

Fergus Brodie's Day Out
Re-evaluating general principles of
Personal Injury law
for a modern day Glasgow



Steve Laing & Rebecca Osborne

Who are you?



TEAM LESLEY

*Born before 1980
or*

*Possess good general knowledge of
popular culture*

Who are you?



TEAM LESLEY

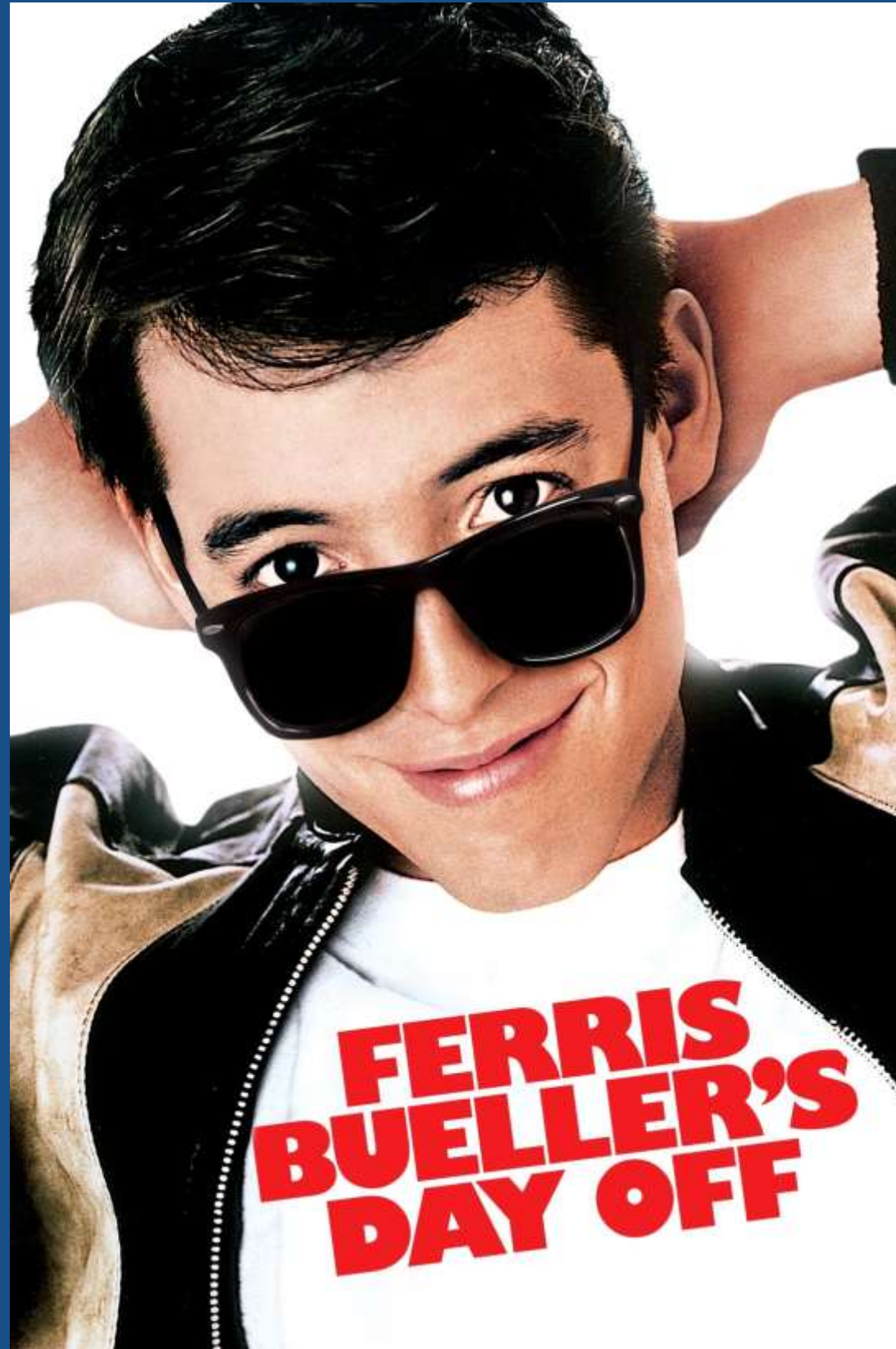
*Born before 1980
or*

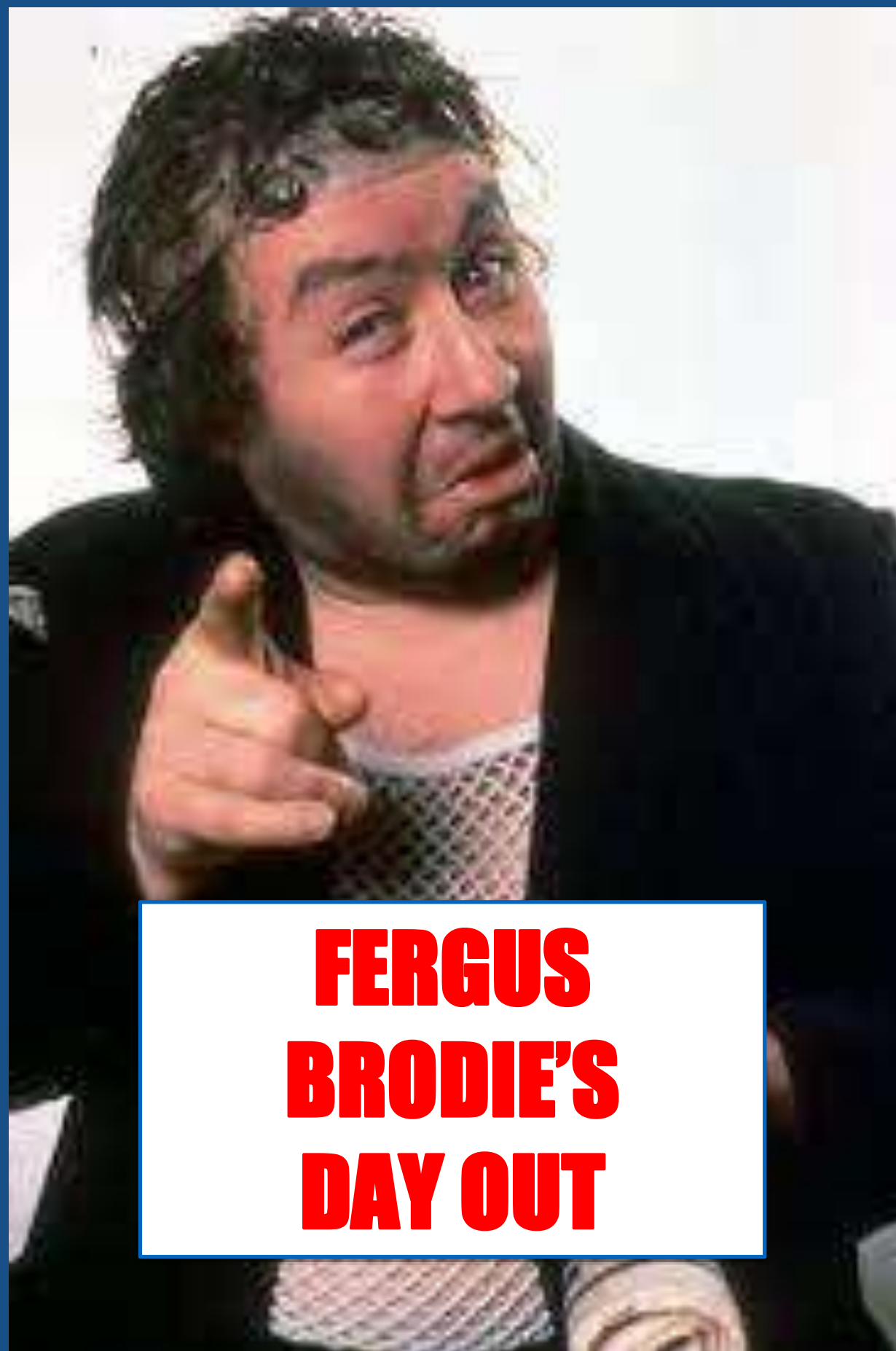
*Possess good general knowledge of
popular culture*

TEAM CILLA

Everybody else







**FERGUS
BRODIE'S
DAY OUT**

Life moves pretty fast....



In your comfort zone?



