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LIABILITY FOR PURE PSYCHIATRIC INJURIES – "THUS FAR AND NO FURTHER"?

White and Others v *Chief Constable of South Yorkshire Police and Others*[1]

THE ebb and flow of tort liability for psychiatric injury, or nervous shock, as it is commonly known, appears to have been arrested finally in the recent English House of Lords' decision of *White and Others* v *Chief Constable of South Yorkshire Police and Others.* In a surprising twist of events, the House of Lords decided to hear the case[2] whose leave to appeal had earlier been refused by the Court of Appeal.[3] The result was not only a reversal of the latter's decision, but it also signified a determination by the highest English court to curb further judicial expansion in this area of tort law.

I. THE FACTS AND THE LOWER COURTS' DECISIONS

The tragic football disaster at the Hillsborough Stadium in Sheffield on 15 April 1989 forms the backdrop of a series of cases including the present one. At this unfortunate event, close to a hundred people, mainly youngsters, lost their lives due to crushing sustained in Spectator Pens 3 and 4 at the Leppings Lane end of the stadium. It was an undisputed fact that the immediate cause of the disaster was the negligent decision of a senior police officer to open an outer gate without cutting off access to the two pens. The present plaintiffs (the respondents in the House of Lord's case) were police officers on duty at that incident. They were performing various tasks, of varying degrees of participation and involvement, on the afternoon of the Hillsborough tragedy. As a result of their involvement in the tragedy,

1 [1999] 1 All ER 1.

2 The case was known as *Frost and Others* v *Chief Constable of South Yorkshire Police and Others* [1997] 1 All ER 540 in the lower courts.

3 *Ibid*, at 576. The Court of Appeal's judgment has been discussed at some length by the present authors in an earlier article, "Nervous Shock, Rescuers and Employees – Primary or Secondary Victims?" [1998] SLJS 121.

the plaintiffs suffered psychiatric damage. The six police officers formulated their claims against the Chief Constable on the following grounds:

1. that the Chief Constable owed each of them a duty of care which was analogous to that owed by an employer to an employee; and

2. that the Chief Constable owed each of them a duty of care as rescuers.

The court of first instance, presided by Waller J, held that all six plaintiffs' claims must fail. The plaintiffs appealed to the Court of Appeal and in a two to one majority decision, the court reversed the decision of the lower court in favour of four of the five plaintiffs who appealed.

II. The House of Lords' Decision

The House of Lords in a majority three to two decision reversed the Court of Appeal's ruling and allowed the appeal. Lord Steyn and Lord Hoffmann, with Lord Browne-Wilkinson concurring, each after a lengthy discussion on the past cases in this area, did not think that the plaintiffs should succeed on either of the two grounds. The common thread that ran throughout their judgments was that bold expansion in this area of law should give way to "cautious pragmatism",[4] and that at the end of the day, policy arguments appeared to be the paramount factor in determining whether recovery should be allowed. In reconciling with the past cases, in particular, with the previous House of Lords' decisions in *Alcock* v *Chief Constable of South Yorkshire Police*[5] and *Page* v *Smith*,[6] the judges touched upon the following topics:

(a) principles of law governing recovery for pure psychiatric harm;

(b) defining primary and secondary victims of psychiatric harm;

(c) duty of care owed to an employee; and

(d) duty of care owed to a rescuer.

We shall look at these topics in turn.

4 *Supra*, note 1, at 41, *per* Lord Hoffmann.
5 [1992] 1 AC 310.
6 [1996] AC 155.

