

Slide 1

MONAHAN + ROWELL  
LAWYERS

**THE LIABILITY TRAIL**

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Slide 2

**Introduction**

- *Thompson v Woolworths (Q'land) Pty Ltd* [2005] HCA 19 (*Woolworths*)
  - Recent history of law of negligence
  - Summary of *Woolworths*
  - Wider implications of *Woolworths* decision

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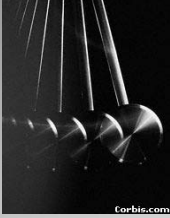
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Slide 3

**The Swinging Pendulum**



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Slide 4

**Examples**



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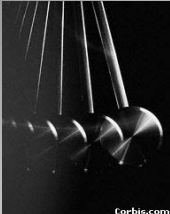
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Slide 5

**The Swinging Pendulum**

  
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Slide 6

**The Woolworths Decision**

- Facts
  - Plaintiff ('P') injured her back whilst moving industrial waste bins to deliver bread to a Woolworths ('W') supermarket.
  - P had hurt her back a few weeks prior to this incident.
  - P and husband owned a bread delivery service.

  
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Slide 7

**The Woolworths Decision**

(cont)

- When delivering to the W loading dock a store man checked goods in (had to wait up to 15 minutes for him).
- Industrial waste bins were left in front of loading dock.
- Delivery drivers would often move the industrial bins.
- P moved bins and hurt her back.
- Evidence indicated the bins were a long standing source of friction between the P and W.

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Slide 8

**Decision of Primary Judge**

- Plaintiff's Case
  - P sued for damages for negligence arguing that W exhibited a systematic failure to exercise reasonable care for her safety.
  - Expert witness suggested W should have introduced procedural controls for moving of the bins.

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Slide 9

**Decision of Primary Judge**

(cont)

- Defendant's Case
  - W argued that the P knew that there was risks involved in attempting to move the bins.
  - Risk to P arose not from W's delivery system but from the P's independent and unnecessary conduct in attempting to move the bins herself.

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Slide 10

**Decision of Primary Judge**

- Held
  - Moving the bins was the responsibility of W.
  - W ought to have made changes to the deliver system.
  - P awarded damages of \$157,991.89

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Slide 11

**Queensland Court of Appeal Decision**

- Reversed primary judges decision.
- Court held that the risk to the P not only foreseeable by W but was also foreseen by the P.
- The obviousness of the risk was factually significant in deciding what, if any, reasonableness was required by W by way of response to that risk.

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Slide 12

**Queensland Court of Appeal Decision**

(cont)

- Found that there was no duty to protect P from this particular risk as she unnecessarily took a risk which was clear to her.
- One dissenting judge would have upheld the finding of negligence but would have reduced the damages by one third for contributory negligence

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Slide 13

**High Court's Decision**

- Common law confers different duties on an occupier depending on the category of entrant.
- More to the relationship – eg quasi employment.
- Held:
  - Duty of care
    - P was required to conform to a delivery system established by W.
    - W's obligation as occupier to exercise reasonable care extends to ensuring that its system did not expose people making deliveries to unreasonable risk or injury

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Slide 14

**High Court's Decision**

(cont)

- Breach
  - W should have had a system which included arrangements for the moving of the waste bins.
  - P had no power to implement such a system.
- Damages
  - Contributory negligence by P.
  - Reduced damages by one third.

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Slide 15

**Implications**

- Duty of Occupier (quasi employment context) – above and beyond standard duty.
- Duty extends beyond the physical premises but also to systems/policies:
  - Eg W's system of delivery.
- Even if the risk is obvious to P, an occupier may still be in breach of duty if there is evidence it could have taken steps to alleviate risk.
- Obviousness of risk is relevant to question of contributory negligence.
  - Personal responsibility?

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**Implications**

- OHS regulations.
- HCA comments re the required standard of reasonable behaviour does not imply the elimination of all risks:  
*"In the case of some risks, reasonableness may require no responses. There are, for instance, no risk free dwelling houses... the community standards of reasonable behaviour do not require householders to eliminate all risks in their premises, or to place a notice at the front door warning entrants of all the dangers that await them if they fail to take care for their own safety."*

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