

Compass Chambers



Vicarious Liability in Abuse Cases

Bruce Langlands, Advocate

Compass Chambers

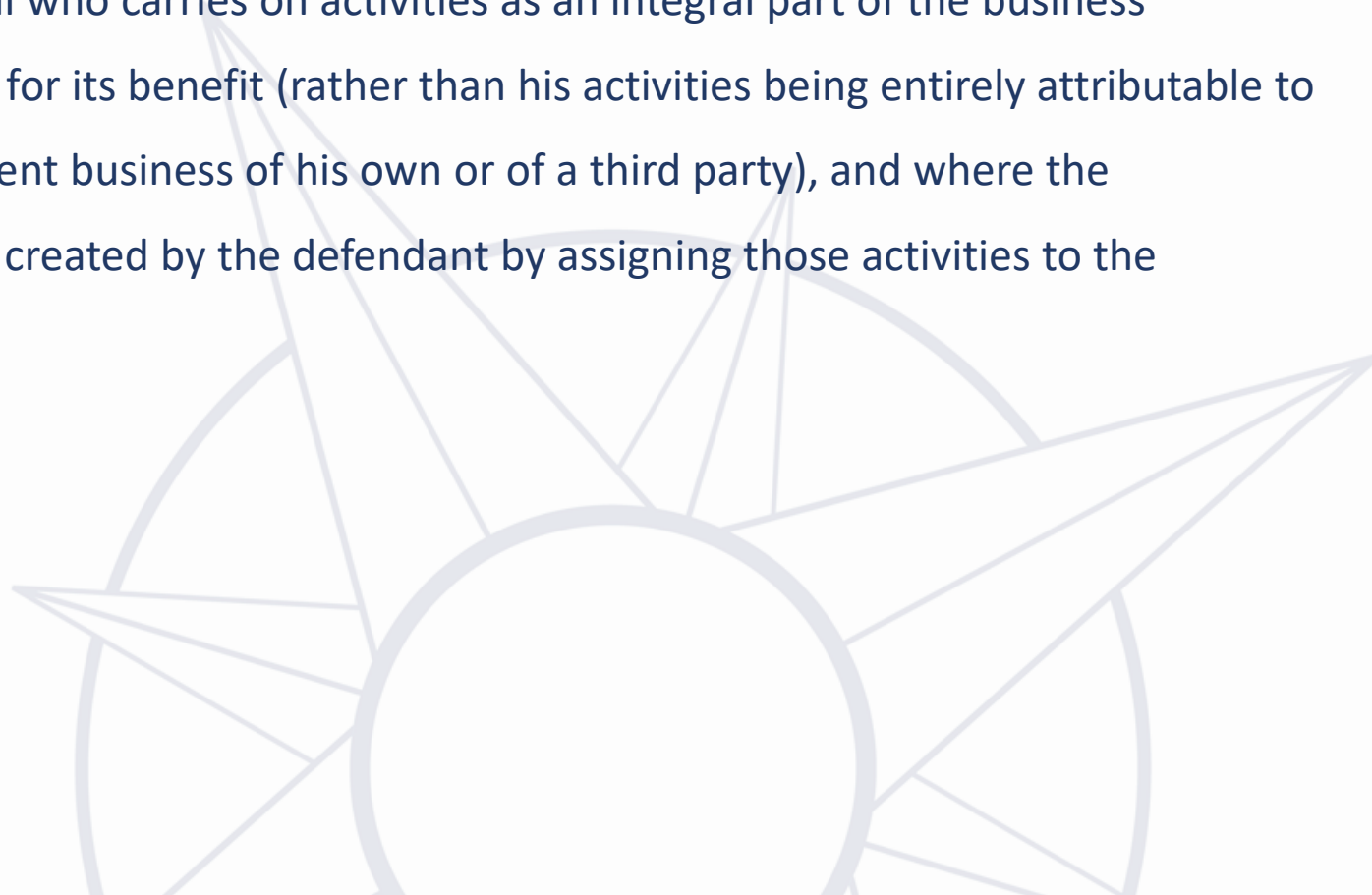
18 November 2022



Cox v Ministry of Justice [2016] A.C. 660

- “a relationship other than one of employment is in principle capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by a defendant and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to the individual in question.”

