

# **NZ PUBLIC LAW**

## **CASE NOTES**



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## Contents

<i>Alcock v Chief Constable of South Yorkshire Police</i> [1991] UKHL 5 .....	3
<i>Anisminic v Foreign Compensation Commission</i> [1968] UKHL 6.....	5
<i>Associated Provincial Picture Houses Ltd. v Wednesbury Corporation</i> [1948] 1 KB 223.....	7
<i>Hill v Chief Constable of West Yorkshire</i> [1987] UKHL 12 .....	9
<i>Home Office v Dorset Yacht Co Ltd</i> [1970] UKHL 2 .....	12
<i>New Zealand Maori Council v Attorney-General</i> [1987] 1 NZLR 641.....	15
<i>R v Oakes</i> [1986] 1 SCR 103 .....	18
<i>R v Panel on Take-overs and Mergers, ex parte Datafin plc</i> [1987] QB 815.....	21
<i>Taylor v Attorney-General</i> [2015] NZHC 1706.....	23
<i>Wi Parata v The Bishop of Wellington</i> (1877) 3 NZ Jur (NS) SC 72.....	26
<i>X and others (minors) v Bedfordshire County Council</i> [1995] 3 All ER 353 .....	29

## ***Alcock v Chief Constable of South Yorkshire Police [1991] UKHL 5***

**Source:** Hard copy via your law library or electronically via a subscription service

**Court details:** United Kingdom House of Lords

**Facts:**

- The claims were brought by Alcock and several other claimants after the Hillsborough disaster in 1989, where 95 Liverpool fans died in a massive crush during the FA Cup Semi Final at Hillsborough Stadium in Sheffield.
- According to the Taylor Report (as well as the later report of the Hillsborough Independent Panel), the accident was caused by the police negligently allowing too many supporters to crowd in one part of the stadium. Many alleged to have seen their friends and relatives die in the crush and suffered psychiatric harm or nervous shock after the incident.

**Issue:**

- This is a leading English tort law case on liability for nervous shock (psychiatric injury).
- The case centred upon the liability of the Police for the nervous shock suffered in consequence of the events of the Hillsborough disaster.

**Reasoning / Decision (Commentary):**

- The plaintiffs in this case were mostly secondary victims, i.e. they were not "directly affected" as opposed to the primary victims who were either injured or were in danger of immediate injury.
- The Judicial Committee of the House of Lords, consisting of Lord Keith of Kinkel, Lord Ackner, Lord Oliver of Aylmerton, Lord Jauncey of Tullichettle, and Lord Lowry has established a number of "control mechanisms" or conditions that had to be fulfilled in order for a duty of care to be found in such cases.

**Ratio:**

- The claimant who is a "secondary victim" must perceive a "shocking event" with his own unaided senses, as an eye-witness to the event, or hearing the event in person, or viewing its "immediate aftermath". This requires close physical proximity to the event, and would usually exclude events witnessed by television or informed of by a third party, as was the case with some of the plaintiffs in Alcock.
- The shock must be a "sudden" and not a "gradual" assault on the claimant's nervous system. So a claimant who develops a depression from living with a relative debilitated by the accident will not be able to recover damages.
- If the nervous shock is caused by witnessing the death or injury of another person the claimant must show a "sufficiently proximate" relationship to that person, usually

described as a "close tie of love and affection". Such ties are presumed to exist only between parents and children, as well as spouses and fiancés. In other relations, including siblings, ties of love and affection must be proved.

- It must be reasonably foreseeable that a person of "normal fortitude" in the claimant's position would suffer psychiatric damage. The closer the tie between the claimant and the victim, the more likely it is that he would succeed in this element. However, once it is shown that some psychiatric damage was foreseeable, it does not matter that the claimant was particularly susceptible to psychiatric illness - the defendant must "take his victim as he finds him" and pay for all the consequences of nervous shock (see "Eggshell skull" rule).

**Order:** The appeal was dismissed

**Think about this:**

- There are examples of cases such as *Alcock v. Chief Constable of South Yorkshire Police* where over two hundred relatives of injured people, some of whom had seen their relatives being crushed to death, were refused their claims against the police force for negligence on policy grounds: if the police could be sued for a vast sum of money the service would be crippled.
- But what about someone who heard about the accident two weeks later?
- Is there any material difference?
- Therefore, in regard to each proximity, there is a point where some can claim and others cannot, even though in all the relevant ways they are similar, and the ones who could not claim were actually closer to the victims than those who could.
- Dworkin says judges should not worry about gains and losses. One argument in *McLoughlin v. O'Brian* was that Parliament should decide the matter because it was a policy decision, and therefore not for the courts.
- Rights, according to Dworkin, are connected to principles, not policies.
- Lord Bridge said sometimes the courts have to make law in an incremental way, making policy.



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