HOUSE OF LORDS SESSION 2007–08
[2008] UKHL 13
on appeal from: [2007] EWCA Civ 601

OPINIONS
OF THE LORDS OF APPEAL
FOR JUDGMENT IN THE CAUSE

Corr (administratix of the estate of Thomas Corr (deceased)) (Respondent) v IBC Vehicles Limited (Appellants)

Appellate Committee

Lord Bingham of Cornhill
Lord Scott of Foscote
Lord Walker of Gestingthorpe
Lord Mance
Lord Neuberger of Abbotsbury

Counsel

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Respondents:
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LORD BINGHAM OF CORNHILL

My Lords,

1. The issue in this appeal is whether loss attributable to the death by suicide of the late Mr Thomas Corr is recoverable by his dependent widow under section 1 of the Fatal Accidents Act 1976 in this action against his former employer.

2. Mr Corr was employed as a maintenance engineer by the appellant company ("the employer"), a manufacturer of light commercial vehicles. On 22 June 1996, then aged almost 31, he was working on a prototype line of presses which produced panels for Vauxhall vehicles. He was working, with another, to remedy a fault on an automated arm with a sucker for lifting panels. The machine picked up a metal panel from the press, without warning, and moved it forcibly in Mr Corr's direction. He would have been decapitated had he not instinctively moved his head. He was struck to the right side of his head and most of his right ear was severed.

3. As a result of this accident, Mr Corr underwent long and painful reconstructive surgery. He remained disfigured, suffered persistently from unsteadiness, mild tinnitus and severe headaches, and had difficulty in sleeping. He also suffered from post traumatic stress disorder. He experienced severe flashbacks which caused his body to jolt, and suffered from nightmares. He drank more alcohol than before the accident and became bad-tempered.

4. Also as a result of the accident, Mr Corr became depressed, a condition which worsened with the passage of time. He was referred to hospital for treatment for depression on 6 February 2002, and was admitted to hospital after taking an overdose of drugs on 18 February. He was assessed as being a significant suicide risk on 2 March 2002, and on 9 March it was noted that he had recurring thoughts of jumping from a high building. He was treated with electro-convulsive therapy. It was noted in his NHS care plan on 15 April that he felt life was not worth living and that he felt he was a burden to his family. On 20 May 2002 Mr Corr was examined by a clinical psychologist who noted that Mr Corr felt helpless and admitted to suicidal ideation. The psychologist diagnosed his condition as one of "severe anxiety and depression". On 23 May 2002, while suffering from an episode of severe depression, Mr Corr committed suicide by jumping from the top of a multi-storey car park in which he had parked his car some hours earlier. A note which he left behind graphically illustrates the depth of desperation to which he had been reduced. Nearly six years had passed since the accident.

5. The facts summarised above are agreed between the parties, as are the facts of Mr Corr's mental and psychological condition at the time of his death. On the one hand, he had the capacity to manage his own affairs. His intellectual abilities were not affected. His appreciation of danger was not lessened. He was aware of the likely consequences of jumping from a high building. He acted deliberately with the intention of killing himself. He had from time to time since the accident thought of taking his own life but had hesitated because of the effect on his family. He understood the difference between right and wrong. He knew the nature and quality of his acts. He did not suffer from hallucinations. It would seem clear, had the question arisen, that his mental condition would not have met the *M'Naghten* test of insanity. On the other hand, at the time of his death Mr Corr was severely depressed. His depression had caused him to experience feelings of hopelessness. These became increasingly difficult to resist. A critical change took place in the balance of his thinking, when he stopped recognising these feelings of hopelessness as symptoms of his depressive illness, and instead they came to determine his reality. At the time of his suicide Mr Corr was suffering from a disabling mental condition, namely a severe depressive episode which impaired his capacity to make reasoned and informed judgments about his future. It was well known that between one in six and one in ten sufferers from severe depression kill themselves.

6. These proceedings were begun by Mr Corr in June 1999, shortly before expiry of the three year limitation period, claiming damages for the physical and psychological injuries which he had suffered. The

proceedings were amended after his death to substitute his widow and personal representative as claimant. She claims for the benefit of Mr Corr's estate pursuant to the Law Reform (Miscellaneous Provisions) Act 1934 and also for herself as a dependant of the deceased under the 1976 Act. The first of these claims has not been contentious. The second is a claim to recover the financial loss attributable to Mr Corr's suicide, and that alone is in issue in this appeal.

7. Before turning to the issue which divides the parties, I think it helpful to record and recapitulate the significant points which are common ground between them. First, the employer accepts that it owed a duty to Mr Corr as its employee to take reasonable care to avoid causing him personal injury. Personal injury must be understood as embracing both physical and psychological injury. That is the effect of the decision of the House in *Page v Smith* [1996] AC 155, which neither party criticises or invites the House to review. (The case is not of course authority for the medical premises on which it rests). It is common ground, secondly, that the employer was in breach of its duty to Mr Corr and that this breach caused the accident on 22 June 1996. So much was admitted on the pleadings. It is common ground, thirdly, that as a consequence of this breach Mr Corr suffered severe physical injuries and mental and psychological injury for which, up to the date of his death, he could have recovered damages had he survived, and for which his personal representative is entitled to recover damages for his estate. It is agreed, fourthly, that the depressive illness from which Mr Corr suffered before and at the time of his death was caused by the accident. There was nothing in his background or history to suggest that he suffered in this way before his accident. Finally, it is common ground, as already noted, that it was his depressive illness which drove Mr Corr to take his own life.

8. Analysed in terms of section 1(1) of the 1976 Act, the question to be decided is whether Mr Corr's death was caused by a wrongful act, namely the employer's breach of duty. In the context of what is agreed, however, the real issue dividing the parties in this case, compendiously expressed, is whether, for one reason or another, the damages claimed by Mrs Corr under the 1976 Act are too remote. In this context both parties relied on Lord Rodger of Earlsferry's recent summary of principle in *Simmons v British Steel plc* [2004] UKHL 20, [2004] ICR 585, para 67, a summary which neither side questioned although they laid emphasis on different propositions. That opinion was given in an appeal from Scotland, but it was not suggested that the law in the two jurisdictions is now different in any relevant respect. The summary reads:

> "67 These authorities suggest that, once liability is established, any question of the remoteness of damage is to be approached along the following lines which may, of course, be open to refinement and development. (1) The starting point is that a defender is not liable for a consequence of a kind which is not reasonably foreseeable: *McKew v Holland & Hannen & Cubitts (Scotland) Ltd* 1970 SC (HL) 20, 25 per Lord Reid; *Bourhill v Young* [1943] AC 92, 101 per Lord Russell of Killowen; *Allan v Barclay* 2 M 873, 874 per Lord Kinloch. (2) While a defender is not liable for damage that was not reasonably foreseeable, it does not follow that he is liable for all damage that was reasonably foreseeable: depending on the circumstances, the defender may not be liable for damage caused by a novus actus interveniens or unreasonable conduct on the part of the pursuer, even if it was reasonably foreseeable: *McKew v Holland & Hannen & Cubitts (Scotland) Ltd* 1970 SC (HL) 20, 25 per Lord Reid: *Lamb v Camden London Borough Council* [1981] QB 625; but see *Ward v Cannock Chase District Council* [1986] Ch 546. (3) Subject to the qualification in (2), if the pursuer's injury is of a kind that was foreseeable, the defender is liable, even if the damage is greater in extent than was foreseeable or it was caused in a way that could not have been foreseen: *Hughes v Lord Advocate* [1963] AC 837, 847 per Lord Reid. (4) The defender must take his victim as he finds him: *Bourhill v Young* [1943] AC 92, 109-110 per Lord Wright; *McKillen v Barclay Curle & Co Ltd* 1967 SLT 41, 42, per Lord President Clyde. (5) Subject again to the qualification in (2), where personal injury to the pursuer was reasonably foreseeable, the defender is liable for any personal injury, whether physical or psychiatric, which the pursuer suffers as a result of his wrongdoing: *Page v Smith* [1996] AC 155, 197F-H per Lord Lloyd."

