Michelle v canconcert

Law, Common Law

Since Michelle suffers fromdepression, a recognized psychiatric illness, and does not suffer any physical injury, this is a case ofduty of care(DOC) under Mental Harm (MM), as provided in sis CLAW. Circumstantial factors will be used to answer the reasonable verifiability question. From the facts, 'sudden shock can be established as Michelle was in the midst of buying water when she was suddenly shocked by the bang and screams. Determination of DOC then falls upon sis(2)(b). The contentious issue is whether hearing the accident and its aftermath constituted Witnessing.

A similar (but not identical) statutory interpretation issue arose in Wicks/ Sheehan, and the courts took a broad interpretation of the statute. Following this trend in interpretation, the concept of Witnessing should therefore not be limited to sense of 'sight' alone, as it is reasonable in such circumstances for one to be affected psychotically by sounds. By referring to provisions in sis(1)(c) CLAW, it can be further inferred that in general, statute intends for witnessing to encompass both concepts of 'sight' or 'sound' for MM.

It was reasonably foreseeable that Michelle could suffer MM under sis(2)(b) as she dinettes Ben being injured and put in danger. The fact that Ben's leg was broken due to the collapsed seating area shows that he was injured and being put in danger, and is still continually injured and being put in danger till Ben receives medical assistance. Therefore in considering those factors, it was reasonable for Michelle to suffer MM. DOC is established. Breach: The facts indicate that Concerted had been careless and caused the seating area to collapse.

Since Consonance's conduct was negligent, there is breach of duty. Causation: In establishing necessary condition, the 'but for' test is satisfied by showing that the incident had a profound effect on Michelle, resulting in depression. This satisfies factual causation. No scope of liability (SOL) issues as Michelle MM is direct result of the collapse seating area. Michelle depression is the kind of harm that is reasonably foreseeable due to Consonance's admitted negligence for the incident. Defenses: No defense available, thus Concerted fully liable for negligence.

Fauna v Concerted Pity Ltd Since Fauna suffers from a depressive episode, a recognized psychiatric illness, and does not suffer any physical injury, this is a case of DOC under MM, as provided in sis CLAW. From the facts, 'sudden shock can be established as Fauna received sudden tragic news about the concert. Given her close relationship to Ben, it is reasonably foreseeable that she will suffer from nervous shock. Fauna satisfies the provision in sis CLAW as she is Ben's mother, hence satisfying both sis(2)(c) and CLAW.

It was established that Concerted admit liability in the tort of negligence concerning Ben's injuries. In pursuant to sis(1)(a) of CLAW, Consonance's liability should also extend to Fauna, as she is a parent of Ben and afamilymember of Ben. Fauna would have legal remedy in the tort of MM. Ben v Lisa As Alias's conduct was a clear positive act causing further injury, this is a non- problematic case. Existence of DOC depends on reasonable verifiability of class of plaintiffs. By subsuming Ben under a broad class of plaintiffs - 'persons receiving aid' - the requirement of verifiability is easily fulfilled.

Thus, it was reasonably foreseeable that Ben would suffer subsequent injury if Lisa failed to take reasonable care while rendering Ben aid. Hence, DOC is established, and Lisa is liable in relation to positive acts. Alias's act of treating Ben with poison was negligent. Since the possibility of carelessly rather injuring Ben by treating the wound with poison is not far-fetched or fanciful, verifiability exists. The significance of further injuring someone is also a substantial risk.

In considering the reasonableness of possible precautions, the issue of social utility may be raised to Justify the lack of taking precautions to avoid these risks. Yet, the likely conclusion is that Alias's act of treating Ben's wound with poison, which created a serious risk of harm, was not warranted, as Lisa has the option of taking precaution by checking if the bottle was in fact antiseptic liquid or poison. It as been established that even when acting for social benefit, the standard of care is higher for professional defendant, and carelessly treating a wound with poison constitutes negligence.

