Trinity Term
[2026] UKPC 26
Privy Council Appeal No 0085 of 2024

JUDGMENT

The Estate of Claudia Edwards Bethel (Respondent) *v* Attorney General of The Bahamas and another (Appellants) (The Bahamas)

From the Court of Appeal of the Commonwealth of The Bahamas

before

Lord Reed
Lord Sales
Lord Briggs
Lord Burrows
Dame Amanda Yip

JUDGMENT GIVEN ON
11 June 2026

Heard on 5 May 2026

Appellant
Rowan Pennington-Benton
Kayla Green-Smith
Nevado Frazer
(Instructed by Charles Russell Speechlys LLP (London))

Respondent
Frederick R M Smith KC
Ruth Jordan
Roderick Dawson Malone
Doneth Cartwright
Suzanne Ter-Minassian
(Instructed by Sheridans Solicitors LLP (London))

LORD BURROWS AND DAME AMANDA YIP:

1. Introduction

1. In the early hours of Saturday 13 December 2014, the police raided a bar in The Bahamas and arrested for immigration purposes a number of Jamaican women, including the late Claudia Bethel. She had been married to a Bahamian since 2010 and at all material times was in possession of a copy of a spousal permit allowing her to remain in The Bahamas. After being interviewed by the police, she was kept at a detention centre from about 3.00 pm on the Saturday until 3.55 pm on Monday 15 December. She was then handed over into the custody of a senior immigration officer, Norman Bastian. He took her to his home and twice raped her before taking her back to her home at 2.30 pm on Tuesday 16 December.

2. On the issues relevant to this appeal, the trial judge, Madam Senior Justice Charles, in a judgment delivered on 27 January 2023, 2015/CLE/gen/00245, held that:

> (i) Mrs Bethel's arrest and detention by the police was not unlawful prior to 3.00 pm on Saturday 13 December 2014 (albeit that her subsequent detention in the detention centre was unlawful and entitled her to damages for the tort of false imprisonment).
>
> (ii) Mrs Bethel's detention and rape by Mr Bastian entitled her to damages against him for the torts of false imprisonment, assault and battery but did not render the other defendants vicariously liable for those torts.

3. The Estate of Mrs Bethel (Mrs Bethel died of Covid on 25 May 2021 before delivery of Charles J's judgment) and Mr Bastian both appealed.

4. The Court of Appeal (Sir Michael Barnett P, Madam Justice Crane-Scott JA, Mr Justice Evans JA) in a judgment given on 27 June 2024, SCCivApp & CAIS Nos 34 and 40 of 2023, dismissed Mr Bastian's appeal.

5. But on the appeal by the Estate of Mrs Bethel, which is the focus of this appeal, the Court of Appeal overturned Charles J's decision on vicarious liability; and by a majority (Sir Michael Barnett P dissenting) also overturned her decision on unlawful arrest and detention by the police prior to 3.00 pm on Saturday 13 December 2014. The defendants (other than Mr Bastian) now appeal to the Board against both those decisions of the Court of Appeal.

6. As was made clear orally by Rowan Pennington-Benton, counsel for the appellants, no point is being taken as to the distinction between the four appellants for the purposes of this appeal to the Board. They are all being treated together as relevant emanations of the State. The Board therefore puts to one side that it is hard to see, for example, how the Commissioner of Police, who is the fourth appellant, has any role in relation to the appeal on vicarious liability given that the torts in question were committed by Mr Bastian, who is an immigration officer and not a police officer.

7. There are therefore two issues on this appeal. The first is whether the arrest and initial detention of Mrs Bethel by the police (ie between approximately 1.00 am and 3.00 pm on Saturday 13 December 2014) was unlawful and therefore constituted the tort of false imprisonment. For shorthand, this will be referred to as the "arrest and initial detention issue". The second is whether Mr Bastian's employers are vicariously liable for the torts of false imprisonment, battery and assault (the detention and rapes of Mrs Bethel) committed by Mr Bastian. This will be referred to as the "vicarious liability issue".