– paragraph 24





Mohamud v WM Morrison Supermarkets PLC [2016] A.C. 677

- The close connection test in *Lister* remains.
- There is no need to expand the scope of vicarious liability as had been argued for.
- The appeal was allowed on the facts of the case.





1 April 2020

- *Barclays Bank PLC v Various Claimants [2020] A.C. 973*





1 April 2020

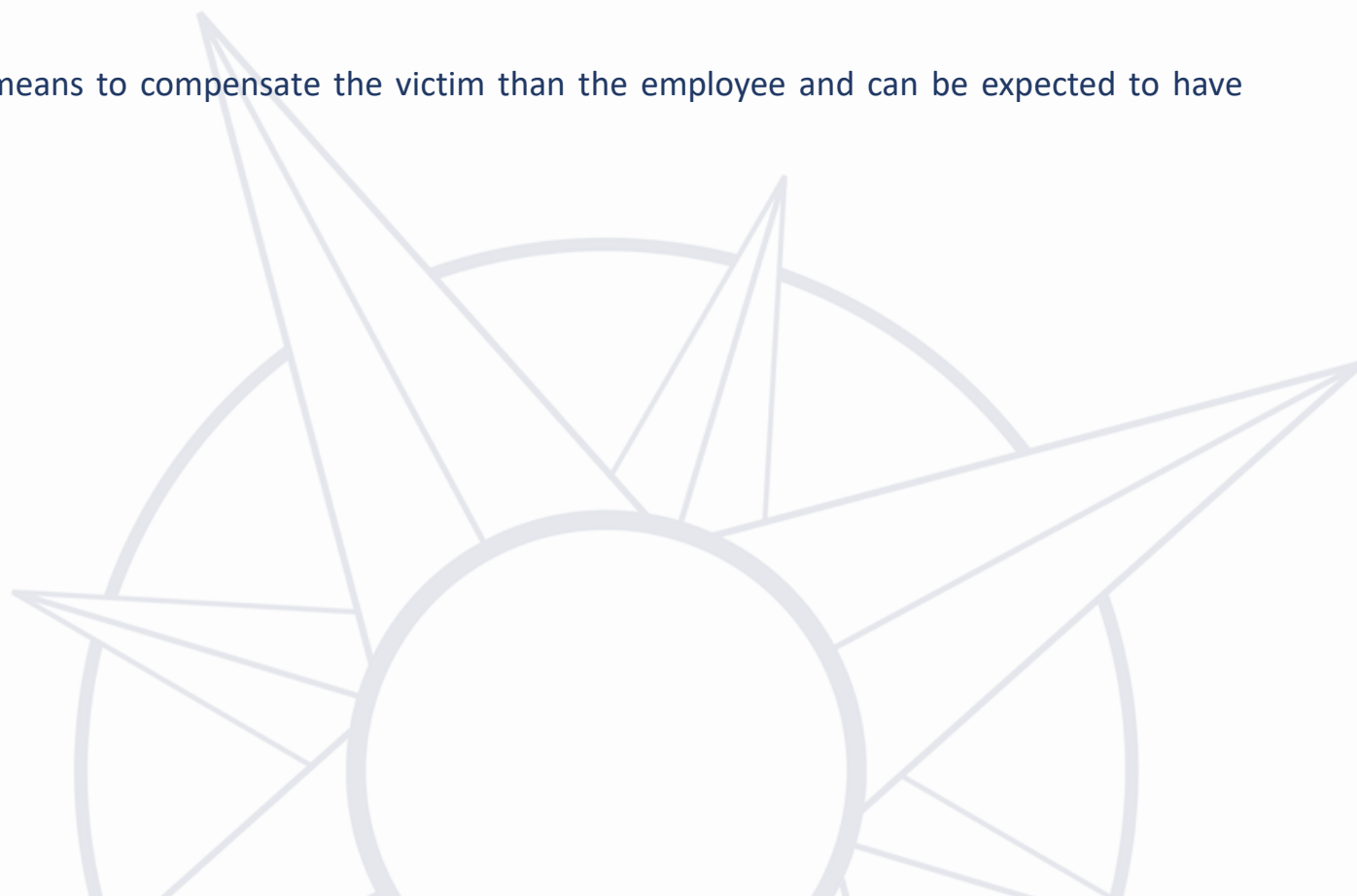
- *Barclays Bank PLC v Various Claimants [2020] A.C. 973*
- *WM Morrison Supermarkets PLC v Various Claimants [2020] A.C. 989 ('Morrisons 2')*





