ANALYSIS OF THE WAGON MOUND CASE: OVERSEAS TANKSHIP UK LTD. VS MORTS DOCKS ENGINEERING COMPANY

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ABSTRACT

In this research paper I will try to describe the two wagon mound cases – Wagon Mound 1 and wagon Mound 2. I will try to go into the judgements and see why the test of Reasonable foresight was preferred way for solving the case between Overseas Tankship limited Vs Mort's Docks Engineering Company. What reasoning was given by the Privy Council of Australia for using this principle and how the wagon mound Principle is applied in various cases across globe? To find out how Wagon Mound case redefined the concept of Remoteness of Damage by restating the test of reasonable foreseeability as the best test for finding out remoteness of damage in a case. To state different cases such as Greenland vs Chaplin, Rigby vs Hewitt which support the test of reasonable foresight and why test of directness is not a good principle for evaluating test for remoteness of Damage. The decisions in Wagon Mound cases explain the test of Reasonable Foreseeability. It states the Tort- Faso is liable for any damage which he can reasonably foresee , may happen as a result of breach of Duty, It may be however remote. The case however establishes that test of foreseeability is not limited to nuisance but is also applicable to tort of Negligence. In a suit for damages in a tort case, the court awards pecuniary compensation to the plaintiff for the injury or damage caused to him by the wrongful act of the defendant. After it is proved that the defendant committed a wrongful act, the plaintiff would be entitled to compensation,. may be nominal, though he does not prove any specific damage or injury resulting to him, in cases where the tort is actionable *per se*. But even in these cases when specific damage is alleged and in all other cases, where tort is not actionable *per se*, and it becomes the duty of the plaintiff to allege the damage resulting from the wrongful act for which he claims damages, the court's enquiry resolves around in deciding three questions: (1) Was the damage alleged caused by the defendant's wrongful act? (2) Was it remote? and (3) What is the monetary compensation for the damage?. If the damage alleged was not

caused by the defendant's wrongful act the question of its remoteness will not arise. In deciding the question whether the damage was caused by the wrongful act, the generally accepted test is known as 'but for' test. This means that if the damage would not have resulted but for the defendant's wrongful act, it would be taken to have been caused by the wrongful act. Conversely it means that the defendant's wrongful act is not a cause of the damage if the same would have happened just the same, wrongful act or no wrongful act

SYNOPSIS

Research Methodology - The study is a doctrinal in nature. Doctrinal study consists of study which is done by compilation of different books and try to take out the best synthesis from the study.

Scope Of Study - The scope of the study is very wide using legal principle, books, statues we justify the principals involved in wagon mound case. How the test of reasonable foresight is justified as a better test for remoteness of damage than test of directness.

Significance Of Study - The decisions in Wagon Mound cases explain the test of Reasonable Foreseeability. It states the Tort- Faso is liable for any damage which he can reasonably foresee,may happen as a result of breach of Duty, It may be however remote. The case however establishes that test of foreseeability is not limited to nuisance but is also applicable to tort of Negligence.

INTRODUCTION

The Wagon mound case is a landmark case which defined the concept of Remoteness of Damage. It was decided by the judicial committee of Privy Council of Australia on an appeal from Supreme Court of New South Wales Australia in 1961. The case was based on an incident of oil spilling and consequent damage of wharf by fire in 1951 It was the case which reemphasised the need to consider the test of Reasonable- Foresight as a better test for solving the cases of Remoteness of Damage. To understand and critically analyse the Wagon- mound cases, we need to have a basic idea of concept of remoteness of damage. If a reasonable man would have foreseen any damage to claimant as a result from the act then he is liable for direct consequences of it suffered by plaintiff whether he had claimed for it or not. The most important fact of this case that it was adopted as a law in England as soon as judgement was given by court. The study established the test of reasonable foreseeability as the best test to find out whether There exists any remoteness of damage or not. It established the principles which would be required for finding out there exists remoteness of damage or not. The judicial committee reversed the decisions of Supreme Court of New South Wales and held that "polemic case is not regarded as good law because it does not seem consonance with ideas of justice, equity, good conscience and morality that for an act of negligence however slight or venial which results in some trivial foreseeable damage, the actor should be liable for all consequences however unforeseeable and grave so long as they look to be direct. After the event even the fool is wise. But it is not the Hindsight of the fool; it is the foresight of a reasonable man which alone can determine responsibility"[1]

Remoteness of damage- After **a** tort is committed the question of liability of defendant arises. The consequences of a wrongful act may be endless or they may be consequences of consequences which would be endless. To draw a line for how much damage should a defendant be liable. To answer this question we need to see whether a damage is too remote or a consequence of any his wrongful act. If the consequences are so connected that they are proximate then defendant is liable for the consequences.

