which has been taken in New South Wales and the
Australian Capital Territory.

The whole argument has been well summed up by Dean Prosser in The
Law of Torts (4th edn, 1971) p 256:

'The reluctance of courts to enter this zone even where the
mental injury is clearly foreseeable, and the frequent
mention of the difficulties of proof, the facility of fraud
and the problem of finding a place to stop and draw the
line, suggest that here it is the nature of the interest
invaded and the type of damages which is the real obstacle.'

Since he wrote, the type of damage has, in this country at least,
become more familiar and less deterrent to recovery. And some of the
arguments are susceptible of answer. Fraudulent claims can be
contained by the courts, which, also, can cope with evidentiary
difficulties. The scarcity of cases which have occurred in the past,
and the modest sums recovered, give some indication that fears of a
flood of litigation may be exaggerated: experience in other fields
suggests that such fears usually are. If some increase does occur,
that may only reveal the existence of a genuine social need; that legislation has been found necessary in Australia may indicate the same thing.

But, these discounts accepted, there remains, in my opinion, just because 'shock' in its nature is capable of affecting so wide a range of people, a real need for the law to place some limitation on the extent of admissible claims. It is necessary to consider three elements inherent in any claim: the class of persons whose claims should be recognised; the proximity of such persons to the accident; and the means by which the shock is caused. As regards the class of persons, the possible range is between the closest of family ties, of parent and child, or husband and wife, and the ordinary bystander. Existing law recognises the claims of the first; it denies that of the second, either on the basis that such persons must be assumed to be possessed of fortitude sufficient to enable them to endure the calamities of modern life or that defendants cannot be expected to compensate the world at large. In my opinion, these positions are justifiable, and since the present case falls within the first class it is strictly unnecessary to say more. I think, however, that it should follow that other cases involving less close relationships must be very carefully scrutinised. I cannot say that they should never be admitted. The closer the tie (not merely in relationship, but in care) the greater the claim for consideration. The claim, in any case, has to be judged in the light of the other factors, such as proximity to the scene in time and place, and the nature of the accident.

As regards proximity to the accident, it is obvious that this must be close in both time and space. It is after all, the fact and consequence of the defendant's negligence that must be proved to have caused the 'nervous shock'. Experience has shown that to insist on direct and immediate sight or hearing would be impractical and unjust and that under what may be called the 'aftermath' doctrine, one who, from close proximity comes very soon on the scene, should not be excluded. In my opinion, the result in BENSON V LEE [1972] VR 879 was correct and indeed inescapable. It was based, soundly, on 'direct perception of some of the events which go to make up the accident as an entire event, and this includes... the immediate aftermath'. The High Court of Australia's majority decision in CHESTER V WAVERLEY MUNICIPAL COUNCIL (1939) 62 CLR 1, where a child's body was found floating in a trench after a prolonged search, may perhaps be placed on the other side of a recognisable line (Evatt J in a powerful dissent placed it on the same side), but in addition, I find the conclusion of Lush J in BENSON V LEE to reflect developments in the law.

Finally, and by way of reinforcement of 'aftermath' cases, I would accept, by analogy with 'rescue' situations, that a person of whom it could be said that one could expect nothing else than that he or she would come immediately to the scene (normally a parent or a spouse) could be regarded as being within the scope of foresight and duty. Where there is not immediate presence, account must be taken of the possibility of alterations in the circumstances, for which the
defendant should not be responsible. Subject only to these qualifications, I think that a strict test of proximity by sight or hearing should be applied by the courts.

Lastly, as regards communication, there is no case in which the law has compensated shock brought about by communication by a third party. In HAMBROOK V STOKES BROS [1925] 1 KB 141, [1924] All ER Rep 110, indeed, it was said that liability would not arise in such a case, and this is surely right. It was so decided in ABRAMZIK V BRENNER (1967) 65 DLR (2d) 651. The shock must come through sight or hearing of the event or of its immediate aftermath. Whether some equivalent of sight or hearing, e.g. through simultaneous television, would suffice may have to be considered.

My Lords, I believe that these indications, imperfectly sketched, and certainly to be applied with common sense to individual situations in their entirety, represent either the existing law, or the existing law with only such circumstantial extension as the common law process may legitimately make. They do not introduce a new principle. Nor do I see any reason why the law should retreat behind the lines already drawn. I find on this appeal that the appellant's case falls within the boundaries of the law so drawn. I would allow her appeal.

LORD EDMUND-DAVIES. My Lords, I am for allowing this appeal. The facts giving rise to it have been related in detail by my noble and learned friend, Lord Wilberforce, and both he and my noble and learned friend Lord Bridge have spaciously reviewed the case law relating to the recovery of damages for personal injury resulting from nervous shock. My own observations can, in the circumstances, be substantially briefer than I had originally planned.

It is common ground in the appeal that, the appellant's claim being based on shock, '... there can be no doubt since HAY (OR BOURHILL) V. YOUNG [1942] 2 All ER 396, [1943] AC 92 that the test of liability ... is foreseeability of injury by shock' (per Denning LJ in KING V PHILLIPS [1953] 1 All ER 617 at 623, [1953] 1 QB 429 at 441). But this was not always the law, and great confusion arose in the cases from applying to claims based on shock restrictions hedging negligence actions based on the infliction of PHYSICAL injuries. In the same year as that in which KING V PHILLIPS was decided, Goodhart perceptively asked why it was considered that the area of possible physical injury should be relevant to a case based on the unlawful infliction of shock, and continued (16 MLR, p 22):

'A woman standing at the window of a second-floor room is just as likely to receive a shock when witnessing an accident as she would be if she were standing on the pavement. To say that the careless driver of a motor-car could not reasonably foresee such a self-evident fact is to hide the truth behind a fiction which must disappear as soon as we examine it. The driver obviously cannot foresee that the woman at the window will receive a physical injury, but it does not follow from this that he cannot
foresee that she will receive a shock. As the cause of action is based on shock it is only foresight of shock which is relevant.'

Indeed, in KING V. PHILLIPS itself Denning LJ expressly held that the fact that the plaintiff was in an upstairs room 80 yards away from the scene of the accident was immaterial.

It is true that, as Goodhart observed, in most cases the foresight concerning emotional injury and that concerning physical injury are identical, the shock following the physical injury, and the result was that, in the early development of this branch of the law, the courts tended to assume that this must be so in all cases. But in fact, as Goodhart laconically put it, 'The area of risk of physical injury may extend to only X yards, while the area of risk of emotional injury may extend to Y yards'. That error still persists is indicated by the holding of Stephenson LJ in the instant case that the ambit of duty of care owed by a motorist is restricted to persons 'on or near the highway at or near the time of the accident' (see [1981] 1 All ER 809 at 820, [1981] QB 599 at 614), and by Griffiths LJ to those 'on the road or near to it who may be directly affected by the bad driving. It is not owed to those who are nowhere near the scene' (see [1981] 1 All ER 809 at 827, [1981] QB 599 at 623). The most striking feature in the present case is that such limits on the duty of care were imposed notwithstanding the unanimous conclusion of the Court of Appeal that it was reasonably foreseeable (and even 'readily' so in the judgment of Griffiths LJ) that injury by shock could be caused to a person in the position of the appellant.

