

SIMON DI ROLLO KC

▲
**A THOUSAND
NATURAL
SHOCKS?**



MOHAMED ABDUL AFRIB



MEADOWS V KHAN [2022] AC 852

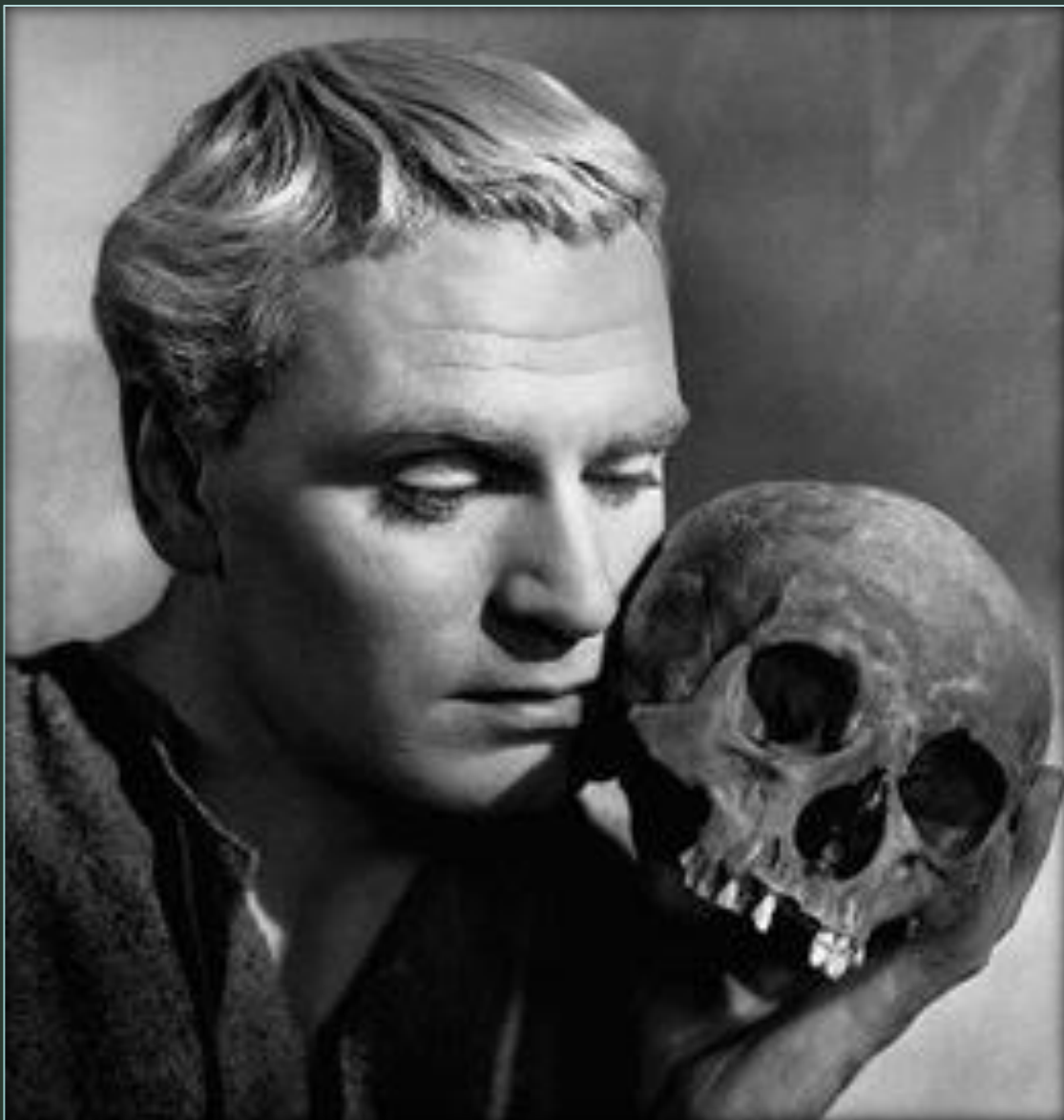
- 1. ACTIONABILITY
- 2. SCOPE OF DUTY
- 3. BREACH
- 4. FACTUAL CAUSATION
- 5. DUTY NEXUS
- 6. LEGAL RESPONSIBILITY



‘The overall object of tort law is to define cases in which the law may justly hold one party liable to compensate another’

Lord Bingham

FAIRCHILD V GLENHAVEN FUNERAL SERVICES [2003] 1 AC 32



CAUSATION - THE BUT FOR TEST

IS THE CAUSE A NECESSARY ELEMENT IN A SET OF
CONDITIONS JOINTLY SUFFICIENT TO PRODUCE A RESULT ?

