O modelo de Singapura para o dever de cuidado

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Singapura aplica um teste único para a existência de um dever de cuidado (duty of care) na negligência, fixado pelo Court of Appeal em *Spandeck Engineering v Defence Science and Technology Agency*. Há um requisito preliminar de previsibilidade fática do dano. O tribunal pergunta então se existe proximidade jurídica suficiente entre as partes, levando em conta a proximidade física, circunstancial e causal e eventual assunção de responsabilidade e confiança (assumption of responsibility and reliance). Estabelecida a proximidade, surge um dever prima facie, que pode ser afastado por considerações de política judiciária (policy considerations).[1] O teste aplica-se a todas as pretensões por negligência, incluindo as pretensões por dano puramente econômico (pure economic loss). Singapura rejeitou a regra inglesa de exclusão do dano puramente econômico, o que significa que quem perdeu dinheiro pelo descuido de outrem não é barrado de antemão, mas precisa superar as etapas da proximidade e da política judiciária.[2] Para pretensões envolvendo criptoativos, que são sempre pretensões por dano econômico, isso representa uma vantagem significativa em relação a um foro inglês.

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Notas

1. *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] SGCA 37, parágrafos [73]–[86]. ↩
2. *Spandeck* [2007] SGCA 37, parágrafos [69]–[72], que se recusa a seguir a abordagem inglesa que trata o dano puramente econômico como categoria especial. ↩

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