

**CRITCHLEY V. CROSS [2000] NSWSC 6**

Supreme Court of NSW – 8 February 2000

**FACTS**

Cross was the owner of land located besides the Shoalhaven River. There was a beach on Cross' side of the river and the beach was owner used by people travelling by boat along the river. The beach became a grass slope which then became the base of a cliff. Cross had arranged for "no trespasser" signs to be placed near the beach but these signs often went missing. In 1987, Critchley and some friends stopped at the beach.

Critchley went for a walk away from the beach and entered Cross' land without consent. Critchley ended up near the top of the cliff and he then accidentally fell into a crevice and was severely injured. Critchley sued Cross for negligence.

**ISSUES**

Did Cross owe a duty of care to trespassers on her land to take reasonable action to prevent harm to the trespassers when walking along the cliff area?

If there was a duty of care owed by Cross, had the standard of care required not been satisfied?

**FINDING**

Cross did not owe a duty of care to Critchley, as it was not reasonably foreseeable that a trespasser would fall into the crevice. Even if a duty of care had been owed, in the circumstances there was nothing that Cross could reasonably have done to avoid harm to people like Critchley.

**QUOTE**

Studdert J said:

*"In deciding whether the defendant owed to the plaintiff a duty of care in this case, I must apply the test as expressed by Deane J in Hackshaw and as adopted by the majority of the judges in Zaluzna.*

*I must have regard to 'all the relevant circumstances' and this includes 'the manner of the plaintiff's entry'. It is, I consider, a further relevant circumstance that the defendant was not aware of the existence of the crevice. I remind myself that 'a prerequisite to any such duty is that there be the necessary degree of proximity of relationship'.*

*I further remind myself of 'the touchstone of its existence', namely 'that there be reasonable foreseeability of a real risk of injury to a visitor or to the class of person of which the visitor is a member'.*

*I have come to the conclusion on the evidence that it was not reasonably foreseeable that a trespasser might venture to where the plaintiff had his fall, and I am not satisfied that there existed the necessary degree of proximity to give rise to a duty of care by the defendant towards the plaintiff."*

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## **IMPACT**

A reminder that the scope of a duty of care owed by an occupier of land is limited by the need for the potential danger to visitors and trespassers to land to be reasonably foreseeable. In this case the lack of knowledge by the owner about the danger, and the fact that the plaintiff went to a place that no normal visitor to the beach would go to was decisive.

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