INTRODUCTION

1. The entitlement to bring a claim following a person’s death derives from statute. The quantification of loss therefore depends largely upon those statutory provisions, and the case law interpreting those provisions, although there is some overlap with the principles applying to the assessment of damages in personal injury claims.

2. There are two types of fatal accident claim: the Estate’s Claim and the Claim by the Dependents of the Deceased.

THE ESTATE’S CLAIM UNDER THE LAW REFORM MISCELLANEOUS PROVISIONS ACT 1934 (“the LRMPA”)

3. Section 1(1) of the LR(MP)A provides that:

   a. “Subject to the provisions of this section on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of, his estate.”

4. In bringing this claim, the Estate effectively stands in the shoes of the deceased and can (subject to the exception of funeral expenses) only claim for the losses that the deceased could have claimed if he or she had survived.

5. All causes of action apart from defamation survive the death of any person for the benefit of his or her estate. This includes, for example the diminished value of a personal injury case unconnected to the cause of the deceased’s death. (See Singh v Aitken [1998] PIQR Q37.)
6. The LR(MP)A claim can be brought only by executors or administrators for the beneficiaries of the Estate.

7. The main types of claim under the LR(MP)A are:

   a. Pain, suffering and loss of amenity (from the date of injury to the date of death)

   b. Special damages (from the date of injury up to the date of death).
      These will include Loss or earnings, medical expenses and treatment, damage to clothing and property, Care (professional or gratuitous) and travel expenses.

   c. Funeral Expenses

   d. Probate Fees

   e. Various one-off expenses and losses

   f. Interest

FATAL ACCIDENTS ACT 1976

8. The FAA 1976 creates a separate cause of action for the dependants (and those entitled to the award of bereavement damages) but it is based on the precondition that the deceased, had he or she lived, must have been entitled to maintain an action in respect of the wrongful act of the Defendant (FAA 1976, S1)

9. Therefore:
a. If the deceased had no cause of action then the estate and the dependants have no cause of action;

b. Any defence that could have been used against the deceased can be used against the estate and the dependants;

c. If the deceased was contributorily negligent then the damages of the estate and the dependants are reduced accordingly.

10. **In general terms, there are 3 possible heads of damages, namely:**

   a. An award of bereavement damages;

   b. A dependency claim for the financial losses suffered by the dependants of the deceased;

   c. A claim for the funeral expenses, if paid by the dependants.

**CASE HISTORY**

11. Your client is David Turner, aged 45 (Date of Birth 15th January 1970). He and his children live in Woking. He has instructed you following the death of his wife, Mary, who died on 25th February 2013. She was 47 when she died (date of birth 25th February 1964). Together they had three children:

   Crispin, aged 25 (date of birth 5th September 1989)
   Amanda, aged 16 (date of birth 7th May 1998)
   Clare, aged 10 (date of birth 12th January 2005)

12. Mary’s death followed a negligently conducted operation to remove a benign tumour from her bowel and a negligent failure to recognise that the operation
had failed. Following the operation, on Monday 11th February, her condition immediately began to decline. Over the first few days post-operatively her temperature began to spike dramatically. She was obviously unwell and she experienced episodes of vomiting as well as stomach pain. She was treated with IV antibiotics on the assumption that she was suffering from an infection but there was a complete failure to assess her condition or recognise its seriousness. Mary herself was convinced that something must have gone wrong with her operation. However, her views were disregarded. On 17th February she was febrile and tachycardic and obviously declining and was finally admitted to surgery. In surgery it became clear that her (negligently) stapled bowel wound was open and had been leaking for some time and that she was suffering from extensive peritonitis. Unfortunately, during that second operation, she developed septicaemia and went into organ failure. She was maintained on life support thereafter and did not regain consciousness prior to her death.

13. You issued proceedings on behalf of Mr Turner on 1st January 2014 and served those proceedings on 1st June 2014. Liability was admitted in August 2014 for damages to be assessed. You prepared a Schedule of loss by reference to a notional trial date of 25th February 2015.

OTHER RELEVANT INFORMATION

14. It is accepted that Mary’s life expectancy was normal at the date of her death.

15. Mary was very successful in her job and worked full time as a head teacher of a state secondary school, earning £150,000 per annum. She had a pension into which she had been paying 10% of her earnings since she was 30, which 10% was then matched by her employer. Mary had not opted out of the state pension and expected to continue to work until the age of 65.

16. Mary also had a private insurance policy in place which paid out £300,000 to David on her death.
17. David did not work, he and his wife having agreed that he should be available to look after the children and the home. He had last worked as a school laboratory technician in 1995. He and Mary had planned that David would return to some form of part time work when Clare turned 18 in 2023 and when he would be 55. He would only have worked in that way up until Mary’s retirement in February 2029.

18. On Crispin’s 21st birthday (5th September 2010), Mary gifted him £150,000 from her savings as a deposit for a flat in London.

HEADS OF LOSS

19. Under the LRMPA, you will be considering the following:
   a. The claim for pain, suffering and loss of amenity for the week during which Mary suffered and was conscious. Technically you can also claim loss of amenity (only) for the period during which she was unconscious.
   b. There is no loss of earnings claim as Mary would still have been recovering during the period prior to her death “but for” the negligence.
   c. Expenses incurred by David Turner in visiting Mary (to the extent that they exceeded what he would have done “but for” the negligence). Eg parking costs and childcare costs.
   d. Care – there may be a small gratuitous care claim in respect of the extra time that David spent tending to his wife during that period.
   e. A claim in respect of the Inheritance Tax that Crispin will be expected to pay on the £150,000 given to him by his mother less than 7 years prior to her death.
   f. Funeral Expenses
   g. Probate Expenses
   h. Interest

20. Under the FAA, you will be considering the following:
   a. Bereavement damages
   b. Dependency which will include:
i. Past Losses and Expenses from the date of death to the notional trial date to include Financial Dependency and Services Dependency.

ii. Future Losses and Expenses from the notional trial date to include Financial Dependency, Services Dependency and Pension Loss.

iii. Interest

You will be provided with a worked example based on the scenario set out above for consideration and discussion.

19th January, 2015

SARAH CHRISTIE-BROWN AND DAVID JUCKES
HAILSHAM CHAMBERS