2. Facts

8. The facts, as explicitly found by Charles J or as agreed in the Statement of Facts and Issues or as emerging from uncontradicted evidence or from evidence preferred by Charles J, can be summarised as follows.

9. Mrs Bethel was a Jamaican national who had been living in The Bahamas since 2010. She had a spousal permit giving her legal permission to remain in The Bahamas based on her marriage (since 2010) to a Bahamian national. She had lost the original spousal permit but, on the night of 12/13 December 2014, she had with her a copy which had been issued to her by the Immigration Department.

10. Mrs Bethel worked as a bartender at the Twilight Bar, which was raided by the police at around 1.00 am on Saturday 13 December 2014. She showed the police a copy of her spousal permit. Nevertheless, Mrs Bethel was arrested and taken to the Central Police Station, along with 11 other Jamaican women in the bar who, according to the uncontradicted evidence of Police Superintendent Adrian Curry, were (in contrast to Mrs Bethel) scantily dressed only in underwear. Mrs Bethel was told (as were the other women) that she was being arrested for "immigration purposes" and that was also recorded on her Detention Record.

11. At around 3.00 pm on the same day (Saturday 13 December 2014), Mrs Bethel was interviewed by Inspector Altida Bowles who had no concern about Mrs Bethel having been trafficked. Mrs Bethel again produced the copy of her spousal permit. Inspector Bowles informed Superintendent Knowles that Mrs Bethel had a copy of her spousal permit.

12. Mrs Bethel was not charged with any offence. Sometime after 3.00 pm Mrs Bethel and the other women were turned over by the police to the Carmichael Road immigration detention centre. This was pending verification of her spousal permit. It is not now in dispute that the detention after 3.00 pm that afternoon was unlawful.

13. On Sunday 14 December 2014, Mrs Bethel was interviewed by immigration officer Thea Moss and senior immigration officer Mr Bastian. After the interview, Mr Bastian made a telephone call to Dwight Beneby, Assistant Director of Immigration, seeking permission to leave the Carmichael Road detention centre with Mrs Bethel for the purpose of checking the information she had provided to the authorities about her address. Mr Bastian told Mr Beneby that they (Mr Bastian and Mrs Bethel) would be accompanied by a woman (the implication being a female immigration officer). Mr Beneby gave his permission for Mrs Bethel to be released into the custody of Mr Bastian for that purpose.

14. At around 3.55 pm on Monday 15 December 2014, Mrs Bethel was released from the Carmichael Road detention centre into the custody of Mr Bastian with a view to verifying her correct address. They were accompanied by Marsha Curry, a friend of Mr Bastian. Mr Bastian had deceived Mr Beneby by not informing him that the female was a friend and not an immigration officer.

15. Ms Curry remained with Mr Bastian and Mrs Bethel whilst they went (a) to a car mechanic (as the vehicle was playing up) (b) to Mrs Bethel's home and (c) to KFC for food. Ms Curry was dropped off after that. Mr Bastian then took Mrs Bethel to his office at the Immigration Department (where he interviewed her), then to a gas station to buy gas and a bottle of wine, then to Starbucks where Mrs Bethel went to the lavatory, then to a further stop at what may have been Mr Bastian's niece's house, then to a Chinese liquor store to purchase more wine, before arriving finally at Mr Bastian's home.

16. At Mr Bastian's home, Mrs Bethel was given food. She washed herself in the bathroom. Mr Bastian came to the bathroom and, as she exited, pushed her into the bedroom and raped her. Mrs Bethel was unlawfully detained overnight at Mr Bastian's house and Mr Bastian raped her again the following morning (Tuesday 16 December 2014).

17. In her evidence, accepted by Charles J, Mrs Bethel said that she had several times asked when she could go home to her children but was told by Mr Bastian that she could not go home yet. At para 151 Charles J said this:

> "I accept Mrs Bethel's evidence that [she] did not believe that she had freedom of movement and she was afraid. I believe that Mr Bastian misused and abused his authority as a senior

> immigration officer to make Mrs Bethel believe that she had no choice but to go with him."

