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Chantelle forests v Department of Arts. Culture and the Gaeltacht 1) The relevant information that has bearing on this instance

vWhat was the old wellness status of Chantelle Woods before the accident?

vWhat portion of the edifice was she in? Where there any mark to state that staff and visitants are prohibited from coming in? vWas at that place any cautiousness mark placed on the stairss instance?

vWhat type of pes wear was she have oning when the accident occurred?

vHas anyone of all time fell from the measure instance before? vWas she transporting anything while mounting the stairss? vDid she used the beam that was provided on the stairss?

From the probe I had done in respect to the accident Mrs Wood had at the topographic point of work during her lunch interruption. I was able to acquire the replies to the inquiry listed above which had bearing on this instance.

Mrs Woods is enduring from short eyesight which means that she had to have on her spectacless at all times. The image of Mrs Woods that was replayed signifier the CCTV camera show that she was walking on the stairss when the accident occurred without her spectacless. The topographic point where the accident occurs was non appropriate topographic point provided for staffs to hold their interruption. although the floor was wet and there was no cautiousness mark to bespeak that it was a wet floor.

She had proper chosen to travel at that place in order to hold a quite topographic point to chew the fat with her friend on the phone. It is really obvious that the sort of places Mrs Wood had on can take to a autumn even when the floor is dry. as the hill was approximately seven inches high. This is

neither easy to walk with nor mounting the stairss with. Despite that the floor was wet. there was no study that anyone had fell from that stairss on that peculiar twenty-four hours expect Mrs Woods. I besides get to understand that Mrs Wood was fighting with a heaving file with one on manus. speaking on the phone and mounting the stairss at the same clip. The beam provided was non used by Mrs Woods because she had her custodies engaged with material. Analyze this state of affairs there is a immense possibilities that an accident can happen.

Negligence

2) Negligence What is?

“ Negligence can be defined as the failure to move sensible in any circumstance to avoid doing harm or hurt which is foreseeable” . (World Wide Web. wikipedia. com [- & gt ; 0]) accessed 5/12/12 In other words it merely means injury caused by sloppiness but non knowing.

Donoghue V Stevenson. This jurisprudence of carelessness was established in the instance.

A adult male bought a bottle of ginger beer signifier a store. The adult male gave the beer to his friend who drank it and found bullet at the underside of the bottle. As a consequence of what he saw. he had a daze and terrible stomach flu. She took a legal action against the maker.

The Judge

“ Analyse the regulations of carelessness that the maker of a merchandise owed a responsibility of attention to the terminal user of their merchandise. If they failed to exert a sensible responsibility of attention in all circumstance and a individual suffers loss or harm as a consequence of their carelessness. therefore they made themselves apt for the person’s loss under negligence” . (Davenport. 2008)

Before any instance can win under carelessness the undermentioned component must be established

Component of Negligence

vDuty of Care:

Is a legal duty on the single ensuring that they adhere to a criterion of sensible attention when executing an Acts of the Apostless they could foreseeable injury other. Everyone owes a sensible responsibility of attention to avoid foreseeable things that would probably wound or harm their neighbor. The word neighbor is the people closer that can be straight affected by our action. The maker of a merchandise owes a responsibility of attention to the terminal users of their merchandise. An employer owes a sensible responsibility of attention to their employee by supplying a safe topographic point for them to work.

The instance of Ryan V Ireland 1989

Explain the extent the employer owes their employees a responsibility of attention to their employees. The complainant was a soldier who was working under the supervising of the Superior officer in a struggle state of

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affairs. So many people lost their lives at that peculiar topographic point where he was assigned. as a consequence of gunfire. This made the full soldier on guard to abandon their responsibility in order to salvage their lives. But after some yearss the gun fires cease and the country was declare safe. The superior officer ordered the complainant to return back to their normal place. The complainant was shot at that peculiar instantly after his recommencement this lead to his disability.

