

Introduction to business law

Law



Issue: Does Megabucks Ltd owe duty of care, yes they owe duty of care because of their 'negligence' the commercial prawn trawlers were unable to fish in the bay for 12 months. The commercial prawn trawlers can certainly claim the damages from the Megabucks Ltd who has failed to perform their duty of care.

To be liable for negligence to another person, a person, a person must owe a legal duty of care to that other person, One explanation is that a duty of care means a duty to take reasonable care or to exercise reasonable skill (both duties) (The legal meaning of negligence is not always the same as the ordinary meaning of negligence. In the present Megabucks case they have failed to take reasonable care for the removal of debris which has caused damage to the commercial prawn trawlers fishing gear and which led them to stay away from fishing for 12 months. Tort law provides legal remedies for damage caused by negligence: "negligence means failure to exercise reasonable care".

Negligence is the tort which now dominates modern tort law after the successful test case of *Donoghue v Stevenson* in 1932 involving the plaintiff getting sick after consuming a contaminated drink (because of a snail in the bottle).

Negligence was established in 1932 in the decision of *Donoghue v Stevenson*, negligence has become by far the most important area of tort law. It is capable of almost infinite expansion and adaptation. The tort of negligence protects the person, property and economic interests from damage caused by another person not taking reasonable care. Case Law *Donoghue v Stevenson*: This is the case which set out the liability of a
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manufacturer in the tort of negligence to the ultimate consumer of its product where there was no contract between them. This decision changed the law as it then stood, and it laid the foundations for the whole of the modern law of negligence Case Example: On 26 August 1928, Mrs May Donoghue, a shop assistant from Glasgow, and a friend stopped at Mr Francis Minchella's Wellmeadow cafe in Paisley, a town 20 Kilometres from Glasgow. It was Mrs Donoghue's friend who ordered ice cream and ginger beer for her, it was Mr Minchella who poured the drink with decomposed snail into the glass for Mrs Donoghue.

Mrs. Donoghue who suffered severe shock, and later gastroenteritis, mental depression and loss of wages following time off work, sued the defendant David Stevenson, Aerated Water Manufacturer of paisley, plus interest as damages and costs, alleging negligence. Mr Stevenson's defence was that no reasonable cause of action was disclosed, ie that no law existed to support the plaintiff's claim.

Rule : So it is clear that Megabucks Ltd owe duty of care to commercial prawn trawlers. Lets see when there is a duty of care? what are the pre-requisites? what are the salient features of a duty of care

There are three prerequisites for an action in negligence which are Duty of care, Breach of the duty of care and Damage. A duty of care: this is a duty owed by one person to another because of the relationship between them which might cause injury. A duty of care is a multi factor concept. It arises from the following important features (sometimes called salient features") which when combined make up a sufficiently close relationship to give rise to a duty of care.

1. Reasonable foreseeability- but not only foreseeability Foreseeability alone is not sufficient to give rise to a duty of care " The true question in each case is whether the particular defendant owed to the particular plaintiff a duty of care having the scope which is contended for, and whether he was in breach of that duty with consequent loss to the plaintiff." 2. Vulnerability of the victim: " The vulnerability of the plaintiff to harm from the defendant's conduct is therefore ordinarily a prerequisite to imposing a duty (of care) 3. Reliance: Reasonable reliance is an important element of a duty of care, In addition, the defendant's knowledge and control and the plaintiff's vulnerability can point to a duty of care being owed.

Apply: Whether a duty of care exists in a particular situation is a question of law and not fact this means that the judge decides if there is a duty of care (a question of law). If there is a jury, it decides whether the facts fit the duty of care (a question of fact). The classic test of when there is a duty of care under the " neighbour" test of Lord Atkin in *Donoghue v Stevenson* is the place to start.

Neighbour Test: In English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of 'culpa', is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of

their remedy. The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour. and the lawyer's questions, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

In the present case this neighbour test is very important because commercial prawn trawlers are considered as neighbour to Megabucks Ltd and as per this neighbour law which also proved in the case of Donoghue V Stevenson. So according to this Megabucks should have taken proper care and must have foreseen the effect of not removing the debris which has affected their neighbours the commercial prawn trawlers. Megabucks has failed to perform their duty of care which caused damage to the fishing gear and made the commercial prawn trawlers stay away from fishing which is the livelihood of the commercial prawn trawlers for 12 months.

Conclude: with the above information it is very clear that Megabucks Ltd owe duty of care towards the commercial prawn trawlers which has caused the damage to the prawn trawlers so they can certainly claim the actions against Megabucks Ltd with regard to the Tort of negligence.

(B) What action or actions in tort may the commercial prawn trawlers claim against the council? Issue: The issue is whether the commercial prawn trawlers can claim any action or actions against the Council. The council's officer has inspected the site and carelessly failed to notice the dangerous size of the pile. About a month after the inspection the pile of debris has become considerably larger which led to the collapse. Even though it's the

council's officer who has not performed his duty properly the council is responsible for its employees act as per the Vicarious liability of employer.

Rule: Let's see what is Vicarious liability of employer Under the doctrine of vicarious(secondary) liability, one person is responsible for the wrongful act of another person because of the legal relationship between them, even if the first person is not personally at fault.

Employer/ Employee: Employees are vicariously liable to third parties for the actions of their employees in the course of their employment. The unlawful action must be within the scope of the employee's actual or implied authority, or incidental to it. Employers are not vicariously liable for the actions of employees who act outside the scope of employment on a frolic of their own, and the employee may be personally liable.

