

Elements of tort negligence with reference to specific cases



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Consider the elements of tort of negligence with references to cases

Negligence is most commonly perceived as failure to take reasonable care not to cause someone harm or loss as somebody breached a duty of care. In most cases, claims that emerge from accidents or injuries typically hold the person responsible liable for any harm cause to the injured. Furthermore, this process is determined through a system known as tort of negligence.

Tort of negligence generally consists of three main elements which are identified as duty of care, breach of duty, and harm caused by breach of duty. Duty of care is a legal duty which any single person has an obligation to take reasonable care not to cause harm or injury to another person.

In many undergoing circumstances duty of care can be breached however not in all cases. A duty of care is breached when a person is harmed or injured in an incident due to the lack of carelessness of another person. In addition, if the offender's actions were reasonably foreseeable (offender knew or ought to have known the action would proceed great risk of injury or harm to a person) then this specifies that a reasonable person in the same circumstances would have not acted that way and ultimately diverted the risk of injury. Harm caused by breach of duty must be established by the plaintiff in the means that demonstrates the carelessness act of the defendants which directly or indirectly cause the harm. In other words, the plaintiff must provide reliable evidence indicating the defendant is liable for the incident, otherwise if the defendant's actions caused the injury through random or unexpected events then this would presumably be deemed as unforeseeable which conclusively the defendant will not be liable.

Within a negligence case, the plaintiff must prove all the elements accurate and present claims to indicate that the defendant acted negligently in order to win. However even if the plaintiff has provided all three elements of the tort, the defendant can still avoid being liable or partially liable to the case if they can establish the existence of one of more defences. Contributory negligence is a common defence to a tort claim, if it is evident that the plaintiff may have contributed to his or her injuries then the defendant and the plaintiff will then both be allocated the liability. An example of this is if a car driver or passenger in the car do not wear a seatbelt. In doing so may not be the cause of an accident however can contribute to the significant injury, which in this scenario both the plaintiff and the defendant have partial fault in the causing the overall incident.

A recent case recorded in August 2017 reported that a farmer testified that a chemical spray damaged his crops, in doing so caused the farmer to lose almost 1 million dollars' worth of tomatoes. In 2013 the farmer noticed that his crops were luminous and covered in yellow spots, he initially thought that the crops were hit by a bad frost however he later noticed that his crops were poisoned by a deadly chemical toxic to grapevines and never to be used in vineyards. The cause of the incident is referred to as spray drift which causes unintentional off target contamination, which the court was convinced that the spray drift had come from the plaintiff's neighbour.

Regarding the tort of negligence, the defendant's duty of care which his crops were sprayed with chemicals can be argued that his actions were not reasonably foreseeable however this does not justify that the overall

consequences of the spraying omission caused possible internal and
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negative external damages to the plaintiff's crops. The plaintiff claimed that 8000 of his vines were required to be removed and replanted to restore his farming procedures back to normal. In the defendant's case, he claimed that there were no facts indicating his spraying activities caused the damages to the crops and furthermore claimed that the damages caused to the vines were from inadequate irrigation and excessive pruning. The plaintiff received no compensation for the damaged crops costing nearly 1 million dollars however 3 years later in 2017 the court had come to a decision and ordered the defendant to pay the plaintiff over 7 million dollars for the damages caused.

Under the *Civil Liability Act 2003* (Qld) if a plaintiff is caught in an incident and is intoxicated, it is seen as them contributing to their own injuries. This is most commonly known as contributory negligence. In Swainson, an incident had occurred where the plaintiff had been drinking at a local pub becoming intoxicated, soon after he decided to hitchhike home instead of riding his bike as he was too intoxicated. While attempting to hitchhike, the plaintiff chose to walk on the fog line of the road with his back to traffic at night being extremely dark outside. The defendant under the circumstances failed to notice the plaintiff on the road in time, causing the vehicle to collide.

With the duty of care of the defendant, the plaintiff claimed that the defendant failed to notice the plaintiff on the road consequently causing the accident, however it is revealed that the plaintiff swerved to the right when he saw the vehicles lights illuminate in front of him. The defendant breached the duty of care as failing to keep a proper look out and slowing down to avoid the crash has permitted the court with enough information to decide <https://assignbuster.com/elements-of-tort-negligence-with-reference-to-specific-cases/>

he was indeed negligence to the accident. The harm caused by breach of duty in this incident is the defendant failing to notice the plaintiff in time to avoid the crash, in the defendant's circumstances he had come around a corner and had noticed the plaintiff and figured he could drive past him safely. In this case, the first appeal was that the plaintiff was found to be 40% liable for the accident occurring. Furthermore, the plaintiff was found to be 60% liable for the incident as the defendant made it evident that the plaintiff could have walked on the footpath beside him however decided not to and additionally failed to walk on the right side of the road and stepping further onto the road. In the end the court determined that the plaintiff was unable to take reasonable care for his own safety however the defendant was also held responsible for failing to avoid collision as he had seen the plaintiff moments before the crash.

Consider and discuss how you believe principles of negligence will be important for you in your professional life.

Negligence is the basis of taking proper precautions to not cause harm or injury to someone else, however in the subject of accounting its meaning varies. Within the field of accounting, negligence primarily means failure to perform professional duties and causing errors or false statements in the accounting procedure. Becoming an accountant comes with its own risks, fraud is a major example within accounting, it can vary from different types of fraud such as tax fraud, credit card fraud and bankruptcy fraud. Inside a company, one individual or in some cases multiple individuals or even businesses can instigate fraudulent activities and provide false information or statements to deceive another party or business. The perpetrators

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committing the fraud produce false claims for small loss or purchases made which in this scenario the company can just review the expense without second thought as it is viewed as a small expense which does not require investigation.

Accountants have freedom and full control of the company's assets and expenses, this essentially allows accountants to the opportunity to forge information or intentionally manipulate of financial statements and expenses for beneficial purposes. An example of accounting fraud is when an accountant overstates its assets, accountants provide a larger amount of assets than what it truly is, in doing so will deceive the company into believing they have more assets than stated. Fraud accountants also fabricate its liabilities by presenting fewer liabilities than reality, this can essentially fabricate the liquidity of the company. Evidently if statements provided by the company goes to the public, this indicates to potential investors that the company has enough liquid assets to compensate for the liabilities and mislead the investors into investing. Fraud can have devastating effect on a business, accountants can basically fabricate and mask the company's financial health into a misrepresentation of the company's financial position to benefits themselves. Accountants caught disclosing false information can be held accountable for fraud and in the end lead to legal charges and in some cases jail time.

In conclusion, the principles of negligence will be an important aspect of working in the field of accounting as understanding and maintaining a positive negligence will allow for a responsible working environment.

Keeping a good level of duty of care can become a beneficial aspect to the <https://assignbuster.com/elements-of-tort-negligence-with-reference-to-specific-cases/>

future as not considering taking reasonable care and causing someone else harm can become disastrous. Having an accounting liability will enforce pressure and a heavy burden when performing accounting duties, however this will allow me to adapt to the pressure and begin to create an appropriate working environment to complete mandatory obligations.

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