

Business lawassignment assignment

[Business](#), [Management](#)



Dylan was shopping at Quills Department Store when he slipped on the highly polished floor and broke his leg. As a result he was out of work for four months and he incurred considerable medical expenses. His leg did not heal quickly or completely because of a hereditary bone defect which he suffered. Hence he had to take on lighter work, which did not pay as well as his former employment.) What legal action is available to Dylan against the proprietor of the store, or the cleaner or the floor polish manufacturer The case states that Dylan incurred medical expenses due to slipping on the highly polished floor when shopping at Quills Department Store. This case applied to Australian common law, implied terms of negligence. The first issue is whether the proprietor of Quills Department Store is liable to Dylan injury. In order to determine, there are three steps must be satisfied. Firstly, if the proprietor owed a duty of care to Dylan need to be determined.

The cases Australian Safely Stores Pty Ltd v Azalea (1987) 162 CLC 479, Strong v Woolworth Ltd (2012) HCl 5 are applied which implied that a retailer owes a duty to its consumers. In this case, Quills Department Store is an operating store. Dylan is a lawful consumer. The legislations between them satisfied the neighbor test for duty of care set out in Donahue v Stevenson (1932) AC 562. The normal rules of negligence applied to the case of property owners and person injured on the property. Therefore, the store owed a duty to take reasonable care to Dylan.

Secondly, it is necessary to examine whether the proprietor had exercise the proper standard of care. The proper standard of care is that how a reasonable person would have responded to the foreseeable risk, to balance

risks, consequences and cost. The weighing test is demonstrated in *Wong Council v Shirt* (1980) 146 CLC 40, *Graham Barclay Oysters Pty Ltd v Ryan* 2000 FCC 1099, *Woods v Multi-Sport Holdings Pty Ltd* 2002 HCl 9.

Considering the high probability of the risk, it is not difficult that a reasonable person in Sass position would have taken precautions.

However, the store failed to exercise the required standard of care. Finally, whether Dylan losses were directly caused by Sass negligence and whether the losses were reasonably foreseeable. It is necessary to apply a but for test referring to the cases *Deals Palace Pty Ltd v Moonbeam Deals Palace Pty Ltd v Bob Names* 2009 HCl 48, *March v Stammer Pty Ltd* (1991) 171 CLC 506, *Chapel v Hart* 1998 HCl 55. In the present case, if the ASS made the floor properly polished, Dylan would not have slipped.

Therefore, the current loss is caused by Sass negligence and not so remote. In conclusion, the ASS will be liable to Dylan for the damages caused by the breach. The second issue in this case is to determine whether the cleaner is liable to Dylan losses. Firstly, in this case, the cleaner was acting as a service provider. Dylan could be closely and directly affected by the act of the cleaner. As illustrated in *Sternest v Hancock and Peters* 1939 all ERE 572, the cleaner owe a duty of care to Dylan for the floor she/he polished.

Secondly, according to the case *Strong v Woolworth Ltd* 2012 HCl 5, if the cleaner had exercised the proper standard of care, Dylan would not have slipped. Thus, the duty owed to Dylan had been breached by the cleaner in this case. Furthermore, the slipping would not have occurred if the cleaner

had controlled the polishing level. Therefore, the issue here is factual causation, and the injury is reasonably foreseeable. As a result, the damages for negligence of cleaner can be established in this case.

The third issue is whether the floor polish manufacturer was liable for Dylan injury. As held in *McPherson Ltd v Eaton* 2005 NCA 435, the duty of care was not automatically owed to end users in relation to the products it sells. In addition, the injury in this case was not reasonably foreseeable for the floor polish manufacturer, since the manufacturer can not control the way by which the products had been used by their consumers. As far as I am concerned, the proprietor and the cleaner were liable to Dylan injury, except for the floor polish manufacturer.

Dylan can bring an action in negligence to compensate the medical expenses. li) Will Dylan succeed in a claim for loss of earnings from his change in employment The issue is whether Dylan can bring an action in negligence against the cleaner and proprietor to recover damages for the loss of earnings from his change in employment. First of all, to obtain damages, the remoteness of damages needs to be determined based on whether the defendants negligence was a necessary condition of the plaintiffs loss.

As was shown in *Overseas Township (UK) Ltd v The Miller Steamship Co Pty Ltd (The Wagon Mound (No 2))* 1966 2 All ERE 709 and *Interlink Victoria Pty English* 2009 VISA 227, the damage must not only have been a direct consequence of the negligent act, but also have been reasonably foreseeable.

Nevertheless, in this case, Dylan changed his job four months after the accident, and the reason why he could not do the former job is not because of the slipping injury rather the delay in healing time caused by the hereditary bone defect.

However, Dylan might prove evidence to defend, such as the case of *Chapel v Hart* 1998 HCl 55, but no reasonable person would have known his hereditary bone defect and provide proper precautions. Obviously, the risk was not reasonably foreseeable, and the loss was too remote. As a plaintiff can only recover damages for losses that are direct consequence of the negligent act, Dylan will not succeed to claim for loss of earnings from his change in employment. B) The Meadows Council received a notice in December 2013 from the State Government of a water-supply plan in regard to an area marked on the shire plan as Zone A. Jenny was thinking of purchasing five acres for a sheep farm. While investigating the suitability of the land for sheep farming, she approached Meadows Council for information and advice. Steve, a land surveyor in the employ of the Council advised all land was agricultural use only. He advised the zoning would not be altered. Steve failed to notice that the State Government's notice was attached to the Council area map.

