

HACKSHAW V. SHAW [1984] 155 CLR 614

High Court of Australia – 11 December 1984

FACTS

Shaw was the owner of a farm where petrol was stored for farming machinery. The petrol was being stolen at night and Shaw decided to ambush the next thief of petrol. He therefore lay in wait near the petrol tank.

Hackshaw was in a stolen motor vehicle with Cox when Cox drove into Shaw's farm, with the headlights turned off, and started stealing petrol. Shaw fired two warning shots at the car and hit Hackshaw who was in the front seat.

It was accepted that Shaw had not known that Hackshaw was in the car. Hackshaw sued Shaw seeking compensation for her injuries.

ISSUES

1. Did Shaw owe a duty of care despite her being a trespasser on his land?
2. Had Shaw breached a duty of care to Hackshaw when he shot his rifle at the car?
3. Was Hackshaw partly liable for her injuries by trespassing on the land?

FINDING

Shaw owes a duty of care to Hackshaw to avoid injuring her by his rifle. He should have foreseen that it was likely that there could be a passenger in the car and was negligent in firing the rifle at the car.

Hackshaw's actions accompanying Cox had contributed to the injury as she had illegally entered Shaw's property.

QUOTE

Deane J said:

"All that is necessary is to determine whether, in all the relevant circumstances including the fact of the defendant's occupation of premises and the manner of the plaintiff's entry upon them, the defendant owed a duty of care under the ordinary principles of negligence to the plaintiff. A prerequisite of any such duty is that there be the necessary degree of reasonable of proximity of relationship.

The touchstone of its existence is that there be reasonable foreseeability of a real risk of injury to the visitor or to the class of person to which the visitor is a member.

The measure of the discharge is what a reasonable man would, in the circumstances, do upon the land, the mere relationship between occupier to take reasonable care to avoid a foreseeable risk of injury to him or her. When the visitor is on the land as a trespasser the mere relationship of occupier and trespasser has

imposed upon the occupier will not satisfy the requirement of proximity or give rise to a reasonably foreseeable risk of relevant degree of proximity. Something more will be required.

The additional factor or combination of factors which may, as a matter of law, supply the requisite degree of proximity or give rise to a reasonably foreseeable riskthey will include either knowledge of the actual or likely presence of a trespasser or reasonable foreseeability of real risk of such presence.”

IMPACT

It is now clear that an occupier of property can owe a duty of care to a trespasser if it can be proven that it was foreseeable that the trespasser could be injured by the negligent acts of the occupier.

Contract Managers should be aware that sometimes a duty of care can be owed to people who commit the illegal act of trespass.

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