A. *Principles of Law Governing Recovery for Pure Psychiatric Harm and the Definitions of Primary and Secondary Victims of Psychiatric Harm*

The majority agreed that there is a difference between claims arising from physical injury and those from pure psychiatric harm. For the former, the requirement of reasonable foreseeability was sufficient to determine whether recovery should be awarded. However, in order to be allowed to claim for damages arising from pure psychiatric harm as a result of the plaintiff witnessing a catastrophe, he must further satisfy the control mechanisms as laid down by Lord Lloyd of Berwick in *Page*. Lord Steyn tried to justify the differential treatment by listing four distinctive features of claims for psychiatric harm, which in essence were no more than policy considerations. Lord Hoffmann was more straightforward. He openly admitted that the control mechanisms were "more or less arbitrary conditions which a plaintiff [of psychiatric harm] had to satisfy and which were intended to keep liability within what was regarded as acceptable bounds".[7] In his view, the issue was simply that a conservative approach was preferred.

With respect to the classification of victims, the majority reiterated the principles as laid down by Lord Lloyd in *Page*. A plaintiff who had been within the range of foreseeable physical injury is a primary victim, as in the case of Mr Page in *Page* who was allowed to recover for psychiatric harm even though he might not in fact suffered actual physical injury. All other victims, who suffer pure psychiatric harm, are secondary victims and must satisfy the control mechanisms as laid down in *Alcock*.[8] With this, the House of Lords ended the confusion surrounding the definition of a primary victim that had earlier been created as a result of the difference in formulation by Lord Oliver and Lord Lloyd.[9]

Lord Steyn agreed that Lord Lloyd's formulation of the definition of a primary victim might be narrow, albeit the fact that it would produce consistent results. However, he was of the opinion that such a narrow definition was deliberate, as it will result in a larger number of persons being considered as potential secondary victims, as oppose to primary victims, whom must satisfy the control mechanisms.[10]

7 *Supra*, note 1, at 41.
8 *Supra*, note 1, see Lord Steyn's judgment at 35-36, and Lord Hoffmann's at 43.
9 In *Alcock* and *Page* respectively. For a discussion of the problem, see *supra*, note 3, at 125 to 126.
10 *Supra*, note 1, at 36.

Lord Hoffmann discussed, in great length, the rationale for imposing control mechanisms unto secondary victims. He first reviewed the two extreme schools of thoughts among academic writers. On one hand, there was Professor Jane Stapleton's[11] call to abolish recovery for psychiatric injury altogether and revert to the position in the 19th century case of *Victorian Railway Commissioner* v *Coultas*.[12] On the other extreme end was Mullany and Handford's[13] proposal to do away with the control mechanisms, and in the light of advances in psychiatric knowledge, treat psychiatric injury the same as physical injury. His Lordship thought that whichever solution to be preferred depended upon the purpose of tort law. If its purpose was to provide an "Aristotelian system" of corrective justice,[14] then the distinction between psychiatric injury and physical injury should be abolished and everybody should be allowed to claim. However, he was more inclined to think that the question of distributive justice warranted the uniform refusal to provide compensation for psychiatric injury, as it would merely be another facet manifesting the anomaly in the law of tort,[15] just like pure economic loss was unrecoverable. However, as it was now too late to go back on the control mechanisms as stated in *Alcock*, any extreme step would require the interference of the Parliament.

(i) *Lord Goff of Chievely's dissenting judgment: A lone voice in the House?*

While the majority and even Lord Griffiths of the minority did not question the correctness of *Page*, Lord Goff was of the opinion that *Page* departed from the established law in this area. In his judgment, Lord Goff, took pains to review the legal principles applicable to the area of tortious liability for psychiatric injuries. Prior to *Page*, it was established law that a claimant for psychiatric injuries must comply with two principles:

[11] In her article appearing in *The Frontiers of Liability,* edited by Peter Birks, OUP (1994) Vol 2 at 84.

[12] (1888) 13 App Cas 222.

[13] In their book *The Liability for Psychiatric Damage*, Sydney, 1993.

[14] *Supra*, note 1, at 42.

[15] *Supra*, note 1, at 42. His Lordship dwelled at length on the dangers in applying the traditional incrementalism of the common law to this part of tort law at 47-49. He agreed with Jane Stapleton's remark that "once the law has taken a wrong turning or otherwise fallen into an unsatisfactory internal state in relation to a particular case of action, incrementalism cannot provide the answer", at 49.

