



## Press Summary

**THE COURT ORDERED that no one shall publish or reveal the name or address of the Respondent or publish or reveal any information which would be likely to lead to the identification of the Respondent or of any member of her family in connection with these proceedings.**

26 April 2023

**Trustees of the Barry Congregation of Jehovah's Witnesses  
(Appellant) v BXB (Respondent)**

**[2023] UKSC 15**

***On appeal from: [2021] EWCA Civ 356***

**Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Briggs,  
Lord Burrows and Lord Stephens**

### **Background to the Appeal**

In this appeal, the Supreme Court is asked to decide whether the Jehovah's Witness organisation is vicariously liable for a rape committed by Mark Sewell, a former elder.

In 1984, Mr and Mrs B began attending services of the Barry Congregation. There, they made friends with Mark Sewell, his wife Mary, and their children. The families became close, visiting each other's houses for tea and going on holidays and days out together. Mrs B considered Mark Sewell to be her best friend.

Towards the end of 1989, Mark Sewell's behaviour changed. He began abusing alcohol and appeared depressed. He began flirting with Mrs B, including hugging her, holding hands and kissing her. He also confided in her. Concerned, Mrs B spoke to Mark Sewell's father, Tony, who like his son was an elder. Tony explained that Mark was suffering from depression and needed love and support. It was accepted at trial that, had it not been for the fact that Mark Sewell was an elder and Mrs B had received this instruction from Tony Sewell, their friendship would have come to an end. Mr and Mrs B continued providing Mark Sewell with support. At one point, he asked Mrs B to run away with him.

On 30 April 1990, Mr and Mrs B and Mark and Mary Sewell were taking part in door-to-door evangelising. Afterwards they all went to a local pub for lunch, where Mark and Mary Sewell argued. Later the families returned to Mark and Mary's house. There, Mark Sewell went into a back room. Mrs B was asked by Mary if she could talk some sense into him. Mrs B decided that she should go to speak to Mark to try to convince him that he should go to the elders about his depression. A conversation ensued during which Mark Sewell pushed Mrs B to the floor, held her down and raped her.

On 2 July 2014, Mark Sewell was convicted of raping Mrs B and seven counts of indecently assaulting two other individuals. He was sentenced to 14 years' imprisonment. By this time Mark Sewell had been expelled as a Jehovah's Witness for unrelated conduct and Mrs B had ceased her association with the Jehovah's Witnesses.

Mrs B commenced an action for damages for personal injury, including psychiatric harm, against the Watch Tower and Bible Tract Society of Pennsylvania (which is a charitable corporation that supports the worldwide religious activities of the Jehovah's Witnesses) and the Trustees of the Barry Congregation, alleging that they were vicariously liable for the rape committed by Mark Sewell. The trial judge found them vicariously liable for the rape and awarded Mrs B general damages of £62,000. The Court of Appeal upheld the trial judge's decision. The Trustees of the Barry Congregation now appeal to the Supreme Court.

## Judgment

The Supreme Court unanimously allows the appeal and holds that the Jehovah's Witness organisation is not vicariously liable for the rape committed by Mark Sewell. Lord Burrows gives the judgment, with which Lord Reed, Lord Hodge, Lord Briggs and Lord Stephens agree.

## Reasons for the Judgment

Vicarious liability is an unusual form of liability by which the defendant is held liable for a tort (a civil wrong) committed by a third party [1]. The law in this area has been subject to an expansive redrawing of boundaries in the 21<sup>st</sup> century [4]. There are two stages of the inquiry, both of which have to be satisfied to find vicarious liability [58(i)]. The same two tests apply to cases of sexual abuse as they do to other cases on vicarious liability [58(v)].

In the vast majority of cases the tests can be applied without considering the underlying policy justification for vicarious liability [58(iv)]. In difficult cases it can be a useful final check on the justice of the outcome to stand back and consider whether that outcome is consistent with the underlying policy.

### Stage One

The test at stage one is concerned with the relationship between the defendant and the tortfeasor (the third party, here Mark Sewell, who committed the tort) [58(i)]. Although not a point taken by counsel, the Supreme Court considers that a correct defendant for this claim was the Watch Tower Bible and Tract Society of Pennsylvania (the first defendant at first instance) [59-64].

The first stage test is whether the relationship between the defendant and the tortfeasor was one of employment or akin to employment [58(ii)]. In applying the "akin to employment" aspect of this test, a court needs to consider carefully features of the relationship that are similar to, or different from, a contract of employment. The "akin to employment" expansion

does not undermine the traditional position that there is no vicarious liability where the tortfeasor is a true independent contractor [58(ii)].

The Supreme Court agrees with the lower courts that the relationship between the Jehovah's Witness organisation and Mark Sewell was akin to employment [65]. The important features here rendering the relationship akin to employment were: that as an elder Mark Sewell was carrying out work on behalf of, and assigned to him by, the Jehovah's Witness organisation; that he was performing duties which were in furtherance of, and integral to, the aims and objectives of the Jehovah's Witness organisation; that there was an appointments process to be made an elder and a process by which a person could be removed as an elder; and that there was a hierarchical structure into which the role of an elder fitted [66]-[67].

### Stage Two

The test at stage two asks, whether the wrongful conduct was so closely connected with acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor's employment or quasi-employment [58(iii)]. The application of this "close connection" test requires a court to consider carefully on the facts the link between the wrongful conduct and the tortfeasor's authorised activities.

At the second stage of the inquiry, the courts below erred by failing to set out the correct "close connection" test and taking into account incorrect factors. [70-71].

The Supreme Court decides that the claimant has failed to satisfy the stage two test for the following reasons: (i) the rape was not committed while Mark Sewell was carrying out any activities as an elder [74]; (ii) the primary reason the offence took place was that Mark Sewell was abusing his position as a close friend of Mrs B when she was trying to help him [75]; (iii) it was unrealistic to suggest, as counsel for the claimant submitted, that Mark Sewell never took off his "metaphorical uniform" when dealing with members of the Barry Congregation [76]; (iv) although Mark Sewell's role as an elder was a "but for" cause of Mrs B's continued friendship and hence of her being with him when the offence occurred, this is insufficient to satisfy the close connection test [77]; (v) the appalling rape was not an objectively obvious progression from what had gone on before but was rather a shocking one-off attack [78]; and (vi) other factors, such as the role played by Mark Sewell's father, and the failure of the Jehovah's Witness organisation to condemn Mark Sewell's inappropriate kissing of members of the congregation when welcoming them, were not relevant except as background [79].

As a final check, consideration of the policy of enterprise liability or risk that may be said to underpin vicarious liability confirms that there is no convincing justification for the Jehovah's Witness organisation to bear the cost or risk of the rape committed by Mark Sewell. The fact that it has deeper pockets is not a justification for extending vicarious liability beyond its principled boundaries [82].

*References in square brackets are to paragraphs in the judgment*

### **NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**