In **Haynes vs Harwood[2]-** The defendant's servant negligently left a horse van unattended in a crowded street. The throwing of stones at the horses by a child made them Bolt and the policeman was injured in an attempt to rescue woman and the children from the Horse. In an

[1] Ratanlal and Dhirajlal, Law of torts, Lexis Nexis India,27th edition, 2016 , page number 187
[2] Haynes vs Harwood, [1935] 1 KB 146

action against the defendant Court held that defendant is liable because though children were a party to act, their act was anticipated. There may be various causes of damage to the plaintiff. In order that action against Defendant succeeds it has to be shown that the defendant's wrongful act was real cause of damage.

In **Lampert Vs Eastern National Omnibus Company**[3] **-** Plaintiff a married woman due to negligence of the defendant was severely injured that resulted in her severe disfigurement, after sometime she was deserted by her husband. In an action against the defendant by the plaintiff, the court held that the real cause of desertion of plaintiff by her husband was not because of her disfigurement but estranged relation between Plaintiff and her husband, existed before the accident and therefore the defendant was not held liable.

The Overseas Tankship Limited vs Mort's Docks Engineering Company popularly known as wagon mound case is the case which cleared the ambiguity regarding the resolving the cases of Remoteness of Damage was resolved the facts of the case are as follows While the. ship Wagon Mound which was chartered by Overseas Tankship Limited was taking on fuel oil at the Caltex Wharf in Sydney Harbour, the engineers of the Wagon Mound allowed a great quantity of oil to be spilled on the water, and within a few hours it drifted away and accumulated around nearby Sheerleg's Wharf which was at a distance of 600 feet where the wharf owners, the Mort's Dock Company, were engaged in oxy-acetylene welding and cutting in the course of repairing another vessel named Corrimal[4] During the welding operations pieces of hot metal frequently flew off and fell into the water. When the manager of the Mort's Dock engineering company saw the thick scum of oil around the wharf he stopped the work and consulted with the manager of Caltex about the danger of igniting the oil. He was assured that it was safe to proceed with the repair work, which was accordingly continued for two days until the oil became ignited and set fire to the wharf and the two vessels. How the oil was ignited was not definitely established, but it was accepted by the courts that some object which supported inflammable material was floating on the oil-covered water and that a hot piece of metal fell on the object and burned the material, which in turn ignited the oil which caused conflagration and fire which destroyed the wharf and the ship which was getting repaired in the plaintiff wharf named corrimal.

[3] Lampert Vs Eastern National Omnibus Company, (1954) 1 WI.R 1047
[4] WE PEEL and J. Goudkamp , Winfield &Jolowicz On Tort, Sweet and Maxwell19th edition.2015 Pg. no. 185

The case could be divided into two parts

1) Mort's docks engineering company files against Overseas Tankship limited.

2) Owner of Corrimal Vessel Files against Overseas Tankship Limited.

Brief facts of Re polemis and Furness withy and Co. limited.

The Re polemis case decided by court of Appeal was based on rule of directness which said that defendant was liable for all direct consequences of his wrongful act whether foreseeable or not because the damages are not too remote.

In this case the defendants chartered a ship which contained a quantity of Benzene petrol in tins. Due To leakage of the Tins, some of their contents were collected in the holds of the ship. Owing to negligence of the defendant's servant a plank fell into the hold, a spark was caused due to which the ship was totally destroyed. By fire. The owners of the ship were held entitled for recovery of losses nearly 200,000 because of direct consequences of defendants act whether foreseeable or not.

ANALYSIS OF WAGON MOUND -1

OVERSEAS TANKSHIP UK LIMITED VS MORTS DOCKS ENGINEERING COMPANY[5]

The Mort's Docks Engineering Company After suffering damages of its wharf filed a case against the Overseas Tankship Limited from whose vessel the oil came out.