1. The claimant must have suffered psychiatric injury in the form of a recognised psychiatric illness. Therefore, ordinary emotions such as grief or distress will not be recoverable.

2. The psychiatric damage to the claimant must have been reasonably foreseeable by the defendant.

The above principles are applicable to all claimants for psychiatric injuries, no distinction being made to the different categories of victims. However, within this broad-based principle of law, there is a group that is treated differently by the courts. This group consists of bystanders, mere witnesses or non-participants of the tortious event and is referred to as "secondary victims" by Lord Oliver in *Alcock*. Recovery of damages for psychiatric injuries by such claimants is allowed only if they satisfy certain control mechanisms,[16] mere foreseeability of injury by shock is not sufficient.

Lord Lloyd's judgment in *Page* appears to have changed the legal position to a great extent. According to Lord Goff, Lord Lloyd has "dethroned foreseeability of psychiatric injury from its central position as the unifying feature of this branch of law"[17] and he did this "by invoking the distinction between primary and secondary victims".[18] The legal principles which govern the claimants in the categories are no longer the same.

Of all the issues raised by Lord Lloyd's judgment in *Page*, the one that is most material to and has a direct bearing on the present appeal will be the distinction between primary and secondary victims. On this particular issue, Lord Goff questioned the correctness and validity of the approach favoured by Lord Lloyd. For the first time,[19] a member of the House of Lords picked up the difference in the supposed "definitions" of primary and secondary victims, which have caused a great deal of difficulties and confusion in the lower courts, and addressed the concerns raised. He said

[16] They are proximity in relationship between the actions of the defendant; proximity in time and space to the incident or its aftermath; and perception by sight or hearing of the event or its aftermath.

[17] *Supra*, note 1, at 15.

[18] *Ibid.*

[19] Lord Lloyd in *Page* believed that his definition was the same as that laid down by Lord Oliver in *Alcock*. The majority of the House in this present appeal also proceeded on that premise.

that the judgment[20] by Lord Lloyd in *Page* has led many[21] to understand that the case has laid down a new approach to the determination of liability in the area of psychiatric injuries, in that presence within the range of foreseeable physical injury is a necessary attribute of a primary victim. Lord Goff was satisfied that the case did not reach such a conclusion. He observed that Lord Lloyd cited the judgment of Lord Oliver in *Alcock* where the terms were first mentioned and noted that Lord Lloyd accepted the distinction made by Lord Oliver. Lord Lloyd has said that Lord Oliver considered "those who are involved in an accident as primary victims, and to those who are not directly involved, but suffer from what they have seen and heard, as the secondary victims".[22] It is therefore an untenable conclusion that Lord Lloyd's statements had the intended effect of imputing the requirement of being within the range of foreseeable physical injury as an arbitrary determinant of who are primary victims. This is because that conclusion is inconsistent with his very own endorsement of Lord Oliver's distinction. The number of secondary victims will increase to include not only the traditional bystanders or mere witnesses but also everyone outside of the range of foreseeable physical injury. It is clear that Lord Oliver never considered the presence of being within the range of foreseeable physical injury as crucial to the issue of who is a primary victim because he had referred to those "who come to the aid of others injured or threatened" as primary victims too.

Perhaps the most convincing argument put forward by Lord Goff on this issue is that if Lord Lloyd's judgment is indeed intended to have the effect of restricting primary victims to those who are within the range of foreseeable physical injury, then the case of *Page* will have created a paradox which by itself will undermine all credibility and validity of the proposition. The paradox will be that on the one hand *Page* expands recovery, by deciding that foreseeability of physical injury justifies recovery in respect of unforeseeable psychiatric injury even though no physical injury is suffered, while on the other hand the same case restricts recovery, by precluding recovery in respect of foreseeable psychiatric injury unless physical injury is also foreseeable. As such, Lord Goff formed the opinion that the passages in Lord Lloyd's judgment is only descriptive of the position of the plaintiff

[20] *Supra*, note 6, see Lord Lloyds' opinion at 184 and 187.

