Tomlinson v Congleton Borough Council

Case Report: [2003] 3WLR 705; (2003) UKHL 47

The facts: The claimant had been seriously injured when he dived into a pond in a country park.

Decision: This is an English case, but an authoritative House of Lords determination, which discusses and applies the Scottish approach to cases on liability for injuries from natural hazards out of doors. The claimant had been successful in obtaining compensation for his injuries in the lower courts and the Council appealed to the House of Lords. The House of Lords allowed the appeal by the Council. They said that the claimant had voluntarily engaged in an activity which was inherently dangerous and that there was no duty on the Council to take steps to prevent people from diving, or to warn people about dangers that were perfectly obvious. An occupier has no duty to provide protection against an obvious danger arising on his land, arising from a natural feature such as a lake or a cliff. However, Lord Hutton said that there might be exceptional cases where a claimant might be able to establish that a hazard from a natural feature was sufficiently great that it required the occupier to take steps to protect people, e.g. a particularly dangerous cliff-top path from which people had already fallen.

Lord Scott said (at p. 735) "Of course there is some risk of accidents arising out of the joie-de-vivre of the young. But that is no reason for imposing a grey and dull safety regime on everyone".

Lord Hoffman said:
"I think it will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land. If people want to climb mountains, go hang gliding or swim or dive in ponds or lakes, that is their affair. Of course the landowner may for his own reasons wish to prohibit such activities. He may think that they are a danger or inconvenience to himself or others. Or he may take a paternalistic view and prefer people not to undertake risky activities on his land. He is entitled to impose such conditions, as the Council did by prohibiting swimming. But the law does not require him to do so."