Similar restrictions were unsuccessfully sought to be imposed in HAYNES V HARRWOOD [1935] 1 KB 146, [1934] All ER Rep 103, the plaintiff having been inside a police station when he first saw the bolting horses and therefore out of sight and seemingly out of danger. And they were again rejected in CHADWICK V BRITISH TRANSPORT COMMISSION [1967] 2 All ER 945, [1967] 1 WLR 912, where the plaintiff was in his home 200 yards away when the Lewisham railway accident occurred. Griffiths LJ expressed himself as 'quite unable to include in the category of rescuers to whom a duty [of care] is owed a relative visiting victims in hospital' (see [1981] 1 All ER 809 at 827, [1981] QB 599 at 623). I do not share the difficulty, and in my respectful judgment none exists. I am here content to repeat once more the noble words of Cardozo J in WAGNER V INTERNATIONAL RLYS CO (1921) 232 NY Rep 176 at 180:

'Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effect within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is wrong also to his rescuer.'
Was not the action of the appellant in visiting her family in hospital immediately she heard of the accident basically indistinguishable from that of a 'rescuer', being intent on comforting the injured? And was not her action 'natural and probable' in the circumstances? I regard the questions as capable only of affirmative answers, and, indeed, Stephenson LJ so answered them.

I turn to consider the sole basis on which the Court of Appeal dismissed the claim, that of public policy. They did so on the ground of what, for short, may be called the 'floodgates' argument. Griffiths LJ presented it in the following way ([1981] 1 All ER 809 at 823, [1981] QB 599 at 617):

'If the [appellant's] argument is right it will certainly have far-reaching consequences, for it will not only apply to road traffic accidents. Whenever anybody is injured it is foreseeable that the relatives will be told and will visit them in hospital, and it is further foreseeable that in cases of grave injury and death some of those relatives are likely to have a severe reaction causing illness. Of course, the closer the relationship the more readily it is foreseeable that they may be so affected, but if we just confine our consideration to parents and children and husbands and wives, it is clear that the potential liability of the tortfeasor is vastly increased if he has to compensate the relatives as well as the immediate victims of his carelessness.'


'Every system of law must set some bounds to the consequences for which a wrongdoer must make reparation. If the burden is too great it cannot and will not be met, the law will fall into disrepute, and it will be a disservice to those victims who might reasonably have expected compensation. In any state of society it is ultimately a question of policy to decide the limits of liability.'

Stephenson LJ expressed the same view by citing his own observation when giving the judgment of the Court of Appeal in LAMBERT V LEWIS [1980] 1 All ER 978 at 1006, [1980] 2 WLR 299 at 331 that 'There comes a point where the logical extension of the boundaries of duty and damage is halted by the barrier of commercial sense and practical convenience.'

My Lords, the experiences of a long life in the law have made me very familiar with this 'floodgates' argument. I do not, of course, suggest that it can invariably be dismissed as lacking cogency; on the contrary, it has to be weighed carefully, but I have often seen it disproved by later events. It was urged when abolition of the doctrine of common employment was being canvassed, and it raised its head again when the abolition of contributory negligence as a total
bar to a claim in negligence was being urged. And, even before my
time, on the basis of conjecture later shown to be ill-founded it
provided a fatal stumbling block to the plaintiff's claim in the
'shock' case of VICTORIAN RLYS COMRS V COULTAS (1888)
13 App Cas 222, where Sir Richard Couch sounded the 'floodgates'
alarm in stirring words which are quoted in the speech of my noble
and learned friend Lord Bridge.

My Lords, for such reasons as those developed in the speech of my
noble and learned friend Lord Wilberforce and which it would serve no
purpose for me to repeat in less felicitous words of my own, I remain
unconvinced that the number and area of claims in 'shock' cases would
be substantially increased or enlarged were the respondents here held
liable. It is a question which Kennedy J answered in DULIEU V WHITE &
SONS [1901] 2 KB 669 at 681, [1900-3] All ER Rep 353 at 360 in the
following terms, which commend themselves strongly to me:

'I should be sorry to adopt a rule which would bar all such
claims on grounds of policy alone, and in order to prevent
the possible success of unrighteous or groundless actions.
Such a course involves the denial of redress in meritorious
cases, and it necessarily implies a certain amount of
distrust, which I do not share, in the capacity of legal
tribunals to get at the truth in this class of claim.'

My Lords, in the present case two totally different points arising
from the speeches of two of your Lordships call for further attention.
Both relate to the Court of Appeal's invoking public policy. Unless I
have completely misunderstood my noble and learned friend Lord Bridge,
he doubts that any regard should have been had to such a
consideration, and seemingly considered the Court of Appeal went wrong
in paying any attention to it. The sole test of liability, I read him
as saying, is the reasonable foreseeability of injury to the plaintiff
through nervous shock resulting from the defendant's conceded default.
And, such foreseeability having been established to their unanimous
satisfaction, it followed that in law no other course was open to the
Court of Appeal than to allow this appeal. I have respectfully to say
that I cannot accept this approach. It is true that no decision was
cited to your Lordships in which the contrary has been held, but that
is not to say that reasonable foreseeability is the only test of the
validity of a claim brought in negligence. If it is surmounted, the
defendant would probably be hard put to escape liability.

Lord Wright found it difficult to conceive that any new head of
public policy could be discovered (SEE FENDER V MILDMAY [1937] 3 All
ER 402 at 427, [1938] AC 1 at 41), and, were Lord Halsbury LC sound in
denying that any court could invent a new head of policy (SEE JANSON V
DRIEFONTEIN CONSOLIDATED MINES [1902] AC 484 at 491, [1900-3] All
ER Rep 426 at 429), I should have been in the happy position of accepting
the standpoint adopted by my noble and learned friend Lord Bridge.
But, as I shall later indicate, the more recent view which has found
favour in your Lordships' House is that public policy is not
immutable. Accordingly, whilst I would have strongly preferred indicating with clarity where the limit of liability should be drawn in such cases as the present, in my judgment the possibility of a wholly new type of policy being raised renders the attainment of such finality unfortunately unattainable.

As I think, all we can say is that any invocation of public policy calls for the closest scrutiny, and the defendant might well fail to discharge the burden of making it good, as indeed, happened in RONDEL V WORSLEY [1967] 3 All ER 993, [1969] 1 AC 191. But that is not to say that success for the defendant would be unthinkable, for, in the words of MacDonald J in NOVA MINK LTD V TRANS-CANADA AIRLINES [1951] 2 DLR 241 at 254:

'...there is always a large element of judicial policy and social expediency involved in the determination of the duty-problem, however it may be obscured by the use of traditional formulae.'

I accordingly hold, as Griffiths LJ did, that 'The test of foreseeability is not a universal touchstone to determine the extent of liability for the consequences of wrongdoing' (see [1981] 1 All ER 809 at 823, [1981] QB 599 at 618). Authority for that proposition is both ample in quantity and exalted in status. My noble and learned friend Lord Wilberforce has already quoted in this context the observation of Lord Reid in MCKEW V HOLLAND & HANNEN & CUBITTS (SCOTLAND) LTD [1969] 3 All ER 1621 at 1623, and referred to his own treatment of the topic in ANNS V MERTON LONDON BOROUGH [1977] 2 All ER 492 at 498, [1978] AC 728 at 752, where further citations are furnished. To add yet another, let me conclude by recalling that in HEDLEY BYRNE & CO LTD V HELLER & PARTNERS LTD [1963] 2 All ER 575 at 615, [1964] AC 465 at 536 Lord Pearce observed:

'How wide the sphere of the duty of care in negligence is to be laid depends ultimately on the courts' assessment of the demands of society for protection from the carelessness of others.' (My emphasis.)