[21] The Court of Appeal on numerous occasions like *Young* v *Charles Church (Southern) Ltd* (1997) 39 BMLR 146 and the present case; the Law Commission's Report on *Liability for Psychiatric Illness* (Law Com No 249)(1998); the author of a textbook Munkman on employer's liability and several commentators of *Page*.

[22] *Supra*, note 1, at 19.

in *Page* and no more should be read into it. He also opposed the idea that the courts should as "a matter of public policy impose a further requirement of foreseeability of physical damage as an arbitrary limit upon recovery by primary victims in respect of psychiatric injury suffered by them".[23] He has labeled this further requirement as a new control mechanism and there were three reasons why it should not be imposed: the requirement is contrary to well-established authority; it would erect a new artificial barrier against recovery in respect of foreseeable psychiatric injury which is undesirable; and the underlying concern for imposing this requirement is misconceived.

B. *Duty of Care Owed to an Employee*

In the light of the definitions of primary and secondary victims, the House of Lords proceeded to categorise employees and rescuers. The majority reached the decision that employees in this situation were no more than secondary victims and thus had to satisfy the tests laid down by the control mechanisms. On the facts, all the plaintiffs failed the requirements.

Lord Steyn agreed that although there was strictly no contract between police officers and a chief constable, their relationship was analogous to one. He then examined the issue by looking from two separate themes: one based on the duty of an employer to safeguard his employees from harm, and the other on policy argument. For the first argument, his Lordship again drew a distinction between physical and psychiatric harms and held that such a duty owed to the employer with respect to psychiatric harm must also be subjected to the normal rules. The second "weighty moral argument"[24] was that police should be conferred special treatment as "police perform their duties for the benefit of us all".[25] However, Lord Steyn correctly pointed out that extending the rules in this way would open up a floodgate to other analogous plaintiffs, for instance, doctors and hospital workers. In addition, rejecting the claims of the police officers did not mean that they would be left without redress. They could always rely on existing statutory provisions to retire on pension.

Lord Hoffmann was of the same opinion as Lord Steyn on the first theme.[26] He drew an analogy between recovery for psychiatric harm and that for pure economic loss. Since an employer is under no duty to prevent his employee from suffering pure economic loss, his Lordship saw no reason

[23] *Supra*, note 1, at 20.
[24] *Supra*, note 1, at 37.
[25] *Ibid*.
[26] *Supra*, note 1, at 43.

why it should not be the case for psychiatric harm. However, Lord Hoffmann did not rule out the possibility that an employee might be held to be a primary victim in certain circumstances, such as the situation in *Walker* v *Northumberland County Council*,[27] and thus not subject to the control mechanisms. In the case of the present plaintiffs, nevertheless, they were secondary victims. In reaching this conclusion, his Lordship had to explain away cases such as *Dooley* v *Cammell Laird & Co Ltd*[28] where the courts allowed recovery for psychiatric injury caused by witnessing or apprehending injury to fellow workers which resulted from the employers' negligence. First, he questioned the authoritative value of these cases. He pointed out that out of the four cases cited to support the proposition, one was from the High Court of Australia. The three English cases were all first instance judgments and only one was reported in full. Second, the cases were correctly decided based on their facts and the law at that time.[29] However, in the light of the new guidelines laid down by *Alcock*, these cases might not be similarly decided today. The problem with this argument was that Lord Oliver himself in *Alcock* did not rule out these cases. In fact, his Lordship said that they could be explained as a special category of cases whereby the plaintiff in each case had been put in a position in which he was, or thought he was about to be or had been, the immediate instrument of death or injury to another. In order not to contradict Lord Oliver, Lord Hoffmann reserved his view on this and sidestepped the issue by saying that none of the present plaintiffs came within the category.

