

The appeal in *Lewis-Ranwell* requires the Supreme Court to determine whether the *ex turpi causa* doctrine bars a negligence claim brought by a claimant who killed three people but was found not guilty by reason of insanity. The defendants argue that the court should exercise its power under CPR 3.4(2)(a) to strike out the claim because it arises from the claimant's own wrongful act; the claimant argues that he lacked the necessary 'turpitude' to trigger the doctrine and, therefore, the case should proceed to trial.

I here argue that, upholding the Court of Appeal's decision, the Supreme Court should dismiss the appeal and allow the claim to proceed to trial. I reach this conclusion through consideration both of the doctrinal distinction between insanity and diminished responsibility, and the flexible approach to the *ex turpi causa* doctrine set out in *Patel v Mirza* [2016] UKSC 42.

1. The significance of the insanity verdict

By returning a verdict of 'not guilty by reason of insanity,' a jury determines that the defendant was "labouring under such a defect of reason" as not to understand the wrongfulness of his actions (*M'Naghten's Case* (1843) 10 Cl & F 200 [8 ER 718] at p. 210). As held by the House of Lords in *Felstead v The King* [1914] AC 534, such a verdict is formally a verdict of acquittal, because, to quote Professor Fingarette,¹ an insane person is neither guilty nor innocent but "his radical incompetence is such that he should not be morally judged at all." By contrast, the partial defence of diminished responsibility, as considered in *Clunis v Camden and Islington* [1998] QB 978 and affirmed by The House of Lords in *Gray v Thames Trains* [2009] UKHL 33, mitigates culpability but does not eliminate it; the offender still bears criminal responsibility and hence has the 'turpitude' that triggers *ex turpi causa*.

The Court of Appeal in *Lewis-Ranwell* considered at length whether the case law on diminished responsibility is authoritative in cases where the insanity defence applies. Per Underhill LJ, the criminal law maintains a binary boundary at the *M'Naghten* threshold: "in any given case it will be possible to say on which side of the *M'Naghten* line the defendant falls" [117]. Dame Victoria Sharp concurred in her judgment: the case law draws "a coherent and bright line distinction" [161] that provides certainty to questions of legal responsibility. Andrews LJ, in her dissenting judgment, maintained that the unlawful acts in the instant case are of the same nature and gravity as the offence in *Henderson v Dorset Healthcare University NHS Foundation Trust* [2020] UKSC 43 – a diminished responsibility case; therefore, the same public policy concerns are present here. I respectfully disagree: such an argument invites the Court to collapse the binary distinction by

¹ *Diminished Mental Capacity as a Criminal Law Defence* (1974) 37 MLR 264 (pp. 270-271)

treating an acquitted defendant as morally equivalent to one convicted of manslaughter: to do so undermines the coherence of criminal law and the integrity of the jury's verdict.

2. Applying the *ex turpi causa* doctrine after *Patel v Mirza*

The Supreme Court in *Patel v Mirza* authoritatively restated the *ex turpi doctrine* through adoption of a flexible approach which weighs competing public policy considerations and proportionality factors. Lord Toulson, in assessing whether the public interest would be harmed, held that it is necessary to consider (a) the “underlying purpose of the prohibition”; (b) “any other relevant public policy” and (c) “whether denial of the claim would be a proportionate response to the illegality” [120].

(a) The purpose of the prohibition

The bar on benefiting from one's own wrongdoing exists to prevent the law endorsing or encouraging crime. But where the claimant has been found not criminally culpable, there is no crime for the law to endorse. To treat the claim as barred would mischaracterise the special verdict and subvert the binary framework of verdicts that the courts must uphold.

(b) Other relevant public policy considerations

Counsel for the defendants argue that permitting the claim could, *inter alia*, deter healthcare professionals from discharging patients and could increase public costs. However, a stronger countervailing policy applies: ensuring that healthcare authorities are held accountable where their failures increase risks to the public, particularly in cases involving mentally ill individuals at high risk of harm. Striking out the claim would send a message that healthcare providers may negligently discharge mentally unwell patients without accountability or threat of litigation.

(c) Proportionality

Denying all remedy would be a disproportionate response when the claimant has been declared legally incapable of wrongdoing. The court's power to strike out a claim risks obfuscating the nuanced factual matrix: while the actions of the claimant are deeply disturbing, the healthcare provider is likely to have contributed to the killings by failing to take all necessary steps to keep Mr Lewis-Ranwell in detention.

3. Conclusion

I submit that, in order to maintain the strict distinction between a guilty and not-guilty verdict, and on proper consideration of the principles in *Patel v Mirza*, the Supreme Court should dismiss the appeal and permit Mr Lewis-Ranwell's claim to go to trial.

It is regrettable that a person who has killed three innocent individuals should be able financially to benefit from the affairs. An intuitive moral assessment suggests that any publicly available funds are better spent compensated the families of the victims or improving mental health services. This case perhaps highlights the inappropriateness of a monetary award as a general remedy: if the court's power to resolve this case were unlimited, a more satisfactory result would be to provide judgment in the Mr Lewis-Ranwell's favour (to apply the *ex turpi causa* doctrine correctly), but to award only nominal damages (to reflect the heinous quality of the killings and address the policy concerns pursuant to *Patel v Mirza*). However, the court's hands are tied on the narrow matter of strike out: any limitations on civil claims imposed on defendants found not guilty by reason of insanity is a matter for Parliament to consider.

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