

**SHORTEN V GRAFTON DISTRICT GOLF CLUB [2000] NSWCA 58**

Court of Appeal of NSW – 23 March 2000

**FACTS**

Shorten, a 13-year-old boy, was playing golf at the Club's golf course. During a game Shorten went to retrieve a ball which had landed in the rough. Shorten noticed that a mob of kangaroos were feeding in the grass where the ball had landed but as he had never had any difficulty with kangaroos he did not hesitate to enter the rough to retrieve the ball. Shorten was attacked by a large eastern grey kangaroo and suffered injuries.

The evidence presented to the Court showed that the Club was aware of the risk of kangaroos attacking persons playing on the golf course and that four golfers had previously been attacked on the golf course. In fact, the Club has even obtained permission to cull aggressive kangaroos in the past. After the attack on Shorten a warning message was added to the score card used by golfers on the course. Shorten sued the Club for negligence.

The trial judge found that while the Club had owed a duty of care to Shorten it had not breached that duty. Shorten appealed to the Court of Appeal.

**ISSUE**

1. Did the Club's duty of care include an obligation to provide golfers with an adequate warning of the risk of attack by a kangaroo?
2. What standard of care was expected of the Club to prevent harm to golfers from aggressive kangaroos?

**FINDING**

The duty of care by the Club included an obligation to warn golfers about the risk of aggressive kangaroos. As the danger to golfers could be minimised by a warning the Club had failed to meet the relevant standard of care.

**QUOTE**

Fitzgerald JA said:

*“The principal, if not the only, basis for the respondent's argument that the trial judge was correct in answering that question in the negative were the low level of risk of injury to a golfer from a kangaroo and the proposition that warnings are often disregarded. ...*

*It is obvious that warnings could have been easily notified and appropriately emphasised at virtually no cost or inconvenience to the respondent. Importantly, the respondent knew both of the risk to golfers and that most, if not all, golfers were unaware of the risk.*

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*In my opinion, giving due weight to the trial judge's opposite view, the respondent's failure to warn golfers of a risk of injury of which they were unaware was a breach of the respondent's duty of care to golfers, even though the risk was small."*

## **IMPACT**

The standard of care expected by a person owing a duty of care will depend on the nature of the risk and the methods available to minimise the risk to the person to whom the duty is owed. In this case the Club knew of the risk and could have easily warned golfers about the risk of aggressive kangaroos attacking golfers.

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