Lord Rodger's summary conveniently introduces the submissions advanced and skilfully developed by Mr Cousins QC for the employer, which were that Mr Corr's suicide (1) fell outside the duty of care owed to him by the employer ("the scope of duty issue"); (2) was not an act which was reasonably foreseeable and therefore not one for which the employer should be held liable ("the foreseeability issue"); (3) broke the chain of causation and constituted a *novus actus interveniens* ("the novus actus issue"); (4) was an unreasonable act which broke the chain of causation ("the unreasonable act issue"); (5) was the voluntary act of

the deceased, and so precluded by the principle *volenti non fit injuria* ("the *volenti* issue"); (6) amounted to contributory negligence ("the contributory negligence issue"). I shall consider these submissions in turn.

(1) The scope of duty issue

9. Mr Cousins adopted and applied to this case the pithy statement of Spigelman CJ in *AMP General Insurance Ltd v Roads & Traffic Authority of New South Wales* [2001] NSWCA 186, [2001] Aust Torts Reports 81-619, para 9: "There was no duty upon the employer…to protect the deceased from self harm". Mr Cousins pointed out that different duties arise in different situations but that, as Lord Hope of Craighead observed in *Reeves v Commissioner of Police of the Metropolis* [2000] 1 AC 360, 379, "It is unusual for a person to be under a duty to take reasonable care to prevent another person doing something to his loss, injury or damage deliberately". Mr Cousins invoked the important principle of personal autonomy, illustrated by *St George's Healthcare NHS Trust v S* [1999] Fam 26 and recently upheld by the House in the criminal field in *R v Kennedy (No 2)* [2007] UKHL 38, [2007] 3 WLR 612, to submit that if an adult of sound mind chooses, for whatever reason, to inflict injury upon himself, that is an act for which responsibility cannot be laid on another.

10. I would agree with the broad thrust of this submission. The law does not generally treat us as our brother's keeper, responsible for what he may choose to do to his own disadvantage. It is his choice. But I do not think that the submission addresses the particular features of this case. The employer owed the deceased the duty already noted, embracing psychological as well as physical injury. Its breach caused him injury of both kinds. While he was not, at the time of his death, insane in *M'Naghten*'s terms, nor was he fully responsible. He acted in a way which he would not have done but for the injury from which the employer's breach caused him to suffer. This being so, I do not think his conduct in taking his own life can be said to fall outside the scope of the duty which his employer owed him.

(2) The foreseeability issue

11. As Lord Rodger's summary quoted above makes clear, and despite the differences of opinion which formerly prevailed, it is now

accepted that there can be no recovery for damage which was not reasonably foreseeable. This appeal does not invite consideration of the corollary that damage may be irrecoverable although reasonably foreseeable. It is accepted for present purposes that foreseeability is to be judged by the standards of the reasonable employer, as of the date of the accident and with reference to the very accident which occurred, but with reference not to the actual victim but to a hypothetical employee. In this way effect is given to the principle that the tortfeasor must take his victim as he finds him. Mr Cousins submits that while psychological trauma and depression were a foreseeable result of the accident (and thus of the employer's breach), Mr Corr's conduct in taking his own life was not.

12. This submission was accepted by the deputy judge (Mr Nigel Baker QC) at first instance. He held that reasonable foreseeability of the suicide must be established both in respect of the duty and the recovery of damages: the suicide fell outside the employer's duty and was not reasonably foreseeable (judgment, paras 33, 34 (ii) and (iii)). Dissenting in the employer's favour in the Court of Appeal [2006] EWCA Civ 331, [2007] QB 46, Ward LJ drew a distinction (para 57) between what was logically foreseeable and what was reasonably foreseeable, and concluded (para 64) that the suicide was not reasonably foreseeable. Both the deputy judge and Ward LJ attached significance in reaching this conclusion, as I think mistakenly, to the personal qualities of the deceased. The majority in the Court of Appeal reached a different conclusion. Sedley LJ (para 66) referred to the admitted fact that depression was a foreseeable consequence of the employer's negligence and to the uncontroverted evidence that suicide was a not uncommon sequel of severe depression. He described it (para 67) as correct but irrelevant that the employer's duty did not extend to anticipating and preventing suicide. It was not the claimant's case that it did. But the law drew no distinction, for purposes of foreseeability and causation, between physical and psychological injury, and on the evidence (para 68) the suicide of Mr Corr was grounded in post-traumatic depression and nothing else. Wilson LJ observed that the claimant did not have (para 98) to establish that, at the date of the accident, the deceased's suicide was reasonably foreseeable. He did not accept (para 98) the view of Spigelman CJ in the *AMP* case, above, that suicide was a kind of damage separate from psychiatric and personal injury, and therefore having to be separately foreseeable.

13. I have some sympathy with the feeling, expressed by Ward LJ in paragraph 61 of his judgment, that "suicide does make a difference". It is a feeling which perhaps derives from recognition of the finality and

irrevocability of suicide, possibly fortified by religious prohibition of self-slaughter and recognition that suicide was, until relatively recently, a crime. But a feeling of this kind cannot absolve the court from the duty of applying established principles to the facts of the case before it. Here, the inescapable fact is that depression, possibly severe, possibly very severe, was a foreseeable consequence of this breach. The Court of Appeal majority were right to uphold the claimant's submission that it was not incumbent on her to show that suicide itself was foreseeable. But, as Lord Pearce observed in *Hughes v Lord Advocate* [1963] AC 837, 857, "to demand too great precision in the test of foreseeability would be unfair to the pursuer since the facets of misadventure are innumerable". That was factually a very different case from the present, but the principle that a tortfeasor who reasonably foresees the occurrence of some damage need not foresee the precise form which the damage may take in my view applies. I can readily accept that some manifestations of severe depression could properly be held to be so unusual and unpredictable as to be outside the bounds of what is reasonably foreseeable, but suicide cannot be so regarded. While it is not, happily, a usual manifestation, it is one that, as Sedley LJ put it, is not uncommon. That is enough for the claimant to succeed. But if it were necessary for the claimant in this case to have established the reasonable foreseeability by the employer of suicide, I think the employer would have had difficulty escaping an adverse finding: considering the possible effect of this accident on a hypothetical employee, a reasonable employer would, I think, have recognised the possibility not only of acute depression but also of such depression culminating in a way in which, in a significant minority of cases, it unhappily does.

