

Fatal Accident Claims: Proposals and Pitfalls

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Introduction



Introduction

- Claims for the Estate: Law Reform (Miscellaneous Provisions) Act 1934.
- Claim for the dependants of the deceased under the Fatal Accidents Act 1976.



1934 Act Claims – Obtaining Probate

- *Milburn-Snell v Evans* [2011] EWCA Civ 577.
- *Meerza v Al Baho* [2015] EWHC 3154 (Ch).
- *Kimathi v Foreign & Commonwealth Office (No 2)* [2016] EWHC 2005 (QB).



Co-habitees

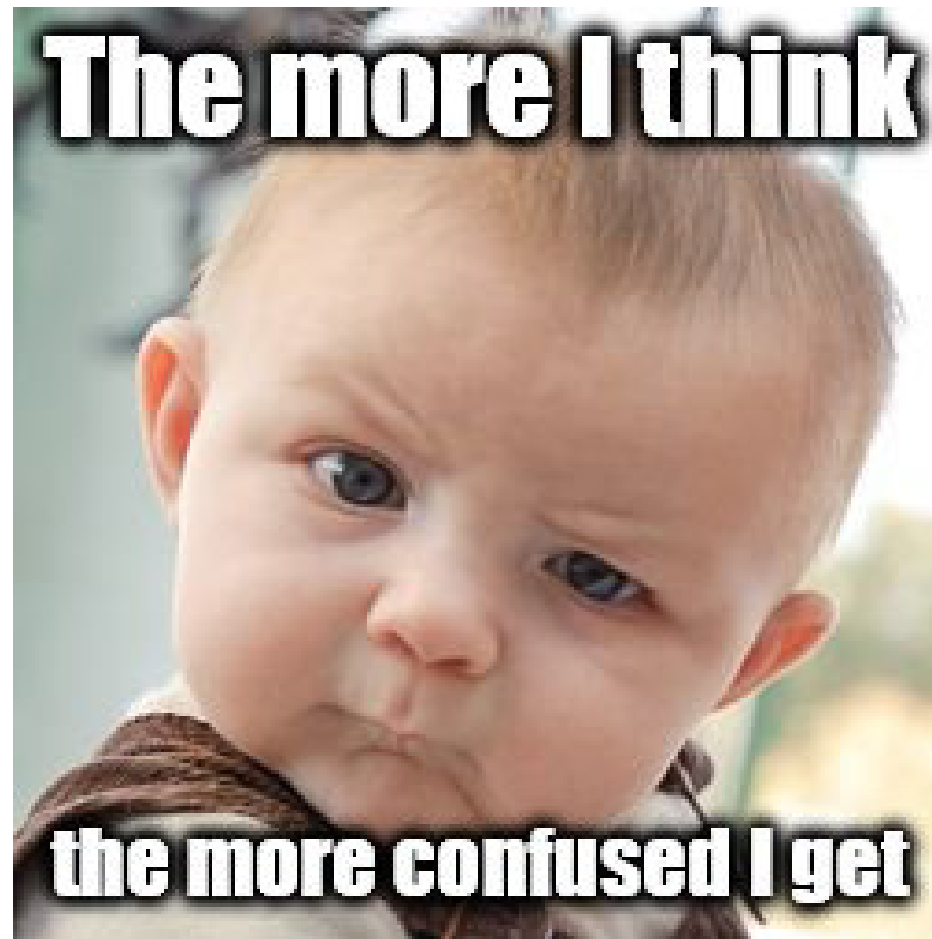
- Bereavement award – proposals for reform following *Smith v Lancashire Teaching Hospitals NHSFT* [2017] EWCA Civ 1916.
- Proving entitlement to claim as a co-habitee: must prove that co-habitee was living with the deceased “as husband and wife” and in the same household:
 - (a) Immediately prior to the date of death; and
 - (b) For at least 2 years prior to the date of death; and
 - (c) For the whole of the 2 years prior to the date of death.
- See *Kotke v Saffarini* [2005] EWCA Civ 221.

Quantification – the basics

- Financial dependency
- Service dependency
- *Knauer v Ministry of Justice* [2016] UKSC 9



Quantification – the conceptual problem



Quantification – benefits

- Benefits arising out of the death:
Section 4 FAA 1976
- Benefits not arising out of the death:
Auty v National Coal Board [1985] 1 WLR 784

Quantification – case study

Claimed:

- Loss of income and pensions the Deceased would have earned but for his death, claimed in full.

Problem / solution:

- Failure to do the dependency calculation: should have claimed 75% until children no longer dependent, two-thirds thereafter.

Quantification – case study

Claimed:

- Past and future claims for:
 - (a) care and assistance provided prior to death on an hourly basis, including the widow undertaking all of the paperwork and book keeping for the Deceased's rental properties, and
 - (b) the widow's loss of earnings as result of giving up work to look after the deceased (prior to his death) and to take care of his business interests and property after his death.

Problems:

- Double recovery.
- Services provided to a business.
- Future claim for widow's LOE is not a dependency claim.

Solution – claim widows LOE as:

- The quantum of the care claim during the Deceased's life.
- Future financial dependency claim for the cost of replacing the Deceased's entrepreneurial skills (see *Cape Distribution v O'Loughlin* [2001] EWCA Civ 178 and *Williams v Welsh Ambulance* [2008] EWCA Civ 81).

Quantification – case study

Claims for costs of maintaining:

1. Family home
2. Rental properties
3. Holiday homes that had been converted to rental properties

Problems / solutions:

1. Service dependency
2. Not a dependency claim – claim as financial dependency as loss of entrepreneurial skills
3. Cannot be claimed – actually (overall) a financial benefit arising out of the death that is disregarded.

Apportionment and Approval

- The "usual" or "pragmatic" approach (per Latham J in R v CICB, ex p Barrett [1994] PIQR Q47):
... the approach to the apportionment of the overall figure has essentially been pragmatic; the courts have sought to provide as much money in free cash terms for the parent who is caring for the child as is sensible in all the circumstances, so that there can be ready access for that parent to the fund representing the lost dependency. The bulk has therefore been apportioned to the parent.
- See also 29-66 and 36-195 of *Kemp & Kemp*.
- Potential complications.

Thank you for listening

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