I finally turn to consider the following passage in the speech of my noble and learned friend Lord Scarman:

'Policy considerations will have to be weighed; but the objective of the judges is the formulation of principle. And, if principle inexorably requires a decision which entails a degree of policy risk, the court's function is to adjudicate according to principle, leaving policy curtailment to the judgment of Parliament...If principle leads to results which are thought to be socially unacceptable, Parliament can legislate to draw a line or map out a new path.'
And at a later stage my noble and learned friend adds:

'Why then should not the courts draw the line, as the Court of Appeal manfully tried to do in this case? Simply, because the policy issue where to draw the line is not justiciable.'

My understanding of these words is that my noble and learned friend shares (though for a different reason) the conclusion of my noble and learned friend Lord Bridge that, in adverting to public policy, the Court of Appeal here embarked on a sleeveless errand, for public policy has no relevance to liability at law. In my judgment, the proposition that '...the policy issue...is not justiciable' is as novel as it is startling. So novel is it in relation to this appeal that it was never mentioned during the hearing before your Lordships. And it is startling because in my respectful judgment it runs counter to well-established and wholly acceptable law.

I restrict myself to recent decision of your Lordships' House. In RONDEL V WORSLEY [1967] 3 All ER 993, [1969] 1 AC 191 their Lordships unanimously held that public policy required that a barrister should be immune from an action for negligence in respect of his conduct and management of a case in court and the work preliminary thereto, Lord Reid saying [1967] 3 All ER 993 at 998, [1969] 1 AC 191 at 228):

'Is it in the public interest that barristers and advocates should be protected against such actions? Like so many question which raise the public interest, a decision one way will cause hardships to individuals while a decision the other way will involve disadvantage to the public interest... So the issue appears to me to be whether the addition of the rule would probably be attended by such disadvantage to the public interest as to make its retention clearly justifiable.'

In HOME OFFICE V DORSET YACHT CO [1970] 2 All ER 294, [1970] AC 1004 your Lordships' House was called on to decide whether the English law of civil wrongs should be extended to impose legal liability for loss caused by conduct of a kind which had not hitherto been recognised by the courts as entailing liability. In expressing the view that it did, Lord Diplock said ([1970] 2 All ER 294 at 324, [1970] AC 1004 at 1058):

'...I agree with Lord Denning MR that what we are concerned with in this appeal "is ... at bottom a matter of public policy which we, as judges, must resolve".'

And in BRITISH RLYS BOARD V HERRINGTON [1972] 1 All ER 749 at 756-757, [1972] AC 877 at 897, dealing with an occupier's duty to trespassing children, Lord Reid said:
'Legal principles cannot solve the problem. How far occupiers are to be required by law to take steps to safeguard such children must be a matter of public policy.'

My Lords, in accordance with such a line of authorities, I hold that public policy issues are 'justiciable'. Their invocation calls for close scrutiny, and the conclusion may be that its nature and existence have not been established with the clarity and cogency required before recognition can be granted to any legal doctrine and before any litigant can properly be deprived of what would otherwise be his manifest legal rights. Or the conclusion may be that adoption of the public policy relied on would involve the introduction of new legal principles so fundamental that they are best left to the legislature: see, for example, MORGANS V LAUNCHBURY [1972] 2 All ER 606 esp at 615, [1973] AC 127 esp at 142, per Lord Pearson. And 'Public policy is not immutable' (per Lord Reid in RONDEL V WORSLEY [1967] 3 All ER 993 at 998, [1969] 1 AC 199 at 227). Indeed, Winfield described it as 'necessarily variable', and wisely added ((1928) 42 Harv LR at 93):

'This variability ... is a stone in the edifice of the doctrine, and not a missile to be flung at it. Public policy would be almost useless without it. The march of civilization and the difficulty of ascertaining public policy at any given time make it essential... How is public policy evidenced? If it is so variable, if it depends on the welfare of the community at any given time, how are the courts to ascertain it? Some judges have thought this difficulty so great that they have urged that it would be solved much better by the legislature and have considered it to be the main reason why the courts should leave public policy alone... This admonition is a wise one and judges are not likely to forget it. But the better view seems to be that the difficulty of discovering what public policy is at any given moment certainly does not absolve the bench from the duty of doing so. The judges are bound to take notice of it and of the changes which it undergoes, and it is immaterial that the question may be one of ethics rather than of law.'

In the present case the Court of Appeal did just that, and in my judgment they were right in doing so. But they concluded that public policy required them to dismiss what they clearly regarded as an otherwise irrefragable claim. In so concluding, I respectfully hold that they were wrong, and I would accordingly allow the appeal.

LORD RUSSEL OF KILLOWEN. My Lords, I make two comments at the outset. First, we are not concerned with any problem that might have been posed had the accident been not wholly attributable
to the negligence of the defendants, but partly attributable to negligent driving by the injured son of the plaintiff. Second, the plaintiff is to be regarded as of normal disposition or phlegm; we are therefore not concerned to investigate the applicability of the ‘thin skull’ cases to this type of case. The facts in this case, and the physical illness suffered by the plaintiff as a result of mental trauma caused to her by what she learned, heard and saw at the hospital have been set out in the speech of my noble and learned friend Lord Wilberforce and I do not repeat them.

All members of the Court of Appeal concluded that that which happened to the plaintiff was reasonably foreseeable by the defendants as a consequence of their negligence on the road. (In some cases, and at all levels, a reasonable bystander seems to be introduced as a relevant mind; I do not understand why: reasonable foreseeability must surely be something to be attributed to the person guilty of negligence).

But, if the effect on this wife and mother of the results of the negligence is considered to have been reasonably foreseeable, I do not see the justification for not finding the defendants liable in damages therefore. I would not shrink from regarding in an appropriate case policy as something which may feature in a judicial decision. But in this case what policy should inhibit a decision in favour of liability to the plaintiff? Negligent driving on the highway is only one form of negligence which may cause wounding or death and thus induce a relevant mental trauma in a person such as the plaintiff. There seems to be no policy requirement that the damage to the plaintiff should be on or adjacent to the highway. In the last analysis any policy consideration seems to be rooted in a fear of floodgates opening, the tacit question: what next? I am not impressed by that fear, certainly not sufficiently to deprive this plaintiff of just compensation for the reasonably foreseeable damage done to her. I do not consider that such deprivation is justified by trying to answer in advance the question posed, What next? by a consideration of relationships of plaintiff to the sufferers or deceased, or other circumstances; to attempt in advance solutions, or even guidelines, in hypothetical cases may well, it seems to me, in this field, do more harm than good.

I also would allow this appeal.

LORD SCARMAN. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bridge. It cannot be strengthened or improved by any words of mine. I accept his approach to the law and the conclusion he reaches. But I also share the anxieties of the Court of Appeal. I differ, however, from the Court of Appeal in that I am persuaded that in this branch of the law it is not for the courts but for the legislature to set limits, if any be needed, to the law’s development.

