constituting the tort, the company law regime modifies the normal consequences of the director's actions so as to direct liability to the company. In this sense the rules of company law have primacy over general principles of law. Any other view is to deny substance and effect to the company's existence. This is not, however, to commit oneself to the conclusion, apparently reached by the Court of Appeal, that if a director is regarded as the company's *alter ego* it must be for all purposes. Among the factors that determine the scope and effect of attribution are the purposes for which the State sanctions the corporate form. As the corporate form does not exist to facilitate non-recourse trading with respect to intentionally wrongful acts, company law does not purport to preclude the personal liability of the director.

The important point of principle, however, is that the law cannot, contrary to the implication in *Standard Chartered*, impose personal liability on the individual merely because, but for the existence of the company, the individual would otherwise incur liability. The permission that this country (and most other States) has granted to individuals to conduct their affairs through the corporate entity might be questionable on a moral and social level, but the fact remains that this permission has been granted and the protection of the individual from civil liability is a necessary and intended consequence of granting that permission (*Adams* v. *Cape Industries plc* [1990] Ch. 433, 539).

ROSS GRANTHAM

CONFIDENCE, DATA PROTECTION AND THE SUPERMODEL

THE supermodel Naomi Campbell told journalists that she shunned illegal drugs. Unfortunately, those statements were untrue. A newspaper discovered that she attended Narcotics Anonymous. It published a sympathetic story saying that she was fighting addiction. But when she threatened legal action, the newspaper responded with articles ridiculing her.

Ms Campbell's action against the newspaper invoked three theories: breach of confidence, breach of privacy and breach of the Data Protection Act 1998. At trial ([2002] EWHC 499), she dropped the privacy claim, conceding that privacy is not protected by a separate tort, but by an extended concept of confidentiality (see *B and C* v. *A* [2002] EWCA Civ 33) and by the 1998 Act. She succeeded on both the remaining claims. Morland J. found, however, that the only breach of confidence was revealing details of

her therapy. The revelation that she was addicted to drugs was itself not a breach, because she "had been misleading the public by her denials of drug addiction". Damages were therefore limited to £2,500. But he added £1,000 aggravated damages, to reflect the extra distress from the newspaper's belittling the claimant in the subsequent articles.

On the newspaper's appeal (*Campbell* v. *Mirror Group Newspapers Ltd.* [2002] EWCA Civ 1373), Ms Campbell conceded that revealing her addiction did not itself constitute a breach of confidence, accepting that "where a public figure chooses to make untrue pronouncements about his or her private life, the press will normally be entitled to put the record straight". She sought only to support the judge's view that revealing details of her treatment was unlawful.

The court treated the concession as well-made, but did not explain what "normally" means. We do not know, for example, whether the illegality or irresponsibility of drug abuse was important. What about an entertainer who, because of the unjustified stigma attached to mental illness, publicly denies that he has been treated for depression? But the court did say, qualifying *B and C*, that people whose status as "role models" has been thrust upon them are not necessarily fair game.

The court decided that revealing the details of treatment was not actionable: "[T]he details faded into insignificance compared to the central fact that Miss Campbell was receiving treatment for drug addiction". In addition, if a public interest exists in publishing the fact that she had a drug problem, a public interest must also exist in publishing supporting details: "[T]he detail ... and indeed the photographs, were a legitimate, if not an essential, part of the journalistic package designed to demonstrate that Miss Campbell had been deceiving the public".

In reaching these findings, the court, perhaps unwittingly, changed our understanding of breach of confidence. It also cast doubt on whether extending breach of confidence is the correct way to protect privacy at all. Finally, it made important decisions on the scope of the 1998 Act, because of which it also upheld the defendant's appeal on that matter.

In *B and C*, Lord Woolf C.J. laid down 15 guidelines for interlocutory injunction claims in breach of confidence. He said that, to protect press freedom, even where an interest in confidentiality might attract legal protection, it might be insufficient to justify an injunction. *Campbell* concerns a claim for damages, not an injunction. One might expect the court to have distinguished between factors relevant to liability and those relevant to remedy.

