



Press Summary

THE COURT ORDERED that no one shall publish or reveal the name or address of the Appellant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellant in connection with these proceedings.

10 December 2025

X (Appellant) v Lord Advocate (Respondent)

[2025] UKSC 44

On appeal from: [2024] CSIH 6

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Briggs, Lord Burrows and Lady Simler

Background to the Appeal

In this appeal, the Supreme Court is asked to decide whether the Crown is vicariously liable for civil wrongs allegedly committed by John Brown when he was a sheriff (a member of the Scottish judiciary).

The pursuer is a legal practitioner. She claims that Mr Brown is liable in delict (the Scottish term for what English law calls tort) for assaulting her on three separate occasions. Two of those were in the court building where he sat as a sheriff and the third was on a train. He also tried to contact her on her mobile phone, after she complained about his behaviour. The pursuer alleges that the sheriff is liable for those assaults and, taking the four incidents together, for harassment contrary to the Protection from Harassment Act 1997.

The factual question whether the sheriff committed the alleged delicts has not yet been decided. This is because the courts have first been asked to decide the preliminary question whether the Crown can be held vicariously liable for the sheriff's delicts, if they are proven at trial. The law on vicarious liability is the same in Scotland as it is in England. In general terms, vicarious liability imposes a liability to pay damages on employers where their employees have committed a delict or a tort within the course of their employment. There are two stages to the vicarious liability enquiry. Stage 1 is concerned to establish whether there is an employment relationship or a relationship "akin to employment" between the wrongdoer and the employer or, if the relationship is akin to employment, quasi-employer. Stage 2 is concerned with whether the delict or tort was sufficiently closely connected to what the wrongdoer was authorised to do that it can fairly and properly be regarded as done by the wrongdoer while acting in the course of the wrongdoer's employment or quasi-employment.

On this appeal, stage 2 is no longer in dispute. That is, it is accepted that, if the pursuer succeeds at stage 1, the case should go to trial because she is not bound to fail at stage 2.

The Outer House of the Court of Session held that she was not bound to fail at stage 1. But that decision was overturned by the Inner House of the Court of Session. The pursuer now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the pursuer's appeal. It holds that the pursuer's claim is bound to fail at stage 1 of the vicarious liability enquiry. Lord Reed and Lord Burrows give a joint judgment with which the other members of the Court agree.

Reasons for the Judgment

The central issue in this appeal is the correct interpretation of section 2(1)(a) of the Crown Proceedings Act 1947 ("the **1947 Act**") [3], [29]. Under section 2(1)(a) read with section 43(b), the Crown may be held vicariously liable in respect of torts and delicts "committed by its servants or agents" [12]-[13].

What does "the Crown" mean in the context of this case?

The Supreme Court holds that, in section 2 of the 1947 Act, "the Crown" means the Sovereign in his official capacity. The Court's view is supported by the provisions of the 1947 Act, which make clear that government Ministers and departments, and members of the Scottish Government and parts of the Scottish Administration, are servants of the Crown, not the Crown itself. Other provisions of the 1947 Act recognise that the Crown acts in different capacities. Further, section 30 of the Interpretation Act 1889, which was in force at the time when the 1947 Act was passed, laid down that, unless the contrary intention appeared, references to the Crown in any Act of Parliament were to be construed as meaning the Sovereign for the time being [32]-[39], [41]-[42].

The Crown has been correctly described in the case law as a corporation sole: a legal entity with perpetual succession constituted by a single person, namely the Sovereign for the time being. This is consistent with familiar aspects of the constitution, such as the continuity of office of the Sovereign on the death of the natural person holding that office for the time being. It reflects the fundamental distinction between the two capacities of the monarch: as a private individual, on the one hand, and as the holder of a public office on the other [40].

The Crown's liability under the 1947 Act does not extend to all of the Sovereign's official capacities, which are wide-ranging. Section 40(2)(b) of the 1947 Act makes clear that the liability of the Crown must arise in respect of His Majesty's Government in the UK or the Scottish Administration [43]-[47].

Who should the pursuer sue?

The Supreme Court agrees with the lower courts that the pursuer's vicarious liability claim was correctly brought against the Lord Advocate. As explained above, the Crown can only be sued under the 1947 Act in respect of liability arising in respect of the UK Government or the Scottish Administration. In the present case, the focus must be on the Scottish Government (which forms part of the Scottish Administration) because the Sovereign in his official capacity acts through the Scottish Government as regards the relationship with Scottish judicial office-holders. The Scottish Government pays judges' salaries and, through the First Minister, is responsible for the appointment and removal of judges. So, the relevant relationship for the purposes of the stage 1 test for vicarious liability is the relationship between the Scottish Government and the sheriff. Under sections 1 and 4A of the Crown Suits (Scotland) Act 1857,

the Lord Advocate is the appropriate defendant in claims against any part of the Scottish Administration [17]-[18], [48]-[50].

What is the relationship between section 2(1)(a) of the 1947 Act and the common law test for vicarious liability?

The Supreme Court rejects the pursuer's principal argument that section 2(1)(a) is self-contained. Section 2 carves out a number of wide exceptions to the general principle that the Crown cannot be held liable in delict or tort. For each of these areas of liability in delict or tort, section 2 puts the Crown in the same position as "if it were a private person of full age and capacity". So, the common law of vicarious liability applies to the Crown in the same way as it would to a private person. This includes the recent development of the common law at stage 1 to embrace a relationship that is akin to employment. Since a statute is "always speaking", an interpretation that embraces developments in the common law is generally preferable to one that treats the interpretation of the statute as frozen in time [23], [51]-[56]

Is the common law test for vicarious liability satisfied on the facts of this case?

No. The Supreme Court holds that stage 1 of the test for vicarious liability is not satisfied because the relationship between a sheriff such as Mr Brown and the Scottish Government is not akin to employment. This is the case even though the Scottish Government, through the Scottish Consolidated Fund, ultimately funds sheriffs' salaries, allowances and pension benefits. It follows that the Crown cannot be held vicariously liable for Mr Brown's alleged wrongdoing [61], [63]-[64].

The Court gives two linked reasons for this conclusion. First, the Scottish Government has no control over the sheriffs' performance of their judicial functions. Second, and most crucially, it is a constitutional principle, resting on the separation of powers, that the judiciary is independent of Government. The principle of judicial independence is enshrined in section 3 of the Constitutional Reform Act 2005 and in section 1 of the Judiciary and Courts (Scotland) Act 2008. The Scottish Government cannot, therefore, tell a sheriff what to do or how to do it. A sheriff must be free to decide cases – including cases where the Scottish Government is one of the parties – without any interference or fear of interference [58]-[60].

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](#)