The appeal raises directly a question as to the balance in our law between the functions of judge and legislature. The common law, which in a constitutional context includes judicially developed equity,
covers everything which is not covered by statute. It knows no gaps; there can be no casus omissus. The function of the court is to decide the case before it, even though the decision may require the extension or adaptation of a principle or in some cases the creation of new law to meet the justice of the case. But, whatever the court decides to do, it starts from a baseline of existing principle and seeks a solution consistent with or analogous to a principle or principles already recognised.

The distinguishing feature of the common law is this judicial development and formulation of principle. Policy considerations will have to be weighed; but the objective of the judges is the formulation of principle. And, if principle inexorably requires a decision which entails a degree of policy risk, the court's function is to adjudicate according to principle, leaving policy curtailment to the judgment of Parliament. Here lies the true role of the two law-making institutions in our constitution. By concentrating on principle the judges can keep the common law alive, flexible and consistent, and can keep the legal system clear of policy problems which neither they, nor the forensic process which it is their duty to operate, are equipped to resolve. If principle leads to results which are thought to be socially unacceptable, Parliament can legislate to draw a line or map out a new path.

The real risk to the common law is not its movement to cover new situations and new knowledge but lest it should stand still, halted by a conservative judicial approach. If that should happen, and since the 1966 practice direction of the House (see Note [1966] 3 All ER 77, [1966] 1 WLR 1234) it has become less likely, there would be a danger of the law becoming irrelevant to the consideration, an inept in its treatment, of modern social problems. Justice would be defeated. The common law has, however, avoided this catastrophe by the flexibility given it by generations of judges. Flexibility carries with it, of course, certain risks, notably a degree of uncertainty in the law and the 'floodgates' risk which so impressed the Court of Appeal in the present case.

The importance to be attached to certainty and the size of the 'floodgates' risk vary from one branch of the law to another. What is required of the law in its approach to a commercial transaction will be very different from the approach appropriate to problems of tortious liability for personal injuries. In some branches of the law, notably that now under consideration, the search for certainty can obstruct the law's pursuit of justice, and can become the enemy of the good.

The present case is a good illustration. Certainty could have been achieved by leaving the law as it was left by VICTORIAN RLYS COMRS V COULTAS (1888) 13 App Cas 222 or, again, by holding the line drawn in 1901 by DULIEU V WHITE & SONS [1901] 1 KB 669, [1900-3] All ER Rep 353 or today by confining the law to what was regarded by Lord Denning MR in HINZ V BERRY [1970] 1 All ER 1074 at 1075, [1970] 2 QB 40 at 42 as 'settled law', namely the 'damages can be given for nervous shock caused by the sight of an accident, at any rate to a close relative'.
But at each landmark stage common law principle, when considered in the context of developing medical science, has beckoned the judges on. And now, as has been made clear by Evatt J, dissenting in CHESTER V WAKERLEY MUNICIPAL COUNCIL (1939) 62 CLR 1 in the High Court of Australia, by Trobiner J, giving the majority judgment in the Californian case of DILLON V LEGG (1968) 68 C 2d 728, and by my noble and learned friend in this case, common law principle requires the judges to follow the logic of the 'reasonably foreseeable test' so as, in circumstances where it is appropriate, to apply it untrammelled by spatial, physical or temporal limits. Space, time, distance, the nature of the injuries sustained and the relationship of the plaintiff to the immediate victim of the accident are factors to be weighed, but not legal limitations, when the test of reasonable foreseeability is to be applied.

But I am by no means sure that the result is socially desirable. The 'floodgates' argument may be exaggerated. Time alone will tell; but I foresee social and financial problems if damages for 'nervous shock' should be made available to persons other than parents and children who without seeing or hearing the accident, or being present in the immediate aftermath, suffer nervous shock in consequence of it. There is, I think, a powerful case for legislation such as has been enacted in New South Wales and the Australian Capital Territory.

Why then should not the courts draw the line, as the Court of Appeal manfully tried to do in this case? Simply, because the policy issue where to draw the line is not justiciable. The problem is one of social, economic, and financial policy. The considerations relevant to a decision are not such as to be capable of being handled within the limits of the forensic process.

My Lords, I would allow the appeal for the reasons developed by my noble and learned friend Lord Bridge, while putting on record my view that there is here a case for legislation.

LORD BRIDGE OF HARWICH. My Lords, I gratefully adopt the account given by my noble and learned friend Lord Wilberforce of the facts giving rise to this appeal.

This is only the second case ever to reach your Lordships' House concerning the liability of a tortfeasor who has negligently killed or physically injured A to pay damages to B for a psychiatric illness resulting from A's death or injury. The previous case was HAY (OR BOURHILL) V YOUNG [1942] 2 All ER 396, [1943] AC 92. The impression with which I am left, after being taken in argument through all the relevant English authorities, a number of Commonwealth authorities and one important decision of the Supreme Court of California, is that this whole area of English law stands in urgent need of review.