(3) The novus actus issue

14. The deputy judge made no express finding on this question. But Ward LJ, having reviewed a number of authorities, concluded (para 49) that the chain of causation was not broken by the suicide of the deceased. This was an opinion which Sedley LJ shared. In paragraph 76 of his judgment he said:

> "But once the law accepts, as it does, the foreseeability of psychological harm as a concomitant of foreseeable physical harm, it is only if a break dictated by logic or policy – or, of course, by evidence – intervenes that it is possible today to exclude death by suicide from the

> compensable damage where that is what the depression leads to."

He expressed his conclusions in paragraphs 82-83:

> "82 To cut the chain of causation here and treat Mr Corr as responsible for his own death would be to make an unjustified exception to contemporary principles of causation. It would take the law back half a century to a time when the legal and moral opprobrium attaching to suicide placed damages for being driven to it on a par with rewarding a person for his own crime. Today we are able to accept that people to whom this happens do not forfeit the regard of society or the ordinary protections of the law.
>
> 83 Once it is accepted that suicide by itself does not place a clinically depressed individual beyond the pale of the law of negligence, the relationship of his eventual suicide to his depression becomes a pure question of fact. It is not a question which falls to be determined, as the deputy judge in significant measure determined it, by analogy with the duty of care resting on a custodian. Once liability has been established for the depression, the question in each case is whether it has been shown that it was the depression which drove the deceased to take his own life. On the evidence in the present case, it clearly was."

Wilson LJ (para 100) agreed with Ward and Sedley LJJ.

15. The rationale of the principle that a *novus actus interveniens* breaks the chain of causation is fairness. 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 (which may or may not be tortious) for which the tortfeasor is not responsible. This is not the less so where the independent, supervening cause is a voluntary, informed decision taken by the victim as an adult of sound mind making and giving effect to a personal decision about his own future. Thus I respectfully think that the British Columbia Court of Appeal (McEachern CJBC, Legg and Hollinrake JJA) were right to hold that the suicide of a road accident victim was a *novus actus* in the light of its conclusion that when the victim took her life "she made a conscious decision, there being no

evidence of disabling mental illness to lead to the conclusion that she had an incapacity in her faculty of volition": *Wright v Davidson* (1992) 88 DLR (4th) 698, 705. In such circumstances it is usual to describe the chain of causation being broken but it is perhaps equally accurate to say that the victim's independent act forms no part of a chain of causation beginning with the tortfeasor's breach of duty.

16. 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. It is in no way unfair to hold the employer responsible for this dire consequence of its breach of duty, although it could well be thought unfair to the victim not to do so. Mr Cousins submitted that on the agreed findings Mr Corr was not, in *M'Naghten* terms, insane, and it is true that in some of the older authorities a finding of insanity was regarded as necessary if a claimant were to recover for loss attributable to suicide: see, for example, *Murdoch v British Israel World Federation (New Zealand) Inc* [1942] NZLR 600, following *McFarland v Stewart* (1900) 19 NZLR 22. I do not for my part find these cases persuasive, for two main reasons. First, so long as suicide remained a crime the courts were naturally reluctant to award damages for the consequences of criminal conduct. Thus a finding of insanity, which exculpated the deceased from criminal responsibility, removed this obstacle. Modern changes in the law overcome the problem: there is now no question of rewarding the consequences of criminal conduct, although it remains true that the more unsound the mind of the victim the less likely it is that his suicide will be seen as a *novus actus*. The second reason is that whatever the merits or demerits of the *M'Naghten* rules in the field of crime, and they are much debated, there is perceived in that field to be a need for a clear dividing line between conduct for which a defendant may be held criminally responsible and conduct for which he may not. In the civil field of tort there is no need for so blunt an instrument. "Insane" is not a term of medical art even though, in criminal cases, psychiatrists are obliged to use it. In cases such as this, evidence may be called, as it was, to enable the court to decide on whether the deceased was responsible and, if so, to what extent. I agree with Sedley LJ that it would be retrograde to bar recovery by the claimant because the deceased was not, in *M'Naghten* terms, insane.

(4) The unreasonable act issue

17. In his summary of principle quoted above, Lord Rodger refers to both a *novus actus interveniens* and unreasonable conduct on the part of the pursuer as potentially breaking the chain of causation. No doubt there is room for a theoretical distinction between the two. But having regard to the reasons I have given for holding the suicide of the deceased not to be a *novus actus* I would find it impossible to hold that the damages attributable to the death were rendered too remote because the deceased's conduct was unreasonable. It is of course true that, judged objectively, it is unreasonable in almost any situation to take one's own life. But once it is accepted, as it must be, that the deceased's unreasonable conduct was induced by the breach of duty of which the claimant complains, the argument ceases in my judgment to have any independent validity.

(5) The volenti issue

18. It is a salutary and fair principle that a tortfeasor cannot be held responsible for injury or damage to which a victim, voluntarily and with his eyes open, consents. But it is not suggested that Mr Corr consented in any way to the accident and injury which befell him on 22 June. It is an argument addressed only to his suicide. But that was not something to which Mr Corr consented voluntarily and with his eyes open but an act performed because of the psychological condition which the employer's breach of duty had induced. I conclude, again, that this is an argument which has no independent validity.

(6) The contributory negligence issue

19. The employer pleaded contributory negligence in its defence, and it featured in Mr Cousins' submissions to the trial judge. The judge, however, made no finding, which he may have thought unnecessary since he was dismissing the claim. In the Court of Appeal, Ward LJ referred to the defence of contributory negligence, observing (para 8) that it had rightly not been the subject of much argument in the appeal. It may be inferred that he considered the defence to have little substance whatever the outcome of the appeal, an impression fortified by the omission of Sedley and Wilson LJJ, both of whom allowed the claimant's appeal and awarded her the additional damages claimed, to mention the point at all. In argument before the House, the issue was again raised, but addressed by both parties with extreme brevity.

20. I very much question whether it is appropriate for the House to conduct what is in effect an independent enquiry into a matter on which the courts below have made no findings and on which, to the extent that it raises any question of law, we have heard no more than cursory argument. I would for my part decline to conduct that enquiry.

21. If, however, my noble and learned friends are of a different opinion, we must pay attention to the terms of section 1(1) of the Law Reform (Contributory Negligence) Act 1945:

> "Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage…."

Thus attention is directed to the fault of the deceased and to his causal contribution to the damage which ensued.

22. For reasons already given, I do not think that any blame should be attributed to the deceased for the consequences of a situation which was of the employer's making, not his. Consistently with my rejection of arguments based on *novus actus* and unreasonable conduct, I would similarly absolve the deceased from any causal responsibility for his own tragic death. I would accordingly assess his contributory negligence at 0%. That, in my opinion, reflects the responsibility of the deceased for his own loss (see *Reeves v Commissioner of Police of the Metropolis* [1999] QB 169, 198).

23. For these reasons, largely those of the Court of Appeal majority, and also the reasons of my noble and learned friend Lord Walker of Gestingthorpe, which I have had the advantage of reading in draft, and with which I wholly agree, I would accordingly dismiss the employer's appeal with costs.

LORD SCOTT OF FOSCOTE

My Lords,

24. I have had the advantage of reading in advance the opinion prepared by my noble and learned friend Lord Bingham of Cornhill and gratefully adopt his exposition of the facts of this sad case.