As far as the dissenting judges are concerned, Lord Griffiths was of the opinion that the law of master and servant is not a distinct and separate branch of tort law. The duty of care owed by a master to his servant is to be considered under the general principles of tortious liability. Although

[27] [1995] 1 All ER 737. In this case, an employee who suffered mental breakdown caused by the strain of doing the work, which his employer had required him to do, was allowed recovery for his psychiatric injury. We submit that this is the correct approach, see *supra*, note 3, at 138.

[28] [1951] 1 Lloyd's LR 271. Other cases in this category include *Galt* v *British Railways Board* [1983] 113 NLJ 870, *Wiggs* v *British Railways Board* The Times, 4 February 1986, and the Australian case of *Mount Isa Mines* v *Pusey* [1971] 125 CLR 382. It has always thought by judges and academic alike that these were indeed a special category not subject to the control mechanisms, see Law Commission Consultation Paper No 137, *Liability for Psychiatric Illness*, at para 2.28, and Mullany and Handford's book, *supra*, note 13.

[29] *Supra*, note 1, at 45. Lord Hoffmann said that the cases were all based on foreseeability, *ie*, whether psychiatric injury to the plaintiff was a foreseeable consequence of the defendant's negligent conduct. This was in accordance with the law at that time, when it was thought that foreseeability alone was sufficient to determine liability, even for psychiatric harm.

His Lordship did not expressly say that employees were secondary victims, he did so by implication as he referred to them as those who were not directly imperilled or who reasonably believed themselves to be imperilled. The control mechanisms must accordingly apply to them and since they could not be satisfied, the respondents' claim in this regard must fail. Lord Griffiths in his judgment also alluded to the argument that as police officers, it would seem very unfair that they could recover whereas spectators and others who witnessed the same horror could not. The unfairness will appear more acute when we take into account the fact that police officers were trained to deal with such incidents and they were also reasonable well compensated under their service should they suffer injuries as a result of carrying out their duty. Lord Griffiths' argument may be plausible in the case of an employee was a mere witness of the event, not involved in any way with the incident. This employee should be in no better position than all the other spectators should in *Alcock*. However, the same argument may not be applicable if the employee has been intricately involved in the incident or its immediate aftermath. Factually, the two cases cannot be treated alike.

This pertinent distinction was emphasized in the judgment of the other dissenting judge, Lord Goff. He said that a distinction must be drawn between the employee who has in the course of his employment been involved in the event, or its immediate aftermath, which caused the death or physical injury of another and the employee who has while at work, incidentally witnessed the incident and its outcome. According to His Lordship the premise of liability in such cases is the extent of the employee's involvement in the incident. It suffices to say that in a claim by an employee against his employer for damages for psychiatric injuries resulting from the death or injury to another, his claim will fail if he is simply a bystander who witness the incident. The employee will not, and should not, be in a more advantageous position over the ordinary bystander merely because he is in an employee-employer relationship with the defendant. But, if he is an active participant in the event, the situation may be different.

C. *Duty of Care Owed to a Rescuer*

The House of Lords was faced with an uphill task in their attempt to dismiss the rescuer argument. For one, the law has long favoured "those who altruistically expose themselves to danger in an emergency to save others".[30] Moreover, the correctness of Waller J's decision in *Chadwick* v *British*

[30] *Per* Lord Steyn, *supra*, note 1, at 37.

Railway Board[31] has never been doubted. Lord Oliver in *Alcock* expressly grouped rescuers as "participants" who were exempted from the control mechanisms.[32] To this, Lord Steyn argued that Lord Oliver was the only judge in *Alcock* who discussed this category and any comment on the issue was merely dicta, not to say controversial. *Chadwick* could be explained on the fact that the plaintiff experienced personal danger in his rescue attempt. It was however inappropriate to extend *Chadwick* to a situation where a rescuer was not exposed to physical danger but had suffered pure psychiatric harm.

