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LIABILITY FOR SUICIDE AND SELF HARM

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PART 1: LEGAL ISSUES IN TORT

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1(a): Duty of Care

2 Important cases



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- *Corr v IBC*: Severe injury at work leading to depression and eventually to suicide.
- *Reeves*: Suicide in police station detention. Known suicide risk. 'Hatch' negligently left open such that C could use it to hang himself. Breach of duty conceded.



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Duty of Care: Corr v IBC

- Lord Bingham:
 - *His own act of suicide fell within the scope of the duty not to cause psychiatric injury or personal injury – it was a consequence of the initial injury.*
 - *It was not incumbent on [C] to show that suicide itself was foreseeable [...] a tortfeasor who reasonably foresees the occurrence of some damage need not foresee the precise form which the damage may take.*



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Volenti (Reeves):

- Hoffman:
 - In the present case, *volenti non fit injuria* can only mean that Mr Lynch voluntarily caused his own death to the exclusion of any other causal effect;
 - So, if breach of duty was a cause of the death, there is no volenti.
 - It was admitted that the breach was a cause of death, so no volenti defence



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Volenti (Corr v IBC):

- Bingham:
 - Principle is that a tortfeasor cannot be held responsible for injury or damage to which a victim, voluntarily and with his eyes open, consents
 - **But** Suicide was not something to which Mr Corr consented voluntarily and with his eyes open.
 - It was an act performed because of the psychological condition which the employer's breach of duty had induced.



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Novus Actus: Reeves

- Lord Hoffman at 692:
 - In general deliberately causing injury to himself is almost invariably regarded as negating causal connection between any prior breach of duty by the defendant and the damage suffered by the plaintiff.
- Lord Hoffman, at 689:
 - The duty [...] is a very unusual one, arising from the complete control which the police or prison authorities have over the prisoner, combined with the special danger of people in prison taking their own lives.
 - Once it is admitted that such a duty is owed, it seems to me self-contradictory to say that the breach could not have been a cause of the harm because the victim caused it to himself.



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Novus Actus: Corr

- Lord Bingham:
 - It is not fair to hold a tortfeasor liable, however gross his breach of duty may be, for damage caused to the claimant not by the tortfeasor's breach of duty but by some independent, supervening cause
 - In the present case Mr Corr's suicide was not a voluntary, informed decision taken by him as an adult of sound mind making and giving effect to a personal decision about his future. It was the response of a man suffering from a severely depressive illness which impaired his capacity to make reasoned and informed judgments about his future, such illness being, as is accepted, a consequence of the employer's tort.
- Here the duty did not arise from complete control like in Reeves
- But the depression / suicide arose from the breach



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Material Contribution

- Dr E & Dr J G v Somerset, Bristol CC 2016
- Applied Bailey v MOD (Pre Williams v Bermuda)
 - *premature ending of the treatment and the failure to involve the family in what was going on[...] did materially contribute to the ultimate decision by F to take her own life.*
- Remember “where medical science cannot establish but for... but can establish a contribution”



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Duty to third parties

- Buck v Norfolk (CC Only)
- C Bus driver suffering psychiatric injury when D's patient took his own life by laying under wheels of C's bus.
- D relied on Hill / Dorset Yacht Co, etc as to liability for third parties
- Held: C was not 'identifiable'; no relationship or assumption of responsibility; hence no duty of care.



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1(b): Contributory Negligence

“Where [C] suffers damage as the result partly of his own fault...”

Reeves



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- In principle suicide can give rise to a deduction for contrib.
- 100% at trial (sound mind = full responsibility) / HL: 50%:
 - Hoffman: *a 100% apportionment [...] is another different way of saying that the police should not have owed Mr Lynch a duty of care. But he was of “sound mind”.*
 - Jauncey: *[the open flap] only became a danger when it was deliberately used by the deceased as part of the mechanism whereby he strangled himself.*
 - Hope: *The fact that it was done so quickly, within minutes of the last check of the cell, also indicates a determination on his part immediately to seize the opportunity*



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Corr v IBC

- Scott: Mr Corr struggled against suicidal tendencies, underwent extremely unpleasant therapy, but finally succumbed to them – 20%.
- Bingham: Situation was of the employer's making, not his: 0%
- Walker: I do not regard "blameworthy" as an appropriate term ... his judgment was impaired by severe depression...
- Neuberger:
 - At one extreme is a case ... where [x] was of sound mind when he killed himself... a purely voluntary act;
 - At the other extreme... the deceased's will and understanding are so overborne by his mental state, which had been caused by the defendant, that there could be no question of any real choice on his part at all;
 - No real choice, therefore no "fault" on his part.