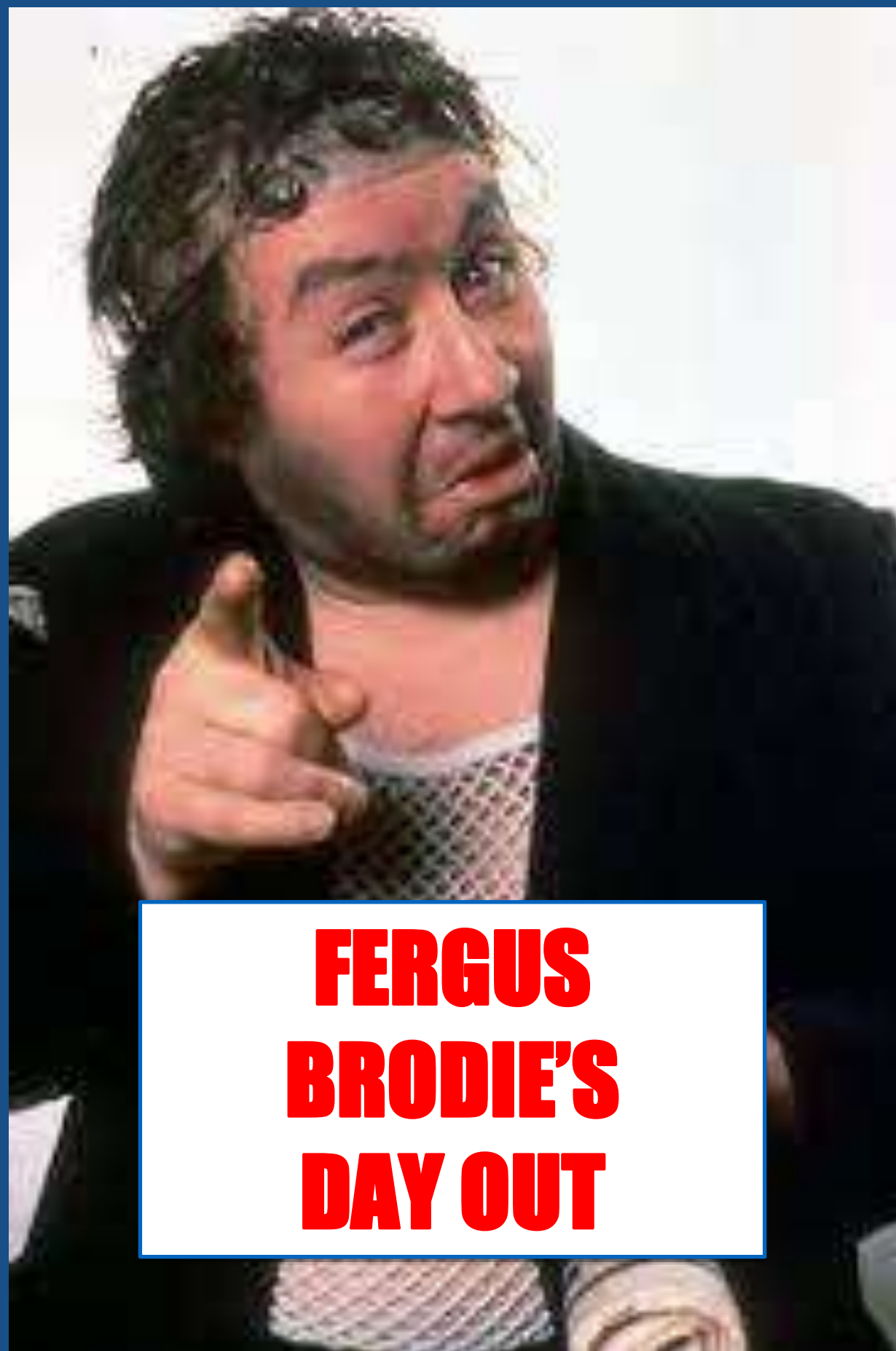
[Print](#)

In your comfort zone?



[Princ](#)





**FERGUS
BRODIE'S
DAY OUT**

Accident 1 – St Vincent Street



Radoslav Pashamov v Leon Taylor
& Edward Vinson Ltd
[2025] EWHC 1035

*Pursuer working in fields picking fruit; took employers' bus back to accommodation provided by employer;
Bus stopped at non-designated pick up point, on opposite side of road to entrance to fields, to collect other workers.
Pursuer got out of bus and crossed road to let other workers know bus arrived
Hit by car as crossed road*

Car driver not liable but employer was liable

Accident 2 – Duke of Wellington Statue



Roderick Finlayson & Others v
Alban Wine Ltd & Andrew Johnstone
2024 CSIH 32

*Non-load bearing wooden shelf suspended over a drop
outside a wine bar collapsed at night (in darkness) under
combined weight of deceased and D2;
D2 had “invited” deceased onto a trap*

Or was hazard an “obvious” one?

