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# **CASE ANALYSIS ON OVERSEAS TANKSHIP (UK) LTD. V. MORDOCK & ENGINEERING CO. LTD. (1961) A.K.A. WAGON MOUND'S CASE: CASE ANALYSIS AND CASE COMMENTARY**

AUTHORED BY - SHREYA SHARMA & NIKAIAH MARIA DA SILVA

Negligence is defined as failing to act reasonably or engaging in conduct that a prudent or reasonable person would avoid. According to "Winfield" and "Jolowicz", "Negligence is the breach of a legal duty to exercise reasonable care that results in injury, desired by the defendant to the plaintiff."

**It can be divided into three categories:**

- **Nonfeasance:** This word refers to failing to fulfil a duty.
- **Misfeasance:** is when a task is not completed as it should be.
- **Malfeasance:** misconduct or wrongdoing, particularly by a public official

**Essentials of negligence**

Six main elements must be present to commit negligence.

1. **Duty of Care:** Each person owes another a responsibility of care when carrying out an action. Even though the Duty exists in all activities, except negligence, it cannot be morally, ethically, or religiously based. It must be legal.
2. **The Obligation Must Be Toward the Plaintiff:** Responsibility is established when the law recognises a connection between the Defendant and the Plaintiff and creates the Defendant's obligations to the Plaintiff. A judge will frequently make this determination if it can be demonstrated that the defendant owed the plaintiff a duty of care.
3. **Breach of Duty to Take Care:** The plaintiff must establish both the existence of a duty of care owed to them by the defendant and the fact that they were breached by them. By failing to carry out the Duty with reasonable care, the defendant breaks the contract.
4. **Actual cause or cause in fact:** Since the plaintiff is suing the defendant for negligence in this case, the plaintiff must demonstrate that the defendant's breach of duty was an appropriate cause of the plaintiff's damages.

5. **Proximate cause:** Proximate cause is the word used to describe the "legal cause," which is the element that the court has found to be the primary source of the injury. It might not be the final thing to occur before an injury, nor might it be the trigger that set off a series of occurrences that resulted in the damage. Instead, it was a choice that naturally produced predictable outcomes without outside assistance. In a negligence case, the Defendant is only liable for damages that he could have prevented by taking independent action.
6. **Consequential Injury to Plaintiff:** The plaintiff has not shown sufficient evidence to establish that the defendant failed to exercise reasonable care, or what the law refers to as "Legal Cause" or "Proximate Cause," which is what the plaintiff contends occurred. Additionally, it must be shown that the Defendant's negligence caused losses to the Plaintiff, to whom the Defendant owed a duty of care.

*Foreseeability* is the capability of an individual to understand, envisage, or reasonably expect that damage or injury will occur from acts or omissions. The concept of Negligence in Law has foreseeability as an essential aspect. This is formed by proving that the tortfeasor, as an individual with average intelligence and prudence, should have reasonably expected that their negligent act would potentially harm others, whether by the actual event or some similar occurrence and regardless of what the tortfeasor anticipated would happen in connection to the virtual event or the way of what caused the injury. Hence, only losses that are reasonably foreseeable as a result of a defendant's actions are liable.

## FACTS

Morts Dock & Engineering Company (henceforth "Morts") performed shipbuilding, ship repair, and general engineering activities at its wharf in Morts Bay in Sydney Harbour. On October 30, 1951, Mort's crew repaired a boat that was moored at the harbour using oxy-acetylene and electric welding gear. To facilitate the discharge of petroleum products and the intake of furnace oil, the Wagon Mound, owned by Overseas Tankship (UK) Ltd ('OT'), was anchored at Caltex Wharf, about 600 feet away from Morts Wharf on the opposite coast of the harbor. The OT staff's carelessness resulted in a significant furnace oil spill into the water.

To Morts Wharf, the oil leaked. The management of Morts Works enquired with the manager of Caltex after becoming aware of the oil's presence. He thought that the Morts Wharf building could proceed risk-free based on the response he got and his belief that furnace oil was

flammable outside. To prevent flammable materials from falling into the oil from Mort's wharf, he did advise taking safety measures. On November 1, 1951, burning furnace oil resulted from hot metal from welding at Morts Wharf colliding with cotton waste in the harbour. The boat and wharf where Morts' workers were working caught fire as a result. Both the pier's machinery and the actual wharf suffered significant damage. Morts sued OT after accusing him of negligence. After considering an appeal from the Trial judge's ruling, the Supreme Court of New South Wales concluded that OT was negligently accountable for the harm that Morts endured. OT appealed to the Privy Council.