The basic difficulty of the subject arises from the fact that the crucial answers to the questions which it raises lie in the difficult field of psychiatric medicine. The common law gives no damages for the emotional distress which any normal person experiences when someone he loves is killed or injured. Anxiety and depression are normal human emotions. Yet an anxiety neurosis or a reactive
depression may be recognisable psychiatric illnesses, with or without psychosomatic symptoms. So, the first hurdle which a plaintiff claiming damages of the kind in question must surmount is to establish that he is suffering, not merely grief, distress or any other normal emotion, but a positive psychiatric illness. That is here not in issue. A plaintiff must then establish the necessary chain of causation in fact between his psychiatric illness and the death or injury of one or more third parties negligently caused by the defendant. Here again, this is not in dispute in the instant case. But, when causation in fact is in issue, it must no doubt be determined by the judge on the basis of the evidence of psychiatrists. Then, here comes the all important question. Given the fact of the plaintiff's psychiatric illness caused [sic] by the defendant's negligence in killing or physically injuring another, was the chain of causation from the one event to the other, considered ex post facto in the light of all that has happened, 'reasonably foreseeable' by the 'reasonable man'? A moment's thought will show that the answer to that question depends on what knowledge is to be attributed to the hypothetical reasonable man of the operation of cause and effect in medicine. There are at least two theoretically possible approaches. The first is that the judge should receive the evidence of psychiatrists as to the degree of probability that the particular cause would produce the particular effect, and apply to that the appropriate legal test of reasonable foreseeability as the criterion of the defendant's duty of care. The second is that the judge, relying on his own opinion of the operation of cause and effect in psychiatric medicine, as fairly representative of that of the educated layman, should treat himself as the reasonable man and form his own view from the primary facts whether the proven chain of cause and effect was reasonably foreseeable. In principle, I think there is much to be said for the first approach. Foreseeability, in any given set of circumstances, is ultimately a question of fact. If a claim in negligence depends on whether some defect in a complicated piece of machinery was foreseeably a cause of injury, I apprehend that the judge will decide that question on the basis of the expert evidence of engineers. But the authorities give no support to this approach in relation to the foreseeability of psychiatric illness. The judges, in all the decisions we have been referred to, have assumed that it lay within their own competence to determine whether the plaintiff's 'nervous shock' (as lawyers quaintly persist in calling it) was in any given circumstances a sufficiently foreseeable consequence of the defendant's act or omission relied on as negligent to bring the plaintiff within the scope of those to whom the defendant owed a duty of care. To depart from this practice and treat the question of foreseeable causation in this field, and hence the scope of the defendant's duty, as a question of fact to be determined in the light of the expert evidence adduced in each case would, no doubt, be too large an innovation in the law to be regarded as properly within the competence, even since the liberating 1966 practice direction (see Note [1966] 3 All ER 77, [1966] 1 WLR 1234), of your Lordships' House. Moreover, psychiatric medicine is far from being an exact science.
The opinions of its practitioners may differ widely. Clearly it is desirable in this, as in any other, field that the law should achieve such a measure of certainty as is consistent with the demands of justice. It would seem that the consensus of informed judicial opinion is probably the best yardstick available to determine whether, in any given circumstances, the emotional trauma resulting from the death or injury of third parties, or indeed the threat of such death or injury, ex hypothesi attributable to the defendant's negligence, was a foreseeable cause in law, as well as the actual cause in fact, of the plaintiff's psychiatric or psychosomatic illness. But the word I would emphasise in the foregoing sentence is 'informed'. For too long earlier generations of judges have regarded psychiatry and psychiatrists with suspicion, if not hostility. Now, I venture to hope, that attitude has quite disappeared. No judge who has spent any length of time trying personal injury claims in recent years would doubt that physical injuries can give rise not only to organic but also to psychiatric disorders. The sufferings of the patient from the latter are no less real and frequently no less painful and disabling than from the former. Likewise, I would suppose that the legal profession well understands that an acute emotional trauma, like a physical trauma, can well cause a psychiatric illness in a wide range of circumstances and in a wide range of individuals whom it would be wrong to regard as having any abnormal psychological make-up. It is in comparatively recent times that these insights have come to be generally accepted by the judiciary. It is only by giving effect to these insights in the developing law of negligence that we can do justice to an important, though no doubt small, class of plaintiffs whose genuine psychiatric illnesses are caused by negligent defendants. My Lords, in the instant case I cannot help thinking that the learned trial judge's conclusion that the appellant's illness was not the foreseeable consequence of the respondents' negligence was one to which, understandably, he felt himself driven by the authorities. Free of authority, and applying the ordinary criterion of reasonable foreseeability to the facts, with an eye 'enlightened by progressive awareness of mental illness' (the language of Stephenson LJ (see [1981] 1 All ER 809 at 819, [1981] QB 599 at 612)), any judge must, I would think, share the view of all three members of the Court of Appeal, with which I understand all your Lordships agree, that, in the words of Griffiths LJ, it was 'readily foreseeable that a significant number of mothers exposed to such an experience might break down under the shock of the event and suffer illness' (see [1981] 1 All ER 809 at 822, [1981] QB 599 at 617).

The question, then, for your Lordships' decision is whether the law, as a matter of policy, draws a line which exempts from liability a defendant whose negligent act or omission was actually and foreseeably the cause of the plaintiff's psychiatric illness and, if so, where that line is to be drawn. In thus formulating the question, I do not, of course, use the word 'negligent' as prejudging the question whether the defendant owes the plaintiff a duty, but I do use the word 'foreseeably' as connoting the normally accepted criterion of such a duty.
Before attempting to answer the question, it is instructive to consider the historical development of the subject as illustrated by the authorities, and to note, in particular, three features of that development. First, it will be seen that successive attempts have been made to draw a line beyond which liability should not extend, each of which has in due course had to be abandoned. Second, the ostensible justification for drawing the line has been related to the current criterion of a defendant's duty of care, which, however expressed in earlier judgments, we should now describe as that of reasonable foreseeability. But, third, in so far as policy considerations can be seen to have influenced any of the decisions, they appear to have sprung from the fear that to cross the chosen line would be to open the floodgates to claims without limit and largely without merit.

Perhaps the most vivid illustration of all three features is in the very first case in the series, the decision of the Privy Council in VICTORIAN RLYS COMRS V COULTAS (1888) 13 App Cas 222. The plaintiff, a pregnant lady, was a passenger in a buggy which was negligently allowed by the defendants' gatekeeper to cross the railway line when a train was approaching. The buggy crossed just in time, ahead of the train, but only narrowly escaped collision. The plaintiff was so alarmed that she suffered what was described as 'a severe nervous shock'. She fainted, and subsequently miscarried. She succeeded in her claim for damages in the courts below. Delivering the judgment of the Privy Council, allowing the appeal, Sir Richard Couch said (at 225-226):

'According to the evidence of the female plaintiff her fright was caused by seeing the train approaching, and thinking they were going to be killed. Damages arising from mere sudden terror unaccompanied by an actual physical injury, but occasioning a nervous or mental shock, cannot under such circumstances, their Lordships think, be considered a consequence which, in the ordinary course of things, would flow from the negligence of the gate-keeper. If it were held that they can, it appears to their Lordships that it would be extending the liability for negligence much beyond what that liability has hitherto been held to be. Not only in such a case as the present, but in every case where an accident caused by negligence had given a person a serious nervous shock, there might be a claim for damages on account of mental injury. The difficulty which now often exists in case 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.'

Two Irish courts declined to follow this decision: BELL V GREAT NORTHERN RLY CO OF IRELAND (1890) 26 LR I 428, following BYRNE V GREAT SOUTHERN AND WESTERN RLY CO OF IRELAND (1884) unreported.

The next English case followed the Irish courts' lead. This was
The case was argued on a preliminary point of law. The plaintiff, again a pregnant lady, pleaded that she had suffered nervous shock when the defendants' horse-drawn van was negligently driven into the public house where she was behind the bar. Kennedy J gave the leading judgment of the Divisional Court in the plaintiff's favour. It is worth quoting the passage which is central to his decision, if only to show how far we have travelled in the last eighty years in the judicial approach to the kind of medical question presently under consideration. He said ([1901] 2 KB 669 at 677, [1900-3] All ER Rep 353 at 358):

'For my own part, I should not like to assume it to be scientifically true that a nervous shock which causes serious bodily illness is not actually accompanied by physical injury, although it may be impossible, or at least difficult, to detect the injury at the time in the living subject. I should not be surprised if the surgeon or the physiologist told us that nervous shock is or may be in itself an injurious affection of the physical organism. Let it be assumed, however, that the physical injury follows the shock, but that the jury are satisfied upon proper and sufficient medical evidence that it follows the shock as its direct and natural effect, is there any legal reason for saying that the damage is less proximate in the legal sense than damage which arises contemporaneously?'

But earlier in his judgment Kennedy J had drawn a new line of limitation when he said ([1901] 2 KB 669 at 675; cf [1900-3] All ER Rep 353 at 357): 'The shock, where it operates through the mind, must be a shock which arises from a reasonable fear of immediate personal injury to oneself.' He supported this by reference to an earlier case (SMITH V JOHNSON & CO (1898) unreported), where the unsuccessful plaintiff suffered from the shock of seeing another person killed and said of such a case:

'I should myself...have been inclined to go a step further, and to hold...that, as the defendant neither intended to affect the plaintiff injuriously nor did anything which could reasonably or naturally be expected to affect him injuriously, there was no evidence of any breach of legal duty towards the plaintiff...'