*Possibility of lack of understanding of dangerous character
of situation by deceased?*

*Free and voluntary assumption of risk in full awareness of
nature and degree of that risk?*

Case against (i) Jamie and/or (ii) Glasgow City Council?



Accidents 3 & 4 – George Square & City Chambers



Tracy Thomson v Iceland Foods Ltd

2024 SAC (Civ) 50

Supermarket customer tripped on raised edge of doormat adjacent to store entrance

Application of res ipsa loquitur –

1. Thing which caused damage under Defender's management

2. Accident of a type that does not ordinarily occur if proper care is taken

Inference of negligence if Defender can offer no explanation consistent with absence of fault

Cases of tripping on local authority pavements are not comparable with tripping on mat in a supermarket store

Accident 5 – Hampden Park



Shane Byrne v Motorsport Vision Racing Ltd

2024 EWHC 2966

Courtney Browning v Odyssey Trust Co Ltd

2014 NIQB 39

*Duty of care owed by occupier of sporting
arenas/stadiums/etc
to participants (Byrne) and to spectators (Browning)*

Role of volenti non fit injuria?

Part and parcel of sport or related to design of premises?

Measure of Damages – underlying principles

Purpose of law of damages is to put the Pursuer in the position in which he would have been had he not suffered the wrong for which he is receiving reparation



Restitution, subject to

- reasonableness*
- proportionality*
- remoteness*
- public policy*
- statutory interpretation*

Necessary services in terms of section 8 of the Administration of Justice Act 1982

“Relative” in terms of section 13(1)(b) includes

“any person, not being the spouse of the injured person, who was, at the time of the act or omission giving rise to liability in the responsible person, living with the injured person as husband or wife”

Section 13(1)(ba) *“.....living with the injured person as the civil partner of the injured person”*



SD v Graham's Dairies Ltd

2016 CSOH 151

Per Lord Armstrong

*In relationship for less than 2 years but had a daughter;
not residing together due to wishes of child of previous
relationship;*

*long term intention to live together;
partner visited deceased's home daily and contributed to
housework.*

*Quality of the relationship could properly be
characterised as being "akin to marriage"*

*"Assessed the matter against the background of the social
norms of contemporary modern life"*

Fatal claims in terms of Damages (Scotland) Act 2011

“Relative” in terms of section 14(1)(a) includes

“immediately before the death is the deceased's spouse or civil partner or is living with the deceased as if married to, or in civil partnership with, the deceased”



Damages relating to divorce caused by injuries



Damages relating to divorce caused by injuries

Loss of joy of marriage and pain of divorce
- relevant to solatium

Increased costs of care relating to consequences of injuries as now single
- recoverable

Expenditure in divorce
- not recoverable

Pritchard v JH Cobden Ltd 1988 Fam 22

- redistribution of assets, not a loss
- too remote and contrary to public policy

Treatment and therapy costs

*Traditional recommended treatments –
physiotherapy; surgery; CBT/EMDR; tinnitus training; etc*

*More recent sophisticated types of treatment –
Hair transplants and cosmetic treatments for burns
victims; skin camouflaging, etc*



Treatment and therapy costs

But what about other “treatments”??

Chiropractic treatments? Acupuncture?

Spa therapies and head massages?

Attendance at a New Age/hippie commune??



Treatment and therapy costs



*Holiday abroad in the sun
as heat of sun reduces
pain???*



Retail therapy???

Costs of medicine

*Traditional recommended medication,
such as over-the-counter painkillers*

CBD oil treatments??

*But difference between allowing costs of CBD oil
and costs of cannabis??*



XX v Whittington Hospital NHS Trust
2020 UKSC 14

*Claimant became infertile due to NHS negligence
Sought costs of 4 pregnancies by surrogacy arrangements
either in USA on commercial basis or in UK on a non-
commercial basis*

*Assisted reproduction was now accepted and widespread
within society*

XX v Whittington Hospital NHS Trust
2020 UKSC 14

UK courts would not enforce a foreign contract contrary to UK public policy but not criminal offence to commission a surrogacy in USA.