Charles J found that Mrs Bethel had a fear of the immigration authorities generally and was also afraid of Mr Bastian. He had indicated to her that he had a licensed firearm and that a very bad man, known as "Death", was his nephew.

18. Later that day, Mrs Bethel persuaded Mr Bastian to take her to the police station. This was on the pretext that she was going to look into her lost spousal permit but, in reality, she intended to report him to the police. Her plan was thwarted as she was unable to speak privately to the officer to whom she had previously spoken.

19. Mr Bastian eventually took Mrs Bethel to her home at 2.30 pm on the Tuesday (16 December), leaving her there. Mrs Bethel then went back to the police station, reported the rapes, and provided the condom that Mr Bastian had used on one of the occasions he had raped her.

3. The judgments in the courts below

(1) Charles J

20. On the arrest and initial detention issue, Charles J reasoned that, applying section 9 of the Immigration Act (set out below at para 27), the arresting officer Superintendent Curry had reasonable cause to suspect that an offence under the Immigration Act had been committed by Mrs Bethel; and that it was necessary to arrest her immediately so as to verify her immigration status. Charles J also considered that the police had given Mrs Bethel sufficient information as to the reason for her arrest by informing her that she was being arrested for immigration purposes. In the context, and as Mrs Bethel was aware, this meant that she was being arrested for offences under the Immigration Act.

21. On vicarious liability, Charles J referred to the relevant test, as laid down in *Lister v Hesley Hall Ltd* [2001] UKHL 22; [2002] 1 AC 215 ("*Lister*"), as being whether Mr Bastian's torts were so closely connected with his employment that it would be fair and just to hold his employers vicariously liable (which she recognised as being a principle of social justice). In her view, this was not so because, although "Mrs Bethel was in a very vulnerable and helpless position [with] a man who was endowed with a lot of power" (para 114), Mr Bastian had abandoned his post and duties and, in the time-honoured phrase, was acting "on a frolic of his own". He had lied to Mr Beneby in order to have Mrs Bethel released into his custody and it must have been clear to her during the many stops on the journey to his home that he was not acting within his remit of verifying her correct address.

22. Charles J's central reasoning was set out at para 182:

> "In my judgment, it cannot be said that taking Mrs Bethel to his home and sexually assaulting her was within the course of his employment and/or sufficiently close to make it right and just for the Immigration Authorities to be held liable under the principle of social justice. Shortly put, Mr Bastian was on a frolic of his own when he took Mrs Bethel to his home having deliberately and consciously abandoned his post and his duties. He had no duties beyond investigating Mrs Bethel's correct address and he was fully aware that a female officer ought to be with him. He put aside his role as an immigration officer and embarked on a frolic of his own. Therefore, the Government is not vicariously liable for his actions namely falsely imprisoning Mrs Bethel for 22.35 hours; assault and battery …"

(2) Court of Appeal

23. As has been said at para 5 above, the Court of Appeal overturned Charles J on both the arrest and initial detention issue (by a majority) and the vicarious liability issue.

24. On the first of those issues, Evans JA and Crane-Scott JA decided that Superintendent Curry did not have reasonable grounds to suspect that Mrs Bethel had committed an offence under the Immigration Act. The test of reasonable suspicion has subjective and objective elements and Charles J had failed properly to assess the reason given by Superintendent Curry for effecting the arrest. Crane-Scott JA stressed that the reasonable suspicion must relate to a "*specific* criminal offence" (para 22) and was also of the view that Mrs Bethel's immediate arrest was not necessary to secure the ends of justice as required by section 9 of the Immigration Act. Evans JA thought it inadequate simply to advise a person that she is being arrested for a breach of the Immigration Act without specifying the contemplated offence. Evans JA said at para 121: "The officer need not cite the specific provision of the Act but should at [a] minimum articulate the nature of the particular offence for which the arrest is being made." He concluded his reasoning as follows at para 129:

> "… I am satisfied that the learned Judge fell into error in not properly assessing the reason provided by Superintendent Curry for effecting the arrest. Further, that Curry failed to comply with the requirement of notifying Bethel of the reason for her arrest so that she could be properly aware of the specific offence(s) for which she was being arrested. I am not satisfied that she knew the reason for her arrest in the absence of a

> specific indication from the arresting officer. I am therefore satisfied that the trial judge erred in finding that [Mrs Bethel] was lawfully arrested and then lawfully held until 3 pm on Saturday December 13, 2014**.**"

Both rejected, clearly correctly, Sir Michael Barnett P's reason for upholding Charles J's decision on this issue because he had based that upholding on an incorrect reading of her findings of fact.

