

## Trident General Insurance Co Ltd v McNiece Bros Pty Ltd (1988) 165 CLR 107

<https://lawcasesummaries.com/knowledge-base/trident-general-insurance-co-ltd-v-mcniece-bros-pty-ltd-1988-165-clr-107/>

### Facts

- McNiece Bros Pty Ltd (**McNiece**) sought to enforce an insurance contract made between Trident General Insurance (**Trident**) and Blue Circle Southern Cement Ltd (**Blue Circle**).
- McNiece was the principal contractor for construction work at a plant which was owned by Blue Circle.
- Blue Circle's insurance contract with Trident granted Blue Circle an indemnity by Trident for any workplace injury to non-employees and contractors.
- Mr Hammond, one of McNiece's subcontractors, was injured and sued McNiece.
- McNiece sought the indemnity from Trident.
- Trident argued that the insurance contract was with Blue Circle and that, as per the principles of privity, McNiece had not right to enforce the contract as he was not a party and gave no consideration to form the contract.

### Issues

- Was McNiece entitled to the insurance indemnity, despite the fact that it was not party to the contract (privity) and provided no consideration?

### Held

- McNiece was entitled to the contract's benefits, despite privity and no consideration.
- Commercial convenience and practice required that McNiece to be able to enforce the insurance contract.
- It would be unjust if third parties could not enforce an insurance contract that was clearly contemplated and designed to benefit them.
- While this judgment is an exception to the established principles of privity, the High Court was clear that this only applied in exceptionally limited circumstances ("the insurance exception").
- Mason CJ and Wilson J noted at page 116 that privity was "under siege" throughout common law jurisdictions.
- Toohey J held at page 172 that the "insurance exception" to the privity rule should only apply in the exceptionally limited circumstances of insurance contracts and policies.
- Gaudron J held that McNiece was entitled to the insurance contract benefits on the basis of "unjust enrichment", rather than an exception to the privity rule.
- Brennan J and Dawson J both dissented on the grounds of privity, while Deane J utilised the law of trusts to justify McNiece's success.

## Quotes

"A simple departure from the traditional rules would lead to third party enforceability of such a contract, subject to the preservation of a contracting party's right to rescind or vary, in the absence of reliance by the third party to this detriment, and to the availability in an action by the third party of defences against a contracting party."

(Mason CJ and Wilson J at 123)

## Full Text

Full text available here: <https://jade.io/summary/mnc/1988/HCA/44>

---

Law case summary from [www.lawcasesummaries.com](http://www.lawcasesummaries.com)