No longer contrary to public policy to award damages for cost of a foreign commercial surrogacy provided treatment was reasonable, and reasonable to go to USA rather than make arrangements in UK, and if costs are reasonable

“Care” costs



Support worker



“Escort”



Prostitute

Taking victim as you find them

v

Failure to take reasonable steps to mitigate loss



High BMI

Large alcohol intake

Cigarette smoker

Drug taker

Lack of balance in diet

Lack of exercise

Taking victim as you find them

v

Failure to take reasonable steps to mitigate loss



In order to enable surgery for injuries to take place, need to address unrelated medical conditions.....

Weight loss drugs?

residential drug/alcohol treatments?

Other outlays?



*“Self-medication”?
As a result of
depression, drink and
smoke more*

Recoverable outlays??

*But what if
Class A drugs?*



Other outlays?



As a result of depression or head injury, what of Pursuer develops a gambling addiction and makes large losses?

But what if the long-shot pays off?



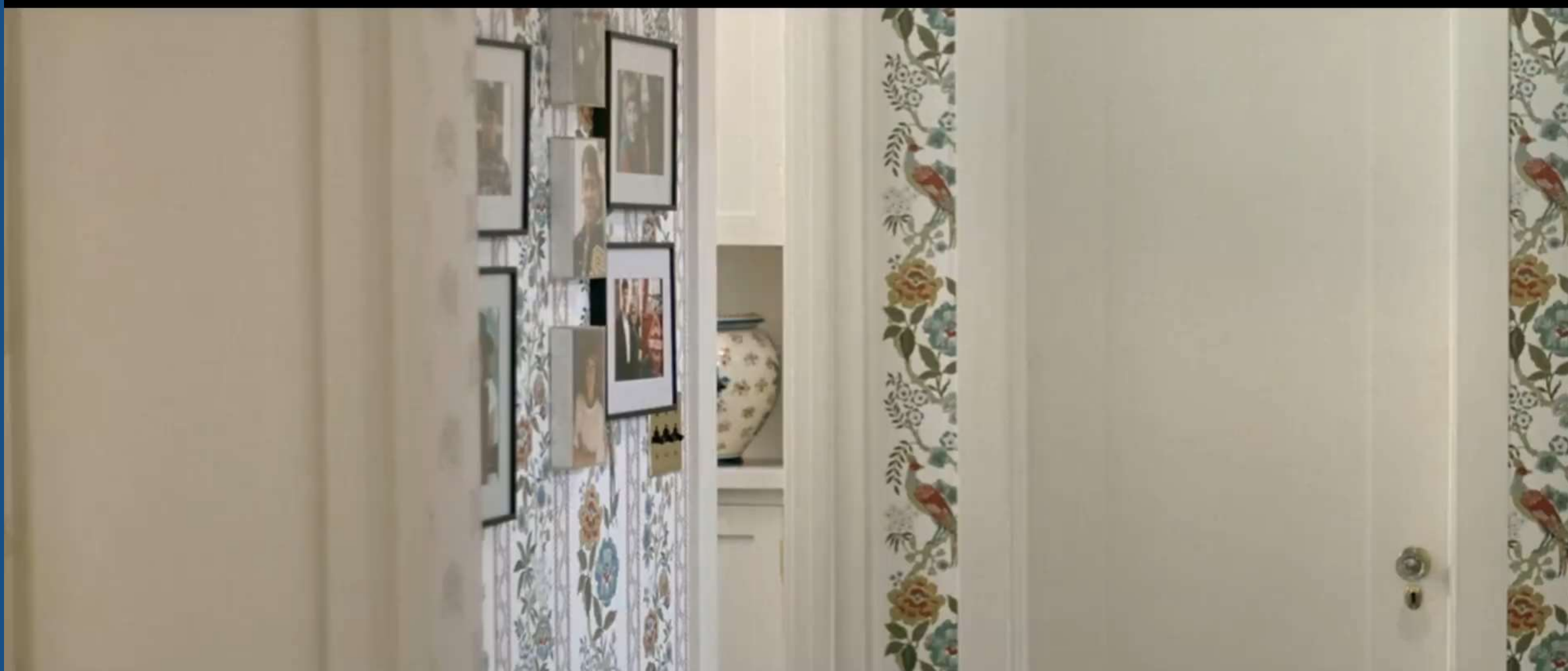
The future - AI manipulation?

The future - AI manipulation?





Food for thought?



Conclusions and Close



Drinks and Canapés