

## **The Liability in Tort of Mentally Disabled Persons**

In September 1985, the Commission published its Report on [\*The Liability in Tort of Mentally Disabled Persons \(LRC 18–1985\)\*](#).

The general thrust of the recommendations in the Report was to make allowance for the mental condition of parties to litigation in determining their liabilities and rights.

The Report recommended that, where it is a necessary ingredient for establishing a tort that the defendant should have acted voluntarily, the defendant should be relieved of liability if it is shown (a) that he was so affected by mental disability as substantially to lack the capacity to act freely, and (b) that as a result of this substantial lack of capacity he did the act complained of.

Where it is necessary to show that the defendant intended to do the act complained of, the Report recommended that he should be relieved of liability if he suffers from such mental disability as to prevent him from acting with the purpose of bringing about the effect in question. Where the tort requires some other specific state of mind, such as malice, it was recommended that a defendant should escape liability if he suffers from a mental disability which is such as to prevent him having that state of mind.

The Report recommended that it should be an effective defence to establish that the defendant did the act complained of as a result of a mistake brought about by a mental disability.

In cases where it is relevant to establish whether a person was guilty of negligence or contributory negligence, the Report recommended that the law should apply the objective test of “the reasonable man” when determining the question, unless the person whose conduct is in issue establishes (i) that, at the time of the act in question, he or she was suffering from serious mental disability which affected him or her in the performance of the act, and (ii) that the disability was such as to have made him unable to behave according to the standard of care appropriate to the reasonable person. This recommendation involves the consequence that where the mental disability renders the person unable to behave according to the standard of the reasonable man, he or she should be entirely relieved of negligence or contributory negligence, as the case may be. The Commission did not consider it desirable to introduce a reduced standard of care for such persons according to the extent of their mental disability as it would be likely to prove unjust and unworkable in practice. The Commission concluded that road accidents represented such a serious social problem that the balance of argument in this context lay against the operation of the class of negligence action. Under the recommendations in the Report, a defendant in this form of negligence action would be entitled to be relieved of liability if he was so affected by mental disability as substantially to lack the capacity to act freely and as a result of this substantial lack of capacity, acted negligently. The Commission felt that this would afford sufficient flexibility to deal with cases involving a sudden onset of insanity.

The Report recommended that an employer or principal who is vicariously liable for a tort should be held liable notwithstanding the fact that the person guilty of the tort is entitled to escape liability by reason of his or her mental disability.

**Draft Legislation in Report**

Draft legislative provisions are included in the Report.

**Information on Implementation**