HART AND HONORE: CAUSATION IN THE LAW 2ND EDITION
(1985)

BUT FOR TEST IN CLINICAL NEGLIGENCE

- 1. FAILURE TO ATTEND OR TREAT – BOLITHO V CITY AND HACKNEY HEALTH AUTHORITY [1998] AC 231
- 2. FAILURE TO ADVISE OR INFORM – CHESTER V AFSHAR [2005] 1 AC 134
- 3. FAILURE TO REFER – GREG V SCOTT [2005] 2 AC 176
- 4. INCORRECT DIAGNOSIS
- 5. ERRORS IN TREATMENT – WILSHER V ESSEX AREA HEALTH AUTHORITY [1988] AC 1074
- 6. FAILURE TO FOLLOW UP



MATERIAL CONTRIBUTION TO CUMULATIVE PROCESS RESULTING IN INDIVISIBLE DAMAGE

- BAILEY V MINISTRY OF DEFENCE [2009] 1 WLR 1052
- WILLIAMS V BERMUDA HOSPITALS BOARD [2016] AC 888

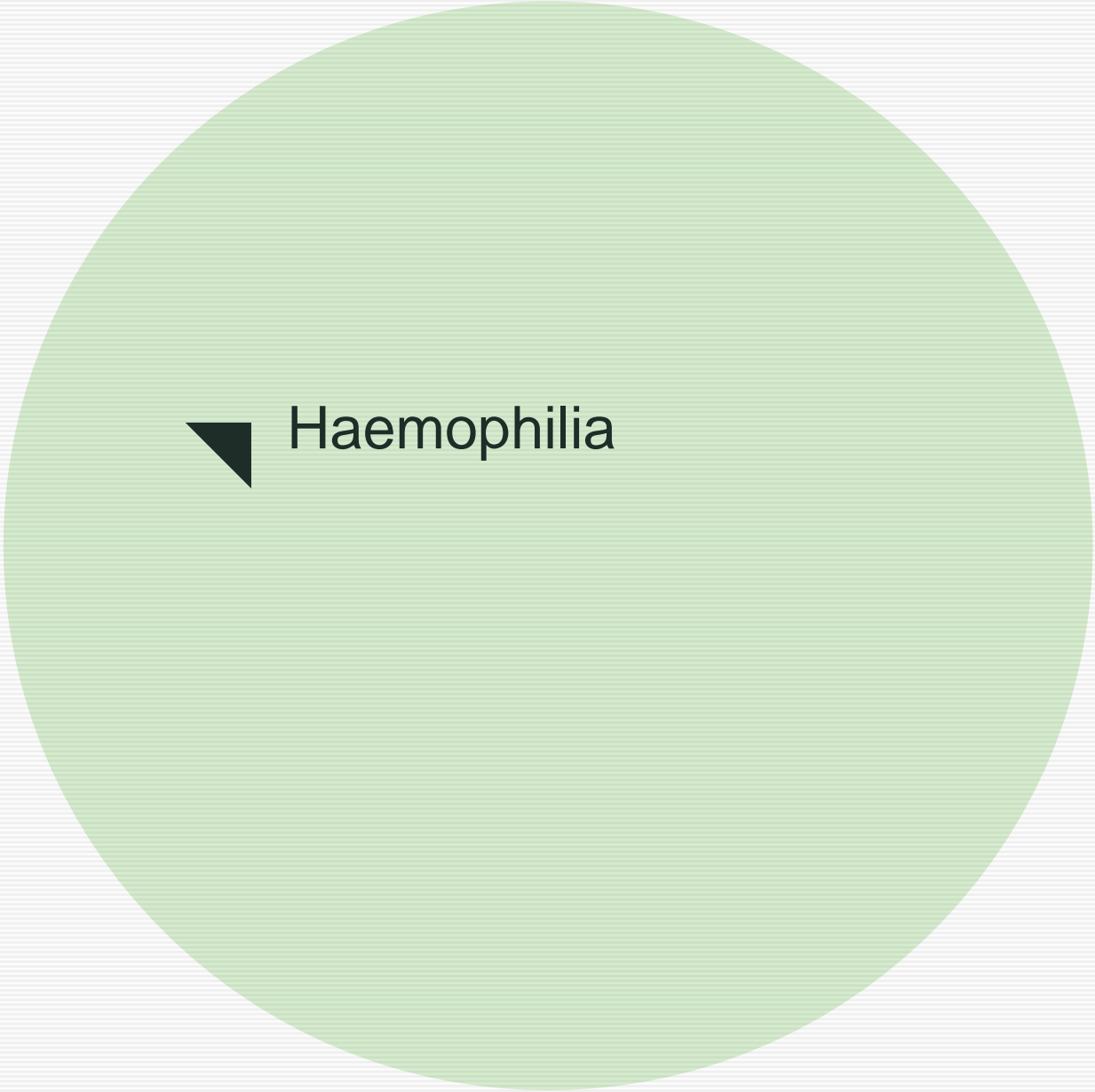
RECAST THE DUTY OF CARE

- McWILLIAMS V SIR WILLIAM ARROL & CO 1962 SC 70



Haemophilia



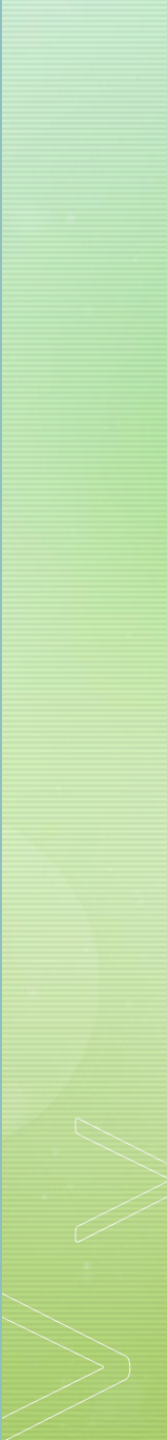


Haemophilia

Autism



SCOPE OF THE DUTY

- The duty of the GP was to take reasonable care to find out whether she was a carrier of the haemophilia gene
 - The risk of having a child with autism is not part of the duty to advise about whether she carried the haemophilia gene
- 

THE DUTY NEXUS QUESTION – IS THE PARTICULAR LOSS OUTSIDE THE SCOPE?

- *SOUTH AUSTRALIA ASSET MANAGEMENT CORPORATION V YORK MONTAGUE [1997] A.C. 191*

Lord Hoffman