25. Turning to vicarious liability, the leading judgment was given by Sir Michael Barnett P, with whose reasoning the other two judges agreed. He first recognised that Charles J had stated the law correctly. But having reviewed some authorities from other jurisdictions, especially the decision of the UK Supreme Court in *BXB v Trustees of the Barry Congregation of Jehovah's Witnesses* [2023] UKSC 15; [2024] AC 567 ("*BXB*") (handed down subsequent to Charles J's judgment), Sir Michael Barnett P concluded that, contrary to the reasoning of Charles J, Mr Bastian's wrongful conduct was sufficiently connected to his duties as an immigration officer to impose vicarious liability on his employers. This was primarily because Mr Bastian at all relevant times had custody of Mrs Bethel in his capacity as an immigration officer, was doing duties as an immigration officer, and did not release her from his custody until the Tuesday afternoon. Indeed, Sir Michael Barnett P pointed out that, in the report of Corporal Ghia Butler, which was admitted by agreement, Mr Bastian told Corporal Butler at the police station on the Tuesday that Mrs Bethel was still under arrest. Sir Michael Barnett P also made clear that, in contrast to the relationship of friendship in *BXB*, Mrs Bethel's relationship with Mr Bastian was only in the capacity of an arrested person in the custody of an immigration officer. He concluded at para 242:

> "In my judgement Bastian's actions after he obtained custody of Bethel from the Detention Centre were sufficiently connected to his employment as an immigration officer as to make the Immigration authorities vicariously liable for his actions[.] This relates both to his detaining Bethel until she returned to her home as well as the assault and battery occasioned by the rape."

4. The arrest and initial detention issue: was the arrest and initial detention of Mrs Bethel by the police (ie between approximately 1.00 am and 3.00 pm on Saturday 13 December 2014) unlawful and therefore constituted the tort of false imprisonment?

26. Article 19 of the Constitution of the Commonwealth of The Bahamas provides protection from arbitrary arrest and detention. Reflecting the common law, and in so far as relevant to the facts of this case, it provides as follows:

"**19. Protection from arbitrary arrest or detention**

(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases—

…

(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;

…

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention …"

27. One of the routes by which arrest and detention is authorised by law is section 9 of the Immigration Act, which provides:

"**9. Powers of arrest**

If any Immigration Officer or police officer has reasonable cause to suspect that any person, other than a citizen of The Bahamas or a person who is a permanent resident, has committed an offence under this Act or any regulations and if it appears to him to be necessary to arrest such person immediately in order to secure that the ends of justice for the purposes of this Act shall not be defeated, he may arrest such person without warrant whereupon the provisions of section 18 of the Criminal Procedure Code Act shall apply in every such case."

28. It is common ground that these provisions give rise to three requirements, all of which had to be proved by the appellants in order to establish the lawfulness of the arrest and initial detention of Mrs Bethel:

(i) The arresting officer had reasonable cause to suspect Mrs Bethel had committed an offence under the Immigration Act;

(ii) It appeared to the arresting officer that her immediate arrest was necessary to prevent the ends of justice for the purposes of the Act being defeated;

(iii) Mrs Bethel was informed of the reasons for her arrest and detention as soon as practicable.

29. While not agreeing with all aspects of their reasoning, the Board agrees with the conclusion of the majority in the Court of Appeal, Evans JA and Crane-Scott JA, that Charles J erred in her approach to these requirements. The question is therefore whether, on the evidence called by the appellants and the judge's primary findings of fact, the lawfulness of the arrest and initial detention was established.