The next landmark is HAMBROOK V STOKES BROS [1925] 1 KB 141, [1924] All ER Rep 110. This was the case which turned on whether 'nervous shock' caused to a mother by fear for her children, who had just disappeared round a corner going up a hill when a runaway lorry appeared round the corner going downhill, and when, as it turned out, one of her children was injured, gave a cause of action against the driver whose negligence allowed the lorry to run down the hill. The court by a majority held that it did. The leading judgment of Bankes...
LJ sought to demonstrate the absurdity of maintaining the boundary of a defendant's liability for 'nervous shock' on the line drawn by Kennedy J, saying ([1925] 1 KB 141 at 151, [1924] All ER Rep 110 at 113):

'Assume two mothers crossing the street at the same time when this lorry comes thundering down, each holding a small child by the hand. One mother is courageous and devoted to her child. She is terrified, but thinks only of the damage to the child, and not at all about herself. The other woman is timid and lacking in the motherly instinct. She also is terrified, but thinks only of the damage to herself and not at all about her child. The health of both mothers is seriously affected by the mental shock occasioned by the fright. Can any real distinction be drawn between the two cases? Will the law recognize a cause of action in the case of the less deserving mother, and none in the case of the more deserving one? Does the law say that the defendant ought reasonably to have anticipated the non-natural feeling of the timid mother, and not the natural feeling of the courageous mother? I think not.'

Sargant LJ, in his dissenting judgment, nevertheless sought to uphold the distinction essentially on the basis that 'nervous shock' caused to a plaintiff by fear of injury to himself occasioned by a 'near miss' is indistinguishable, so far as the defendant's duty is concerned, from injury by direct impact, whereas 'nervous shock' caused by the fear or sight of injury to another is beyond the defendant's anticipation and hence beyond the range of his duty.

When one comes to the decision of your Lordships' House in HAY (OR BOURHILL) V YOUNG [1942] 2 All ER 396, [1943] AC 92 it is important to bear in mind, as the speeches delivered show, that the difference of judicial opinion in HAMBROOK V STOKES BROS remained unresolved, and indeed that their Lordships did not purport to resolve it. Furthermore, on the facts of that case, the result was surely a foregone conclusion. The pursuer was alighting from a tram when she heard, but did not see, the impact of a collision between a motor cyclist (on whose negligence in driving too fast her claim was based) and a car. The motor cyclist, a stranger to the pursuer, was killed. There is nothing in the report to indicate that she ever saw the body, but after the body had been removed she saw the blood left on the road. In these circumstances I cannot suppose that any judge today would dissent from the view that 'nervous shock' to the pursuer was not reasonably foreseeable. Nor would anyone, I think, quarrel with the following passage from the speech of Lord Porter as expressing a view of the law as acceptable in 1982 as it was in 1942 ([1942] 2 All ER 396 at 409, [1943] AC 92 at 117):

'The question whether emotional disturbance or shock, which a defender ought reasonably to have anticipated as likely to follow from his reckless driving, can ever form the basis of
a claim is not in issue. It is not every emotional disturbance
or every shock which should have been foreseen. The driver of a
car or vehicle even though careless is entitled to assume that the
ordinary frequenter of the streets has sufficient fortitude to
endure such incidents as may from time to time be expected to occur
in them, including the noise of a collision and the sight of injury
to others, and is not to be considered negligent towards one who does
not possess the customary phlegm.'

On the difference of opinion in HAM BROOK V STOKES BROS Lord
Russell in terms expressed a preference for the dissenting view of Sargant LJ.
Lord Thankerton and Lord Macmillan, although not saying so in terms,
appear by necessary implication to support the same view by confining
a driver's duty of care to those in the area of potential physical
danger which may arise from the manner of his driving. Lord Porter's
speech is neutral. Lord Wright expressed provisional agreement with
the majority decision in HAM BROOK V STOKES BROS. His speech also
contained the following and, as I think, far-sighted passage ([1942] 2
All ER 396 at 405-406, [1943] AC 92 at 110):

'What is now being considered is the question of liability,
and this, I think, in a question whether there is a duty owing
to members of the public who come within the ambit of the act,
must generally depend on a normal standard of susceptibility.
This, it may be said, is somewhat vague. That is true; but
definition involves limitation, which it is desirable to avoid
further than is necessary in a principle of law like negligence,
which is widely ranging and is still in the stage of development.
It is here, as elsewhere, a question of what the hypothetical
reasonable man, viewing the position, I suppose ex post facto,
would say it was proper to foresee. What danger of particular
infirmity that would include must depend on all the circumstances;
but generally, I think, a reasonably normal condition, if medical
evidence is capable of defining it, would be the standard. The
test of the plaintiff's extraordinary susceptibility, if unknown
to the defendant, would in effect make the defendant an insurer.
The lawyer likes to draw fixed and definite lines and is apt to
ask where the thing is to stop. I should reply it should stop
where in the particular case the good sense of the jury, or of the
judge, decides...I cannot, however, forbear referring to a most
important case in the High Court of Australia, CHESTER V.
W A V E R L E Y
MUNICIPAL COUNCIL ((1939) 62 CLR 1), where the court by a
majority
held that no duty was made out. The dissenting judgment of Evatt, J.,
will demand the consideration of any judge who is called upon to
consider these questions.'

I shall return later to the judgment of Evatt J to which Lord Wright
there refers.

This observation was cited with approval in OVERSEAS TANKSHIP (UK) LTD V MORTS DOCK AND ENGINEERING CO LTD THE WAGON MOUND (NO 1) [1961] 1 All ER 404 at 415, [1961] AC 388 at 426.

I would add, however, that KING V PHILLIPS, a case in which the plaintiff failed, would, as I think, clearly be decided differently today. By 1970 it was clear that no one could any longer contend for the limitation of liability for ‘nervous shock’ to those who were themselves put in danger by the defendant’s negligence, so much so that in HINZ V BERRY a mother who witnessed from one side of the road a terrible accident to her family picnicking on the other side of the road recovered damages for her resulting psychiatric illness without dispute on the issue of liability, and the case reached the Court of Appeal on the issue of quantum of damages only. Lord Denning MR said ([1970] 1 All ER 1074 at 1075, [1970] 2 QB 40 at 42):

‘The law at one time said that there could not be damages for nervous shock; but for these last 25 years, it has been settled that damages can be given for nervous shock caused by the sight of an accident, at any rate to a close relative.’

The only other important English decision is CHADWICK V BRITISH TRANSPORT COMMISSION [1967] 2 All ER 945, [1967] 1 WLR 912. The plaintiff’s husband lived 200 yards from the scene of the terrible Lewisham railway accident in 1957 in which 90 people were killed. On hearing of the accident in the evening he went at once to the scene and assisted in the rescue work through the night until early next morning. As a result of his experiences of the night he developed an acute anxiety neurosis for which he required hospital treatment as in an in-patient for over six months. After his death from unrelated causes his wife, as administratrix of his estate, recovered damages for his psychiatric illness. This was a decision of Waller J. It was not challenged on appeal and no one, I believe, has ever doubted that it was rightly decided.

