

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

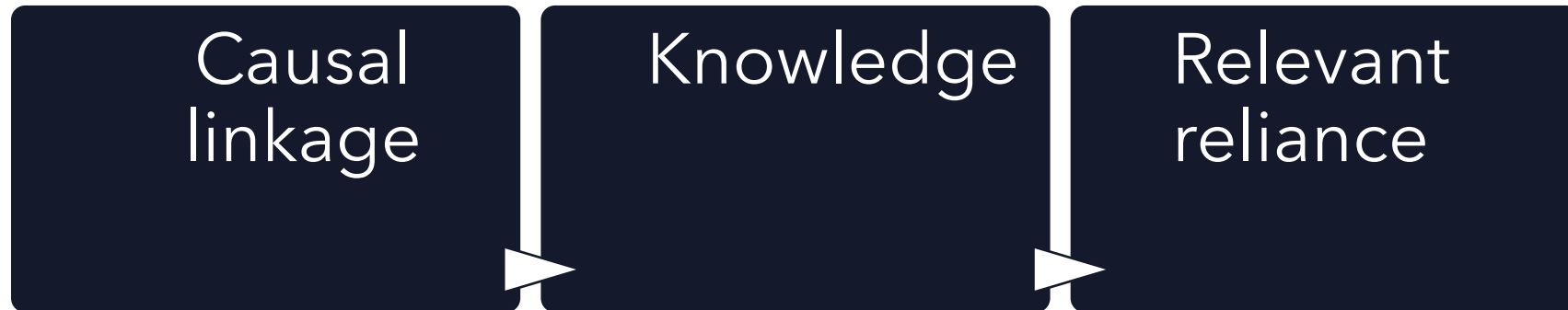
A trading loss arises from a company merely being in existence. That is not something for which the auditor takes responsibility.

'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
- ❖ Not authority for the universal application of the 'mere existence' model
- ❖ Themes of:



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] PNL R 27
- Bank - failure to spot 'rogue trader' - *Barings v. Coopers & Lybrand* [2003] PNL R 34 + [2003] EWHC 2371

Challenges with the matching process

Collusive management fraud

<u>Audit Error</u>	<u>Cause of Trading Loss</u>
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)

<u>Audit Error</u>	<u>Cause of Trading Loss</u>
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. Reliance
2. 'Legal causation'

Examples:

- Super-added trading activity
- *Novus actus*

Summary of the framework

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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