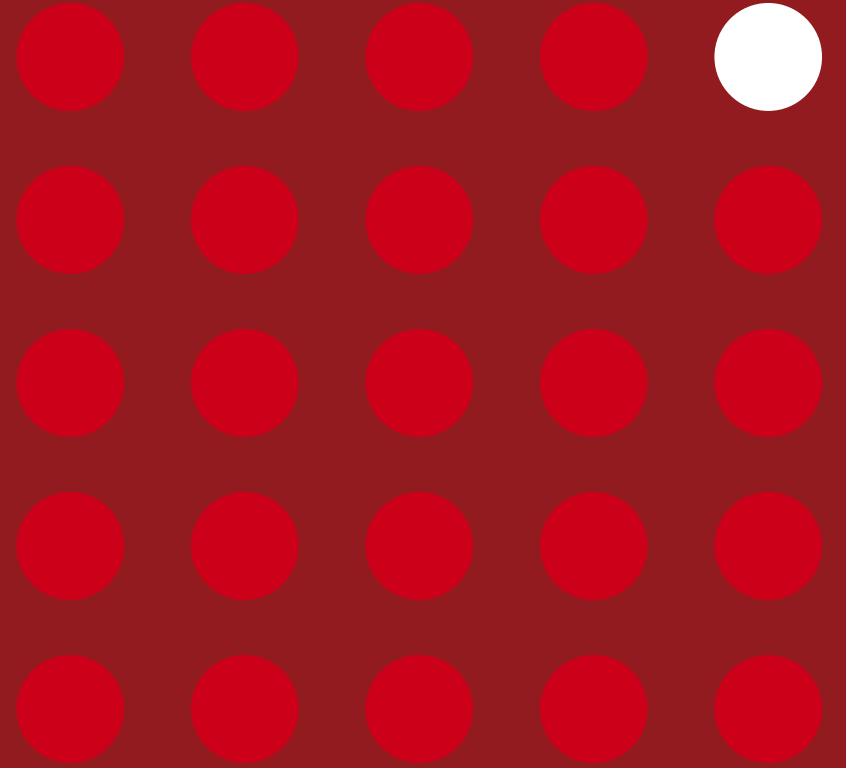


Military claims – suing the State or the manufacturer?

Simon Ellis

May 2026



Types of claim

- Noise induced hearing loss
- Cold injuries
- Sea King cancer
- Toxic exposure – burn pits
- Training accidents



Choice of defendant

- Ministry of Defence
- Cold Manufacturer
- Both



Claim against Ministry of Defence

- Breach of statutory duty
- Negligence
- Crown Immunity
- Combat Immunity
- Overseas Operations Act 2021



Claims against Ministry of Defence

- Political considerations
- Election timing
- Commercial considerations (???)



Claims against manufacturer

- Consumer Protection Act 1987
- Producer
- Defective product
- Recoverable loss
- Defect caused damage



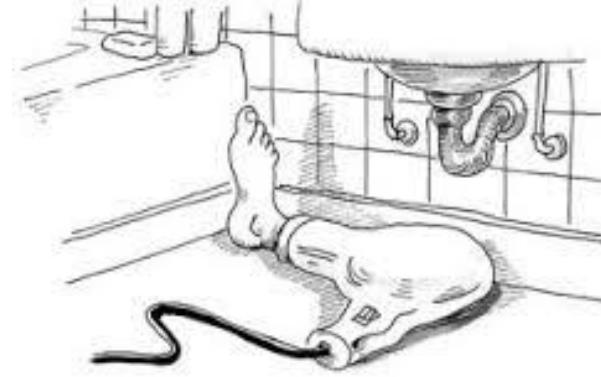
Who is the manufacturer?

- Company that made product
- Company that assembled product into another product
- MoD?



Is the product defective?

- Abnormal conditions (combat)
- Abnormal use
- Competing requirements



The blow dryer was tragically defective.



Recoverable loss?

- Includes physical injury
- Includes psychiatric injury
- Excludes repair costs to defective product
- Excludes pure economic loss
- Excludes damage to business property



Did the defect cause the damage?