Lord Hoffmann was conscious of the fact that a generous ruling allowing a rescuer to recover for psychiatric harm might give rise to a definitional problem as to who is a rescuer. In addition, his Lordship did not think that subsuming rescuer under the general principles of tort law would invoke much difficulty. The fact that a rescuer could recover for physical injury as a result of saving someone in danger did not naturally mean that he could also recover for psychiatric harm. Lord Hoffmann was also of the same opinion as Lord Steyn that *Chadwick* stood for the law that a rescuer who was himself exposed to physical danger but suffered psychiatric harm could recover on the principle in *Page*.

On the other hand, Lord Griffiths recognised rescuers to be in a "special" category. However, His Lordship felt that a distinction must be made between "rescue in the sense of immediate help at the scene of the disaster, and treatment of the victims after they are safe".[33] In the former case, where the rescuer suffers physical injuries in the rescue attempt, it is trite law that he could recover. Therefore, if it were not physical injuries that he suffered but psychiatric ones, there were no good reasons why he could not recover, provided that psychiatric damage to the rescuer was foreseeable. Lord Griffiths observed that although the test of foreseeability of psychiatric damage as a sole determinant of liability could be criticized for being too wide and would open the floodgates to unmeritorious claims, he was confident that the courts in their infinite wisdom would be capable of controlling any such flood of claims. As for rescue actions of victims after they were safe, Lord Griffiths felt that in such cases, where the rescuer is in no physical danger, it will only be in very exceptional situations that psychiatric injuries are foreseeable. This is because the law expects certain fortitude to be present in persons giving help to victims in incidents of daily occurrence. But, if the nature of the incident was a catastrophic one, as in *Chadwick*, it may

[31] [1967] 1 QB 912.
[32] *Supra*, note 5, at 407.
[33] *Supra*, note 1, at 7.

be reasonably foreseeable that the rescuer would suffer psychiatric damage even though he was merely involved in the immediate aftermath of the incident. He strongly felt that the court should be given this discretion to decide in accordance with the circumstances and facts of the case and it would be wholly artificial and unnecessary to impose a condition that a rescuer could only recover if he was in fact in physical danger. Accordingly, Lord Griffiths dismissed the appeal for the three officers who were found to be rescuers by the lower courts.

Lord Goff felt that rescuers form a category which is very important for outsiders who intervene in the incident created by the tortious act of the defendant. Like employees, whether a rescuer could claim for psychiatric injury suffered as a result of his intervention in the situation depends on the extent of his involvement. He cited the case of *Chadwick* and concluded that although no one had ever doubted the case was rightly decided, the circumstances of *Chadwick* were wholly exceptional and that it must be very uncommon that a person who is merely bring aid and comfort to a victim will be held to have suffered foreseeable psychiatric damage.

When the plaintiffs are both employees and rescuers at the same time, Lord Goff felt that the court must consider their involvement as a whole. In a case where a group of employees is involved in the aftermath of the event but only a few of them are involved in rescue actions, it does not mean that only the latter are entitled to recover. What must be considered is the involvement of each of them as a whole. He found that in each of the case of the five respondents, their psychiatric damage was a result of the extent of their involvement in the tragedy which was reasonably foreseeable by the Chief Constable, the employer, who was responsible for their safety at work.

III. Conclusion and Comments

With the difficulties and the confusion faced by the lower courts in applying the principles of law enunciated in the two House of Lords' decisions of *Alcock* and *Page*, the clarifications given by the majority in the present case are much needed and welcomed. It is now clear that the preferred approach is found in Lord Lloyd's judgment in *Page*. To determine liability for psychiatric damage, the first question to ask is no longer whether psychiatric damage is foreseeable by the defendant but rather what kind of victims is the claimant. A distinction is drawn between primary and secondary victims. For primary victims, liability hinges upon whether physical injuries are foreseeable, if so, psychiatric damage may be recoverable whether it is foreseeable or not. The control mechanisms given in *Alcock* are applicable to secondary victims only and they could succeed in their claims if, and only if, these control mechanisms are satisfied.

