

NZ TORT LAW

CASE NOTES



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Sample

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).

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