

## Special duty problems: psychiatric harm annotated problem question

Following months of speculation the legendary indie guitar band—*Blinking Idiot*—are about to embark on a reunion tour of the UK. They are performing a warm-up gig at a small intimate venue when a spotlight falls onto the stage causing a massive explosion killing the band members: Madeleine, Amish and Dave. Unfortunately, the lighting rig (onto which the spotlight was fitted) had been negligently maintained by **Rack & Horse Lighting**. The sight is particularly gruesome.

Hannah, Amish's wife, is watching the gig from the VIP area of the venue. She is physically unharmed, but later suffers nightmares and depression. This is particularly traumatic for her as she had previously suffered from depression, but had sought help and recovered.

Pete, Madeleine's brother, is listening to the live radio broadcast of the gig from his hotel room in Paris. He hears the explosion and thinks he can hear Madeleine screaming. He rushes to the airport, managing to catch a flight that is just leaving, and arrives at the hospital three hours after the accident. Unfortunately, Madeleine's body has not yet been moved to the morgue and is still covered in blood and grime from the explosion. He develops post-traumatic shock disorder.

Lucy has attended every *Blinking Idiot* gig in the UK and has travelled to a number of their overseas concerts. She is a founder member of their fan club and regularly contributes to their fan magazine. She always tries to stand as close as possible to the stage. Miraculously she was not hurt by the explosion but has since been overcome with grief.

Tim was one of the first on the scene. He is a trainee ambulance man and this was his first major incident. He rushes to the stage but quickly sees that there is little he can do. He spends the next two hours comforting distraught fans. He later suffers from recurring nightmares and panic attacks.

Stuart, one of the roadies, is overcome with feelings of guilt and depression. It was his job to fix the lighting and he feels the explosion was his fault. A subsequent investigation completely exonerates him.

Advise the parties.

Hannah is likely to be too far away to be a primary victim (although this depends on how far away the VIP area is—if it was near to the stage she could be in the zone of danger as in *Page*). If she is not a primary victim, she would therefore need to show that she meets the criteria set out in *Alcock*. Note that her previous depression will not defeat her claim as a secondary victim if a person of 'ordinary phlegm and fortitude' would have suffered some sort of psychiatric harm. Assuming this is the case, the egg shell skull principle will allow her to recover for the full extent of her injury (even if it goes beyond what is reasonably foreseeable).

Rack and Horse Lighting will be the defendants in all the claims.

Pete will need to satisfy the secondary victim criteria as set down in *Alcock*. The key issue here is proximity in time and space—could hearing Madeleine on the radio be akin to seeing her on TV? Given what the law lords said in *Alcock* about TV images, this is unlikely to be successful. He will also need to establish a close tie of love and affection with his sister. You should apply and distinguish *Alcock*, *McLoughlin* and *Galli-Atkinson*.

Tim is a rescuer. Following *White* he will need to establish that he meets either the primary or secondary victim requirements.

Stuart would be considered an involuntary participant as in *Dooley*. He may also be a primary victim depending on how close he is standing to the stage.

Although Lucy may be a primary victim (on the basis of *Page*), she has not suffered a recognisable psychiatric illness—mere grief is not recoverable.