In balancing the risk against the end, the risk that Lisa took when she treated Ben's wound with poison was not Justified as Lisa has work experience from SST John's ambulance, hence Lisa should exercise a higher degree of caution when treating Ben's wound. In those circumstances, a reasonable man would have taken precautions to prevent foreseeable risk. Therefore, Lisa was negligent and this constitutes breach. There are no contentious issues in satisfying necessary condition here. 'But for' Alias's not have sustained further injury.

Pursuant to sis(1)(b) CLAW, we need to consider whether it is appropriate to extend the defendant's SOL to the harm. Alias's act of negligence directly caused Ben further injury when she treated him with poison instead of antiseptic. Sustaining further injury is the kind of harm that is a reasonably foreseeable result of being treated with poison, as it is not far-fetched or fanciful, indicating Ben's injury. However, Lisa might argue that 'but for' her negligence, Ben was still injured by Christopher gelignite.

The manner of harm was a foreseeable result of Ben's injury as it is appropriate to hold Lisa responsible for the entire course of injury, even if Ben has sustained prior injury from Christopher negligence. Thus, Lisa has fulfilled the kind of harm and manner of harm test as Ben's injury was reasonably foreseeable due to Alias's negligent act. Lisa will try to seek protection from liability under so CLAW. Lisa fits the definition of " Good Samaritan" as she goes to Ben's aid without expecting payment. However, to successfully use this defense, Lisa must prove that her act of assisting Ben was done oneself, and without recklessness.

There is nothing on the facts to suggest dishonesty, but her act of treating Ben's wound with poison could possibly constitute recklessness. Ultimately, this should be decided by courts subjectively based on her circumstances, and if the defense applies, Lisa will not be liable for negligence. Darryl v Sarah Sarah owes a DOC to Darryl as an occupier of land because Darryl is an invitee to Sarah's property, making him a lawful entrant. Occupier-entrant relationship is an established duty category, thus the existence of DOC presents no challenge.

Since it s reasonably foreseeable that visitors coming onto Sarah's land would suffer some kind of harm if Sarah failed to take reasonable care, Sarah owes Darryl an obvious Donahue type DOC. The issue is whether Sarah's omission to warn is part of DOC. An existing duty to act has to be established for omissions to constitute negligence. Sarah's requisite duty to act arises from Occupier's liability in ACT legislation - sass CLAW. Similar to Azalea, Sarah has a general duty as an occupier to act positively to take reasonable care to avoid foreseeable risk of injury to entrants, in the circumstances.

The DOC therefore clearly affords Sarah liability for omissions. Using sis CLAW, the breach enquiry examines Sarah's particular conduct to ascertain, as a question of fact, if Sarah has breached DOC. If Sarah's behavior is not reasonable, breach is established. Three potential breaches: 1) Sarah'sfailureto warn (by erecting a warning sign) is the most likely omission to constitute breach. 2) Failure to patch the gully, or to engage in physical impracticality of such precautions. 3) Failure to fence the gully is unreasonable as the gully is not a latent danger.

The gully, in these circumstances, could not cause harm to anyone without the person actively 'Jumping over it, and it requires a fence all around, not Just at the particular area where accident occurred. Since the reasonableness of second and third precautions is uncertain and highly dependent on nature of gully, by common sense the first precaution (to warn) seems the most practicable. Similar to Wong, a contextual and balance assessment would establish that putting up a warning sign

constitutes a reasonable and effective response to the foreseeable risk in this instance.

In deciding the nature of required warning, obviousness of risk is a factor to insider. There is no breach when obviousness of risk makes it reasonable for defendant not to respond to the risk of injury. This usually relates to omissions to warn. With reference to the facts, a reasonable person would have warned the entrant about the " rugged" nature of the premises, and the gravity and likelihood of Dairy's probable injury if he were to engage in outdoor activity with Sarah's motorbike. In this context, Sarah was required to take reasonable care by warning of this obvious danger.