30. In relation to the first requirement, it is accepted that assistance as to the approach to be taken to whether there was reasonable cause to suspect that Mrs Bethel had committed an offence under the Immigration Act is to be derived from *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286. In that case, the House of Lords considered the provisions of section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 which allowed a constable to arrest without warrant a person who had been concerned in acts of terrorism. Lord Hope said, at p 298:

> "My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised."

31. But while section 9 of the Immigration Act requires reasonable cause to suspect that the person arrested has committed an offence under the Act or the regulations, it is not necessary for the arresting officer to have a specific statutory provision in mind. In this respect, the Board respectfully disagrees with the reasoning of Crane-Scott JA (see para 24 above) stressing that the appellants had to prove that the arresting officer had reasonable cause to suspect that Mrs Bethel had committed a *specific* offence under the

Immigration Act. In *Betaudier v Attorney General of Trinidad and Tobago* [2021] UKPC 7; [2021] 5 LRC 155, the Board considered a similar issue relating to a statutory provision which allowed an officer to arrest without warrant a person suspected of having committed an arrestable offence. The Board expressed the view that:

> "… while it is not sufficient that an officer has suspicion of some general unlawful conduct, neither under section 3(4) nor at common law is it necessary to establish that an arresting officer had in mind specific offences or statutory provisions."

This followed the approach identified by Bingham LJ in *Chapman v Director of Public Prosecutions* (1988) 89 Cr App R 190, at p 197:

> "It is not of course to be expected that a police constable in the heat of an emergency, or while in hot pursuit of a suspected criminal, should always have in mind specific statutory provisions, or that he should mentally identify specific offences with technicality or precision. He must, in my judgment, reasonably suspect the existence of facts amounting to an arrestable offence of a kind which he has in mind."

In the same way, section 9 does not require the arresting officer to identify infringement of a specific statutory provision under the Immigration Act. However, it does require the officer to have in mind the nature of the suspected offence and a factual basis for suspecting it.

32. The evidence called by the appellants to establish reasonable cause to suspect Mrs Bethel of committing an offence under the Immigration Act was limited. Superintendent Curry explained that he had led the team of officers which went to the Twilight Bar following a briefing from senior command concerning suspected unlawful activity at various nightclubs in New Providence. He said that foreign accents were heard among the women in the club, that documents were requested and inspected, and that breaches of the immigration laws were suspected. He concluded by saying that at no time was he made aware that any of the women had spousal permits. In cross-examination, Superintendent Curry gave various reasons for Mrs Bethel's arrest. He confirmed that the intelligence concerned illegal immigrants engaged in exotic dancing, that Mrs Bethel was dressed differently from the other women, and that he had not spoken to her or examined any documents she produced. On the third day of his evidence, he suggested that Mrs Bethel may have been in charge of the exotic dancers at the club. That was not consistent with the pleaded defence which asserted that Mrs Bethel was detained to determine whether an immigration or other offence had been committed, and to ensure that she and the other women were not victims of human trafficking.

33. There was, therefore, real uncertainty as to the basis upon which Mrs Bethel was arrested. If, as Charles J found, Superintendent Curry was the arresting officer, the evidence did not satisfactorily establish what was in his mind at the time. He had deliberately kept some distance from the women, had not spoken to Mrs Bethel, and had not himself examined the documents produced. To the extent that he directed her arrest, it appears he did so by reference to the group of Jamaican women as a whole, rather than by reference to Mrs Bethel's individual circumstances. That is significant because Charles J expressly found that Mrs Bethel showed the police a copy of her spousal permit before her arrest. She later produced the same copy when interviewed by Inspector Bowles at around 3.00 pm on Saturday 13 December. In those circumstances, the conclusion that the arrest and initial detention were lawful up to 3.00 pm on Saturday 13 December 2014 but unlawful thereafter is difficult to reconcile with the judge's finding that the copy permit had been shown before the arrest. If the judge proceeded on the basis that the arrest and detention were justified pending verification of the permit, and that such verification had occurred by 3.00 pm on the Saturday, that conclusion was not supported by the evidence. The Immigration Office was closed over the weekend, so no such verification could have taken place until Monday 15 December 2014.