25. Mr Corr, the respondent's husband, was injured at work by the negligence of the appellant company, his employers. The accident he suffered could easily have killed him but in the event inflicted on him serious and disfiguring injuries to his head but left him alive. It is easy to understand that the repercussions of an injury of that character may have an enduring effect on the mental state of the victim, continuing after the physical effects are spent. So it was with Mr Corr. He became clinically depressed, bad-tempered and suffered from nightmares. He was treated with electro-convulsive therapy. All of this was, it is accepted, a result of the accident. Mr Corr also began to entertain thoughts of suicide. This, it is accepted, was a symptom of his clinical depression. On 23 May 2002, nearly six years after the accident, Mr Corr did commit suicide. In doing so he acted deliberately, aware of the consequences and with the intention of killing himself. The action which has now reached your Lordships' House is the action brought by his widow, Mrs Corr, under the Fatal Accidents Act 1976.

26. Section 1 of the 1976 Act enables a dependant of the deceased to bring an action for damages

> " [if] death is caused by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof…"

The first question for decision, therefore, is whether Mr Corr's death by suicide was "caused" by the act, neglect or default of his employer that had occasioned, or failed to prevent, the accident. Consideration of this question can easily become over-influenced by the cataclysmic nature and finality of an act of suicide and I have found it easier to consider the question by asking myself what the position would have been if Mr Corr's attempt at suicide had not been successful but instead had caused

him serious and additional physical injuries to those he suffered in the accident at work. If the answer is that he would have been entitled not only to recover for his original injuries but also for the additional injuries caused by his attempted suicide, there is no reason that I can see why Mrs Corr should not have a good Fatal Accidents Act claim; but if he would not have been entitled to recover damages for the additional injuries, then I would conclude that Mrs Corr would not be entitled to Fatal Accidents Act damages. The issue is whether his jumping from the top of the multi-storey car park was "caused" by his employer's negligence.

27. There is no doubt, on the facts of this case, that but for the employer's negligence the accident at work would not have happened, that but for the accident at work and the physical damage he suffered Mr Corr would not have become clinically depressed and that but for that psychiatric feature he would not have entertained suicidal thoughts or have attempted suicide. On a "but for" test, his jump from the top of the multi-storey carpark can be said to have been "caused" by his employer's negligence. But the developing case law has placed limits on the extent of the "but for" consequences of actionable negligence for which the negligent actor can be held liable. This case engages and questions the extent of those limits. As it is put in Clerk & Lindsell on Torts 19th Ed. at 2-78

> "Where the defendant's conduct forms part of a sequence of events leading to harm to the defendant, and the act of another person, without which the damage would not have occurred, intervenes between the defendant's wrongful conduct and the damage, the court has to decide whether the defendant remains responsible or whether the act constitutes a *novus actus interveniens* i.e. whether it can be regarded as breaking the causal connection between the wrong and the damage"

After noting that a *novus actus* may take the form of conduct by the claimant (i.e. Mr Corr) himself, the text says that

> "whatever its form the *novus actus* must constitute an event of such impact that it 'obliterates' the wrongdoing of the defendant."

The question in this case, therefore, is whether Mr Corr's deliberate act of jumping from a high building in order to kill himself, an apparent *novus actus*, albeit one that was causally connected, on a 'but-for' basis, to the original negligence, broke the claim of causative consequences for which Mr Corr's negligent employers must accept responsibility.

28. The answer to this question does not, in my opinion, require the application of a reasonable foreseeability test. To ask whether it was reasonably foreseeable that an accident of the sort that injured Mr Corr might have psychiatric as well as physical consequences and, if it did have psychiatric consequences, whether those consequences might include suicidal tendencies and an eventual suicide would be unlikely, on the facts of this case, to result in an affirmative answer. The *possibility* of those consequences is clear. On the other hand, the likelihood of their happening, if judged at the time of the accident, seems to me to be remote. The evidence was that between 1 in 10 and 1 in 6 persons suffering from clinical depression will commit suicide. There was, I think, no evidence as to the likelihood, in percentage terms, of persons suffering the sort of physical injuries that Mr Corr suffered developing as a consequence clinical depression, but I would be surprised if it were more than, say, 25 per cent. So my expectation would be that the percentage of cases in which an accident of the sort that befell Mr Corr would lead to clinical depression and suicide would lie in the range of 2 to 4 per cent. A statement that an outcome of this degree of likelihood was *reasonably* foreseeable would be to attribute to the adverb a less than helpful meaning. It would mean, I think, no more than that the outcome was foreseeable as a possibility and was one for which the negligent employer ought to be held responsible.

29. Authority, however, discourages attempts to decide cases like the present by the application of a reasonable foreseeability test. The general rule is that in a case where foreseeable physical injuries have been caused to a claimant by the negligence of a defendant the defendant cannot limit his liability by contending that the extent of the physical injuries could not have been reasonably foreseen; the defendant must take his victim as he finds him. In *Smith v Leech Brain & Co. Ltd* [1962] 2 QB 405 Lord Parker CJ said at 415 that

> "The test is not whether these employers could reasonably have foreseen that a burn would cause cancer and that [the victim] would die. The question is whether these employers could reasonably foresee the type of injury he suffered, namely, the burn. What, in the particular case, is

> the amount of damage which he suffers as a result of that burn, depends upon the characteristics and constitution of the victim."

Smith v Leech Brain did not involve psychiatric consequences of a physical injury, but *Page v Smith* [1996] AC 155 did. In *Page v Smith* the House held that where physical injury was a reasonably foreseeable consequence of the negligence the defendant was liable for psychiatric damage caused by the negligence even though physical injury had not in the event been caused and whether or not psychiatric damage as a consequence of the negligence was foreseeable. As Lord Browne-Wilkinson put it at 182

> "In the present case the defendant could not foresee the exact type of psychiatric damage in fact suffered by the plaintiff who, due to his M.E., was an 'eggshell personality.' But that is of no significance since the defendant did owe a duty of care to prevent foreseeable damage, including psychiatric damage. Once such duty of care is established, the defendant must take the plaintiff as he finds him"

And, per Lord Lloyd of Berwick at 189

> "The negligent defendant…takes his victim as he finds him. The same should apply in the case of psychiatric injury. There is no difference in principle…between an eggshell skull and an eggshell personality."

Page v Smith, therefore, extended the rule as stated in *Smith v Leech Brain* so as to include psychiatric injury. If a duty of care to avoid physical injury is broken and psychiatric injury is thereby caused, whether with or without any physical injury being caused, the negligent defendant must accept liability for the psychiatric injury. He must take his victim as he finds him. That this is so is a consequence of the House's decision in *Page v Smith*. That decision has been the subject of some criticism but not in the present case. If Mr Corr's psychiatric damage caused by the accident at work is damage for which his employers must accept liability, it is difficult to see on what basis they could escape liability for additional injury, self-inflicted but attributable to his psychiatric condition. If Mr Corr had not suffered from the

clinical depression brought about by the accident, he would not have had the suicidal tendencies that led him eventually to kill himself. In my opinion, on the principles established by the authorities to which I have referred, the chain of causal consequences of the accident for which Mr Corr's negligent employers are liable was not broken by his suicide. For tortious remoteness of damage purposes his jump from the multi-storey car park was not, in my opinion, a *novus actus interveniens*. Mrs Corr is entitled, in my opinion, to a Fatal Accidents Act claim against his employers.