I should mention two Commonwealth decisions of first instance. In BENSON V LEE [1972] VR 879 Lush J, in the Supreme Court of Victoria, held that a mother who did not witness, but was told of, an accident to her son 100 yards from her home, went to the scene and accompanied the child in an ambulance to hospital where he died, was entitled to damages for ‘nervous shock’ notwithstanding evidence that she was prone to mental illness from stress. In MARSHAL V LIONEL ENTERPRISES INC (1971) 25 DLR (3d) 141 Haines J, in the Ontario High Court, held
that a wife who found her husband seriously injured shortly after an accident caused by defective machinery was not, as a matter of law, disentitled to damages for the 'nervous shock' which she claimed to have suffered as a result. On the other hand in ABRAMZIK V. BRENNER (1967) 65 DLR (2d) 651 the Saskatchewan Court of Appeal held that a mother who suffered 'nervous shock' on being informed by her husband that two of her children had been killed in a road accident was not entitled to recover.

CHESTER V WAVERLEY MUNICIPAL COUNCIL (1939) 62 CLR 1, referred to by Lord Wright in the passage quoted above, was a decision of the High Court of Australia. The plaintiff's seven-year-old son having been out to play, failed to return home when expected. A search was mounted which continued for some hours. Eventually, in the presence of the plaintiff, his mother, the child's dead body was recovered from a flooded trench which the defendant authority had left inadequately fenced. The plaintiff claimed damages for 'nervous shock'. The majority of the court (Latham CJ, Rich and Starke JJ) rejected the claim. The decision was based squarely on the ground that, the plaintiff's injury not being a foreseeable consequence of the defendant's omission to fence the trench, they owed her no duty. But the judgment of Latham CJ contains an interesting example of the 'floodgates' argument. He said (at 7-8):

'But in this case the plaintiff must establish a duty owed by the defendant to herself and a breach of that duty. The duty which it is suggested the defendant owed to the plaintiff was a duty not to injure her child so as to cause her a nervous shock when she saw, not the happening of the injury, but the result of the injury, namely, the dead body of the child. It is rather difficult to state the limit of the alleged duty. If a duty of the character suggested exists at all it is not really said that it should be confined to mothers of children who are injured. It must extend to some wider class - but to what class? There appears to be no reason why it should not extend to other relatives or to all other persons, whether they are relatives or not. If this is the true principle of law, then a person who is guilty of negligence with the result that A is injured will be liable in damages to B, C, D and any other persons who receive a nervous shock (as distinguished from passing fright or distress) at any time upon perceiving the results of the negligence, whether in disfigurement of person, physical injury or death.'

In a powerful dissenting judgment, which I find wholly convincing, Evatt J drew a vivid picture of the mother's agony of mind as the search continued, culminating in the gruesome discovery in her presence of the child's drowned body. I cannot for a moment doubt the correctness of his conclusion that the mother's mental illness was the reasonably foreseeable consequence of the defendant's negligence.
This was a case from New South Wales and I cannot help wondering whether it was not the manifest injustice of the result which led, a few years later, to the intervention of the New South Wales legislature, to enable the parent, husband or wife of a person ‘killed, injured or put in peril’ by another’s negligence to recover damages for ‘mental or nervous shock’ irrespective of any spatial or temporal relationship to the accident in which the death, injury or peril occurred.

My Lords, looking back, I think it is possible to discern that there only ever were two clear lines of limitation of a defendant’s liability for ‘nervous shock’ for which any rational justification could be advanced, in the light both of the state of the law of negligence and the state of medical science as judicially understood, at the time when those limitations were propounded. In 1888 it was, no doubt, perfectly sensible to say:

‘Damages arising from mere sudden terror unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot ... be considered a consequence which, in the ordinary course of things, would flow from ... negligence.’

(See VICTORIAN RLYS COMRS V COULTAS 13 App Cas 222 at 225). Here the test, whether of duty or of remoteness, can be recognized as a relatively distant ancestor of the modern criterion of reasonable foreseeability. Again, in 1901 it was, I would suppose, equally sensible to limit a defendant’s liability for ‘nervous shock’ which could ‘reasonably or naturally be expected’ to be such as was suffered by a plaintiff who was himself physically endangered by the defendant’s negligence (see DULIEU V WHITE & SONS [1901] 2 KB 669 at 675; cf [1900-3] All ER Rep 353 at 357). But once that line of limitation has been crossed, as it was by the majority in HAMBROOK V STOKES BROS, there can be no logical reason whatever for limiting the defendant’s duty to persons in physical proximity to the place where the accident, caused by the defendant’s negligence, occurred. Much of the confusion in the authorities since HAY (OR BOURHILL) V YOUNG, including, if I may say so, the judgments of the courts below in the instant case, has arisen, as it seems to me, from the deference still accorded, notwithstanding the acceptance of the Hambrook principle, to dicta of their Lordships in HAY (OR BOURHILL) V YOUNG which only make sense if understood as based on the limited principle of liability propounded by Kennedy J in DULIEU V WHITE & SONS, and adopted in the dissenting judgment of Sargant LJ in HAMBROOK V STOKES BROS.

My Lords, before returning to the policy question, it is, I think, highly instructive to consider the decision of the Supreme Court of California in DILLON V LEGG (1968) 68 C 2d 728. Before this decision the law of California, and evidently of other states of the Union, had adhered to the English position before HAMBROOK V STOKES BROS that damages for nervous shock could only be recovered if resulting from the plaintiff’s apprehension of danger to himself, and, indeed, this
view had been affirmed by the Californian Supreme Court only five years earlier. The majority in DILLON V LEGG adopted a contrary view in refusing a motion to dismiss a mother's claim for damages for emotional trauma caused by seeing her infant daughter killed by a car as she crossed the road.

In delivering the majority judgment of the court, Tobriner J said (at 740-741):

'Since the chief element in determining whether defendant owes a duty or an obligation to plaintiff is the foreseeability of the risk, that factor will be of prime concern in every case. Because it is inherently intertwined with foreseeability such duty or obligation must necessarily be adjudicated only upon a case-by-case basis. We cannot now predetermine defendant's obligation in every situation by a fixed category; no immutable rule can establish the extent of that obligation for every circumstance of the future. We can, however, define guidelines which will aid in the resolution of such an issue as the instant one. We note, first, that we deal here with a case in which plaintiff suffered a shock which resulted in physical injury and we confine our ruling to that case. In determining, in such a case, whether defendant should reasonably foresee the injury to plaintiff, or, in other terminology, whether defendant owes plaintiff a duty of due care, the courts will take into account such factors as the following: (1) Whether plaintiff was located near the scene of the accident as contrasted with one who was a distance away from it. (2) Whether the shock resulted from a direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence. (3) Whether plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship. The evaluation of these factors will indicate the degree of the defendant's foreseeability: obviously defendant is more likely to foresee that a mother who observes an accident affecting her child will suffer harm than to foretell that a stranger witness will do so. Similarly, the degree of foreseeability of the third person's injury is far greater in the case of his contemporaneous observance of the accident than that in which he subsequently learns of it. The defendant is more likely to foresee that shock to the nearby, witnessing mother will cause physical harm than to anticipate that someone distant from the accident will suffer more than a temporary emotional reaction. All these elements, of course, shade into each other; the fixing of obligation, intimately tied into the facts, depends upon each case. In light of these factors the court will determine whether the accident and harm was reasonably foreseeable. Such
reasonable foreseeability does not turn on whether the particular plaintiff as an individual would have in actuality foreseen the exact accident and loss; it contemplates that courts, on a case-to-case basis, analyzing all the circumstances, will decide what the ordinary man under such circumstances should reasonably have foreseen. The courts thus mark out the areas of liability, excluding the remote and unexpected. In the instant case, the presence of all the above factors indicates that plaintiff has alleged a sufficient prima facie case. Surely the negligent driver who causes the death of a young child may reasonably expect that the mother will not be far distant and will upon witnessing the accident suffer emotional trauma. As Dean Prosser has stated: "when a child is endangered, it is not beyond contemplation that its mother will be somewhere in the vicinity, and will suffer serious shock." (Prosser, The Law of Torts (3rd edn, 1964) p 353. See also 2 Harper & James, The Law of Torts (1956) p 1039.) We are not now called upon to decide whether, in the absence or reduced weight of some of the above factors, we would conclude that the accident and injury were not reasonably foreseeable and that therefore defendant owed no duty of due care to plaintiff. In future cases the courts will draw lines of demarcation upon facts more subtle than the compelling one alleged in the complaint before us.'