The Supreme Court

“ Held that the province as an employer had failed to take sensible attention of his retainer. ” the Officer owes the complainant a responsibility of attention. although the work of soldiers involves ineluctable hazard of decease and hurt. A sensible adult male can foreseeable that there is a possibility of gunshot at that topographic point where the complainant got injured ; as so many people had lost their lives there earlier. The superior officer who sent an employee under his attention to that same topographic point where killing are taking topographic point did non move sensible in anyhow ; therefore the Supreme Court ruled that the province was apt for the complainant disability. (Brian Doolan. 8th edition. 2011)

The section of Arts. Culture and the Gaeltacht owes a responsibility of attention Mrs Woods which is to supply a safe topographic point for her to a work as an employee. If the work of a soldier that involves ineluctable hazard of decease and hurt. yet the employer was held apt for the disability of a complainant that got himself involves in such occupation. Therefore the section of Arts. Culture and the Gaeltacht should be held apt because it is

unforeseeable that Mrs Woods can lost her enjoyment of life due to the nature of her occupation. It is really obvious that the vinyl surface of the steps was notoriously slippery. A sensible employer can anticipate the possibility of anyone particularly a female erosion hill can had a autumn due to the state of affairs of the landing. It is the responsibility of the employer to guarantee that there are cleaners on responsibility during the on the job hours to maintain the environment clean and save.

vBreach of the responsibility of attention:

Is the failure to move sensible or protect person who a individual owed a responsibility of attention from the been affected negatively by our action. In this instance of Mrs Woods versus Department of Arts. Culture and the Gaeltacht. turn out that there was a breach in responsibility of attention. It is the responsibility of an employer to supply safe topographic point for the employees to work. During the on the job hours cleaners and security were supposed to be on responsibility to clean up up the environment. or indicate that peculiar topographic point by puting a cautiousness mark to state that the floor was wet. Even if Mrs Woods was speaking on the phone while walking on the land. seeing the cautiousness mark would hold made her to take proper attention of her stairss. In this circumstance. failure to bespeak that peculiar topographic point was non safe to work is the breach in the responsibility of attention.

vcausation:

This is principle that proves the nexus between the suspect carelessness and the claimant or plaintiff loss or amendss. It merely means that if the breach

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in the responsibility of attention owed to whoever is due for their harm that they are enduring from. The Egg-shell skull regulation

“ This rule provinces that the suspect should take their victim as they found them” . (Ursula Connolly. 2005) . Anyone who causes harm to another individual must pay for whatever hurt the individual is enduring from. It does non count if the hurt is worse than what another individual would hold expected.

In the instance of Vosburg v Putney

In United State. 11 old ages old male child kicked 14 old ages old male child. who already had an unknown microbial in the shin while at school. The microbic can easy be irritated by boot. As a consequence of the boot the 14 old ages old lost the usage of his leg. The tribunal ruled that the boot was improper ; therefore the 11 old ages male child was held apt (www.wikipedia.com) accessed on the 17/12/2011.

Although Mrs Wood already has an bing spinal column job. she was still able to make her normal occupation without any complain. It was merely a minor job for her because it did non halt her from making anything. As a consequence of the accident she had during her tiffin interruption made her minor hurt worse and inability to return to her normal occupation. As we all know working with computing machine involve sit down over a period of clip depend on the nature of the occupation. There is the possibility that Mrs Wood would non be able to make any occupation that as to make with sitting down over a period of clip. due to the nature of the hurt which occur at the her topographic point of work. Falling from 10 to 12 stairss and set downing <https://assignbuster.com/common-law-college/>

a caput at the underside could ensue to a future hurt. Therefore the employer should be held apt for her hurt harmonizing to the egg shell skull regulation which says that our victim should be taking as we found them.

The type of the hurt:

There are two types of hurts that are recognised in jurisprudence. which are as follow.

vSpecial hurt:

These are the hurt that are quantifiable in nature. illustration loss of hearing. hospital measure etc.

vGeneral hurt:

They are less quantifiable in nature but more subjective. Example includes hurting. loss of agreeableness and enjoyment of life and future wellness job etc. I would sort Mrs Woods hurt as an hurt under general amendss. because she is enduring from hurting. inability to make the occupation where she earn her life and there is besides a possibility that she will hold a future spinal cord job as a consequence of the accident she had at the topographic point of work.