Application in abuse cases

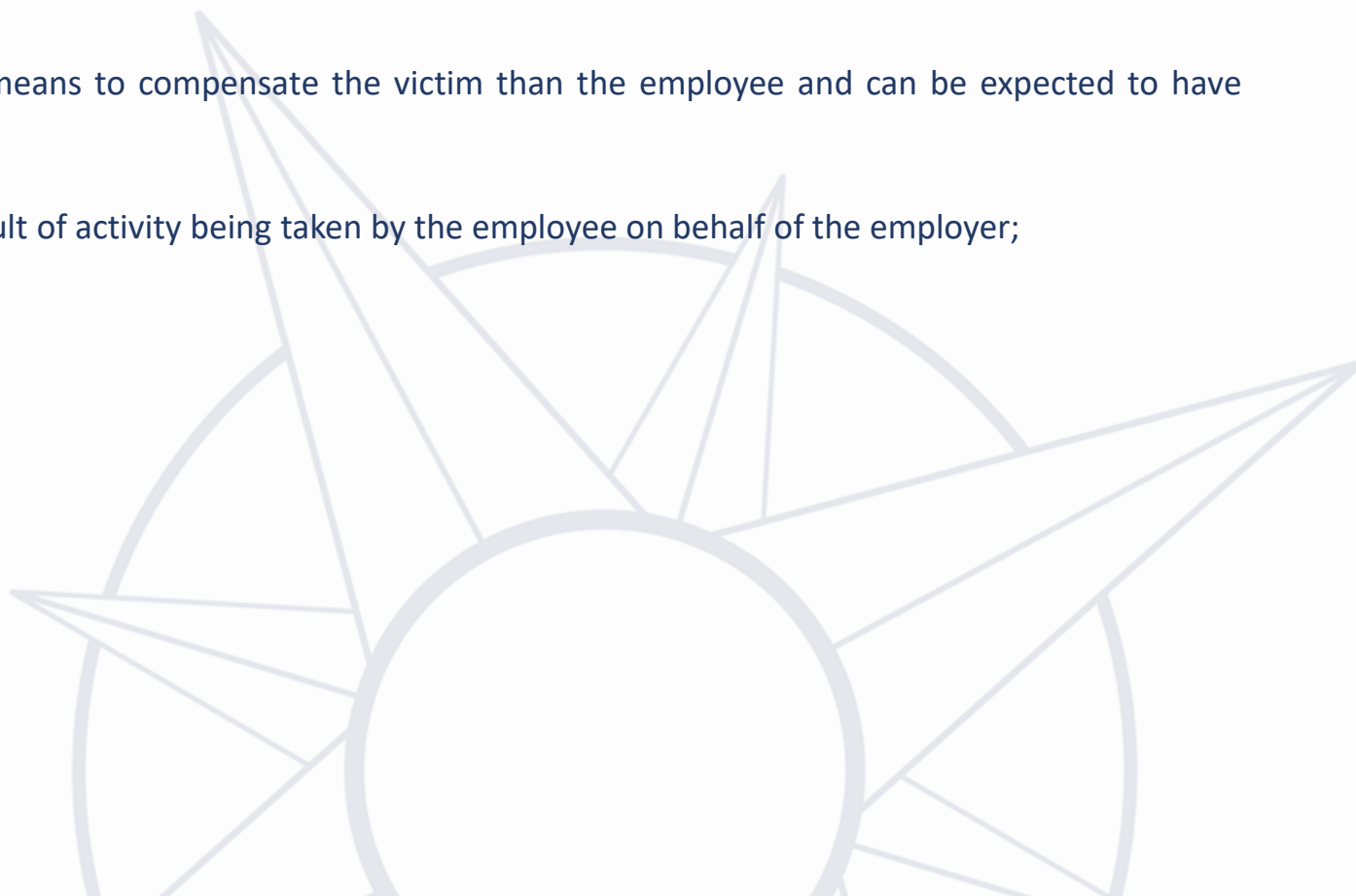
- *Various Claimants v Catholic Child Welfare Society [2013] 2 A.C. 1* ('Christian Brothers')
- Lord Phillips five criteria:
 - (i) The employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability;





