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Claims against Accountants for Trading Losses: a Search for Coherence

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Introduction

Rudiments of a 'trading loss' claim

- Client company sues auditor
- For loss-making trading happening post-audit
- Audit was negligently performed such that Cert should have been qualified
- Had the qualification been made, loss-making trading wouldn't have happened

Problems of analysis

Big money £££

Diffuse case law (pre-*MBS*)

'Mere existence' model – never recoverable

A trading loss arises from a company merely being in existence. That is not something for which the auditor takes responsibility.

'But for' model – always recoverable

'But for' unqualified report, company would not have traded.

Examining *Galoo*

- Built upon *Alexander v. Cambridge Credit (1987) 9 NSWLR 310*
- May be said to be authority for the rejection of the ‘but for’ model
- <u>Not</u> authority for the universal application of the ‘mere existence’ model
- Themes of:

Causal linkage → Knowledge → Relevant reliance

Joining together *MBS* and *Caparo*

(2) *"What are the risks of harm to C against which the law imposes on D a duty to take care?"*

(5) *"Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and* [the scope of the auditor's duty]?"

Key enquiry = *"the purpose of the duty, judged on an objective basis by reference to the reason why the advice is being given."*

Statutory purpose of audit process = to enable the shareholders as a body to scrutinize the conduct of the company's affairs and to exercise their collective powers to control or remove those to whom that conduct has been confined.

Analytical framework

- Blanket prohibition on recovery of trading losses? No! *MBS* (2)
- How to determine if recoverable? Apply *MBS* (5)
- Q1: what is the 'particular matter' the auditor has got wrong?
- Q2: what is the 'particular fashion' of trading leading to the loss?
- Q3: do the 'particular matter' and the 'particular fashion' match?

A process of fractionation

1. Unpick the term ‘trading losses’: move from the generic to the specific.
2. How does the audit failure compare with the specific cause of the trading losses?

Examples:

- ➢ Insurance broking practice – overstatement of profit margin on premiums – *Temseel Holdings Ltd v. Beaumonts Chartered Accountants [2003] PNLR 27*
- ➢ Bank – failure to spot ‘rogue trader’ – *Barings v. Coopers & Lybrand [2003] PNLR 34 + [2003] EWHC 2371*

Challenges with the matching process

Collusive management fraud

Audit Error	Cause of Trading Loss
Fraud A	Fraud B
Fraud A	Ponzi scheme (including Fraud A)
Concerted plan to deceive auditors	COVID

Challenges with the matching process

Collusive management fraud (cont)

Audit Error	Cause of Trading Loss
Concerted plan to deceive auditors	**Particular acts of dishonesty by directors**

AssetCo plc v. Grant Thornton UK LLP [2019] Bus LR 2291 (Bryan J) and [2021] PNLR 1 (CA)

Other elements of the framework

1. <u>Reliance</u>

2. <u>'Legal causation'</u>

Examples:

- ➢ Super-added trading activity
- ➢ *Novus actus*

Summary of the framework

1. No blanket prohibition on recovery of trading losses

2. To the contrary, a potentially wide range of trading losses are recoverable

3. Primarily a question of matching (a) audit failure and (b) particular manner of trading at a loss

4. Matching needs to be to a high degree of precision

5. Need to take care when it comes to collusive fraud – pragmatism may creep in

6. C must additionally prove reliance and 'legal causation'

Two recent cases

Wine Investment v. Crowe UK LLP [2026] EWHC 692 (Ch)

Deloitte & Touche LLP v. Hin Leong Trading Ltd **[2026] SGA 33**