30. But that is not an end of the issues that arise in this case. Section 5 of the 1976 Act applies where the deceased whose death has entitled the dependant to a Fatal Accidents Act damages action has died "as the result partly of his own fault and partly of the fault of any other person". In that event the damages recoverable by the dependant are to be reduced to the same proportionate extent as damages brought for the benefit of the deceased's estate would have been reduced under section 1(1) of the Law Reform (Contributory Negligence) Act 1945. Here, too, I find it easier to examine the issue by supposing that Mr Corr had not died from his jump but had merely, if that is the right word, added to his physical injuries. Would he have been entitled to recover in full for those additional injuries, or would there have been a proportionate reduction to reflect the fact that the jump had been his own deliberate decision?

31. Section 1(1) of the 1945 Act provides for the reduction of damages recoverable in respect of the negligence "to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage". This reduction does not come into operation unless there has been some "fault" on the part of the claimant or, in a Fatal Accidents Act case, the deceased that has been a contributory cause of the damage or the death, as the case may be. There is no doubt in the present case that both the employer's negligence and Mr Corr's act in jumping from a high building with the intention of killing himself were contributory causes of his death. The issue, to my mind, is whether Mr Corr's act can be described as "fault" within the meaning of that word in section 5 of the 1976 Act. Mr Corr's state of mind, his suicidal tendencies, had been brought about as a result of his employers' negligence. But he was not an automaton. He remained an autonomous individual who retained the power of choice. The evidence that clinical depression leads often to suicidal tendencies and that between 1 in 10 and 1 in 6 persons succumb to those tendencies is evidence also that between 9 in 10 and 5 in 6 persons do not. Suppose, for example, that there had been people in the area on to which Mr Corr

was likely to land if he jumped. If he had jumped in those circumstances and had in the process injured someone beneath, surely no court, faced with a claim by the injured person for damages, would have found any difficulty in attributing fault to his action. "Fault" in section 4 of the 1945 Act includes :

> "…[any] act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence"

and "fault" in section 5 of the 1976 Act must bear the same meaning. So if the act of jumping in disregard for the safety of others would have constituted fault for tort purposes, it is difficult to see why that same act of jumping with the deliberate intention of terminating his own life should not also be so regarded. If, in jumping, Mr Corr had both injured someone else and also himself, it would seem to me highly anomalous to hold him liable in negligence in an action by the third party but not guilty of fault for contributory negligence purposes so far as his own injuries were concerned.

32. In my opinion, therefore, this is a case to which section 5 of the 1976 Act applies and the damages recoverable by Mrs Corr fall to be reduced accordingly. The percentage reduction is very much a matter of impression, dependent on the view taken of the degree of responsibility for Mr Corr's death to be attributed to Mr Corr and his employers respectively. The written Case submitted to your Lordships on behalf of the employers has (at para.107) drawn attention for comparative purposes to *Reeves v Metropolitan Police Commissioner* [2000] 1 AC 360. That was a case where a person known to be a suicide risk was being held in police custody and while in that custody succeeded in a suicide attempt. The police were held liable in negligence for allowing this to happen and the issue of contributory negligence arose. The House held that responsibility for the death should be apportioned equally between the police and the deceased. The employers in their written Case submit that Mr Corr's responsibility for his own death should be taken to be much greater than the 50 per cent responsibility attributed to the deceased in the *Reeves* case. My Lords, I do not take that view. Mr Corr's suicidal tendencies which led him to take his own life were one of the psychiatric products of his employers' negligence. As I read the evidence Mr Corr struggled against those tendencies, underwent extremely unpleasant therapy in an attempt, sadly unsuccessful, to be cured of them, but finally succumbed to them. I think, for the reasons I have given, that this is a case to which section 5 of the 1976 Act applies

and that there must, therefore, be a proportionate reduction in the damages recoverable by Mrs Corr. But I do not regard the adjective 'blameworthy' as an apt description, other than in a strictly causal sense, of Mr Corr's conduct in jumping to his death. I would attribute to him responsibility for his death of 20 per cent.

33. For the reasons I have given I would dismiss this appeal on liability but support a direction that Mrs Corr's damages be reduced by 20 per cent to reflect Mr Corr's responsibility for his own death.

LORD WALKER OF GESTINGTHORPE

My Lords,

34. I have had the privilege of reading in draft the opinion of my noble and learned friend Lord Bingham of Cornhill. I am in full agreement with it, and for the reasons that Lord Bingham gives I would dismiss this appeal. But because of the importance of the issues raised I add some observations of my own.

35. It is common ground that the issues raised are different from those in the so-called "custodian" cases – that is, where an individual known to be a suicide risk is in the care or custody of a hospital, a prison, or the police. In England the two most important custodian cases are (in chronological order) *Kirkham v Chief Constable of the Greater Manchester Police* [1990] 2 QB 283 and *Reeves v Commissioner of Police of the Metropolis* [2000] 1 AC 360. In *Kirkham* the claimant's husband hanged himself in Risley Remand Centre after the police had failed to warn the prison authorities that he was (as the police knew) a suicide risk. He was suffering from clinical depression and had previously attempted suicide more than once. The Court of Appeal upheld awards under the Fatal Accidents Act 1976 and the Law Reform (Miscellaneous Provisions) Act 1934, not reduced by an allegation of contributory negligence (an issue raised in the notice of appeal but not discussed at all in the judgments of the Court of Appeal).

36. In *Reeves* the claimant was the administratrix of a man who had hanged himself while in custody in a police cell. He was known to be a suicide risk (having made two previous attempts) but a doctor who

examined him at the police station a few hours before his death thought that he showed no signs of psychiatric disorder or clinical depression. This House upheld the majority of the Court of Appeal (Lord Bingham of Cornhill CJ and Buxton LJ, Morritt LJ dissenting) in holding the police liable but allowed the appeal on the issue of contributory negligence, directing a 50 per cent reduction in damages (whereas the Court of Appeal had directed no reduction). The majority was however achieved only by the process explained by Lord Bingham at [1999] QB 169, 198. In this House the issue of contributory negligence was discussed at some length in the opinions of Lord Hoffmann (at pp369-372), Lord Jauncey of Tullichettle (at pp367-377) and Lord Hope of Craighead (at pp382-385).

37. This appeal differs from the custodian cases in two important respects. The late Mr Thomas Corr was not, before the dreadful accident on the press line, a suicide risk; he was a happy family man. The appellant, IBC Vehicles Limited ("IBC") was not Mr Corr's custodian but his employer. IBC owed him various contractual, tortious and statutory duties, of which the most important for present purposes was to take reasonable care that he did not sustain personal injuries in the course of his work. Mr Corr did not suffer from depression, suicidal ideation or any other psychological disorder. There was no question of IBC owing him any special duty, before the accident, on account of any such disability. His severe clinical depression and feelings of worthlessness and hopelessness came after, and as a result of, the very serious physical injuries which he received in the accident.

38. Before the decision of this House in *Page v Smith* [1996] AC 155 there was much uncertainty as to the circumstances in which psychiatric injury was actionable on its own, unaccompanied by bodily injury. The appellant, Mr Page, had been in a car crash in which he was not physically injured. But he did as a result of the crash suffer a serious recurrence of myalgic encephalomyelitis (also known as ME), which although viral in origin seems to have been treated as on a par with what used to be called "nervous shock." There is a much fuller discussion of the aetiology of ME in the judgments in the Court of Appeal [1994] 4 All ER 522, where Hoffmann LJ observed that the distinguishing feature of psychiatric damage was its causation rather than its symptoms; it would include a miscarriage caused by severe fright.