The plaintiffs i.e. Mort's Docks Engineering Company sued the defendants for the damage which they had sustained, basing their claim on negligence, and, in the alternative, on nuisance. The learned trial Judge found that

1 The oil had been spilled into the harbour by the defendants' negligence.

2 It had done some 'foreseeable damage to the plaintiffs' wharf by fouling the slipways;

3 The defendants did not know and could not reasonably have known that the oil was capable of being set on fire while on the water;

[5] Overseas Tankship Uk Limited Vs Morts Docks Engineering Company: (1961) 2 WLR 126

4 The fire although unforeseeable was a direct consequence of the defendants' negligence.

The trail judge on basis of above findings and applying the test of directness which laid down in *Polemis,* he gave judgment in favour of plaintiff.

Appeal in Supreme Court Of New South Wales, Australia.

The defendants appealed to the Supreme Court of New South Wales, basing their appeal on two grounds:

(1) The Re *Polemis was* wrongly decided.

(2)Even if we assume that Re polemis case was correctly decided then in this case the damage was not a direct consequence of the defendants' negligence.

The Supreme Court unanimously rejected both grounds of appeal and affirmed the Judgment of the trial judge. It should be mentioned that Manning **J,** said "Notwithstanding that, if regard is to be had to each individual, occurrence in chain of events which led to fire, each occurrence was improbable, and in one sense improbability was heaped upon improbability. I cannot escape from the conclusion that that if the ordinary man in the street would have been asked , as a matter of common sense, without any detailed analysis of the circumstances, to state the cause of fire at mort's docks, he would have unhesitatingly have assigned such cause to the spillage of oil by the appellant's employees"[6]

Appeal before the Privy Council, Australia

In the Privy Council the defendants (appellants) confined their argument almost entirely to attacking the correctness of the decision in *Polemis,* and as this is the only question dealt with in the Judgment. The Privy Council ruled in favour of defendant and overturning the decision of Supreme Court of New South Wales and said that

Polemis case cannot be regarded as a Good Law "For it does not seem consonant with the current Ideas of Justice or morality that for an act of negligence, however slight or venial which results in some trivial foreseeable damage, the actor should be liable for all foreseeable damage, however grave as long as they can be direct". It further said "After the event even a Fool Is Wise. But it is not the Hindsight of the Fool; it is the Foresight of a Reasonable Man which

[6] RK Bangia, Law Of Torts ,Allahabad Law Agency , 24th edition , 2017, page number 134

alone can Determine Responsibility. The Polemis rule by substituting 'direct' for 'Reasonably foreseeable' consequence leads to a conclusion equally illogical and Unjust."[7]

The main reasons given by the Privy Council for quashing Re polemis case and test of directness and adapting test of reasonable foreseeability could be summarised as below

Authority-Their Lordships were obviously hard to find any cases decided prior to *Polemis* to support their view. They rely mainly upon *dicta* in certain early cases, and in particular on a statement **of** Pollock C.B. Rigby vs Hewitt i.e. the liability of defendant is only for those consequences which could have been foreseen by a reasonable man placed in circumstances of wrongdoer. The dicta in some of the Judgements is capable of construed as supporting the foreseeability test.

Logic – Judges on the bench of wagon mound were the most supporters of the foreseeability test and according to them directness test is illogical. 'If, as admittedly it does,' their Lordships say that liability (culpability) of the defendant should depend -on the reasonable foreseeability. Of the consequent damage" In the words of Atkin L.J. in *Halbrook. v. Stokes,* "The duty of the owner of a motorcar in a highway is not a duty to refrain from inflicting a particular kind of injury upon those who are in the highway. **If** so he would be an insurer. It is a duty to use reasonable care to avoid injuring those using the highway.'"

It can be interpreted in a way that owner of a motor car should take a reasonable care and is liable for damages which he can foresee. He could not be made liable for all actions which might arise when he is moving on the road

Justice- Their Lordships express the view that the foreseeability test is more in accordance with Justice than the directness test, and there can be little doubt in this fact that test of directness does not seems to be consonant' ,with current ideas of justice or morality that, for an act of negligence, however slight or venial, which results in some trivial foreseeable damage, the actor should be liable for all consequences,- however unforeseeable and trivial so long as they can be said to be direct . The test of directness puts all the hardship on the defendant foe even a small damage which cannot be justified.