- Would the defect have made any difference?
- MoD set specifications



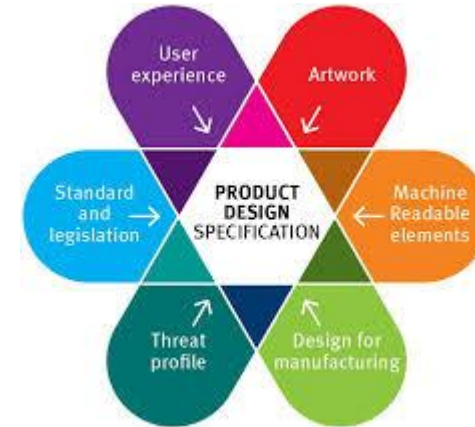
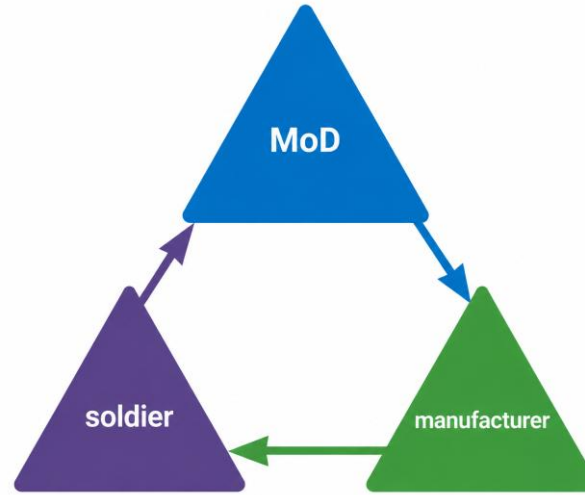
Defences

- Various defences under CPA
- Development risks defence
- Change in circumstances



MoD / manufacturer

- Mod / manufacturer / soldier
- MoD design specifications
- Defect becomes apparent
- *Lambert v Lewis* [1982] AC 225
- Lifespan of product



Limitation

- Ministry of Defence
- Manufacturer



Who to sue - disclosure

- Availability
- Location
- National security
- Commercially sensitive



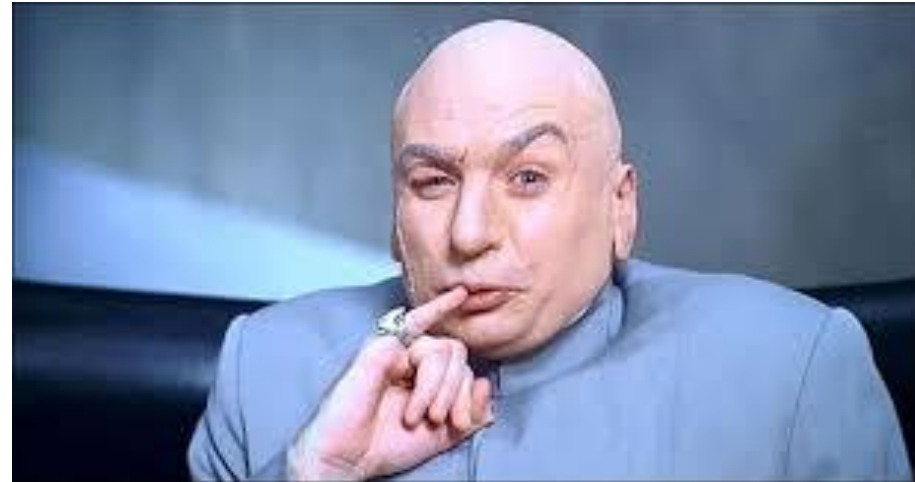
Who to sue – witness evidence

- Availability
- Location
- National security
- Commercially sensitive



Defendant approach to litigation

- Politics
- Commercial considerations
- Reputational concerns different



Case study

- Was there a product?
- Was the equipment defective?
- Did the defect cause the injury?
- Has the Claimant suffered a recoverable loss?



Conclusion

- What caused the injury?
- Who controlled the risk?
- Limitation



Conclusion

- Defendant selection is critical
- Combat Immunity – narrow interpretation
- Evidential hurdles
- One claim or two?



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Any Questions?



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