Although the accident Mrs. forests had at her topographic point of work. was non knowing or calculated act. but she contributed to it.

Conducive carelessness:

This is the state of affairs whereby the Plaintiff contributed or failed to move sensible to procure her ain safety.

From my ain personal probe. Mrs. Woods contributed to the accident in so many ways. like chew the fating on the phone with her friend while mounting the stairss. It is really obvious that all her attending were on the phone instead down the concentrating on the stairss she was mounting. Despite that the floor was wet ; there are other grounds to turn out that accident would had occur due to the carelessness of Mrs Woods ; failure to have on her spectacless. walking with 6 inches high heel etc. How could she be able to place the topographic point that was wet without have oning her spectacless when she enduring from short eyesight. Again the 6 inches high heel she had on was excessively high to be worn on a on the job environment.

Badger v. The curate of defense mechanism EWCH 2005

A widow took a legal action against the curate of defense mechanism on behalf of her dead hubby. who was a tobacco user. He was employed as a boiler shaper in the section. During the class of his employment. he was exposed to asbestos dust and fiber which made him to be a patient of lung malignant neoplastic disease that leads to his ill-timed decease. The medical grounds proved that his uninterrupted smoke wont contributed the lungs malignant neoplastic disease that lead to his premature decease.

Justice Stanley Brown

Refers to subdivision 1 (1) of the jurisprudence Reform (conducive carelessness) act 1954 A individual that suffers amends. partially from his ain mistake or the mistake of another individual excepting the suspect. shall have reduced recoverable amends as consequence of his sloppiness as required by jurisprudence. Therefore Mrs. Badger claim was reduced by 25 per centum.

Therefore there shall be a decrease on the claim of Mrs. Woods as she had failed to exert a sensible attention for her safety.

The restriction Period

This is the period of clip in which an person or administration are given the chance to action for the civil wrong that occurs. Within this period. anyone that which to do a claim for what he/she suffers has a consequence of the behavior of the suspect. has the right to make so within the period of clip ; but after this clip limit the instance is said to be statue barred as the right to do a claim has been ceased. In the instance of Mrs Woods v the section of Arts. Culture and the Gaeltacht. The instance was within the restriction period. as the accident occurred in February and in August the twelvemonth she took a legal action against her employer. She made this claim under personal hurt and the restriction period for such instances is two old ages. Her claim is non statue barred because it was within a twelvemonth.

Case two

Mr. Cuddy a buyer who took a proceedings action under negligent mis-statement against Wood Bell Camp about the belongings he purchased which was falsely calculated by Woods Bell Camp's employee.

Negligence Mis Statement

What is Negligent Mis-statement?

Negligent mis-statement is the representation of fact. heedlessly made which is non on the favor of the claimant. It can besides be refers to as inaccurate statement that is supplied by a trusty individual to another who relies and move harmonizing to the information he had received. Statement like this are ever disadvantages on the side of the claimant.

Some of the disadvantages can be loss of income. enjoyment of life etc. For a individual to be apt under negligent misstatement. the particular relationship must be established. Particular relationship is the trust or the relationship that issue between the shaper and the receiver of the statement. The shaper should be cognizant that the receiver relies and Acts of the Apostless based on the information received from him/her. It is the responsibility of the shaper of the statement to guarantee that the information supplied is right in order non to be apt for it. This particular relationship was established in the instance of

David Walsh v. Jones Lang Lasalle Ltd [2007] IEHC 28.

The Plaintiff claims for amendss for compensation for the loss and amendss he had sustained as a consequence of negligent and negligent misstatement from the suspect. The complainant purchased a belongings from a well

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known house of auctioneer retained by the proprietor of the belongings. The complainant was given 23. 057 square pessa as the entire measuring of the floor. He did not reach a private surveyor to mensurate the floor country in order to corroborate if the measuring supplied by the suspect were accurate. He purchased the belongings for ? 2. 34200 Irish lbs. The buyer subsequently happened out that the floor country was 1. 817 square pessa less than was given to him by the suspect. He took a legal action against suspect under negligent misstatement.

