

Tame v New South Wales [2002] HCA 35; Annetts v Australian Stations Pty Limited (2002) 211 CLR 317

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Facts

- Annetts went missing and died on a cattle station of dehydration in the Kimberley
- His parents brought an action against the employers due to suffering nervous shock as a result
- They had enquired about the working conditions beforehand

Issue

- Did the employer owe the parents a duty of care to avoid such psychiatric injuries?

Held

- There was a preexisting relationship between employer & the parents
- It was reasonably foreseeable a person of ordinary fortitude would suffer nervous shock
- The process they learnt about the death was protracted; Gleeson said the CL does not limit cases to 'sudden shock' or 'direct perception' (or immediate aftermath) because of the pre-existing relationship (enquiring about the working conditions)
- Gaudron pointed to the sudden shock rule but said they only limited the scope of liability; something more than the foreseeability is necessary before a duty of care is owed
- Gummow & Kirby pointed to the control mechanisms & stated these reflect a perceived need to keep liability within practical bounds. 2 of these were 'sudden shock' and 'direct perception' but they insisted these mechanisms were unsound and should not be preconditions to recovery. Unprincipled distinctions of this type bring the law into disrepute and the requirement should not be a precondition as it causes unjust decisions. Direct perception had not been accepted by the HCA as essential (*Jaensch v Coffey*) They also identified the connection between the parties ('antecedent relationship')

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