This did not happen. Every factor mentioned appears to be relevant to liability. For example, in *Australian Broadcasting Corporation* v. *Lenah Game Meats Pty. Ltd.* [2001] HCA 63, Gleeson J. said that a useful test was whether "disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities". Lord Woolf, albeit implicitly, used this test to help decide whether there should be an injunction. In *Campbell*, however, the test is used for liability.

For newspapers, it is important whether breach of the extended duty of confidence yields a right to an injunction or only to damages. If the former, there can be no breach unless all the conditions for issuing an injunction are satisfied, contrary to *B and C*. If the latter, there must be a difference between the conditions of liability and the conditions of granting an injunction, contrary to the impression given in *Campbell*.

Even more striking is the court's doubt about whether extensions to breach of confidence are the right way to protect privacy. The defendants attempted an argument, which the court rejected, that developments in aspects of trusts law significant for the conventional duty of confidence (*e.g. Twinsectra* v. *Yardley* [2002] UKHL 12, [2002] 2 A.C. 164) meant that no liability could exist unless the defendant knew that the information was confidential and that the public interest could not justify its publication. The court commented that this argument was only possible because of "shoe-horning into the tort of breach of confidence [the] publication of information that would, more happily, be described as breach of privacy". It continued, "We consider that the unjustifiable publication of such information would better be described as breach of privacy rather than breach of confidence". This reversal is surprising, though understandable, since using confidentiality to protect privacy involves talking about "relationships" of confidence in ways which strain credulity.

Finally, Campbell is the first case to consider the liabilities created by section 13(1) the 1998 Act, which provides that "An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that damage". The newspaper claimed the protection of section 32 of the Act, which exempts the "processing [of data] ... undertaken with a view to the publication ... of any journalistic, literary or artistic material". The court holds that, although "processing" data must, given the terms of the Act, include publishing hard copy, the protection under section 32 also extends to publication itself and is not confined to processing before publication.

Although this interpretation is entirely plausible, it raises a difficulty which perhaps only the legislature can resolve. Newspapers maintain libraries of their own stories, previously cuttings, now increasingly in electronic form. Journalists rely on cuttings libraries when generating new stories. Consequently, errors in past stories tend to reproduce themselves. If section 32 applies to all newspaper operations, the fourth data protection principle, requiring data to be accurate, cannot help to correct cuttings libraries. One of the worst features of newspapers, their capacity to create myths, would continue to be legally incontestable.

DAVID HOWARTH

CAN AN EMPLOYER BE UNDER A DUTY TO DISMISS AN EMPLOYEE FOR HIS OWN GOOD IN ORDER TO PROTECT HIS HEALTH?

SUPPOSE that an employee has some personal idiosyncrasy that puts him at risk while performing work that can be safely performed by virtually all his colleagues? If the employer simply has no alternative work reasonably available, what is he to do if the employee, with full understanding of the situation, nevertheless prefers to run those risks rather than have no job at all? *Coxall* v. *Goodyear Great Britain Ltd.* [2002] EWCA Civ 1010 suggests that the employer may be under a common law duty to dismiss the employee for his own good so as to protect his health.

The claimant, Mr. Coxall, worked in the defendant's factory. The manufacturing process was safe and satisfactory for the majority of the workers (employees were given rubber gloves, goggles, and respirators), but the claimant suffered from a mild constitutional predisposition to asthma. This condition was initially unknown both to him and to his employer. When it eventually came to light, the works doctor wrote a memorandum to the claimant's team manager stating that the claimant should be removed from his job because he must avoid any work involving exposure to known respiratory irritants, including the paint used in the manufacturing process. The claimant was aware of the doctor's advice. However, he chose to continue to work because he needed the money. The company did not act on the doctor's letter, and the claimant eventually collapsed, suffering from occupational asthma caused by exposure to irritant fumes at work. He then sued the company for negligence.

An employer is under a non-delegable personal duty under the common law to his employees to see that reasonable care is taken