The leading minority judgment castigated the majority for embarking on a first excursion into the 'fantastic realm of infinite liability', a colourful variant of the familiar 'floodgates' argument. In approaching the question whether the law should, as a matter of policy, define the criterion of liability in negligence for causing psychiatric illness by reference to some test other than that of reasonable foreseeability it is well to remember that we are concerned only with the question of liability of a defendant who is, ex hypothesi, guilty of fault in causing the death, injury or danger which has in turn triggered the psychiatric illness. A policy which is to be relied on to narrow the scope of the negligent tortfeasor's duty must be justified by cogent and readily intelligible considerations, and must be capable of defining the appropriate limits of liability by reference to factors which are not purely arbitrary. A number of policy considerations which have been suggested as satisfying these requirements appear to me, with respect, to be wholly insufficient. I can see no ground whatever for suggesting that to make the defendant liable for reasonably foreseeable psychiatric illness caused by his negligence would be to impose a crushing burden on him out of proportion to his moral responsibility. However liberally the criterion of reasonable foreseeability is interpreted, both the number of successful claims in this field and the quantum of damages they will attract are likely to be moderate. I cannot accept as relevant the well-known phenomenon that litigation may delay recovery from a psychiatric illness. If this were a valid policy
consideration, it would lead to the conclusion that psychiatric illness should be excluded altogether from the heads of damage which the law will recognize. It cannot justify limiting the cases in which damages will be awarded for psychiatric illness by reference to the circumstances of its causation. To attempt to draw a line at the furthest point which any of the decided cases happen to have reached, and to say that it is for the legislature, not the courts, to extend the limits of liability any further, would be, to my mind, an unwarranted abdication of the court's function of developing and adapting principles of the common law to changing conditions, in a particular corner of the common law which exemplifies, par excellence, the important and indeed necessary part which that function has to play. In the end I believe that the policy question depends on weighing against each other two conflicting considerations. On the one hand, if the criterion of liability is to be reasonable foreseeability simpliciter, this must, precisely because questions of causation in psychiatric medicine give rise to difficulty and uncertainty, introduce an element of uncertainty into the law and open the way to a number of arguable claims which a more precisely fixed criterion of liability would exclude. I accept that the element of uncertainty is an important factor. I believe that the 'floodgates' argument, however, is, as it always has been, greatly exaggerated. On the other hand, it seems to me inescapable that any attempt to define the limit of liability by requiring, in addition to reasonable foreseeability, that the plaintiff claiming damages for psychiatric illness should have witnessed the relevant accident, should have been present at or near the place where it happened, should have come on its aftermath and thus have some direct perception of it, as opposed to merely learning of it after the event, should be related in some particular degree to the accident victim - to draw a line by reference to any of these criteria must impose a largely arbitrary limit of liability. I accept, of course, the importance of the factors indicated in the guidelines suggested by Tobriner J in DILLON V LEGG as bearing on the degree of foreseeability of the plaintiff's psychiatric illness. But let me give two examples to illustrate what injustice would be wrought by any such hard and fast lines of policy as have been suggested. First, consider the plaintiff who learned after the event of the relevant accident. Take the case of a mother who knows that her husband and children are staying in a certain hotel. She reads in her morning newspaper that it has been the scene of a disastrous fire. She sees in the paper a photograph of unidentifiable victims trapped on the top floor waving for help from the windows. She learns shortly afterwards that all her family have perished. She suffers an acute psychiatric illness. That her illness in these circumstances was a reasonably foreseeable consequence of the events resulting from the fire is undeniable. Yet, is the law to deny her damages as against a defendant whose negligence was responsible for the fire simply on the ground that in important link in the chain of causation of her psychiatric illness was supplied by her imagination of the agonies of mind and body in which her family died,
rather than by direct perception of the event? Second, consider the plaintiff who is unrelated to the victims of the relevant accident. If rigidly applied, an exclusion of liability to him would have defeated the plaintiff's claim in CHADWICK V BRITISH TRANSPORT COMMISSION. The Court of Appeal treated that case as in a special category because Mr. Chadwick was a rescuer. Now, the special duty owed to a rescuer who voluntarily places himself in physical danger to save others is well understood, and is illustrated by HAYNES V HARWOOD [1935] 1 KB 146, [1934] All ER Rep 103, the case of the constable injured in stopping a runaway horse in a crowded street. But, in relation to the psychiatric consequences of witnessing such terrible carnage as must have resulted from the Lewisham train disaster, I would find it difficult to distinguish in principle the position of a rescuer, like Mr. Chadwick, from a mere spectator, as, for example, an uninjured or only slightly injured passenger in the train, who took no part in the rescue operations but was present at the scene after the accident for some time, perforce observing the rescue operations while he waited for transport to take him home.

My Lords, I have no doubt that this is an area of the law of negligence where we should resist the temptation to try yet once more to freeze the law in a rigid posture which would deny justice to some who, in the application of the classic principles of negligence derived from DONOGHUE V STEVENSON [1932] AC 562, [1932] All ER Rep 1, ought to succeed, in the interests of certainty, where the very subject matter is uncertain and continuously developing, or in the interests of saving defendants and their insurers from the burden of having sometimes to resist doubtful claims. I find myself in complete agreement with Tobriner J that the defendant's duty must depend on reasonable foreseeability and --

'must necessarily be adjudicated only upon a case-by-case basis. We cannot now predetermine defendant's obligation in every situation by a fixed category; no immutable rule can establish the extent of that obligation for every circumstance of the future.'

To put the matter in another way, if asked where the thing is to stop, I should answer, in an adaptation of the language of Lord Wright and Stephenson LJ, 'Where in the particular case the good sense of the judge, enlightened by progressive awareness of mental illness, decides'.

I regret that my noble and learned friend Lord Edmund-Davies, who criticizes my conclusion that in this area of the law there are no policy considerations sufficient to justify limiting the liability of negligent tortfeasors by reference to some narrower criterion than that of reasonable foreseeability, stops short of indicating his view where the limit of liability should be drawn or the nature of the policy considerations (other than the 'floodgates' argument, which I understand he rejects) which he would invoke to justify such a limit.

My Lords, I would accordingly allow the appeal.
APPEAL ALLOWED.

Solicitors: Vinters, Cambridge (for the appellant); Hextall, Erskine & Co. (for the respondents).

Mary Rose Plummer  Barrister.

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