39. Such fine distinctions are however unnecessary since *Page v Smith*, in which your Lordships' House held that in the case of a primary victim foreseeability of the risk of physical injury is sufficient to

establish liability, if there is a breach of duty, for personal injury of any sort, including psychiatric injury (either on its own or in conjunction with physical injury). Lord Lloyd of Berwick (delivering the leading speech in the majority) stated at p188:

> "In an age when medical knowledge is expanding fast, and psychiatric knowledge with it, it would not be sensible to commit the law to a distinction between physical and psychiatric injury, which may already seem somewhat artificial, and may soon be altogether outmoded. Nothing will be gained by treating them as different 'kinds' of personal injury, so as to require the application of different tests in law."

40. The case has attracted adverse comment from some legal scholars, but it has not been challenged before your Lordships. It provides a much simpler test for judges trying personal injury cases, even if it sometimes results in compensation for damage in the form of psychiatric sequelae which might not, on their own, have been reasonably foreseeable by an employer.

41. In this case the trial judge (Mr Nigel Baker QC) held that Mr Corr's suicide was not reasonably foreseeable. But he had earlier quoted from the speech of Lord Browne-Wilkinson in *Page v Smith* at p182:

> "I am therefore of opinion that any driver of a car should reasonably foresee that, if he drives carelessly, he will be liable to cause injury, either physical or psychiatric or both, to other users of the highway who become involved in an accident. Therefore he owes to such persons a duty of care to avoid such injury. In the present case the defendant could not foresee the exact type of psychiatric damage in fact suffered by the plaintiff who, due to his ME, was 'an eggshell personality.' But that is of no significance since the defendant did owe a duty of care to prevent foreseeable damage, including psychiatric damage. Once such a duty of care is established, the defendant must take the plaintiff as he finds him."

But the judge then took his eye off the essential principle in *Page v Smith,* and misdirected himself by reference to earlier authority, some not concerned with personal injuries at all.

42. It was not disputed by Mr Cousins QC (for IBC) that Mr Corr's severe clinical depression was the result (and if it mattered, which it does not, the foreseeable result) of the severe physical injuries and shock which he sustained in the accident. His severe depression produced feelings of hopelessness which became increasingly strong; they came to determine his reality; by the time of his suicide he was suffering from a disabling mental condition which (as the agreed statement of facts and issues records) impaired his capacity to make reasoned and informed judgments. But (as is also in the agreed statement) Mr Corr still had the capacity to manage his affairs; his intellectual abilities were not affected; he did not come within the definition of insanity (at best obsolete and probably never scientifically sustainable) found in the judges' answers to the second and third abstract questions put to them, without their hearing argument, in connection with *M'Naghten's* case (1843) 10 Cl & F 200.

43. Mr Corr was not therefore deprived of his personal autonomy. It was his own decision to end his life, despite the love and support which he was given, after as well as before his accident, by his immediate family. He must have known that his death would cause them enormous pain, but in his severely depressed state he felt that he was an even greater burden to them alive. Suicide was his decision, but it came from his feelings of worthlessness and hopelessness, which were the result of his depression, which was in turn the result of his accident. Sedley LJ said in the Court of Appeal [2007] QB 46, para 76:

> "But once the law accepts, as it does, the foreseeability of psychological harm as a concomitant of foreseeable physical harm, it is only if a break dictated by logic or policy – or, of course, by evidence – intervenes that it is possible today to exclude death by suicide from the compensable damage where that is what the depression leads to."

I agree. Indeed, apart from its absence of any reference to contributory negligence, I agree with the whole of the judgment of Sedley LJ, which is, I think, very much in line with the opinion of Lord Bingham.

44. Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 provides:

> "Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage..."

In applying this test the Court has to have regard both to blameworthiness and to what is sometimes called causal potency (*Stapley v Gypsum Mines Ltd* [1953] AC 663, 682). These are not precise or mutually exclusive tests. I do not regard "blameworthy" as an appropriate term to describe Mr Corr's conduct when, with his judgment impaired by severe depression, he decided to end his life by jumping off a high building. That was his own decision, but it was nevertheless a natural consequence of the physical and mental suffering which he had been enduring since the accident. For my part, in agreement with Lord Bingham, I would make no reduction in the damages to be awarded under the Fatal Accidents Act 1976.

LORD MANCE

My Lords,

45. I have had the benefit of reading in draft the opinions of my noble and learned friends, Lord Bingham of Cornhill, Lord Scott of Foscote, Lord Walker of Gestingthorpe and Lord Neuberger of Abbotsbury.

46. On the question whether the appellants are liable to the respondent in respect of the suicide of the late Mr Corr, I agree that the appeal should be dismissed for the reasons given in the opinions of Lord Bingham of Cornhill and Lord Walker. I also agree with Lord Neuberger's comments on *Page v. Smith* [1996] 1 AC 155, and its irrelevance on this appeal.

47. On the issue of contributory fault, I agree that, in the light of the extreme brevity with which this issue has been treated at all stages in this case and on the basis of such material as is available, it is not appropriate to contemplate a deduction on that score in this House. But, I have considerable sympathy with the general approach taken by Lord Scott of Foscote in his opinion on this issue; and so, like Lord Neuberger, I prefer to leave open the possibility that such a deduction could be appropriate in circumstances of deliberate suicide committed in a state of depression induced by an accident. Lord Scott's and Lord Neuberger's observations in this respect are, I note, in accord with remarks made in the Supreme Court of Dakota in *Champagne v. United States of America* 513 N.W. 2d 75 and quoted with apparent approval by Lord Hope of Craighead in *Reeves v. Commissioner of Police of the Metropolis* [2000] 1 AC 360, 384G-385B.

48. "Blameworthiness" and causal potency are factors to which attention has to be addressed in cases such as *Stapley v. Gypsum Mines Ltd.* [1953] AC 663, which are concerned with a defendant's failure to take care. But *Reeves v. Commissioner of Police of the Metropolis* establishes that "fault" in s.1 of the Law Reform (Contributory Negligence) Act 1945 is wide enough to cover deliberate suicide. This was the view of Lord Bingham of Cornhill CJ in the Court of Appeal, [1999] QB 169, 198A-C, upheld by the majority of the House of Lords: see the passages from Lord Hoffmann's opinion quoted by Lord Neuberger and also per Lord Jauncey of Tullichettle at p.377F and Lord Hope at pp.383E-F (pointing out that "one should not be unduly inhibited by the use of the word 'negligence' in the expression 'contributory negligence'") and 384C. Lord Mackay of Clashfern agreed at p.373-A with the reasoning of both Lord Hoffmann and Lord Hope.

49. In *Reeves* the police's duty of care was specifically related to the known risk that Mr Lynch would, although of "sound" mind, seek to commit suicide. But Mr Lynch's decision to commit suicide was not induced by the police's breach of duty, which merely enabled him to implement it. Comparing these two contributing factors, the House concluded, in common with Lord Bingham of Cornhill CJ, that an appropriate deduction would be 50%. In the present case, Mr Corr's depression and suicide were both caused by and within the foreseeable range of consequences of the appellants' negligence, and this puts the present respondent in a stronger position than the claimant in *Reeves*.

