

TORT

**Negligence – Duty of care – Breach of duty of care – Reasonably foreseeable and probable –
Damage caused by third party –
Whether duty existed to prevent damage caused by third party**

*The President of Majlis Perbandaran Tawau v Amiruddin bin Rasake & 245 Ors and
another appeal*

[2017] 3 MLJ 778, Court of Appeal

Facts The appellant is the Tawau local authority who was in charge of the management of a government housing project (“the Taman”), while the respondents are the residents of the Taman (“the Residents”). The Residents, who received their piped water supply from elevated water tanks situated within the premises of the Taman, had discovered that the cause of the nauseous, foul-smelling water was a dead human body found in one of the tanks. The respondents sued the appellant for damages for the tort of negligence caused by the breach of duty of care by the appellant for failing to prevent the stranger from entering and falling into the elevated water tank that caused damage to the respondents who used and consumed the water. The High Court held that there was a duty of care and a breach of it, and awarded damages to the respondents. The appellant appealed.

Issue The main issue was whether the appellant owed a duty of care to the respondents to prevent a third party from causing damage to the respondents by the third party’s own deliberate wrongdoing.

Held In allowing the appeal, it was held that NO special relationship exists between the appellant and respondents. Therefore, there is no duty imposed on the appellant to prevent harm caused by the deliberate act of a third party, over whom the appellant has no control except in specific circumstances which he identifies. It was also held that it is not reasonably foreseeable as probable, and that it was highly unlikely that anyone would deliberately die in the elevated water tank so as to contaminate the water consumed by the respondents in the Taman.