

**B E T W E E N:**

**MR BERNARD BERRIEN**

**Claimant/Appellant**

~v~

**BAD PRACTICE BANKING PLC**

**Defendant/Respondent**

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**AGREED FACT PATTERN**

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1. Bad Practice Banking Plc (“**BPB Plc**”) is a large, multi-national bank that specialises in shorting currency. Its focus is on high risk, high reward trades. It attracts ambitious, talented, and sometimes aggressive employees.
2. BPB Plc’s employees are expected to work long hours. Alongside high bonuses, part of their remuneration includes private health care through a third-party provider, Private Health Service Ltd (“**PHS Ltd**”).
3. PHS Ltd and BPB Plc have a long-standing agreement whereby PHS Ltd will, among other things, provide a GP to work in BPB Plc’s offices for three days a week. This allows BPB Plc’s employees to see a GP without having to leave the building, enabling them to return to work more quickly. BPB Plc has calculated that the time thus saved generates many millions a year for the firm. Under the arrangement, BPB Plc pays the GP’s wages directly to them and provides the GP with an office in the BPB Plc building. It is for the GP to pay their own tax and national insurance.
4. PHS Ltd contracts with numerous doctors for them to provide private health services. One of those doctors was Dr Prendergast, who was designated a self-employed contractor in his contract with PHS Ltd. For over a decade, Dr Prendergast had worked solely for PHS Ltd as he was able to work three days a week and take holidays whenever he wanted (as long as he gave sufficient notice). This fitted his lifestyle, as he is a keen horse racing spectator and would spend as much time as possible at different races.

5. Between October 2021 and 21 December 2022, Dr Prendergast worked his three-days a week at BPB Plc's offices pursuant to the arrangement described at §3 above. During that time, Dr Prendergast was invited to BPB Plc's social events (such as weekly firm drinks, monthly firm lunches, the Christmas and summer parties) and received a birthday cake from the firm every year. He also made many friends within BPB Plc.
6. Mr Bernard Berrien ("**Mr Berrien**") was employed by BPB Plc between October 2017 and 21 December 2022. He was a highly successful trader. Although they had not met before, on 19 December 2022 Mr Berrien had been to see Dr Prendergast about a health issue. Dr Prendergast swiftly treated that issue, and Mr Berrien felt much better.
7. On 20 December 2022 BPB Plc was hosting its annual Christmas party at the Shard, London. All staff, and Dr Prendergast, were invited. Mr Berrien and Dr Prendergast attended. After the official event finished, Mr Berrien's manager, Mr Wooster, suggested that "*the team*" go on to a nightclub. As Dr Prendergast went to leave the Shard, Mr Wooster told Dr Prendergast to come to the nightclub, stating "*you are very much part of the team, doc! You keep the little workers going so they can make BPB a fortune!!*".
8. At the nightclub, Mr Wooster bought Dr Prendergast and Mr Berrien many rounds of tequila. They both became heavily intoxicated.
9. After they left the nightclub, Dr Prendergast and Mr Berrien both tried to hail the same taxi. Mr Berrien insisted he had seen the taxi first, and so Dr Prendergast should wait for the next taxi. Dr Prendergast, being heavily intoxicated, shouted at Mr Berrien "*You should have more respect, I'm the one bloody looking after you!!*" and pushed Mr Berrien out of the way so that Dr Prendergast could take the cab. Unfortunately, Mr Berrien fell into the road, where a bus passed, crushing his legs. Mr Berrien's legs were amputated.
10. The next morning, BPB Plc sacked Mr Berrien because he could no longer work. BPB Plc also told PHS Ltd it wanted Dr Prendergast replaced. PHS Ltd did so and, after a short investigation, cancelled Dr Prendergast's contract.

11. Mr Berrien originally wished to claim against PHS Ltd for his injuries, alleging that it was vicariously liable for Dr Prendergast's actions. However, he did not pursue that claim when he discovered that PHS Ltd held no assets and had no insurance.
12. Mr Berrien does not wish to claim against Dr Prendergast directly, as Dr Prendergast tried to make up for his lost earnings by gambling heavily on horse racing, which resulted in his losing all his assets.
13. Mr Berrien therefore claims against BPB Plc, alleging that it was vicariously liable for Dr Prendergast's actions.
14. BPB Plc denied liability, arguing that (a) its relationship with Dr Prendergast was not sufficient to found vicarious liability; and/or (b) Dr Prendergast was not acting in the course of any such qualifying relationship when he pushed Mr Berrien.
15. BPB won on both arguments before Ms Justice McCartney.
16. Mr Berrien appealed to the Court of Appeal but lost. The Court of Appeal (Dory, Crush, and Marlin LJ) found they were bound by *Barclays Bank plc v Various Claimants* [2020] UKSC 13 and *WM Morrisons Supermarkets plc v Various Claimants* [2020] UKSC 12 to find in BPB Plc's favour.
17. Mr Berrien now appeals to the Supreme Court and argues that the cases relied on by the Court of Appeal do not support BPB Plc's case but his own.
18. The Supreme Court has asked that the Parties provide written arguments of **no more than two pages** in advance of the appeal hearing. You are instructed on behalf of Mr Berrien to draft his two-page written argument. You may rely on no more than two authorities, in addition to those mentioned at §16 above.