

**PERRE V APAND PTY LTD [2007] HCA 36**

High Court of Australia - 12 August 1999

**FACTS**

Apand was a national manufacturer of potato crisp chips which supplied experimental potato seeds to Sparnon in the Berri region of South Australia. Sparnon and his potato growing neighbours (who included Perre and the other Plaintiffs) had a lucrative trade selling potatoes to Western Australia as the price of potatoes in Western Australia was higher than in South Australia.

The seeds supplied to Sparnon were infected with bacterial wilt and his potatoes became infected. Western Australian law prohibited the import of infected potatoes and the import of potatoes from farms in a 20-kilometre radius surrounding an infected farm. Sparnon and other potato farmers were therefore prohibited from exporting potatoes to Western Australia for five years.

Perre and the other potato farmers sued Apand for the economic loss they had suffered as a result of the loss of access to the Western Australian market. Apand was aware of the Western Australian law prohibiting the importing of potatoes in such circumstances

**ISSUES**

Did Apand owe a duty of care to Perre and the other potato farmers to avoid damage which would cause financial loss to them, even if there was no connected physical injury to property or a person?

**FINDING**

Apand was found to owe duty of care to Perre and the other potato farmers.

The Judges of the High Court had differing reasons for determining how a duty of care was imposed on Apand but all agreed that Apand should have foreseen that its supplying infected seeds to a potato farmer in South Australia would affect the ability of neighbour potato farmers to sell potatoes, and thus cause economic loss.

**QUOTE**

Kirby J supported the following approach:

*“As an approach or methodology for deciding whether a legal duty of care in negligence exists, I suggested that the decision-maker must ask three questions:*

- 1. Was it reasonably foreseeable to the alleged wrongdoer that particular conduct or an omission on its part would be likely to cause harm to persons who have suffered damage or a person in the same position?*
- 2. Does there exist between the alleged wrongdoer and such person a relationship characterised by the law as one of "proximity" or "neighbourhood"?*

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3. *If so, is it fair, just and reasonable that the law should impose a duty of a given scope upon the alleged wrongdoer for the benefit of such a person?*” – paragraph 259 of [1999] HCA 36.

## **IMPACT**

Traditionally, the law of negligence has only allowed claims for physical damage either to a person or property, save for a small class of matters where the economic loss was foreseeable and easily quantifiable.

This High Court decision, however, confirms the more modern view that in certain cases a duty of care may be owed to avoid damage to the economic interests of others. Unfortunately, it is not yet clear when such a duty of care will be imposed. A negligence claim for purely economic losses is now more likely to be successful. For example, a Contractor or Sub-contractor, which is a party, claiming that a direction or action by the Principal or Contract Administrator was negligent and caused economic loss may be prepared to issue legal proceedings for negligence.

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