34. In the circumstances, the evidence and the judge's findings of fact did not support the conclusion that there was reasonable cause to suspect Mrs Bethel of having committed an immigration offence. The Board is (and the Court of Appeal was) therefore entitled to intervene. Accepting that Superintendent Curry was the arresting officer, his evidence did not establish that he had in mind any sufficient basis for suspecting Mrs Bethel of having committed such an offence. The intelligence related to women engaged in exotic dancing who were in The Bahamas unlawfully. It was apparent from her state of dress that Mrs Bethel did not fall within that category. Mrs Bethel was not dressed as an exotic dancer, was working behind the bar and, most importantly of all, had produced a copy of her spousal permit. On the judge's findings, those matters distinguished her from the other women. The evidence did not establish that her individual circumstances were sufficiently considered before she was arrested.

35. That conclusion is by itself sufficient to determine the arrest and initial detention issue in the respondent's favour. The Board nevertheless agrees with the conclusion reached by Crane-Scott JA that the appellants also failed to establish the second requirement, namely that Mrs Bethel's immediate arrest was necessary to secure that the ends of justice for the purposes of the Act should not be defeated. Charles J made no clear finding on that issue. Although she rightly observed that the availability of an alternative power under section 8 of the Act to summon a person for interrogation and production of documents did not itself preclude a lawful arrest under section 9, it remained necessary to consider whether, on the facts of Mrs Bethel's case, immediate arrest was required. In that context, the production of the copy permit was plainly material. The evidence did not establish that Superintendent Curry, or any officer acting on his instructions, addressed whether immediate arrest was necessary, rather than further inquiry or a requirement to attend later to verify the document through the section 8 procedure. That is especially so

given that verification could not in practice occur until Monday because the Immigration Office was closed over the weekend.

36. In the light of those conclusions, it is unnecessary to decide whether the third requirement was satisfied. Since the appellants failed to establish reasonable cause to suspect that Mrs Bethel had committed an offence under the Act, and failed also to establish the necessity of her immediate arrest, the arrest was unlawful in any event. In those circumstances, it is unnecessary, and would be somewhat artificial, to examine separately the adequacy of the reasons given for an arrest which was not otherwise shown to be lawful. The Board would add only that, contrary to what Evans JA appeared to be saying on this issue, it does not accept any general proposition that informing a person that he or she is being arrested for "immigration purposes" must always be insufficient. The adequacy of the reasons given for arrest will depend on the context of the arrest and the specific circumstances as they appear at the time. Nothing turns on that issue in the present case.

37. The Board therefore concludes that the arrest and initial detention of Mrs Bethel by the police (ie between approximately 1.00 am and 3.00 pm on Saturday 13 December 2014) was unlawful and thereby constituted the tort of false imprisonment.

5. The vicarious liability issue: are Mr Bastian's employers vicariously liable for the torts of false imprisonment, battery and assault (the detention and rapes of Mrs Bethel) committed by Mr Bastian?

38. Sir Michael Barnett P cited extensively from the judgment of the United Kingdom Supreme Court (given by Lord Burrows) in *BXB* as representing the most recent authoritative statement of the law on vicarious liability in England and Wales. In line with his reasoning, it is not in dispute in this case that the relevant law on vicarious liability in The Bahamas is the same as English law.

39. Without wishing to rehearse all that was said in *BXB,* the following five points from the judgment are worth emphasising.

(i) There are two stages to consider in determining vicarious liability. Stage 1 is concerned with the relationship between the defendant and the tortfeasor. Stage 2 is concerned with the link between the commission of the tort and that relationship. Both stages must be addressed and satisfied if vicarious liability is to be established.

(ii) The test at stage 1 is whether the relationship between the defendant and the tortfeasor was one of employment or akin to employment. In this case, it is not in

dispute that stage 1 is satisfied. That is because Mr Bastian was a senior immigration officer employed in the Department of Immigration. As has been mentioned at para 6 above, for the purposes of this appeal no distinction is being drawn between the four appellants. But on the face of it, at least the second and third appellants may be said to represent Mr Bastian's employer.