50. Here, the coroner found that Mr Corr "underwent over time a psychological change resulting in depression and anxiety not previously

experienced", while Dr Paul McLaren, the consultant psychiatrist instructed by Mrs Corr, said in his reports that "a critical change takes place in the balance of a sufferer's thinking, when they stop seeing the hopeless thoughts as symptoms of an illness and the depressive thinking comes to determine their reality" and concluded that "Mr Corr's capacity to make a reasoned and informed judgment on his future was impaired by a Severe Depressive Episode in the hours leading up to his death". In these circumstances, there was a considerable case for the full recovery which the Court of Appeal awarded; this is also highlighted by Lloyd LJ's reasoning in *Kirkham v. Chief Constable of the Greater Manchester Police* [1990] 2 QB 283, 290C-E, although his remarks were directed simply to an issue of *volenti non fit injuria* and it is not apparent that the issue of contributory fault raised in the notice of appeal, p.285F-G, was actually pursued before the Court in that case.

51. However, in my view, the existence of a causal link between an accident and depression leading to suicide, sufficient to make a defendant who is responsible for the accident liable for the suicide as one of its consequences, does not necessarily mean that such liability should involve a 100% recovery. The concept of impairment is itself one which could usefully be further explored in expert evidence in another case. On the one hand, a person suffering from depression may be perfectly capable of managing his or her affairs in certain respects, but be caught ineluctably in a downward spiral of depressive thinking with regard to their own worth and future. On the other hand, a conclusion that a person suffering from depressive illness has no responsibility at all for his or her own suicide, and is in effect acting as an automaton, may be open to question in law, at least when the person's capacity to make a reasoned and informed judgment is described as "impaired" rather than eliminated. I agree with Lord Scott that, unless such a person could be described as an automaton, he or his estate could not expect to escape liability to a bystander injured by a suicide or suicide attempt. But this may not, I believe, by itself be conclusive on the issue whether such a person should bear part of any loss flowing from suicide or an attempt as against a person responsible causally for the depression leading to the suicide or attempt. It may be right, not only to consider more closely with the benefit of expert evidence what is involved in "impairment" but also, as Lord Hope suggested in *Reeves* at p.385A, to identify differing degrees of impairment and responsibility. It may also be relevant if other factors were also operating on the claimant, independently of the accident and the consequent depression – for example, impending exposure of lack of probity, financial ruin or matrimonial breakdown.

52. The different strands of policy which exist in this area, and the balancing of different goals which is necessary, may therefore make it appropriate not only to hold liable a defendant who causes an accident which leads to depression and suicide, but also to attribute an element of responsibility, small though it may be, to a person who commits suicide, so recognising the element of choice which may be present even in the case of someone suffering from an impairment due to an accident.

LORD NEUBERGER OF ABBOTSBURY

My Lords,

53. I have had the opportunity of reading in draft the opinions of my noble and learned friends Lord Bingham of Cornhill, Lord Scott of Foscote and Lord Mance. I agree with Lord Bingham that this appeal should be dismissed for the reasons that he gives, subject to two points which I should like to address.

54. The first point concerns the somewhat controversial decision of this House in *Page v Smith* [1996] AC 155. As Lord Bingham has explained, neither party has criticised that decision, let alone invited the House to review it. At least for my part, I understood that was the position of the employer because, even if we had been persuaded that *Page* was wrongly decided, that would not have ensured the success of this appeal. I agree. Accordingly, not least in the light of the trenchant observations of Lord Goff of Chieveley in *Frost v Chief Constable of South Yorkshire Police* [1999] 2 AC 455 at 473D to 480F, I would not want to appear to prejudge any decision as to the correctness of the majority view in *Page*, if it comes to be challenged before your Lordships' House on another occasion.

55. I should briefly explain why my conclusion that this appeal should be dismissed on the liability issue is not in any way based on the assumption that *Page* was correctly decided. It is common ground that Mr Corr's depression was the direct and foreseeable consequence of the accident for which the employer accepts responsibility, and that Mr Corr's suicide was the direct consequence of his depression. In these circumstances, it appears to me that the only issue on liability can be whether the fact that Mr Corr's suicide was his own conscious act at a time when he was sane should defeat the claim under the 1976 Act.

Although that is expressed as a single issue, it can be characterised in a number of different ways in law, all of which have been dealt with by my Lord in ways that I cannot improve on.

56. It is accepted that Mr Corr's severe depression satisfied the requirements of a valid claim with regard to causation, foreseeabilty and remoteness, and was not excluded for any of the policy reasons mentioned by Lord Rodger of Earlsferry in the passage quoted in para 8 of Lord Bingham's opinion. In those circumstances, I have difficulty in seeing how it could be said that suicide was not a reasonably foreseeable result, or even a reasonably foreseeable symptom, of his severe depression. I accept that it can often be dangerous to deduce that, if each step in a chain was foreseeable from the immediately preceding step, then the final step must have been foreseeable from the start. Nonetheless, once it is accepted that Mr Corr's severe depression is properly the liability of the employer, I find it hard to see why, subject to the specific arguments raised by the employer and disposed of by Lord Bingham, Mr Corr's suicide should not equally be the liability of the employer. It is notorious that severely depressed people not infrequently try to kill themselves: indeed, the evidence before us suggests that the chances are higher than 10%. While I would not attribute to a reasonable defendant, such as the employer in the present case, the knowledge that the likelihood of suicide attempts among severe depressives is higher than 10%, I would expect him to appreciate that there was a substantial risk of a suicide attempt by someone who suffers from severe depression, and that suicide attempts often succeed.

57. The second point which I wish to deal with is that of contributory negligence. I have reached the conclusion that, in this case, it would be inappropriate to reduce the damages awarded to Mr Corr on the basis of his contributory negligence. That is essentially because the point appears hardly to have been touched on in evidence or argument either at first instance or in the Court of Appeal. Accordingly, there is no satisfactory material available to your Lordships to enable an assessment to be made as to whether a deduction, and if so what deduction, in damages would be appropriate. Further, it seems to me that it would be unfair to the claimant if we were to make a deduction given that she will have had no real opportunity to deal with the arguments on the point.

58. Having said that, I think it would be wrong not to record the fact that, in agreement with the reasoning of Lord Scott and Lord Mance, I consider that a defendant such as the employer in this case could, in principle, succeed in an argument for a reduction in damages based on

contributory negligence. In that connection, guidance is available from the decision of your Lordships' House in *Reeves v Commissioner of Police of the Metropolis* [2000] 1 AC 360, a case involving the question of whether the dependant of a Mr Lynch could recover damages from the Police Commissioner, in circumstances where Mr Lynch had committed suicide when in police custody, and if so whether those damages should be reduced pursuant to the Law Reform (Contributory Negligence) Act 1945.

59. Section 1(1) of the 1945 Act provides that where a person suffers damage "as the result partly of his own fault and partly of the fault of any other person" the damages he recovers from the other person "shall be reduced to such extent as to the court considers and equitable having regard to the claimant's share in the responsibilities for the damage". Section 4 defines "fault" as: "negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence".

