Negligence: duty of care and buick motor co.

Experience, Human Nature

Negligence, duty and Breach of Duty. To constitute a legal action against some one’s negligence, several requirements to be fulfilled. First one is that there must exist someduty of caretowards the plaintiff by the defendant. The second one is that the defendant should breach such duty of care imposed on him. The third one is that the negligence done by the defendant should be the cause of the harm resulted to the plaintiff. The fourth one is that the harm should have some monetary value. In Haynes V Harwood (1935) 1 KB 146 at 152, Judge Greer L.

J, pointed out these requirements in his judgement stating that “ Negligence in the air will not do: negligence, in order to give a cause of action, must be the neglect of some duty owed to the person who makes the claim”. The simple meaning is that if one done negligence actions, in a place, which is untouched by other people, in such a place, there would not arise a duty of care toward others. Therefore the question of the breach of such duty of care would also not arise. In such a situation a legal action on negligence can not be instituted.

To understand above elements pertaining to negligence in law of tort, we shall discuss them in detail. Duty of Care In tort law, a duty of care is a legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence. The claimant must be able to show a duty of care imposed by law which the defendant has breached.

The duty of care may be imposed by operation of law between individuals with no current direct relationship (familial or contractual or otherwise), but

eventually become related in some manner. At common law, duties were formerly limited to those with whom one was in privity one way or another, as exemplified by cases like Winterbottom v. Wright (1842). In the early 20th century, judges began to recognize that enforcing the privity requirement against hapless consumers had harsh results in many product liability cases.

The idea of a general duty of care that runs to all who could be foreseeably affected by one's conduct (accompanied by the demolishing of the privity barrier) first appeared in the landmark U. S. case of MacPherson v. Buick Motor Co. (1916) and was imported into UK law by another landmark case, Donoghue v Stevenson [1932]. MacPherson v. Buick Motor Co. , 217 N. Y. 382, 111 N. E. 1050 (1916) A famous New York Court of Appeals opinion by Judge Benjamin N. Cardozo which removed the requirement of privity of contract for duty in negligence actions The plaintiff, Donald C.

MacPherson, a stonecutter, was injured when one of the wooden wheels of his 1909 " Buick Runabout" collapsed. The defendant, Buick Motor Company, had manufactured the vehicle, but not the wheel, which had been manufactured by another party but installed by defendant. It was conceded that the defective wheel could have been discovered upon inspection. The defendant denied liability because the plaintiff had purchased the automobile from a dealer, not directly from the defendant. The portion of the MacPherson opinion in which Cardozo demolished the privity bar to recovery is as follows: If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequence to be expected. If to the element of danger there is added knowledge that the thing will be used by

persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. That is as far as we need to go for the decision of this case . . . . If he is negligent, where danger is to be oreseen, a liability will follow” Donoghue v. Stevenson [1932] The case of Donoghue v. Stevenson [1932] illustrates the law of negligence, laying the foundations of the fault principle around the Commonwealth. The Plaintiff, Donoghue, drank ginger beer given to her by a friend, who bought it from a shop. The beer was supplied by a manufacturer, Stevenson in Scotland. While drinking the drink, Donoghue discovered the remains of an allegedly decomposed slug. She then sued Stevenson, though there was no relationship of contract, as the friend had made the payment.

As there was no contract, the doctrine of privity prevented a direct action against the manufacturer. In his ruling, justice Lord MacMillan defined a new category of delict (the Scots law nearest equivalent of tort), (based on " implied warranty of fitness of a product" in a completely different category of tort--" products liability") because it was analogous to previous cases about people hurting each other. Lord Atkin interpreted the biblical passages to 'love thy neighbour,' as the legal requirement to 'not harm thy neighbour. He then went on to define neighbour as " persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions that are called in question. Reasonably foreseeable harm must be compensated”. This is the first principle of negligence. Breach of the Duty The test is both subjective and objective. The defendant who knowingly

(subjective) exposes the plaintiff/claimant to a substantial risk of loss, breaches that duty.

The defendant who fails to realize the substantial risk of loss to the plaintiff/claimant, which any reasonable person [objective] in the same situation would clearly have realized, also breaches that duty. Breach of duty is not limited to professionals or persons under written or oral contract; all members of society have a duty to exercise reasonable care toward others and their property. A person who engages in activities that pose an unreasonable risk toward others and their property that actually results in harm, breaches their duty of reasonable care.

An example is shown in the facts of Bolton v. Stone,[5] a 1951 legal case decided by the House of Lords which established that a defendant is not negligent if the damage to the plaintiff was not a reasonably foreseeable consequence of his conduct. In the case, a Miss Stone was struck on the head by a cricket ball while standing outside her house. Cricket balls were not normally hit a far enough distance to pose a danger to people standing as far away as was Miss Stone.

Although she was injured, the court held that she did not have a legitimate claim because the danger was not sufficiently foreseeable. Causation For a defendant to be held liable, it must be shown that the particular acts or omissions were the cause of the loss or damage sustained. Although the notion sounds simple, the causation between one's breach of duty and the harm that results to another can at times be very complicated. The basic test is to ask whether the injury would have occurred but for, or without, the accused party's breach of the duty owed to the injured party.

Even more precisely, if a breaching party materially increases the risk of harm to another, then the breaching party can be sued to the value of harm that he caused. Sometimes causation is one part of a multi-stage test for legal liability. For example for the defendant to be held liable for the tort of negligence, the defendant must have (1) owed the plaintiff a duty of care; (2) breached that duty; (3) by so doing caused damage to the plaintiff; and (4) that damage must not have been too remote. Causation is but one component of the tort.

On other occasions causation is the only requirement for legal liability (other than the fact that the outcome is proscribed). For example in the law ofproduct liability, the fact that the defendant's product caused the plaintiff harm is the only thing that matters. The defendant need not also have been negligent. On still other occasions, causation is irrelevant to legal liability altogether. For example, under a contract of indemnity insurance, the insurer agrees to indemnify the victim for harm not caused by the insurer, but by other parties.

Where establishing causation is required to establish legal liability, it is usually said that it involves a two-stage inquiry. The first stage involves establishing ‘ factual’ causation. Did the defendant act in the plaintiff’s loss? This must be established before inquiring into legal causation. The second stage involves establishing ‘ legal’ causation. This is often a question of public policy: is this the sort of situation in which, despite the outcome of the factual enquiry, we might nevertheless release the defendant from liability, or impose liability?