(iii) The test at stage 2 (the "close connection" test) is 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. The reference to quasi-employment embraces where the relationship at stage 1 is "akin to employment" but, as we are here dealing with employment, there is no need to consider quasi-employment. The vicarious liability issue in this case turns on the correct application of the "close connection" test.

(iv) Although not always adhered to in the reasoning in past cases, the above tests invoke legal principles that in the vast majority of cases can be applied without considering the underlying policy justification for vicarious liability. In other words, the standard common law technique of applying legal principles in the light of past case law should generally be applied without needing to examine the underlying policy.

(v) That is not to deny that in a difficult case, it can be a useful final check on the justice of the outcome to consider whether the outcome of applying the tests is consistent with the policy underlying vicarious liability. That essential policy is that the employer (or quasi-employer), who is taking the benefit of the activities carried on by a person integrated into its organisation, should bear the cost or risk of the wrong committed by that person in the course of those activities.

40. It is the Board's view that the close connection test is clearly satisfied on the facts of this case for the following reasons.

41. First, Mr Bastian, as a senior immigration officer, in certain circumstances lawfully had the power to detain and question a person as part of an investigation into the commission of an immigration offence and this would include verifying information about the person's immigration status. Here Mr Bastian purported to be exercising that power during the whole period from when he took Mrs Bethel from the detention centre at 3.55 pm on Monday 15 December 2014 until he returned her to her home at 2.30 pm the following day. So, for example, when asked by Mrs Bethel during that period when she could go home to her children, he told her that she could not do so yet; and when he took her into the police station on the Tuesday, he told Corporal Butler that Mrs Bethel was still under arrest. In detaining Mrs Bethel, he was therefore purporting to be

exercising a power conferred by his role as an immigration officer. Indeed, at the outset, and even though obtained by an implied lie, he was expressly given the authority to take Mrs Bethel into his custody by his superior officer, Mr Beneby. As Sir Michael Barnett P put it at para 238:

> "Bethel had been at the detention centre under the control of the Department of Immigration. She was 'released' from the detention centre, not to her freedom, but to the custody of Bastian."

42. Secondly, throughout the period, Mrs Bethel was under the control of Mr Bastian and was afraid of him. She subjectively believed that she was not free to leave. Although part of her fear was of Mr Bastian himself (he had indicated to her that he had a dangerous nephew and owned a gun) she was also afraid of him because he was an immigration officer and she had a fear generally of the immigration authorities.

43. Thirdly, the rapes were committed while Mrs Bethel was being detained by Mr Bastian and while she was under his control and was afraid of him. Indeed, as powerfully argued by Ruth Jordan, who made the submissions for the respondent on this part of the appeal, the rapes can be viewed as a clear manifestation of the domination and control that Mr Bastian was exercising over Mrs Bethel.

44. Fourthly, it was incorrect of Charles J to say that Mr Bastian "had no duties beyond investigating Mrs Bethel's correct address" (see para 22 above). At the very least he came under a common law duty of care to keep her safe from harm for as long as he continued to detain her (see, eg, *Reeves v Commissioner of Police of the Metropolis* [2000] 1 AC 360, 380; *Clerk & Lindsell on Torts*, 24th ed (2023), para 7–56). In raping her, he was directly in breach of that duty of care.

45. Fifthly, there was a seamless sequence of events from his taking her into his custody on the Monday afternoon to his returning her to her home the following day. At no point did he abandon his post. As counsel for the respondent submitted, Mr Bastian never took off his "metaphorical uniform" as an immigration officer.

46. Sixthly, Mr Pennington-Benton submitted that one should downplay any potential significance in Mr Bastian having been given express authority to take Mrs Bethel into his custody not only because of the implicit lie but also because, not having a female immigration officer, it was a breach of protocol. But there are many cases where express prohibitions have not absolved employers from vicarious liability: see, eg, *Ilkiw v Samuels* [1963] 1 WLR 991; *Rose v Plenty* [1976] 1 WLR 141; *Winfield & Jolowicz on Tort*, 21st ed (2025), para 24-026. As Ms Jordan correctly submitted, if the law were to

allow a breach of protocol in itself to absolve an employer from vicarious liability, there would be a proliferation of protocols designed to avoid vicarious liability.

