

# Essay on tort law case study

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Law

## **The Injury Case of Bobby**

Next is the school itself, the accident happened in school and at any given time the school should exercise safety and when students enters the school premises, the school is automatically responsible for the student's safety no matter if it's during recess or during the class. Although, many debates surrounding the applied principles of playground liability when no apparent school personnel are present during the accident, the school still plays a part on the case. There are several things to consider in order establishing involvement of the school in the incident. Since the case file already mentioned that there were no teacher or supervisor as the accident happens then the argument for "failure to witness injury" could not be imposed. This is because in that argument inadequate supervision will only be established if the accident happened in the presence of supervising personnel but failed to act immediately to prevent the accident (Bossenmeyer, Dr. Melinda Ed. D. N. D.), therefore the act of negligence is established. But the fact that the school is aware of the newly installed rim on the basketball shooting board, there should be a thorough inspection of its safety prior to allowing of use. If found that the rim is not safe enough, the school should have taken precautionary measures to prevent untoward accidents such as what happened to Bobby. In the elements of tort law school administrators will be held liable when the act of injury was inflicted intentionally by another student or because of negligence (Dragan, Edward F. Ed. D. N. D.). The court will usually define the context of negligence in reference to education law when determining the school's liability and it would depend on the prevailing

law of the state. On one of the conditions include if the victim have directly contributed to cause the injury through his own negligence. If that condition was established in the court then the school will not be held responsible. However, the case file indicated that Rachel is the one who gave Bobby a boost to do the dunk shot, being said that, it is clear that Bobby did not directly contributed to injure himself. As a matter of fact, even without the supervision the school is still responsible because of the presence of one significant element in the case and that is the “ Duty to Protect”. This is a crucial element that needs to be established and evidently Bobby has the biggest advantage for a lawsuit. Because the “ Duty to Protect” states that the school is responsible in anticipating potential danger and take precautionary measures to protect the students. That includes ensuring the safety of equipment and facilities including the basketball rim (Dragan, Edward F. Ed. D. N. D.).

After Bobby acquired injury he was then rushed to the City General Hospital and from there the problem started to get worst. Upon arriving at the hospital the nurse attended to him immediately and handed him towels to press on his wounds and the nurse left him to phone his mom. The nurse tried to reach the parent to inform about the situation, get consent and confirm payment and insurance. What the nurse is doing is to do comply with the operating procedure of the hospital, but that procedure has several major flaws. In term of ethical and lawful medical industry practices, in any case that the patient came in to request for medical treatment the hospital must perform MSE of medical screening examination to determine emergency medical condition or EMC. When EMC is evident like in Bobby’s

case the hospital should immediately stabilize the patient's condition according to the hospital's capability and facility availability. (Zibulewsky, Joseph MD. October 14, 2001) EMC and MSE is a must in hospitals with emergency facilities and no doubt a city general hospital has one considering that it is a general hospital.

After the nurse learned that Bobby doesn't have sufficient insurance to cover the treatment expenses he was transferred to a local county facility. That action was not acceptable in every way and having him to wait for 75 minutes is already a violation of the EMTALA policies or Emergency Medical Treatment and Labor Act on patient dumping. According to the rules of EMTALA all patients are entitled for medical treatment on emergency cases regardless of the individual's ability to pay at point of service. This law directly contradicts the common law of "no-duty" principle applied to patient and physician relations. Although the "no-duty" principle is eminent in most care providers, this should be overridden by the EMTALA law because of the urgent nature of the medical situation and that EMTALA will suspend the rights of the hospital in selecting the patient they will serve (Zibulewsky, Joseph MD. October 14, 2001). If only the nurse and the hospital is practicing the EMTALA policies, then Bobby could have already been treated within that long 75 minute wait because EMTALA also constitutes the requirement of performing MSE on the onset of the patient's treatment request. There are hospitals that are using the insurance verification process to delay the delivery of treatment which is also against the EMTALA law and therefore constitutes negligence by making Bobby wait for payment verifications when treatment could have already been applied.

The hospital directly violated the tort law on the grounds of gross negligence under the circumstances of the patient's payment capabilities. However, the penalty for this violation is not as severe as Bobby's condition, because the consequence only calls for disentanglements of the hospital from being a credited healthcare provider for health insurances. But despite of the nondiscrimination bill to protect patients from being dumped which EMTALA also intends to provide, it is still has ambiguous interpretations (Zibulewsky, Joseph MD. October 14, 2001). Bobby is one of the many patients that experienced patient dumping at its best which could have been avoided if the hospital was knowledgeable enough or at least reasonable in choosing which policy to be imposed and when should be applied. The unfair procedure that the hospital imposed on Bobby also contributed to the worsening of his condition that led to a more frustrating consequence. If only the hospital took the health and welfare of the patient above all else and acted accordingly to the situation then Bobby could have received treatment right away. Clearly the hospital is hesitant in such situation because of business principles and not for the purpose of serving the community for a greater cause. There are other options on how Bobby could pay his bill, there is credit card or cash depending on his parent's preference, but certainly there is a way that Bobby could pay so there is no acceptable reason why he should be dumped.

Apart from the doctor(s) that performed the amputation, the hospital could also be sued for the incompetence of their employees because medical negligence is attributed to the responsibilities of the medical professional towards his patients (Hg. org N. D.). The fact that the hospital employed

professionals that showed incompetence, the hospital is also responsible in overseeing these shortcomings the performance of their employees and ensuring the quality of their work and it is called joint liability. The same sort of liability case can also be filed to other professionals who worked in the amputation operation. No patient deserves what happened to Bobby, after being rejected from the previous hospital he certainly hoped for the better but ended up losing both his hands because of some mistake. In making personal injury claims it is important that Bobby would be able to justify the proof of negligence. This is because the tort law of has four essential elements to be proven in order to justify cause. First of those elements is that, there should be a duty of care owed, second is the fact that the medical care professional have violated the required care standards, third is that the harm was indeed caused by the professional and lastly the injury should be determined as compensable (Hg. org N. D.).

All of those elements are important to establish the case, otherwise Bobby did not only lose his hands but let the people involved to get away with it. In Bobby's case, the first element is already evident while the second element needs further verification in terms of professional license backtracking. The third one needs to be elaborated further because it is also evident in the case, meanwhile the last element needs to consider a few aspects for evaluation of the permanent loss. The fact that Bobby lost two hands when he should still have the other one intact is an indication that Bobby will no longer be able to live normally. This alone is paramount in establishing the extent of damage both physically and financially. When a person who used to be complete of all body parts but lost them along the way will have a difficult time adjusting

to the changes and not to mention the Bobby's ruined future. By law, the loss of limbs is priced according to what was lost and hands are one of those that fetches the highest compensation in Bobby's case makes it two. Overall, Bobby has all the advantages in his case and the proof of negligence is evident in all scenarios of the case especially the hospital part, his situation would get him a strong case in the court provided he satisfy all the necessary elements of justification.

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