“A mountaineer about to undertake a difficult climb is concerned about the fitness of his knee. He goes to a doctor who negligently makes a superficial examination and pronounces the knee fit. The climber goes on the expedition, which he would not have undertaken if the doctor had told him the true state of his knee. He suffers an injury which is an entirely foreseeable consequence of mountaineering but has nothing to do with his knee. On the Court of Appeal's principle, the doctor is responsible for the injury suffered by the mountaineer because it is damage which would not have occurred if he had been given correct information about his knee. He would not have gone on the expedition and would have suffered no injury. On what I have suggested is the more usual principle, the doctor is not liable. The injury has not been caused by the doctor's bad advice because it would have occurred even if the advice had been correct”





APPLICATION

- D V GRAMPIAN HEALTH BOARD [2022] 1WLUK 453
- B V ENGLISH PROVINCE OF THE CONGREGATION OF THE CHRISTIAN BROTHERS [2022] 1 WLUK 453
- D V N HS FIFE HEALTH BOARD [2022] SAC (CIV) 27

MEADOWS V KHAN [2022] AC 852

- 1. ACTIONABILITY
- 2. SCOPE OF DUTY
- 3. BREACH
- 4. FACTUAL CAUSATION
- 5. DUTY NEXUS
- 6. LEGAL RESPONSIBILITY

SIMON DI ROLLO KC

▲
A THOUSAND
NATURAL
SHOCKS?