

Dependency Part I: claims for income dependency

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With thanks to Patrick Kerr and Ivan Bowley

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Income dependency: introduction

- ▶ Ordinary position
- ▶ Joint/business income: the road to *Rix*
- ▶ The decision in *Rix*
- ▶ In practice

Income dependency: the ordinary position

- ▶ s.3 Fatal Accidents Act 1976

3. — Assessment of damages.

(1) In the action such damages, other than damages for bereavement, may be awarded as are proportioned to the injury resulting from the death to the dependants respectively.

- ▶ Income; deduction; multiplier
- ▶ ***Grant v Secretary of State for Transport*** [2017] EWHC 1663 (QB) – business losses

Income dependency: the road to *Rix*

- ▶ ***Wood v Bentall Simplex Ltd* [1992] P.I.Q.R. P332 (CA)**
 - ▶ Distinction between income from capital asset (if inherited by dependants) and deceased's work
 - ▶ s.4 FAA

- ▶ ***Cape v O'Loughlin* [2001] EWCA Civ 178**
 - ▶ Method of calculation: value of lost services vs comparison of financial position
 - ▶ Refer back to s.3(1) FAA – loss from relationship
 - ▶ Contrast ***Burgess v Nightingale* [1955] 1 Q.B. 349**

Income dependency: the road to *Rix*

- ▶ ***Williams v Welsh Ambulance NHS Trust*** [2008] EWCA Civ 81
 - ▶ Successful business post-death; is there a loss?
 - ▶ Dependants argued for cost of replacing services as manager
 - ▶ Again s.3 FAA – benefit derived from relationship
 - ▶ Dependency fixed at point of death

Income dependency: the decision in *Rix*

- ▶ Mrs Rix was a dependant:

[61] *“As in the Williams case, her husband’s business produced an income for the family which was the result of her husband’s skill, energy, hard work and business flair... if he had lived his management of the business would have continued to produce an income for her.”*

- ▶ Dependency is fixed at death

[61] *“the health of the business after the deceased’s death is irrelevant”*

- ▶ Rejected D’s case that business was akin to income-generating asset on facts
- ▶ Calculated dependency on basis of Mrs Rix’s share of income; not value of services

Income dependency: in practice

- ▶ What type of claim: family business/other
- ▶ Evidence:
 - ▶ Business structure
 - ▶ Underlying practical reality – witness evidence
 - ▶ Evidence on deceased's contribution?
 - ▶ Expert evidence
- ▶ Tactics
 - ▶ What if dependant is *underpaid*
 - ▶ Extent of post-death evidence
 - ▶ Dividend vs. profit ***Head v Culver Heating*** [2020] P.I.Q.R. Q2

Income dependency: in practice

- ▶ Appeals: watch this space