

Contracts and torts research paper examples

[Sociology](#), [Violence](#)



Molly Micro

Molly Micro can initiate civil proceedings against Air Transport Limited and Launchpad McQuack in both torts and contracts. Molly Micro can sue for breach of contract by Air transport Limited as Air Transport Limited did not fulfil its duty to deliver the equipment to its intended destination without damage. For the tort of negligence, she can sue both the Company and the pilot as they did not undertake a standard duty of care in handling the equipment. The company is liable for fraud as it misrepresented itself as an experienced and qualified transporter with several awards yet that was not the case.

Breach of Contract

A contract is an agreement between two individuals that is legally binding (McCamus, 2011). Air Transport Limited did not fulfil its duty to deliver the equipment to its intended destination without damage. Molly explicitly and clearly told the owner of Air Transport about the extreme fragile nature of the equipment for which she wanted to procure transport services. She also told him that they had to take all necessary precautions to facilitate safe transport of the said equipment and avoid damage.

As part of the contract deliberations, the Air Transport Limited owner gave assurance that the deliveries by Air Transport are of the highest standard further stating that the company had won several service awards in line with their high standards of service delivery. The reassurances made Molly satisfied about the safety of her equipment and she agreed to pay \$20, 000 as transport cost for the equipment. This constituted the offer by Molly for

which the owner accepted at it became legally binding (Fridman, 2011).

Failure to deliver the equipment in good condition translates to breach of contract.

Tort of negligence

On negligence, both the owner and the pilot are liable. The owner of Air Transport failed to mention to his pilot about the fragile nature of the equipment to be transported. He also failed to indicate if the pilot should use any special precautions to ensure the secure loading of equipment. Due to his failure to give this information, the pilot did not exercise due care in handling and transporting the goods and they ended up damaged. The cause-in-fact for the employer is that if the information would have been passed to the pilot, the goods would not have been damaged (Fridman, 2012).

Launchpad McQuack is also liable for negligence. While transporting the equipment, Launchpad got bored and decided to have fun with the plane. He undertook a number of aerial acrobatics including flips and rolls. It is due to the aerial acrobatics that the equipment got destroyed. McQuack did not exercise the standard of care that was required of him in the transportation of goods. Professional standard of care as expressed in *Vaughn v. Menlove* (1837) is about whether McQuack acted with reasonable caution as a prudent person would have, given the existing circumstances (Baudouin & Linden, 2010).

His profession as an air transport pilot implies that he should act with care when handling customer goods. In the first place, he carelessly tosses the goods into the plane without regard if they would have been delicate. While

on air, he does not put into account that he is carrying goods that might be delicate when he performs his acrobatics. Under proximate cause, his actions are responsible for the damage to those goods. This is a clear case of cause-in-fact. His actions of aerial acrobatics caused the equipment to get damaged. It is a case of direct causation for which McQuack should be liable.

Fraud

Fraud is basically a wrongful misrepresentation of facts for personal gain (Baudouin & Linden, 2010). Air Transport Limited gave false information to Molly Micro regarding their track record. The owner claimed that their deliveries were of the highest standard further stating that the company had won several service awards in line with their high standards of service delivery. The reassurances made Molly satisfied about the safety of her equipment and she agreed to pay \$20, 000 as transport cost for the equipment. Under Section 380 (1) of the Canadian Criminal Code, a person who by falsehood, deceit, or other fraudulent means defrauds another of money, property, valuable security or service is liable for punishment (Fridman, 2012). The company misrepresented itself in order to convince Molly to transport with them. This was done so that they can benefit from the high amount of money she would pay as transport cost for her equipment.

Basis and Extent of Damages

Molly should seek compensatory damages for the destruction of her product and the expense paid to Air Transport for transportation. She should also seek further damages as an expectation measure to cover the income she could have acquired had Microchip received her equipment in good

condition. The breach of contract by Air Transport meant that Molly was not able to showcase that product to Micro computing so that they see it work. This led to her losing on the chance to have Micro computing distribute her chips in Canada. Molly should argue that the expectation damage will be to restore her to the economic position she would have been if Air Transport would have delivered the equipment as agreed. Safe delivery would have given her a chance to showcase the product and get a distributor deal with Micro Computing.

Molly can also seek additional damages for the fraudulent misrepresentation of the Company by the owner that misguided her into paying for a service that was not delivered as agreed. If it were not for the assurances by the owner about the ability of the company to deliver and the many awards won, it is possible that Molly would have made a different choice and not lost her chance to present the product to Microchip. The damages would be for the emotional harm caused by her lost chance to partner with Microchip for distributorship of the equipment.