An employer found to be vicariously liable for an employee's wrongful act may be able to claim an indemnity from the employee. The employer may have a contractual right to claim an indemnity if the employee's wrongful act amounts to a breach of the employee's contract of service. In addition, where the employer is guilty of no personal fault, the employer may be able to claim an indemnity from the employee as a joint " tortfeasor" under the laws of contribution. The principle has been modified by statute in some jurisdictions, including the introduction of proportionate liability under the new civil liability legislation introduced after the " tort law crisis". In these jurisdictions, an employer cannot claim an indemnity against an employee unless the employee's wrongful act amounts to serious and wilful misconduct.

Apply: So as per the law of vicarious liability of employer, the council is responsible for the act of the council's officer who has inspected the site and carelessly failed to notice the dangerous size of the pile. If the officer would have done his job correctly by noticing the dangerous size of the pile the council would have ordered its removal under the council's statutory power.

The basic rule of vicarious liability is that an employee is vicariously liable for the negligence of an employee provided the employee was acting "in the course of employment". A corporation can only act through its employees and agents so it is necessary to decide in which circumstances the law of agency or vicarious liability will apply to hold the corporation liable in tort for the negligence of its employees. Case Example

Meridian Global Funds Management Asia Ltd V Securities commission (1995): Two employees of the company, acting within the scope of their authority but unknown to the directors, used company funds to acquire shares. The question was whether company knew or ought to have known that it had acquired those share. The privy Council held that it did. whether by virtue of their employment, their acts and omissions and their knowledge could be attributed to the company, and this could give rise to liability as joint tortfeasors where the directors have assumed responsibility on their own behalf and not just on behalf of the company.

so considering these facts it is clear that the council is responsible for the negligence of the council's officer who was very much in course of his employment when he visited the site for inspection and carelessly failed to notice the dangerous size of the pile which has caused the damage to the fishing gear of the commercial prawn trawlers which made them stay away

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from fishing for 12 months. Conclude: Yes, the commercial prawn trawlers can claim actions against the council for the negligence of his officer.

(C) What damages would the commercial prawn trawlers be entitled to from either the council or Megabucks Ltd? Would either the council or Megabucks have a defence? Issue: The issue is whether commercial prawn trawlers are entitled to claim any damages from Megabucks or Council and we can say that yes they are very much entitled to claim the damages under the civil liability Acts

Rule: The basic remedy in tort is an award of damages as compensation. However, in some situations such as the torts of trespass or nuisance equitable remedies such as the injunction may restrain a continuing breach. The purpose of an award of damages is fair compensation not punishment or retribution.

Consequential loss is also recoverable in the case of damage to or destruction of a profit-generating object such as Machinery. Consequential loss may be economic loss rather than property damage, and it suffered by someone rather than the owner of the property (eg someone who the owner has allowed to use the property), it may be recoverable under the ordinary principles of negligence regarding recovery for economic loss.

Liability for Economic Loss : The Law of negligence, based on the existence of a duty of care, recognises that the " categories of negligence are never closed". It builds on Lord Atkins's neighbour test and has allowed recovery of damages for pure economic loss (financial loss). Four Types of Economic(financial) loss

1. Economic loss to the plaintiff as a result of physical damage to the plaintiff's person or property
2. Economic loss to the plaintiff as the result of physical damage to person or property suffered by a third party
3. Economic loss actionable by the plaintiff caused by a defective product with no injury to person or property
4. Economic loss actionable by the plaintiff following negligent statements which may or may not be accompanied by damage to person and/ or property

Apply: so the rule is that the plaintiff can claim four types of economic loss from the defendant according to the damage caused to him. In our present case the commercial prawn trawler can claim two damages from the Megabucks Ltd and Council which are 1. Economic loss to the plaintiff as a result of physical damage to the plaintiff's person or property : This economic loss follows a breach of duty of care, and entitles the plaintiff to be put in money terms in the same position as if D's negligence had not occurred. There may be compensation if the damage was both reasonably foreseeable and a direct consequence of the negligence

2. Economic loss to the plaintiff as the result of physical damage to person or property suffered by a third party:

Case Examples : Caltex Oil(Australia) Pty Ltd v The Dredge " willemstad" (1976) Caltex Oil sued for damages for negligence: 1. the owner of the dredge " Willemsted" and 2. the company responsible for plotting the path to be followed by the dredge. Caltex claimed damages for economic loss expenses caused by the loss of the means of obtaining preprocessed petroleum at its terminal, including the cost of alternative road and sea transport to the terminal.

Caltex was successful this was an exceptional case where D knew that P individually, and not merely as a member of an unascertained class, would be likely to suffer economic loss if D were negligent. Liability was based on foreseeability and the breach of a duty of care.

Conclude: From the above rules it is clear that Commercial prawn trawlers can claim the damages from the Megabucks and the Council who are responsible for the damage of their fishing gear which made them away from fishing for 12 months.

Defence for Megabucks and Council: Both these parties can defend themselves in the court of law as per the contributory negligence under the civil liability acts. Contributory negligence regarding personal injuries has been codified in some states and territories as part of the civil liability acts passed after Review of Negligence reforms of 2002 and 2003. The standard of care required of the person who suffered damages is that of a reasonable person in the position of the person this is based on what that person knew or ought to have known at the time.

Under the civil liability acts, the court can reduce liability by 100% if a court thinks that it is just and equitable to do so if there has been contributory negligence by P. A 100% reduction in liability would defeat the claim for damages.