Judge Quirke

“ Deals with this issue stating that the suspects failed to exert necessity and near criterion of attention which a buyer is entitled to anticipate from a reputable auctioneer. Therefore is a breach in the responsibility of care” .

Walsh V Jones Lasalle Ltd instance is rather similar to Cuddy v Wood Bell Camp.

The complainant Mr Cuddy did not to the full rely on the information given to him by Wood Bell Camp because he contacted a belongings surveyor to analyze the belongings before he made up his head to buy the belongings. He made a loss on that belongings because the floor measuring is 30 % lesser than what he was given to him by the auctioneers. Forests Bell Camp is apt of negligent misstatement by providing an inaccurate computation. In the instance of Walsh V Jones Lasalle. the high tribunal ruled that most auctioneers had some of signifier of disclaimer on their booklet “ Judge Quirke explained that the disclaimer comprises of an attempt to protect the agent signifier comparatively minor mistakes. He said that he would

anticipate their measuring to accurate which the buyer can trust upon” . In this facet of it. Wood Bell Camp has failed for their inaccurate measuring and the buyer who relied on upon them had made a loss on his purchase.

Judge Quirke

If the suspect wished to reserve to itself the right to print within its gross revenues booklet. precise measurings which were in fact grossly inaccurate and. to alleviate itself of liability to the class of individuals to whom the booklet and its contents were directed. so there was an duty upon the suspect to pull to the attending of the complainant and other prospective buyers the fact that the apparently precise measurings published were likely to be entirely undependable and should non be relied upon in any fortunes. Satisfy themselves as to the rightness of the information given the suspect failed to dispatch that duty. (Walsh v Jones Lasalle ltd)

Since forests Bell Camps had besides failed to information the buyer non rely on their measuring. they should besides be held apt for the loss of the buyer harmonizing to Judge Quirke in Walsh V Jones Lasalle Ltd instance.

Vicarious Liability

Vicarious liability is a legal rule that transportations liability of an hurt to a individual who did non do the hurt. but who has specific relationship to a individual who acted negligently. The proprietor of a vehicle is apt for the civil wrong committed by his driver. an employer is held apt for his employees negligent act. while at work under the class of employment (this is during the working hr when an employer assigned an employee to specific

undertaking) any civil wrong committed by the employees while making the undertaking is known as a civil wrong committed during the class of employment. There is a particular relationship that exists between the employer and the employee. Therefore Wood Bell Camp should be held apt under vicarious liability act for the civil wrong committed by the Brody Shine. because he was employed by the company. who assigned him to sell the belongings purchased by Mr Cuddy.

Defense mechanism

consent and contributory carelessness

Consent refers to the proviso of blessing or disapproval. sing a specific issue after much consideration. this is really of import because it render contact legitimately. Although Wood Bell Camp was cognizant that Mr Cuddy has assigned a belongings surveyor to analyze the belongings. but they were non cognizant that the surveyor were merely trusting on their ain measuring alternatively of taking his ain personal measuring of the belongings. Mr Cuddy besides contributed to his ain loss by neglecting to guarantee that the belongings surveyor he had assigned to take the measuring of the belongings and compared it to the one supplied by Wood Bell Camp before buying the belongings.

“ the tribunal ruled that the responsibility of attention of which the complainant owes was to guarantee that the measuring of the belongings which the suspect published of the gross revenues booklet was is accurate before buying the belongings. ” (In the instance of Walsh V Jones lasalle ltd)

Although David Walsh did not contact a belongings surveyor to analyze the belongings before he purchased it. Mr Cuddy did but merely failed to guarantee that the measuring are accurate this made him contribute to his own loss. If had he done his own measuring and convey it to the consciousness of Wood Bell Camp. I am certain the monetary value would have been reduced for him to accommodate the right measuring. Another auctioneer would have been assigned by the company to recapture the floor measuring and compared it to what Mr Cuddy belongings surveyor had provided.

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