

***Joseph Thomas Beaumont & Lewis O'Neill v David Ferrer***  
**[2016] EWHC Civ 768**

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Court finds that two claimants were precluded by the *ex turpi causa* principle from recovering damages

***Joseph Thomas Beaumont & Lewis O'Neill v David Ferrer***

The appellants appealed against a finding that the respondent, a taxi driver, was not liable in negligence to them.

The claimants were passengers in the respondent's licensed taxi vehicle. The claimants, who were both aged 17 at the time of the accident, were travelling with four of their mutual friends. The young men had agreed amongst themselves prior to undertaking the journey that they would not pay the eventual taxi fare and that they would 'jump the taxi' i.e. take an opportunity to get out of the taxi at some point close to their destination.

The respondent, who was an experienced driver, immediately appreciated that the passengers intended to 'jump' his taxi. He told the passengers that the fare for the journey was £10 and requested payment. He stopped the taxi at a set of traffic lights which were on red. At that moment the three passengers who were sitting in the middle row of the taxi were able to exit and flee the scene. The two claimants were in the back of the taxi, from which position it was more difficult to leave as it involved having to release the seats of the middle row, and so they remained in the vehicle.

The driver pulled away and turned the corner of the road at about 20mph. As he was turning the corner the first claimant exited the taxi. Within seconds the second claimant also left the taxi. The driver continued to drive towards the police station.

At first instance the Judge held that the two claimants had made the decision to jump from the taxi and that the driver had done nothing to lead their decisions to do so, finding that the driver was not in breach of the duty of care. The Judge held that, even if the driver was in breach of his duty of care by driving on as he did, that breach did not cause the claimants injuries. He also found that the claimants were barred from recovery by the maxim *ex turpi causa non oritur actio*.

The Court of Appeal held that the driver was in breach of the duty of care. His choice was to either let the remaining three passengers out of his vehicle or to drive them to the nearest police station. He drove off with an open door knowing that the claimants were not wearing their seat-belts.

The Court considered *Vallion v Chief Constable of Manchester* [2002] 1 WLR 218 in which it was held that the ex turpi causa maxim arises where the claimant's claim is founded upon his own criminal or immoral act. The facts which give rise to the claim must be inextricably linked with the criminal activity. It is not sufficient if the criminal activity merely gives occasion for tortious conduct of the Defendant. The criminal conduct has to be sufficiently serious to merit the application of the principle.

The question is one of causation and so can it be said that, although the damage would not have happened but for the tortious conduct of the defendant, it was caused by the criminal act of the claimant? Alternatively is the position that, although the damage would not have happened without the criminal act of the claimant, it was caused by the tortious act of the defendant?

The Court applied the former proposition to the case and found that although the injuries would not have happened but for the negligence of the driver they were in reality caused by the claimants' own criminal acts of making off without payment. Accordingly the claimants were precluded from recovering damages.

Appeal dismissed.

### **The significance?**

There are good public policy reasons for why the law continues to apply the ex turpi causa maxim. Put simply, those who are engaged in the commission of a crime should not be able to recover for the consequences of their criminal conduct. This case re-iterates that principle and serves as a reminder to practitioners to closely consider the causation question when dealing with claims where there is alleged criminal conduct.

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