Defences

The Company may argue that the damages sought by Molly are too high. In their argument, they should agree to pay damages only to the extent of cost of the goods. Under the equitable doctrine of restitution, no party should be unjustifiably enriched at the expense of the other. In a contract fails to go through, the parties should be put back into the position they would have been if they would not have entered into contract.

The damages under fraud, the company may argue that the loss suffered did not result from misrepresentation but rather, it was from the negligent act of

the pilot. Further, it the emotional harm claimed by the client is not logical as she was not involved in any way during the transportation of the goods and there is no guarantee that Microchip would have agreed to distribute the goods after she made her presentation. The stated loss of a distributorship deal with Microchip due to inability to present the equipment is merely an assumption. It is also possible that Microchip would have refused to distribute the equipment.

Sally Seatbelt

Sally can sue both Air Transport Limited and Launchpad McQuack under Tort. Air Transport can be used under the principle of respondeat superior, whereby employer is vicariously liable for acts done by an employee within the course of employment. McQuick can be sued for negligence because as a professional, he owed a duty of care to other people who were rightfully using the highway and it is his reckless flying that distracted Sally Seatbelt and caused her to crash into a roadside pole. He can also be sued for assault as Sally's apprehension of imminent harm was as a result of his reckless flying.

Vicarious Liability

Under the principle of respondeat superior, the employer is vicariously liable for acts done by an employee within the course of employment (Baudouin & Linden, 2010). Air transport Limited is liable for the actions of its employee McQuick because it was while transporting equipment that he landed on the TransCanada Highway. His action distracted Sally Seatbelt causing her to crash into a pole. Employers are liable for assault that results from the

actions of employees while in the course of conducting their work. As in the case *Lister v Hesperley Hall Ltd* [2001], the employer is vicariously liable for McQuicks actions.

Negligence

McQuick decided to entertain himself by performing acrobatic stunts which culminated in landing of the plane on the Highway. As a pilot and professional, he owed a duty of care to other people who were rightfully using the highway. The reckless flying by McQuick distracted Sally Seatbelt and caused her to crash into a roadside pole. This is a case of proximate cause. His acrobatic actions are responsible for Sally's accident. It is a clear case of cause-in-fact (Fridman, 2012). The acrobatic landing the highway caused a distraction to Sally Seatbelt and she crashed into a pole. It is a case of direct causation for which McQuack should be liable.

Assault

Under Common law, an intentional act by an individual that results in an apprehension by the other person of imminent harm is categorised as assault (Fridman, 2012). It is not necessary to have physical contact in order to have a case of assault. The perception of imminent harm is equivalent to assault. McQuick assaulted Sally by landing on the highway in front of her which caused her to crash.

Basis and Extent of Damages

Damages can be sought either from Air Transport Limited or from McQuick. In the case of Air Transport Limited, the company is vicariously liable of the negligent actions and task of standard of care by its employee. The action of

the employee caused Molly to crash into a pole and was injured in the process. Sally can ask for compensatory damages from the company to cover her medical expenses associated with the injury incurred and also to pay for repairs on her car.

McQuick is also liable to pay damages. In his case, he is negligent and he also assaulted Sally. He acted negligently by landing the plane on the highway, an action that also resulted in assault and ultimately Sally's accident. Sally suffers injury from the accident. The Compensatory damages will cover her medical expenses associated with the injury incurred and also to pay for repairs on her car.

Defences

Frolic

Under their suit in vicarious liability, Air Transport Limited can argue that their employee McQuick's actions constituted a frolic and as such the company is not liable under vicarious liability. A frolic is a major departure from assignment by an employee in order to attain personal benefit (Baudouin & Linden, 2010). In this case McQuick's departure from his assignment in order to entertain himself was for his own pleasure and benefit and not a minor deviation in his course of employment. As in the case of *Joel v Morison* [1834], the employer can be exempt from vicarious liability if the employee's actions constitute a frolic (Fridman, 2012).

Contributory Negligence

In Launchpad McQuack's defence, he can argue that Sally is also responsible for her injuries because at the time of accident she did not have her seatbelt

on. Based on the case in *Butterfield v. Forrester*, Sally also contributed to the accident because if she had her seatbelt on, it is possible that the accident would have been avoid or would have been less tragic (Baudouin & Linden, 2010). Sally contributed to her injuries by not wearing her seatbelt. McQuack can ask not to pay for damages on this basis.

References

Baudouin, Jean-Louis and Allen M. Linden (2010), *Tort Law in Canada*, Toronto: Wolters

Kluwer.

Fridman, E. G. (2011) *The Law of Contract in Canada*, (6th ed.). Toronto: Carswell.

Fridman, G. H. L (2012) *Introduction to the Canadian Law of Torts* Toronto: LexisNexis.

McCamus, J. D. (2011) *The Law of Contracts* Toronto: Irwin Law Inc.