Simplicity- . The Privy Council expressed the hope that the rejection of the directness rule will help in simplifying the law. If the position in the future is to be that both the existence and the

[7] Ratanlal and Dhirajlal , law of Torts, Lexis Nexis India ,27th edition , 2016, pageno.187

extent of liability for negligence are to be determined by the same test, then undoubtedly the law will be simplified. But it may be doubted whether this will really be the position. Foreseeability as the test for the existence of negligence means what the defendant as a reasonable man should have foreseen at the time of the commission of the negligent act. The following example would support the simplicity of test of reasonable foreseeability. Ex. X swallows a pill which, through the negligence of the chemist who supplied it, contains deadly poison. The pill sticks in X's windpipe and he chokes to death. According to the -directness rule the chemist would be liable for the death, It would seem clear that this view is untenable. As X would have died even if the pill had not contained poison because he died due to choking of pill and thus test of reasonable foreseeability protects chemist.

Fairness - It is no doubt hard on a negligent defendant that he should be liable for unexpectedly large damages but it is not clear that final outcome is any fairer if the claimant is left without redress for damage which he has suffered for no fault of his own. Due to this reason Privy Council feels that test of directness works unfairly[8]

ANALYSIS OF WAGON MOUND 2

OVERSEAS TANKSHIP UK LIMITED VS MILLER STEAM SHIP[9]

About the case

Wagon Mound Two is the case between the Owner of the vessel **Corrimal** which was under repair in the wharf of Mort's Docks Engineering Company when fire damaged the ship and the Overseas Tankship Limited who were charterers of the ship from which oil leakage happened. Though the facts were same as that of Wagon Mound 1 but the evidences were different due to which the final verdict was different

Facts of the case - The plaintiffs in *Wagon Mound No...2* were the owner of the vessel **Corrimal** which were undergoing repair at the Sheerleg's Wharf owned by Mort's Docks Engineering Company which was at a distance of 60 feet from where the defendant's vessel i.e. Overseas Tankship Limited which was undergoing refuelling at Sydney Harbour. Plaintiff Owner of **Corrimal** vessel filed their case on nuisance and negligence and were awarded

[8]WE PEEL and J. Goudkamp , Winfield &Jolowicz On Tort, Sweet and Maxwell,19th edition,2015 page number 7-041

Overseas Tankship Uk Limited Vs Miller Steam Ship (1966) 2 All Er 709

substantial recoveries in the trial court, the Supreme Court of New South Wales (Walsh, **J.),** on the nuisance count, but the count for negligence was dismissed, probably on the basis of the judgment of the Privy Council in *Wagon Mound No.1*. The defendant appealed the decision based on nuisance, and plaintiffs appealed the decision based on negligence.

Issues in wagon mound -2

Did the owners of wagon mound ship owe a duty to prevent oil from spilling in the harbour which includes risk of injury to plaintiff vessels by fire?

The privy council held that the extent of liability and the measure of damages is determined only on basis of foreseeability and the risk of oil on water catching fire was foreseeable and therefore the defendants Overseas Tankship limited are liable for damages

Reasoning behind decision of wagon mound -2 case

The Privy Council held that there could be no justification for not making the defendants liable based on following reasons

1) There was a risk of fire ignited the vessel although it was remote

2) The risk was grave in the sense that if the oil caught fire serious damages to ships and property

3) The discharge of oil was from the beginning an offence which the defendants shouldn't have done and should be made liable.

4) The person of the position of the Chief Engineer in the defendant's company would have easily known the gravity of risk

5) A Reasonable man having the experience and knowledge to be in position of chief engineer of a big ship of Wagon mound would have foreseen the risk of damage to life and property and could have prevented them.

6) Action to eliminate the risk presented no difficulty.

7) The spillage of oil from Sydney harbour also involved considerable loss financially.

