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HIGH COURT OF AUSTRALIA

WYONG SHIRE COUNCIL v SHIRT

Stephen, Mason, Murphy, Aickin and Wilson JJ

30-31 October 1979; 1 May 1980

[1980] HCA 12; (1980) 146 CLR 40; (1980) 29 ALR 217; (1980) 54 ALJR 283

NEGLIGENCE – DUTY OF CARE – BREACH OF DUTY – FORESEEABILITY OF RISK OF INJURY – LIKELIHOOD OF HARM OCCURRING – ERECTION OF SIGN "DEEP WATER" IN VICINITY OF SHALLOW WATER – WHETHER FORESEEABLE THAT INEXPERIENCED WATER-SKIER WOULD FALL AND SUFFER INJURY.

S. was injured when he fell while water ski-ing and struck his head on the bed of a shallow lake. He claimed that he had been misled by a sign erected in the vicinity by the appellant council, which read "Deep Water". In fact, the sign was, with three others, intended to indicate the presence of a dredged channel leading from a jetty used by an aquatic club. A jury's verdict of negligence by the council was upheld by the Court of Appeal of the Supreme Court of New South Wales. In this appeal to the High Court of Australia, the council conceded that it was under a duty of care to water skiers in the manner in which it erected the sign, but claimed that there was no evidence fit to be considered by the jury in support of the conclusion that the council was in breach of that duty.

HELD: per Stephen, Mason, Murphy and Aickin JJ (Wilson J dissenting):
1. Appeal dismissed. The jury's conclusion that there was a forseeable risk of injury was not unreasonable and was open on the evidence.

Per Mason J (with whose reasons Stephen and Aickin JJ agreed): Notwithstanding some Australian support for a narrower version of the forseeability doctrine as applied to breach of duty, the High Court would be well advised to accept that the law upon the point was correctly stated and applied by the Judicial Committee in *The Wagon Mound (No.2)* [1966] UKPC 1; [1967] 1 AC 617; [1966] 2 All ER 709; (1967) ALR 97.

***Caterson v Commissioner for Railways* [1973] HCA 12; (1973) 128 CLR 99; [1972-73] ALR 1393; 47 ALJR 249;**

***Koufos v C Czarnikow Ltd* [1967] UKHL 4; [1969] 1 AC 350; (1967) 3 All ER 686;**

***Bolton v Stone* [1951] UKHL 2; [1951] AC 850; [1951] 1 All ER 1078; [1951] 1 TLR 977;**

***Chapman v Hearse* [1961] HCA 46; (1961) 106 CLR 112; [1962] ALR 379; 35 ALJR 170;**

***Mount Isa Mines Ltd v Pusey* [1970] HCA 60; (1970) 125 CLR 383; [1971] ALR 253, considered.**

***Home Office v Dorset Yacht Co* [1970] UKHL 2; [1970] AC 1004; [1970] 2 All ER 294; [1970] 2 WLR 1140; [1970] 1 Lloyds Rep 453; 114 Sol Jo 375;**

***Anns v Merton London Borough Council* [1977] UKHL 4; [1978] AC 728; [1977] 2 All ER 492; [1977] 2 WLR 1024;**

***Viro v R* [1978] HCA 9; (1978) 141 CLR 88; (1978) 18 ALR 257; 52 ALJR 418, referred to.**

Per Mason J: A risk of injury which is remote in the sense that it is extremely unlikely to occur may nevertheless constitute a foreseeable risk. A risk which is not far-fetched or fanciful is real and therefore foreseeable.
