

IN THE COURT OF APPEAL (CIVIL DIVISION)

Bartholomew v Marjorie

Homerton and Marjorie were the married parents of Bartholomew. Every Thursday evening, Marjorie would join her friends at the local bowling alley, where she was a member of the ladies team. Homerton would pick up a takeaway after work and eat dinner with Bartholomew whilst Marjorie was out.

One particular Thursday when Bartholomew was ten years old, Homerton did not return from work as planned. Marjorie waited until 7pm but then decided to leave for the bowling session, expecting that Homerton would return soon after. Bartholomew was adamant that he was happy to sit at home and watch TV by himself in the meantime. Unfortunately, Homerton had been drinking after work and did not return home until 9pm. Upon seeing that there was no dinner prepared and having forgotten to pick up a takeaway himself, Homerton flew into a rage, taking out his anger on Bartholomew, and throttling him until he lost consciousness. Thinking that he had killed his only son, Homerton tragically took his own life.

Returning home shortly thereafter, Marjorie was able to summon the emergency services who were able to resuscitate Bartholomew. However, Bartholomew had suffered a laryngeal fracture, which resulted in severe vocal cord dysfunction, restricting his voice quality throughout his childhood.

Bartholomew blamed his mother for his injury, and on moving out of home at the age of eighteen, brought a claim against Marjorie for negligence for failing to protect him from harm and in particular for failing to protect him from the assault committed by Homerton.

Barney J found the following facts:

1. Although a loving husband, Homerton would frequently return home from work drunk, and had on a number of occasions verbally and physically assaulted Marjorie. These attacks had never resulted in police intervention.
2. Marjorie had left Bartholomew at home alone previously, but never for longer than one hour.
3. Other than the vocal cord injury, Bartholomew had been otherwise unaffected by the incident.
4. Despite numerous sessions of speech therapy during his teenage years, it was unlikely that Bartholomew's vocal quality would improve further.

At first instance, Barney J rejected Bartholomew's claim, finding that by applying the test in *Caparo Industries v Dickman* [1990] 2 AC 605, although there could be a notional duty of care imposed on Marjorie:

1. It was not reasonably foreseeable for Marjorie to consider that Bartholomew would come to harm at the hands of Homerton; and in any event
2. It was not fair, just or reasonable to impose a duty of care to such an act of omission.

Bartholomew appeals on the following grounds:

1. It was reasonably foreseeable that Homerton would return home from work drunk, which would in turn involve a significant risk of serious harm to Bartholomew; and
2. Marjorie and Bartholomew had a special relationship as mother and son entitling Bartholomew to rely on affirmative action by Marjorie, and as such it would be fair, just and reasonable to require Marjorie to demonstrate a duty of care to the standard of a reasonable parent judged by the standards of the day.