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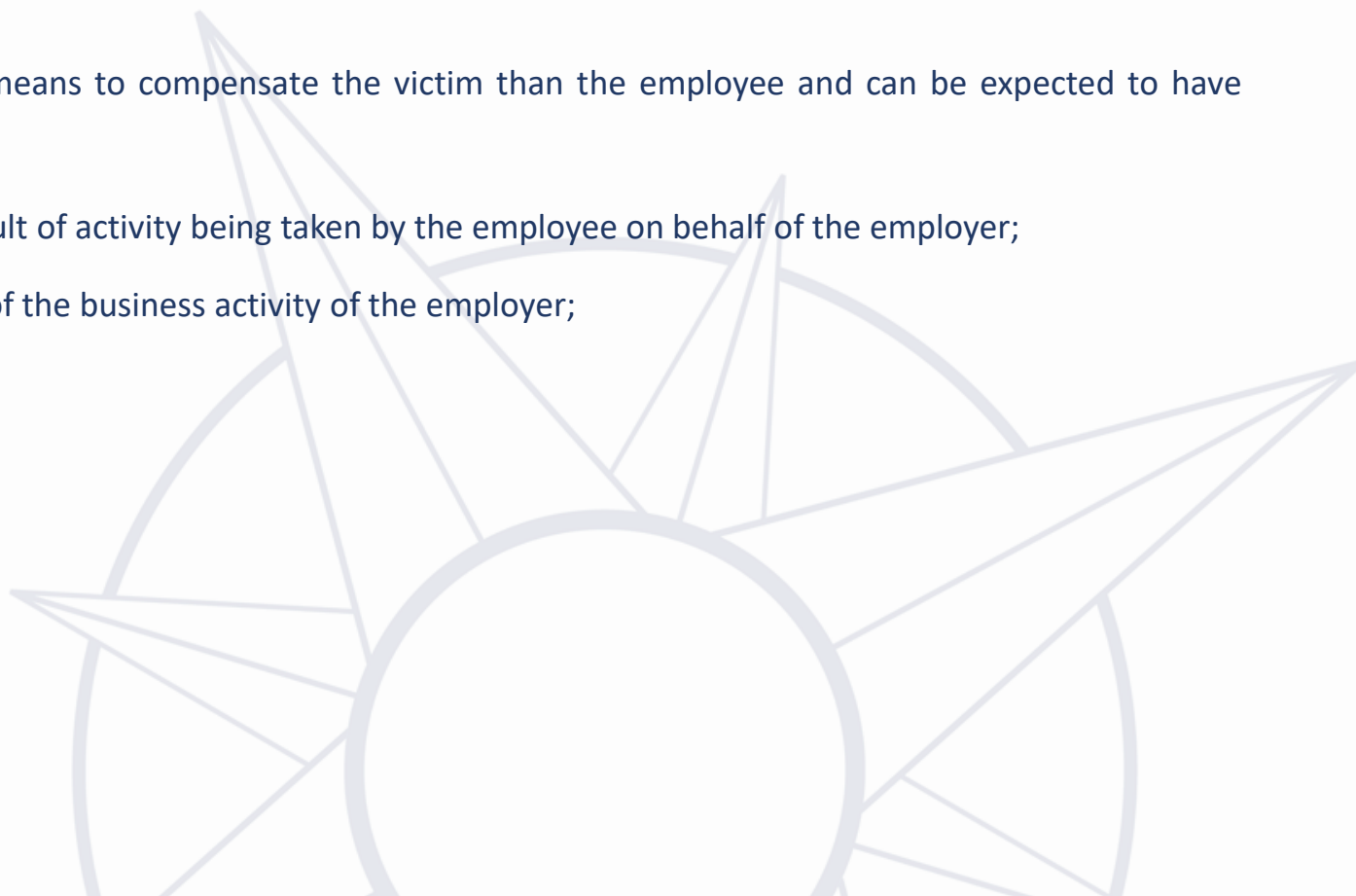
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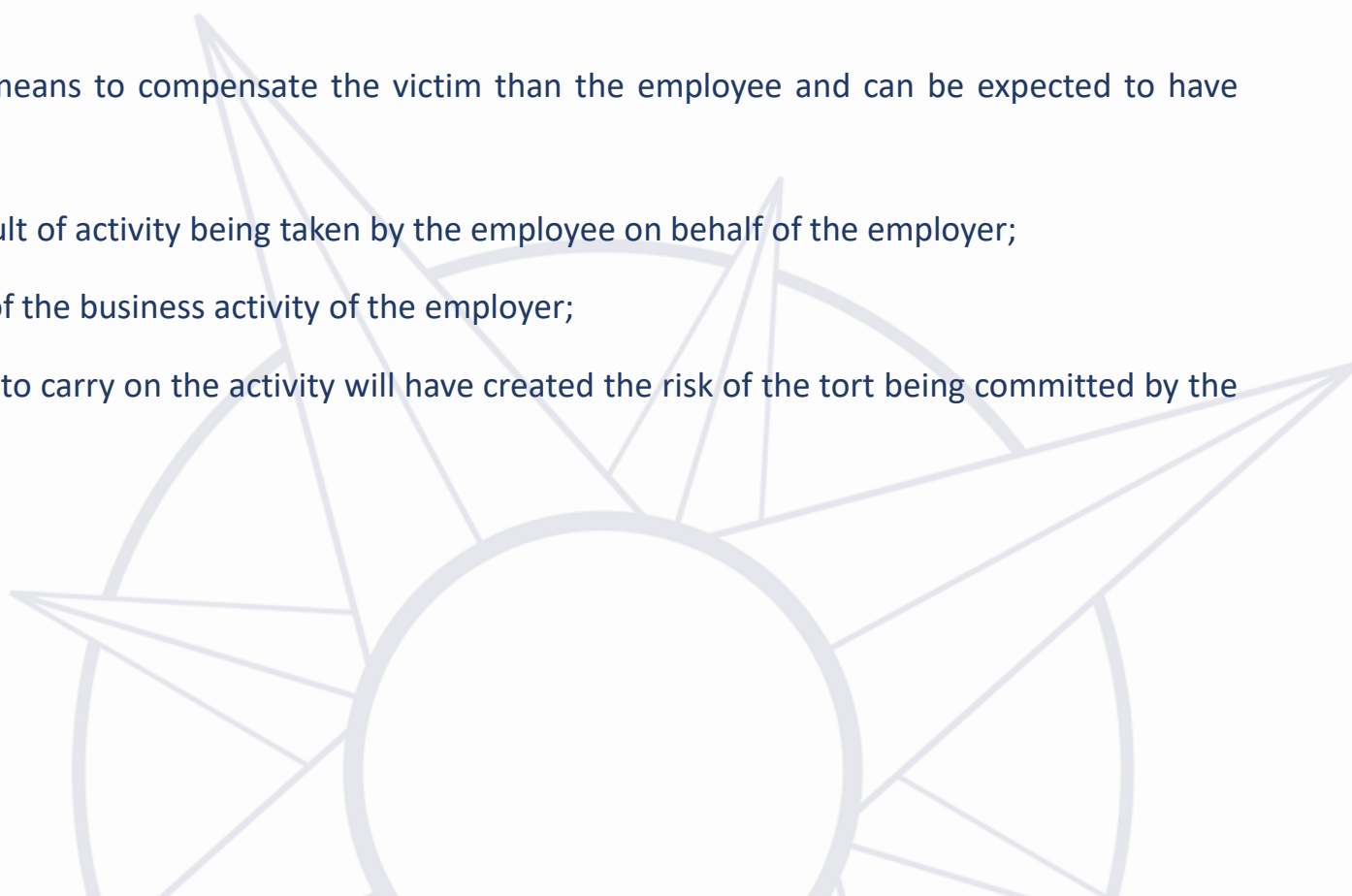
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 - (iii) The employee's activity is likely to be part of the business activity of the employer;