Significance of Wagon Mound -2

The judgment of the Privy Council in *Wagon Mound No. 2* is highly significant in that it revises and broadens the foreseeability formula heretofore utilized by the English courts whether used as a basis of duty, the extent of duty, or its violation. It accomplishes this revision by the addition of certain “policy" terms such as "a real risk," "balancing the advantages and disadvantages, “and "no expense." Inasmuch as the Council viewed the case from “hindsight" (as must all courts in other cases), it could read into "foreseeability “whatever good policy demanded in order to place the risk of burning the plaintiffs' vessels upon the defendant. In fact it could not have avoided doing so because of the impossibility of putting itself in the attitude of a “reasonable man," considering what he should have foreseen before anything had actually happened, and at the same time forgetting what it knew had already happened. Viewing what defendant did and the losses the plaintiffs suffered, the judges ought *to be* a just adjustment as between the parties. English judges have considered "policy “a "wild horse" which they have been hesitant to mount and have remained pedestrian in their adherence to the well-worn paths of legal terminology in the exercise of their law-making function. More recently, however, there has been demonstrated a noticeable tendency to expand this function by revising doctrinal formulas

Principles from wagon mound case

1) Same kind of damage - The wagon mound contains the requirement that the foreseeable damage should be of same kind as the damage which actually occurred. The wagon mound demands a more elaborate classification of kinds of damages that: In the wagon mound-1 case damage to claimants wharf was foreseeable and damage to wharf which occurred. The Privy Council follows that a distinction must be done between the damage by fouling which was foreseeable and damage by fire which occurred. The difficulty is to know how narrowly the kind of damage in any given case is needed to be identified.

Tremaine Vs Pike[10]- the rat population of the defendant’s farm was allowed to become unduly large and claimant a herdsmen in the farm contracted Leptospirosis also known as Weil’s disease as a consequence of defendant’s action... even on the assumption that the defendant’s had been negligent in failing to control the rat population the claimant could not succeed. Justice Payne held that weil’s disease is extremely rare and is caused by contact with Rat’s Urine and in Justice Payne Opinion – the contact with Rat’s urine was both unforeseeable and

[10] Tremaine Vs Pike, (1969) 3 All ER 1303

'entirely different in the kind' from such foreseeable consequences as it was highly improbable to get contact with rat's urine from food poisoned with rat or rat bite. The claimant could not simply say that rat- induced disease was foreseeable and Rat – induced disease occurred.

Foreseeability a relative concept- In the wagon mound case the Judicial committee **of** the privy Council accepted and based it's reasoning on the Trial Judge findings that the defendant's did not know and could not reasonably be expected that the furnace pill was capable to be set in fire when placed on water. But in Wagon Mound – 2 the facts and circumstances of the case were different and therefore different evidence was presented. And therefore the Privy council fading was rejected and it was held that the real risk of fire could have been appreciated by a qualified chief engineer of defendant's ship and also there was no justification for discharging oil into the Sydney Harbour which was sufficient to fix liability on the defendant's. we can also say that Mere Fact that damage suffered was unlikely to occur does not relieve the liability of the defendant conduct was unreasonable. In case even though the defendant's claim that the oil due to which explosion was caused was not reasonably Foreseeable but there was no necessity of throwing oil in the water.

Wide meaning of foreseeable - The Wagon Mound case the claim failed on basis of remoteness. The House of Lords in emphasising the difference between the Rules of remoteness in Tort and Contract emphasised that the rule in tort imposes a much wider liability than contract. The defendant in tort will be liable for any type of damages which is reasonably foreseeable as liable to happen even in most unusual cases unless risk is so small that the reasonable man in those circumstances would justify neglecting it.

APPLICATION OF WAGON MOUND IN THE CASES

a) Hughes vs Lord Advocate[11] – The post office employees opened a man hole for the purpose of maintaining an Underground telecommunication equipment. The manhole was covered with tent. One evening it was left surrounded by paraffin lamps but otherwise unguarded. A child of 8 years entered the tent and started playing with one of the lamps. The lamp fell into the manhole which caused a violent explosion resulting in the fall of the boy also in the hole and severe, serious injuries from the burns. It was foreseeable that a child could get burned by tampering of lamps but the explosion could not be foreseen. The house of lord held that though