### ***ISSUES***

1. Whether it was possible to predict that Defendant's negligence contributed to the fire that destroyed Plaintiff's wharf.
2. Whether the directness standard from *Re, Polemis* still holds true in this instance.

### ***JUDGEMENT***

On January 18, 1961, the Privy Council determined in a unanimous decision that the Defendant was only accountable for the consequences of its irresponsible behaviour that were logically foreseeable at the time of the negligent act. The Defendant was not accountable for the inescapable consequences of its negligence. The Privy Council limited a defendant's liability to natural activity with likely adverse consequences of their carelessness by concluding that predictable behaviours were natural and had conceivable results. The Privy Council found that Morts' losses were not inherently catastrophic, even if Overseas Tankship had broken its duty of care to Morts. The Trial Judge's ruling that Overseas Tankship was not aware of and could not reasonably be expected to have seen that furnace oil was flammable when placed over the water was accepted by the Privy Council, which allowed for this finding to be reached. This judgement was made in light of the extensive expert testimony heard during the trial. The former rule that a defendant was responsible for all damages that were directly caused by or a result of their breach of duty, even if those damages were not reasonably foreseeable, was rejected by the Privy Council.

The remoteness principle, which provides that a party violating a duty of care is only accountable for injury that is reasonably foreseeable and not accountable for harm coming from a breach that is too remote or far-fetched, was affirmed in this instance.



## ANALYSIS

A landmark decision in tort law is "Overseas Tankship (UK) Ltd. v. Mordock & Engineering Co. Ltd. (1961)." The concept of reasonable foreseeability was established in this judgement to determine the responsibility of a defendant who had committed a specific act. This rule emphasises the notion that only when a negligent act is committed and its consequences are foreseeable by the perpetrator will he be held accountable. In order to determine the extent of the tortfeasor's liability, the rule of reasonable foreseeability also rejected the directness of damage rule that was established in the case of "Re Polemis and Furness Withy & Co (1921)," which means that a person will be held accountable for all the consequences that arise from the action regardless of foreseeability. This case also set the basis for a number of cases.

In "Hughes v. Lord Advocate", the Post Office employees failed to maintain a sewer hole in the road. They surrounded the sewer hole with multiple paraffin lamps and covered it with a tarpaulin entry before they departed the area. The 8-year-old plaintiff was playing near the sewer hole with another child when she was drawn to the lamps. The explosion in the sewer hole was brought on by the destruction of one of the lamps. The plaintiff sustained harm as a result of the blast. The court determined that the burns suffered by the plaintiff because of the explosion were foreseeable. However, the explosion itself was not foreseeable. Thus, it was established that negligence is satisfied when a plaintiff suffers an injury that was predictable but brought on by an unusual event or another way that could not have been anticipated.

In the case of "Doughty v. Turner Manufacturing Co. Ltd.", When the lid of a cauldron of boiling hot liquid fell in at Turner's factory, it caused an explosion and the liquid to move toward Doughty, injuring him. It was unknown whether the cover would explode if it landed in the fluid. At trial, Turner was found responsible and given damages, which they contested. Diplock asserts that in this situation, the Wagon Mound correlation must be applied. Hughes is comparable, but there are some important differences. In that case, the defendant's negligence in leaving the manhole exposed caused the youngster to sustain injuries. Despite the fact that the precise injury was unanticipated, the negligent act was the direct cause of it. Doughty's only duty in this situation was to make sure he wasn't hurt if the top fell into the molten liquid and spilled some of it over the side. The only reason he was hurt was because of an unanticipated explosion; this might have been avoided. Turner was under no duty to shield Doughty from this because they were unable to foresee it. It was ruled that the defendant's negligence was not

reasonably foreseeable for the plaintiff's damages because the defendant could not have understood the extent of the damage brought on by the explosion. The accused were absolved of responsibility.