60. In *Reeves*, at 369G to 372C, Lord Hoffmann considered the question of whether the fact that Mr Lynch had killed himself could be said to be his own "fault" within Section 1(1) of the 1945 Act. While recognising that it was "odd" to describe such a person "as having being negligent", Lord Hoffmann pointed out that "the 'defence of contributory negligence' at common law was based upon the view that a plaintiff whose failure to take care for his own safety was a cause of his injury could not sue. One would therefore have thought that the defence applied a fortiori to a plaintiff who intended to injure himself." Lord Hoffmann then went on to examine and reject the arguments which had been put forward for questioning that conclusion.

61. Mr Lynch was of sound mind, and, for that reason, Morritt LJ, in the Court of Appeal, had taken the view that he should be held to be 100% contributorily negligent. Lord Hoffmann disagreed at 372D, on the basis that this was effectively to hold that the Commissioner owed Mr Lynch no duty of care. He continued at 372E to H:

> "The law of torts is not just a matter of simple morality but contains many strands of policy, not all of them consistent with each other, which reflect the complexity of life. An apportionment of responsibility "as the Court thinks just and equitable" will sometime require a balancing of different goals…. The apportionment must recognise that

> a purpose of the duty accepted by the Commissioner in this case is to demonstrate publicly that the police do have a responsibility for taking reasonable care to prevent prisoners from committing suicide. On the other hand, respect must be paid to the finding of fact that Mr Lynch was "of sound mind". I confess to my unease about this finding, based on a seven-minute interview with a doctor of unstated qualifications, but there was no other evidence….. I therefore think it would be wrong to attribute no responsibility to Mr Lynch and compensate the plaintiff as if the police had simply killed him".

In those circumstances, he concluded that it was appropriate to hold Mr Lynch 50% contributory negligent, a view which coincided with that of Lord Bingham in the Court of Appeal.

62. In these circumstances, there is, I accept, a powerful case for saying that, where a defendant is tortiously liable under the 1976 Act for the suicide of a person, a degree of contributory negligence (which in the absence of special factors, might well be 50%) should be attributable to the deceased where he is of sound mind, but that it is inappropriate to attribute any contributory negligence to him where it can be said that he was not of sound mind. However, it seems to me that such an approach does not pay sufficient regard to what Lord Hoffmann referred to in the passage already quoted as "the complexity of life". Indeed, what Lord Hoffmann had to say earlier in his opinion at 368H to 369A appears to me to be even more directly in point:

> "The difference between being of sound and unsound mind, while appealing to lawyers who like clear-cut rules, seems to me inadequate to deal with the complexities of human psychology in the context of the stresses caused by imprisonment."

63. In my view, although that remark was plainly directed to circumstances in prison, it is applicable much more generally. It is often necessary to have a clear-cut decision: either someone is sane enough to plead to a criminal charge, to bring civil proceedings, to enter into a contract, or to avoid being detained, or he is not. However, it is only realistic to accept that there are degrees to which a person has control over, or even appreciation of the effect and consequences of, his acts,. It also seems clear that there is no inconsistency between the notion that

there is a spectrum of sanity, normalcy or autonomy, and the notion that a clear point has to be identified for some purposes at some specific place on the spectrum.

64. In the present type of case, as I see it at least, a nuanced approach is appropriate, and the existence of a spectrum can and should be recognised. At one extreme is a case such as *Reeves* where (surprising though it might seem) the evidence was that Mr Lynch was of sound mind when he killed himself. In those circumstances, the suicide could be said to be a purely voluntary act, and one can see how the principle of personal autonomy could be invoked to justify the view reached by Morritt LJ. Nonetheless, your Lordships' House decided that there were, in reality, two proximate causes of the death, namely the negligence of the police and Mr Lynch's choice to kill himself and it was effectively impossible to say, at least on the facts of that case, that the suicide was more attributable to one cause than to the other.

65. At the other extreme, in my view, would be a case where the deceased's will and understanding were 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, because he had effectively lost his personal autonomy altogether. In effect, in that type of case, the deceased does not really appreciate what he is doing when he kills himself, and he has no real control over his action. In such a case, as the deceased would have had no real choice, there would therefore be no real "fault" on his part for his suicide; consequently there would be no reduction for contributory negligence..

66. In my judgment, there will be cases in the middle, where the deceased, while not of entirely sound mind, can be said to have a degree of control over his emotions and actions, and will appreciate what he is doing when he kills himself. In other words, there will be cases where a person will have lost a degree of his personal autonomy, but it will not by any means have been entirely lost. In one sense, of course, it can be said that anybody that kills himself has been driven to it, because his natural instinct for self-preservation has been overcome by an irresistible urge to die. However, if that analysis were correct, there would have been no contributory negligence in *Reeves*, because that argument would apply equally when the deceased's mental state was entirely unimpaired.

67. In the present case, Mr Corr's depression led him to have "thoughts of hopelessness" which "became more difficult to resist" before the suicide and, at the time he committed suicide, he was suffering from a "disabling mental condition, namely a severe depressive episode, [which] impaired his capacity to make a reasoned and informed judgment on his future". This seems to me to render the employer's case on contributory negligence plainly and significantly weaker than that of the Commissioner in *Reeves*. However, Mr Corr's capacity was "impaired" rather than removed, a point emphasised by the fact that neither his intellectual abilities nor his appreciation of danger had been lessened from the norm, and that he appreciated the consequences of jumping from a building.

68. In my judgment, in a case such as this, it would represent a failure to take into account the importance of personal autonomy, and would be inconsistent with the reasoning in *Reeves*, if we were to hold that, save where the deceased was of entirely sound mind at the relevant time, it would be inappropriate in principle to reduce the damages awarded under the 1976 Act on the grounds of contributory negligence, where the deceased had taken his own life. The mere facts that his mental state was impaired to some extent by a condition for which the defendant was responsible, and that he would not have killed himself but for that impairment, cannot, in my opinion, without more justify rejecting the contention that there could have been a degree of "fault" on his part.

69. In the end, I consider that the question to be addressed is the extent to which the deceased's personal autonomy has been overborne by the impairment to his mind attributable to the defendant. Where it has not been so overborne at all, the contribution, and hence the reduction in damages, may well be 50% (as in *Reeves*); where it has been effectively wholly overborne, there will be no reduction. In other cases, the answer will lie somewhere between those two extremes. In such cases, the question, while a relatively easy question to formulate, will, I strongly suspect, be a relatively difficult question to answer, at least in many circumstances.

70. Almost any exercise which involves assessing the degree of contributory negligence must inevitably be somewhat rough and ready, and that is particularly so where one has to decide on the extent to which a person, whose mental capacity is impaired to a degree, is responsible for his own suicide. However, even bearing that in mind, and acknowledging the force of Lord Scott's view to the contrary, I am in

agreement with Lord Mance in that I do not consider it appropriate for your Lordships to determine the appropriate degree of responsibility (if any) to apportion to Mr Corr for his suicide in the present case. The question does not seem to have been the subject of significant evidence or argument at first instance, and it was hardly touched on in argument in the Court of Appeal. Not only do I doubt whether it is possible to answer that question on the basis of the evidence and limited argument before us, and in the absence of any finding in the courts below. It would also be unfair on the claimant to consider a reduction in her damages on this ground as, for essentially the same reasons, she has not had a proper opportunity to deal with the question. It is not as if it is inevitable that there would have been some discount on this ground: it would be for the defendant to establish any deduction on the basis of evidence and argument.

71. Accordingly, I too would dismiss this appeal.