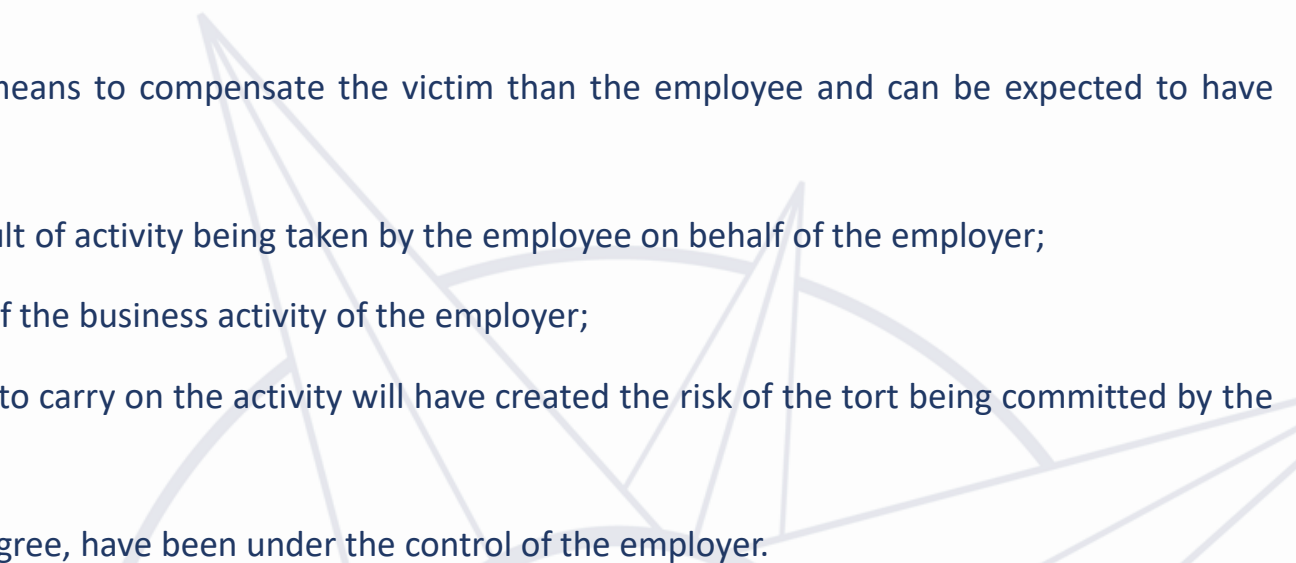
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 - (iv) The employer, by employing the employee to carry on the activity will have created the risk of the tort being committed by the employee; and