Clarity and certainty in the legal principles are virtues that the majority sought to restore in this area of law, which has for a very long time been entwined with complex legal tangles. However, one has to agree, to a certain extent, with the forceful dissenting judgment of Lord Goff. His Lordship has persuasively cast doubts on the legal premises upon which the majority relied to reach their decisions. One such legal premise is the correctness of *Page*. Although the outcome of the case in *Page* is sensible[34] given its facts, it is doubtful whether a general application of the principles to be extracted from *Page* will also achieve sensible results.[35] Perhaps the most sensible thing to do is to limit *Page* to the facts of its case and as Lord Goff has advised, nothing more should be read into it. Unfortunately, the majority did not feel a need to address this issue and proceeded on the premise that *Page* has intended to change the law. Therefore, although the majority in the present case agreed that claims for physical and psychiatric damage are not the same in nature, the law lords nevertheless endorsed the opinion of Lord Lloyd whom by a simple stroke of the pen merged the two different heads of damage. Such a position is arguably contrary to established principles in *Wagon Mound No 1*, although advances in science and technology may dictate that a distinction between physical and psychiatric damage would "seem somewhat artificial, and may soon be altogether outmoded".[36]

Therefore, while one may be gratified that the law has now become clearer after the present case, one cannot but ponder over the fate of future claimants for psychiatric damage after this landmark decision. The upshot of the present case is that not only are the existing control mechanisms here to stay, but also the apparent imposition of a new control mechanism in the form of foreseeable physical injuries being an attribute of a primary victim. This new requirement effectively limits the chances of recovery of certain claimants like rescuers, who previously were allowed to recover through their involvement in the incident. The fact that they did not suffer any physical injuries or were not under any threat of physical injuries was immaterial to their claims. With the endorsement of the majority of *Page*, the number of secondary victims has now been increased. As such, more of such claimants must necessarily come under the control mechanisms now than before. Could this be the intended effect of Lord Oliver's original classification in *Alcock*,

[34] In a case where the primary victim is identifiable and limited in number, the problem of extending liability to an indeterminate class for and indeterminate amount does not arise and perhaps, this has influenced the court in *Page* to adopt a more liberal approach with regard to the particular plaintiff.

[35] *Supra*, note 1, at 20, see Lord Goff's arguments.

[36] *Supra*, note 1, *per* Lord Lloyd at 109.

which may be nothing more than mere labels of convenience, or has too much been read into it by the later cases?

The effect of the present case is to discourage claims for psychiatric damage in the future. The majority judges have reiterated in their judgments the importance of public policy considerations in this area of the law and why further expansions in liability for psychiatric injuries must be curbed. The fact that the claimants in the present case are police officers who have the benefits of certain compensatory schemes provided by the police force may have influenced the law lords in their decisions. After all, tort law is not a wholly encompassing compensatory scheme within the law and should not be asked to assume such a role.

Although the categories for claiming pure psychiatric damage are not entirely closed,[37] they are admittedly well defined and limited in number after the present case. Perhaps, this was a concerted effort by the majority of this case to rein in the fast moving boundaries of liability in this area of law. Until parliament decides that the time has come for legislation to be made, the majority's rather conservative stance in *White and Others* v *Chief Constable of South Yorkshire Police and Others* shall prevail and Lord Goff's opinion is but a lone voice in the House.

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[37] The case of employees claiming for psychiatric damage suffered because of work pressure may be an area where claims will be forthcoming and the law will have to address the issues then. This particular type of claim has been referred to by the judges in the present case but it was not dealt with, as the issue did not arise in the present appeal.

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