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1(c): Breach of Duty



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Inpatient issues

- Home leave s.17 (Rabone)
- Discharge
- Level of observations
- Search / removal of means
 - No express power to search
 - Necessity (tort)
 - Chapter 8 MHA code - without consent 8.39
 - Balance safety with Art.8 - proportionate
- **Risk Assessments**



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Community Care

- Level of support
- Assertive outreach
- Involving the family
- Failure to visit urgently
- Failure to admit

Risk assessments



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- Expression of ideation
- History of attempts
- Evidence of plans (direct or indirect)
- Hopelessness
- Self-care
- Medication non-Compliance
- Paranoia re services / medication
- Psychotic symptoms / delusions
- Looking to the future? - positive
- Looking to the past? – can be negative
- Elation – can be either
- Impending events / risk (e.g. needles)



Common failures in risk assessments:

- Not systematic
- No direct questioning
- Failure to challenge
- Failure to identify masking of symptoms
- Failure to consider circumstances / indirect evidence
- Family concerns
- Failure to identify psychosis
- Failure to address / treat psychosis



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Mental Health Act

- Section 2 – admission for assessment
- Section 3 – admission for treatment
- Section 6 – power to convey and detain
- Informal patient free to leave BUT
- Section 5(4) nurse power to detain for 6 hours

Causation

- Access to means
- Immediate risk
- Continuing risk of suicide
- Life expectancy



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2: Types of Claim



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Types of Claim

- Estate:
 - PSLA - Consider psychological distress
 - Knowledge of impending death
 - Section 1(1)(a) Administration of Justice Act 1982 / Kadir v Mistry 2014
- FAA
 - Bereavement
 - Dependency
 - Life expectancy



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Secondary Victim

- Close ties
- Horrifying event
- Presence at scene or “Immediate aftermath”
 - Identical scene?
- Injury caused by witnessing death of or serious injury to primary victim



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3. Article 2 Claims

Operational Duty



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- *Osman* para 115 - Positive obligation where:

the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk

Operational Duty



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- Extended to apply to:
 - suicide by prisoners – Keenan
 - suicide by MHA detained patients – Savage
 - suicide by informal patients – Rabone

Operational Duty key points



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- Real risk = substantial, not remote or fanciful
- Standard is one of reasonableness.
 - *“consideration of the circumstances of the case, the ease or difficulty of taking precautions and the resources available”*: (In re Officer L [2007])
- Consideration of respect for personal autonomy (Rabone).



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Who is a 'Victim'?

- Section 7(7) HRA: “victim” refers to Art 34 of the Convention
- A person ceases to be a victim within the meaning of article 34 if the domestic public authority has
 - (i) provided “adequate redress” and
 - (ii) “acknowledged, either expressly or in substance, the breach of the Convention”.



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Who is a Victim?

- Family members can bring Art 2 claims (See Rabone)
- Morgan [2010]: *whether the relationship between the applicant and the deceased is such that the applicant has 'suffered gravely' as a result of serious violations*
- Daniel v St Georges goes further: Family tie or legal relationship. *NOT close friends, lovers, housemates, or colleagues from a common workplace or other institutions, such as a college or club.*



Damages for Art.2 breach

- Savage: Range of ECtHR awards €5,000 - €60,000 (£4,300 - £52,400)
- Rabone (UKSC): “*real force*” in submission that £5,000 each is too low (but not appealed)
- Rabone: Factors include
 - Closeness
 - Nature of breach
 - Circumstances of death
- £12,980?



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Questions?

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