From the facts, Sarah was negligent by failing to put up warning signs about the possible danger arising from the gully. Breach is established. There are two requirements for causation in sis CLAW. Firstly, negligence has to be a necessary condition of harm. Similar to Ideals Palace, there is no evidence to find that Sarah's omission to warn, was a necessary condition of Dairy's harm. The 'but for' test, functioning as a negative criterion of causation, fails here, as it is unreasonable to assume that Darryl would not have " Jumped" over the gully if Sarah had not been negligent in warning him.

Simply showing the possibility of different consequences in the absence of defendant's negligent omission cannot satisfy actual causation. Darryl must therefore establish on the balance of probabilities that he would have responded to the warning in such a way as to avoid the danger. Given Dairy's thrill seeking nature, he would still have attempted to " Jump" over the gully with Sarah's motorbike. Therefore, Sarah's negligence in warning

would not be found to be a necessary condition. The defendant's SOL to the harm.

In this instance the kind of harm was not foreseeable as it would be far-fetched or fanciful to assume that Darryl would not have attempted to Jump over the gully even if Sarah did not breach the failure to warn. Manner of harm is not in contention, as Dairy's injury satisfies the manner of harm test in Wagon Mound - Dairy's injury, is exactly the manner of harm that Sarah had reasonable foreseen. Since Alfred admitted liability under negligence, he owes damages. Calculation of Damages: Compensatory damages are divided into pecuniary, and non-pecuniary damages.

Pecuniary: 1) Derived-from-John's-loss-of-earning-capacity. John-is-entitled-to-recover-for-any diminution-in-capacity-to-earn. Since-he-is-still-able-to-work-after-accident, but in a- lower-paying-job, he-will-be-compensated-for-the-net-loss-in-prospective-earning opacity according-to-provisions-of sis CLAW. This-is-calculated-by-finding-the average-income-of-a-top-Rugby-League-player, since he was already a first grade Rugby-player-with the-Canberra-cavalry, and has-not-made-it-to-the-top yet. From that sum, deduct-his-predicted-earning-capacity-after-accident.

Further-deduct-costs that-John-have-had-to-have-incurred-in-earning-the-income. 2) Compensation in claim for medical treatment expenses. As long as John has paid for past medical treatment, relating to relevant injury, he can claim the costs. John will also be compensated for subsequent, long-term medical care, even though they ere provided free of charge by Elena. Even though Elena personally provided the medical care, principle in Australia is

such that John will still receive compensation for gratuitous services provided. Damages for this will be calculated based on reasonable and commercial costs of providing the care.) Discounts are considered because a sum ofmoneyis given for future pecuniary loss. Discounts for all future economic loss. It is usually 3% in all cases for ACT. Next, discounts-for-vicissitudes-of-life-usually-applied-to-future earning capacity only, and starts with 15% but varies circumstantially.) Collateral-benefits-does-not-apply, as the intention with-which-the-monetary benefits-from-his- " mates" was to-assist-John-in-bill-payments, and-not-reduce-the liability of Alfred. Non-pecuniary: 1) Compensation for loss of amenities (enjoyment of life) is set out in sis CLAW.

It is likely that John will be compensated here as John has to give up his Rugbycareerand his pastime of waterier. 2) No compensation for pain and suffering and loss of expectation of life as no evidence in facts to suggest otherwise. Ben v Alex Vicarious Liability: Since Ben is unable to sue Christopher, Ben might claim damages from Alex under legislation between Alex and Christopher. From Hollies/Stevens, it is necessary that an employer-employee relationship be established between Alex and Christopher for Alex to be vicariously liable.

The case involves an independent method for distinguishing an employee from an independent contractor (C). From the facts, Christopher has specific skills as a builder who is able to make an independent career to generate 'goodwill' given his reputation for having good workmanship. Alex had little control over the manner of how Christopher performs his work as Christopher

has flexible working hours. Alex id not superintend Christopher finances, as Christopher was paid a fixed sum of money. Christopher also undertook the provisions of insurance and deducted taxes himself, and provided for his own leave arrangements.