[11] Hughes vs Lord Advocate , (1963) A.C. 837 (1963) 1

kind of damages was foreseeable but the extent was not, the defendants were liable. **Lord Reid** said in his judgement that "The appellant Injuries were mainly caused by burns and it cannot be said that injuries from burns were unforeseeable. As a warning to traffic, the workmen had set lighted red lamps round the tent which covered the Manhole, and if boys did enter the dark tent, it was likely that they would take one of these lamps with them. If the lamps fell and broke, it was not at all unlikely that the boys would be burnt and the injuries might well be serious. No doubt it was not to be expected that the injuries would be serious as these which the appellant sustained. But the defendant is liable, although the damage may be a good deal greater than which it was foreseeable."

b) Doughty vs Turner Manufacturing Co. limited[12] – The plaintiff was employed by the Defendants. Some other workmen of the defendant let an asbestos cement cover slip into a cauldron of hot molten liquid. It resulted in an explosion and the liquid thereby erupted, causing injuries to plaintiff who was standing nearby. The cover had been purchased from reputed manufacturers and nobody could foresee that any serious consequences could follow by falling of the cover into the cauldron. Held that the damage resulting from the explosion was not that kind off which could have been reasonably foreseeable and thus defendants were not held liable.

c) SCM (United kingdom limited) vs WJ whittle and sons[13]- In this case due to the negligence of the defendant's workmen an electric cable alongside the road was damaged due to which there was a seven hour power cut in the plaintiff's typewriter factory. The plaintiff alleged that as a consequence of power failure, there was a damage to materials and machine and subsequent loss of production which could have been foreseen by the defendants. It was held that as the defendants knew that the said electric cables supplied electric current to factories in the neighbourhood. They could foresee that if the current was cut off there would be a consequent loss of production and hence they were liable for damages caused to the plaintiff.

d) Jolly VS Sutton London Borough Council [14] – The defendants had failed to take steps to remove an old abandoned boat from their land to which the public had easy access. The Obvious

[12] Doughty vs Turner Manufacturing Co. limited 1964) 1 All ER 98
[13] SCM (United kingdom limited) vs WJ whittle and sons [1971] 1 Q.B. 337

[14] Jolly v Sutton London Borough Council, , (2000) 3 All ER 409,

Task was that a child might suffer injury from climbing on the boat and falling through the Rotten Planking; in fact of the claimant and his friend embarked on a futile project to restore the boat and while the claimant was working underneath it, it fell on him breaking his back. The house of Lords Restored the decision for the claimant by the trial judge who held had been entitled to conclude that the accident which occurred which was in range of what was foreseeable, given the ingenuity of the children "in finding unexpected ways of doing mischief to themselves and others.It can be made clear from this case that if the accident occurs in a foreseeable way, as broadly defined the defendant would be liable even though the damage would be greater even that could have been anticipated.

CONCLUSION

It is probable that *The Wagon Mound case* will be regarded by future legal historians as the most famous case of our era. The reason will not be so much because the decision effects radical changes in the law. It will be rather because it finally settles, so fir at any rate as English law is concerned, a controversy which has raged for more than half a century and which has divided both English and American lawyers into two opposing camps. And also, and perhaps primarily, because it rejects a view which has commended itself to many of the most eminent judges and writers of this and the preceding generation. he effect of the decision in *Wagon Mound No. 2***.** is to affirm and explain the test of foreseeability. A tort-feasor is liable according to the explanation given of foreseeability in this case, "for any damage which he can reasonably foresee may happen as a result of the breach (of duty) however unlikely it may be, unless it can be brushed aside as far fetched."**.** This case (*Wagon Mound No. 2*) also establishes that the test of foreseeability is not limited to the tort of negligence but applies also to the tort of nuisance. In *Wagon Mound No. 1*,**.** the Privy Council reserved its opinion on the question whether the *test of foreseeability* could be applied to a tort of strict liability. It has now been authoritatively decided by the House of Lords in Cambridge Water Co Ltd v Eastern Countries Leather Plc[15] that even in cases of strict liability governed by the rule in *Rylands v Fletcher*[16]*,***.** foreseeability of damage of the relevant type, if there be escape from the land of things likely to do mischief, was a prerequisite of liability. However, it has been said that in action for deceit, damages are not restricted to foreseeable damage.

[15] Cambridge Water Co Ltd v Eastern Countries Leather Plc (1994) 1 All ER 53 (HL).
[16] *Rylands v Fletcher* , (1868) LR 3 HL 330.

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