47. Seventhly, the facts of this case are plainly distinguishable from those in *BXB* where the close connection test was held not to have been satisfied. In that case the rape was an abuse of the close relationship of friendship that had been built up between the victim and the tortfeasor rather than being an abuse of the tortfeasor's position as an Elder of the Barry Congregation of Jehovah's Witnesses. But here the only relationship between Mrs Bethel and Mr Bastian was that of being a detained person in the custody of an immigration officer and the rape was an abuse of that relationship. Furthermore, in *BXB* the rape was not committed while the tortfeasor was carrying out, or purporting to carry out, any activities as an Elder on behalf of the Jehovah's Witnesses. In contrast in this case, the rapes were committed while Mr Bastian was detaining Mrs Bethel in the purported exercise of the powers he had as an immigration officer.

48. Eighthly, that the close connection test is satisfied on the facts of this case derives support from the leading cases in England and Wales on vicarious liability for the sexual abuse of children: *Lister*, *Various Claimants v Catholic Child Welfare Society* ("*Christian Brothers*") [2012] UKSC 56; [2013] 2 AC 1, and *Armes v Nottinghamshire County Council* ("*Armes*") [2017] UKSC 60; [2018] AC 355. In *Lister*, the warden of a school boarding house had systematically sexually abused the claimants, at the time aged 12–15, who were residents in the boarding house and were in the warden's care. In *Christian Brothers,* the claimants had been boys at a Roman Catholic residential school who had been sexually abused by members of the Christian Brothers who lived and taught at the school. In *Armes* there was sexual abuse committed by foster parents against a child entrusted into their care by a local authority. In each of these cases the close connection test for vicarious liability was held to be satisfied not least because of the abuse of the position of authority and care with which the tortfeasors had been entrusted by their employers (or quasi-employers) in respect of the children. Similarly in this case, Mr Bastian abused the position of authority, control and care in respect of Mrs Bethel that was an aspect of his role as an immigration officer and with which he had been entrusted by his superior officer.

49. It follows that the Board agrees with the essential reasoning of Sir Michael Barnett P on the application of the close connection test.

50. On the vicarious liability issue, was the Court of Appeal entitled, and is the Board entitled, to interfere with the decision of Charles J? Mr Pennington-Benton submitted that the answers were "no" because, on his submission, Charles J correctly stated the law on the close connection test and her application of that law to the facts required an evaluative judgment by her to which an appellate court should defer. The Board rejects that submission. We accept that Charles J's articulation of the close connection test was essentially correct (although there is a subtle difference between the formulation approved

in *BXB* which requires the wrongful conduct to be *fairly and properly regarded as done by the tortfeasor while acting in the course of the tortfeasor's employment* (or quasi-employment) and the earlier formulation which required it to be *fair and just to hold the tortfeasor's employers vicariously liable*). But the objection is that, with respect, Charles J did not logically and rationally link the facts, as she found them to be, to the close connection test. There was a gap in her reasoning (especially in the key para 182, set out above at para 22) which led her to the plainly wrong view that Mr Bastian was "on a frolic of his own". Moreover, there was a specific error of law in para 182 because, as has been made clear at para 44 above, Mr Bastian did have a continuing duty to Mrs Bethel (at least a common law duty of care to protect her from harm for as long as she remained in his custody). There was also an inconsistency between what Charles J said at para 151, where she relied on Mr Bastian's abuse of his authority as a senior immigration officer as the basis for her decision that Mr Bastian had himself committed false imprisonment, and her later decision on vicarious liability that the close connection test was not satisfied. For these reasons, the Board is (and the Court of Appeal was) entitled to interfere and to consider afresh the application of the close connection test to the facts as found.

51. The Board therefore concludes that Mr Bastian's employers are vicariously liable for the torts of false imprisonment, battery and assault (the detention and rapes of Mrs Bethel) committed by Mr Bastian.

6. Overall conclusion

52. For all these reasons, the Board will humbly advise His Majesty that the appeal should be dismissed.