In the case of “S.C.M. (UK) Ltd. v. W.J. Whittall & Sons”, The workers of the defendant damaged an electricity board cable, cutting off several factories, including the plaintiff's typewriter manufacturing endured a protracted power outage as a result of this damage. The plaintiff asserted that his factory's machinery was damaged and productivity was lost as a result of the power outage. The defendant requested that the claim be rejected. In this instance, the Court found that the defendants knew that the aforementioned electric wire was used to supply electricity to the factory of the plaintiff and that they might have reasonably predicted that any such power outage would cause the plaintiff to suffer a large loss. The plaintiff therefore qualified for payment. The claim for physical damage was not dismissed, but the claim for economic loss was. Economic loss should not be borne by a single person but should be shared by all those who suffer. There are some exceptional cases where it is the direct result of negligence and is therefore recoverable.

To sum up, everything that has been stated so far, The test of reasonable foreseeability has been a critical aspect in determining the liability of a tortfeasor in the concept of Negligence. The case of “Overseas Tankship (UK) Ltd. v. Mordock & Engineering Co. Ltd. (1961)” has played a major role in advocating this principle that a tortfeasor should be made liable for the consequences of their actions that any person of normal intelligence could foresee. In the aftermath of the mentioned case, several other judgments have been passed in accordance with the principle laid down in this case. Thus, it can be concluded that the case of “Overseas Tankship (UK) Ltd. v. Mordock & Engineering Co. Ltd. (1961)” set the basis for many cases in this aspect and is considered a landmark judgment.

#### **Case commentary:**

The judgment passed by the court in the “Overseas Tankship (UK) Ltd vs Mordock & Engineering Co Ltd (1961)” has been rightly issued as for an individual to be held liable for Negligence. It is very important for an individual to analyze all the possible consequences in a reasonable manner before doing a particular negligent act i.e. foreseeability. This case laid down the rule of reasonable foreseeability and rejected the rule of directness of damage that was laid down in the case of “Re Polemis and Furness Withy & Co (1921)”.

According to the test of directness, a person is liable for all direct consequences of his act, whether he could have predicted them or not, because the results that directly follow a wrongful act are not too remote. Furthermore, the offender would be responsible for all direct repercussions of his wrongdoing if he might have foreseen any damage. The “Re Polemis” Case can be taken into account in order to comprehend this remoteness test better.

***“Re Polemis and Furness, Wilthy & Co.”***

This case, also known as the “Re Polemis Case”, is regarded as a seminal example of the directness test. The standard of reasonable foresight was deemed relevant by the Courts of Appeal, but the test of directness was later affirmed by the Privy Council.

The defendants rented a ship to transport cargo, and it is one of the pertinent elements of the case. In order to transport fuel to Casablanca, among other things, the owners of a vessel rented it out to the appellants. There were several cans of gasoline and/or benzoene in the shipment. A leak in the cans caused some oil to gather in the ship's hold. Now, due to the servants of the defendant's incompetence, an explosion occurred when a wooden plank fell into the hold carrying the gasoline while the cargo was being unloaded at Casablanca. Those sparks caused the ship to catch fire, completely destroying it. The owners demanded payment from the charterers for the worth of the vessel, accusing them of negligence. The charterers retorted that they are not at fault because the fire was a distant result of their acts. The Privy Council ruled that the ship's owners were entitled to compensation in this case, despite the fact that the defendants could not have foreseen the loss. It was decided that whether or not the defendant could have reasonably anticipated it made no difference because the fire (and consequent ship damage) were a direct result of the defendant's conduct.

The dispute was sent to arbitration, and the arbitrators determined that the spark that started the fire occurred when the hardwood plank struck the metal. The charterers and the arbitrators both concluded that the spark was an unanticipated result of the initial mistake, making the destruction of the vessel a remote eventuality. The damage caused by the fire should not be included in the damages that the charterers are responsible for, just the approximate damage caused to the ship by the falling wooden board. Owners requested a review. The charterers' argument that the fire was an unanticipated result of the falling wooden board was the foundation for the decision that the spark was too far away to subject the charterers to liability.

When determining whether the potential harm is remote, the irresponsible party's actual expectations are immaterial. Because the charterers' negligence directly caused the fire in this instance, they are responsible for it. Whatever the potential damage is, it is a foreseeable result of negligence when a wooden plank falls while unloading merchandise.

**References:-**

- Overseas Tankship (UK) Ltd v. Mordock & Engineering Co Ltd (1961) All ER 404 PC
- Hughes v. Lord Advocate (1963) AC 837
- Doughty v. Turner Manufacturing Co Ltd (1964) 1 QB 518
- S.C.M. (UK) Ltd. v. W.J. Whittall & Sons (1971) 1 Q.B. 337.
- Re Polemis and Furness Withy & Co (1921) All

