

Foundations of business law assignment

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In this situation there was a duty of care for the defendant, who is the bank, to provide to the plaintiff, who is the old man, as the defendant was in a position to see that water had come into the building and the floor was wet. This wet floor would have greatly increased the chance of someone slipping over and causing injury. They would have known that failure to properly warn customers who both enter and leave the building that there was water on the floor and would be reasonable foreseeable to lead to either injury off customer or an employee.

As well as this there was a vulnerable relationship between the plaintiff and the defendant. The plaintiff would have entered the bank in good faith and under an assumed knowledge that if there was a hazard to his and others health the bank would place some type of signage or warning of the slippery floor or to remedy it by mopping up the water. As such he was also reliant on the bank to provide this warning or to mop up the water and ensure the surface of the floor was not dangerous to walk on. Second legal issue- as the duty of care breached?

The second issue that this case raises is whether the duty of care was breached by the defendant. To establish a breach of duty of care it must be shown that the defendant failed to do what a reasonable person would have done in the same circumstances. As such it is imperative that the defendant can be proven to have acted in an unreasonable manor in a certain situation and not exercised a proper standard of care. The principle law that is used to define breach of duty of care is *Paris v Stephen Borough Council* [1951] AC 367. In this situation it is apparent that the defendant has breached its duty of care.

For one the defendant should have provided some type of warning as to the hazard of the wet floor. It had been raining for most of the day and previous customers had been bringing water into the building thus causing the surface of the floor to become slippery and potentially dangerous to walk over. As such it could be said that a reasonable person would have foreseen the possibility of someone slipping and placed some type of sign warning patrons of the hazard and allowed customers to take a different path to enter and exit the building.

Secondly the defendant should have had an employee mop up the water the hazard to customers would have been removed and any risk or hazard eradicated. By failing to either provide warning or to mop up the water the bank has breached its duty of care due to both the seriousness of the injury, *Paris v Southborough Council* [1951] AC 367, and by increasing the likelihood of injury: *Bolton v Stone* [1951] AC 850. Third legal issue- Damages. In this case as the defendant did owe the plaintiff a duty of care and that the duty of care was breached then damages may be recoverable.

To prove that damages are recoverable and need to be awarded there needs to be both a causation of fact and a causation of law. The law that is used to prove a causation of fact is *Chapel v Hart* (1998) CLC 232. For there to be a causation of fact there must be evidence that the damage or injury would not have happened to the plaintiff were it not for a particular fault than it is that fault that caused the damage. In this case the causation of fact can be shown by the reasoning that the plaintiff would not have slipped if it wasn't for

he water being left on the floor as well as there being no sign warning him of this risk.

The law that is used to prove causation of law is Overseas Deanship (I-J) Ltd v Mores Dock & Engineering Co Ltd [1961] AC 388 (The Wagon Mound (No 1)). For the causation of law the general rule is that “ defendant is liable for the kind of damage that is reasonably foreseeable as a result of the breach” . In this case of the plaintiff and the defendant the defendant would be liable for damages that happen due to the injury to the plaintiffs leg. As well as this they could be liable for medical bills and also any psychological trauma he may suffer due to his fall.

In conclusion it can be stated that the bank owed the plaintiff a duty of care. The defendant then subsequently breached this duty of care and as such damages resulted from the breach. Due to these three instances, owing a duty of care, breaching the duty of care and damages being incurred the defendant is liable of negligence and proper steps should be taken to resolve the matter in court or through settlement. Question 2 Discuss possible defenses and other legal principles which might be raised to avoid r lessen liability, having regard to all the facts.

If the defendant was to try to avoid being found liable in negligence for the injuries that the plaintiff suffered than it could use one of two defenses. These are Voluntary assumption of the risk and contributory negligence. By using either of these defenses successfully than the bank could absolve itself of paying damages to the plaintiff. Voluntary assumption of the risk This type

of defense would be one way that the defendant could prove it was not liable of negligence and is an absolute defense against negligence.

Voluntary assumption of risk can be defined as an instance where the plaintiff voluntarily accepted the risk of damage at their own expense and by the case of *Morris v Murray* [1991] 2 WALL 195. There are three deciding factors in being able to determine whether there was voluntary assumption of risk. Firstly is the instance that the plaintiff had a total and complete knowledge of the risk. Secondly is if the plaintiff had sufficient appreciation of the danger that came with the risk and lastly that the plaintiff would knowingly and willingly accept the dangers of the risk.

In regards to f the risk. Firstly although the plaintiff would have been aware of the rain outside and the possibility of a slippery floor he would not have known the exact location of any major trouble spots or also if there was a specific risk to him. Also because he did not know how slippery the floor was he could not have a sufficient appreciation of the dangers that would come with the risk. As well as this because the plaintiff was in a rush to catch his bus he would not have knowingly and willingly accepted the dangers of the risk.

As such the defendant could not use this defense to avoid or lessen its liabilities. Contributory negligence This would be another type of defense that the defendant could use to prove it was not liable of negligence but it is only a partial defense as the courts will usually apportion the damages payable when contributory negligence is proved. Contributory negligence means that the plaintiff has not been very careful in looking to their own

actions so that, in part, their failure to assess the risk has given rise to the damage that has been suffered.

The case that is used to define contributory negligence is *Connors v Western Australian Government Railways Commission* [1992] Status Torts Rep 81-187. In this case between the defendant and the plaintiff it could be shown that there was some contributory negligence on the part of the plaintiff that gave rise to the risk of damage. As the plaintiff was running from the building this would have helped to give more risk and possibility of damages to his persons. As other customers and employees had entered through the same doorway without injury it could be reasonably assumed that his running helped contribute to his fall and subsequent injury.