

Clean hands and care claims: the wider effects of *Hunt v. Severs*

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Since the House of Lords decision in *Hunt v. Severs* [1994] 2 AC 350, it has been the law that where the claimant's carer is also the tortfeasor, the claimant cannot recover damages for care gratuitously provided by the latter. The principle is easy to understand in law, based as it is on the notion that there can be no ground in public policy or otherwise for requiring the tortfeasor to pay to the claimant, in respect of services which he has himself rendered, a sum of money which the claimant must then repay to him. It also imports aspects of trust law: *Hunt* established that the injured claimant who recovers damages under this head should hold them on trust for the voluntary carer. We all remember from our law studies that the person who comes to equity must do so with clean hands. In personal injury claims, where the money usually comes from a third party such as an insurer, it seems logical to say that the tortfeasor carer should not be able to hold out his dirty hands and expect money to be put into them.

However, in the real world of catastrophic personal injury claims, *Hunt* can cause difficulties. If a parent drives carelessly and gravely injures their child, it seems distasteful that the recoverability of part of the child's damages should influence the care regime that is put in place after the accident, not just for the past but into the future as well. And what about where the parent has only a small share of the blame for the accident? Should the claim for gratuitous care provided by the parent be disallowed altogether? The legal analysis in *Hunt* indicates that defendants are fully entitled to argue that yes it should, although no doubt many claims can be and are pragmatically settled on the basis of a discount on the gratuitous care claim that matches the carer's share of the blame for the accident. Underlying all of this there is also an uncomfortable feeling that defendants are receiving a windfall.

Almost 30 years on from *Hunt*, there has not been a serious attempt to correct these seeming anomalies, and perhaps we should conclude that the legal basis of the decision is just too sound to make an attack worthwhile.

It is worth bearing in mind though that *Hunt* may have more morally comfortable consequences in other situations. Take for example the dishonest claimant who makes a seriously inflated claim for gratuitous care provided after the injury. Particularly where the claim is supported by similarly dishonest evidence from the alleged carer, and before one reaches questions of fundamental dishonesty and strike out, a defendant should not have too much difficulty relying on the principle in *Hunt* to argue out the gratuitous care claim in its entirety, depriving the claimant of the ability to ask the court to assess damages for the true level of care that was provided. This may provide a useful additional bargaining counter for settlement negotiations, where parties often struggle to reach an agreement that fairly recognises the justice of a genuine injury with exaggerated consequences.

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