

Overseas Tankship (UK) Ltd v Morts Dock & Engineering Company ('The Wagon Mound No. 1') [1961] AC 388

Chapter 4

Relevant facts

Morts Dock & Engineering Company ('Morts') carried on the business of ship-building, ship-repairing and general engineering at its wharf in Morts Bay in Sydney Harbour. On 30 October 1951, Morts employees were working on a vessel moored at the wharf using electric and oxy-acetylene welding equipment. A vessel owned by Overseas Tankship (UK) Ltd ('OT'), the 'Wagon Mound', was moored at Caltex Wharf on the opposite shore of the harbour, approximately 600 feet from Morts Wharf, to enable the discharge of gasoline products and taking in of furnace oil. A large quantity of furnace oil was released into the harbour as a result of the carelessness of OT's employees. The oil spread to Morts Wharf. When the Morts works manager became aware of the presence of the oil, he made enquiries with the manager of Caltex. The response he received as well as his own belief that furnace oil was inflammable in the open led him to believe that the work at Morts Wharf could safely continue. However, he gave instructions that safety precautions should be taken to prevent inflammable material falling from Morts wharf into the oil. On 1 November 1951, hot metal from the welding at Morts Wharf fell on cotton waste in the harbour and ignited the furnace oil. Consequently, the wharf and the vessel upon which Morts employees were working caught fire. Considerable damage was done to the wharf and to the equipment on it.

Morts sued OT for negligence. In hearing an appeal from the decision of the Trial judge, the Supreme Court of New South Wales held that OT was liable in negligence for the damage suffered by Morts. OT appealed to the Privy Council.

Legal issue

Is a negligent defendant responsible for all the consequences of their actions including those that are not reasonably foreseeable?

Decision

On 18 January 1961, the Privy Council unanimously held that OT was only liable for the consequences of its actions that were reasonably foreseeable at the time of the negligent act. OT was not liable for unforeseeable consequences of its negligence.

The Privy Council was of the view that a defendant's liability should be limited to those acts that are natural and probable consequences of its carelessness, and that acts that were foreseeable were the natural and probable consequences. The Privy Council held

that although OT had owed Morts a duty of care and that duty had been breached, the damage suffered by Morts was not reasonably foreseeable. Critical to this determination was the Privy Council's acceptance of the Trial Judge's finding, based on the extensive expert evidence given at trial, that OT did not know and could not reasonably be expected to have known that furnace oil was flammable when spread on water.

The Privy Council rejected the previous rule that a defendant was liable for all harm directly caused by, or a direct consequence of, their breach of duty, even if that harm was not reasonably foreseeable. According to Viscount Simonds in his judgement on behalf of the Privy Council:

It is a principle of civil liability, subject only to qualifications which have no present relevance, that a man must be considered to be responsible for the probable consequences of his act. To demand more of him is too harsh a rule, to demand less is to ignore that civilised order requires the observance of a minimum standard of behaviour....

For, if some limitation must be imposed upon the consequences for which the negligent actor is to be held responsible - and all are agreed that some limitation there must be - why should that test (reasonable foreseeability) be rejected which, since he is judged by what the reasonable man ought to foresee, corresponds with the common conscience of mankind, and a test (the 'direct consequence') be substituted which leads to no-where but the never-ending and insoluble problems of causation.

.... [T]he essential factor in determining liability is whether the damage is of such a kind as the reasonable man should have foreseen. This accords with the general view thus stated by Lord Atkin in Donoghue v Stevenson [1932] AC 562 at p 580: 'The liability for negligence, whether you style it such or treat it as in other systems as a species of 'culpa,' is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay.' It is a departure from this sovereign principle if liability is made to depend solely on the damage being the 'direct' or 'natural' consequence of the precedent act. Who knows or can be assumed to know all the processes of nature? But if it would be wrong that a man should be held liable for damage unpredictable by a reasonable man because it was 'direct' or 'natural,' equally it would be wrong that he should escape liability, however 'indirect' the damage, if he foresaw or could reasonably foresee the intervening events which led to its being done ... Thus foreseeability becomes the effective test.

Significance

This case confirmed the remoteness rule: a defendant who has breached their duty of care is only liable for harm caused by the breach that is reasonably foreseeable, and is not liable for harm caused by the breach that is too remote or far-fetched.