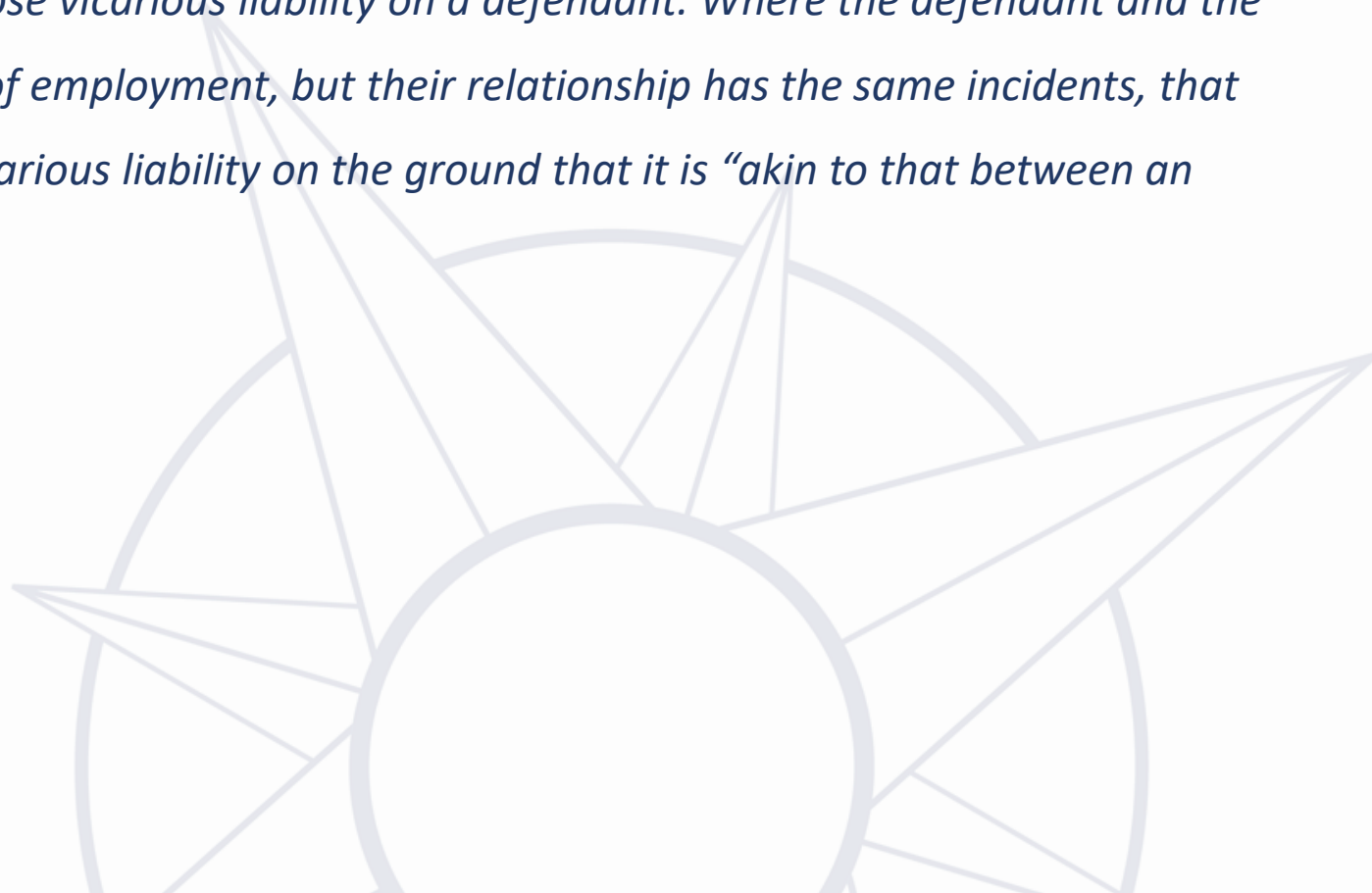
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 - (iii) The employee's activity is likely to be part of the business activity of the employer;
 - (iv) The employer, by employing the employee to carry on the activity will have created the risk of the tort being committed by the employee; and
 - (v) The employee will, to a greater or lesser degree, have been under the control of the employer.
- 



Various Claimants v Catholic Child Welfare Society [2013] 2 A.C. 1 ('Christian Brothers')

- *“At para 35 above, I have identified those incidents of the relationship between employer and employee that make it fair, just and reasonable to impose vicarious liability on a defendant. Where the defendant and the tortfeasor are not bound by a contract of employment, but their relationship has the same incidents, that relationship can properly give rise to vicarious liability on the ground that it is “akin to that between an employer and an employee”.”*





Various Claimants v Catholic Child Welfare Society [2013] 2 A.C. 1 ('Christian Brothers')

- *"In days gone by, when the relationship of employer and employee was correctly portrayed by the phrase "master and servant", the employer was often entitled to direct not merely what the employee should do but the manner in which he should do it. Indeed, this right was taken as the test for differentiating between a contract of employment and a contract for the services of an independent contractor. Today it is not realistic to look for a right to direct how an employee should perform his duties as a necessary element in the relationship between employer and employee. Many employees apply a skill or expertise that is not susceptible to direction by anyone else in the company that employs them. Thus the significance of control today is that the employer can direct what the employee does, not how he does it."*



Application in abuse cases

- *Lister v Hesley Hall [2002] 1 A.C. 215*



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