Jenny purchased property and spent considerable money on erecting fences and sheep pens. Half way through the process, Jenny received a notice from the State Government to cease building activities as the Government was to acquire the land to build a dam. What right does Jenny have in these circumstances In this case, Jenny decided to buy a five-acre land for sheep

farming based on the Meadows Council's advice related to the suitability of the land. However, the information provided by the surveyor of the Council is not true.

As a result, Jenny suffered a considerable loss when the land was acquired by the State Government to build a dam. Australian common law in aspect of negligent misrepresentation is involved. The issue is whether Jenny can bring an action in negligence against the Meadows Council. Firstly, whether the Meadows Council owed a duty of care to Jenny needs to be determined. As were shown in *L Shacked and Associates Pty Ltd v Parameter City Council* (1981) 55 LAIR 713, *Hadley Byrne Co Ltd v Heeler Partners Ltd* (1964) AC 465, *Sees Petroleum*

Co Ltd v Maroon (1976) 2 WALL 583, a duty of care can be owed when giving advice or supplying information that the plaintiff reasonably rely on. In this case, Jenny could claim that the Meadows Council owed a duty of care to her, because she reasonably relied on the suggestion that the land was agricultural use only, which was given by the Meadows Council when she enquired about if there would be any plan could affect the land, furthermore, she bought the land based on that information.

Secondly, there is a need to consider that did the Meadows Council failed to exercise the required standard of care Referring to the cases *Rogers v Whitaker* (1992) 175 CLC 479 and *NORMA Ltd v Morgan* 1999 NCSC 407, the defendant ought to exercise the proper standard of care if the risk was foreseeable. In this case, the information provided by the Meadow Council is

not true, and Jenny was required to cease building activities as the Government was to acquire the land to build a dam, which is foreseeable by the Meadows Council.

Therefore, the Meadows Council breached the standard of care. Furthermore, the remoteness of damages needs to be determined based on whether the Meadows Councils negligence was a necessary condition of Melissa and Fernando loss. Quoting the cases *Kenny Good Pty Ltd v MAGIC (1992) Ltd* 1999 HCl 25, *Tepee v Water Board (2001) 206 CLC 1*, the damages caused by defendant should not be too remote. In this case, it is reasonably foreseeable that the Meadows Councils suggestion would cause halt to Jenny's plan.

In addition, Jenny would not buy the land if the Meadows Council provided the accurate information about the land. In conclusion, I suggest that the Meadows Council owed a duty of care to Jenny as it breached the standard of care by indicating inaccurate information to Jenny. As a result, Jenny could bring an action for negligent misrepresentation against the Meadows Council and sue for damages. Question 2 i) Mr. Gao lives in Melbourne. He contacted his favorite niece in Shanghai (Ms Shih) and proposed that her and her husband should come to Melbourne to look after him.

He promised they could live in the house rent free, and he would pay all expenses if they looked after him. Ms Shih and her husband sold their apartment and moved to Melbourne. After two years, arguments commenced and Mr. Gao advised he was not going to leave the house under

his will to Ms Shih. Ms Shih and her husband want to know whether there is a contract. If an arrangement is only just a social or domestic arrangement, the courts are generally reluctant to interfere. The view is that the parties really did not intend to make a contract. Law in Commerce, 5th Edition, B Reilly, J Coleman, A, 2013) However, a social or domestic arrangement will be a contract if the creation of a legally binding agreement was the intention of the parties, referring to *Todd v Nicol* 72 (Supreme Court of South Australia). In this case, the existence of legally enforceable binding between both parties by offer contained in Mr. Gags proposition and the acceptance by Ms Shih. The question is whether a reasonable person would have concluded that the arrangement was contractual, referring to the case *Erroneous v Greek Orthodox Community of AS Inc* (2002) 1 87 ALARM 92.

The court will look not only at the arrangement between the parties, but also at the circumstances surrounding the agreement, the effect of the agreement on the parties and the manner in which the parties have conducted themselves subsequent to the agreement. Ms Shih and her husband sold their apartment and lack of any condition covering a possible return. In this circumstance, Ms Shih and her husband took serious conduct as a subject to binding to Mr. Gags life time. Thus, legal binding is formed by such intention. In conclusion, Ms. Shih and her husband have made a contract with Mr..

Gao. li) Harry advertised the sale of his car in the newspaper for 5, 000.

Doug rang and said he would pay 5, 000 for the car. Harry responded and would think about for a week. Doug responded if he heard nothing from

Harry within a week he would regard the car as his. Doug heard nothing from Harry within the week. Do Harry and Doug have a contract Discuss. This issue is whether Harry and Doug have a binding contract in place after the week Doug heard nothing from Harry. The analysis will scrutinize the facts when overlaid with the essential elements of a simple contract.

The rule of intention, as stated in *Rose and Frank Co v. JAR Crampton Pros Ltd* 5, is to create a contract there must be a common intention of the parties to enter into legal obligations, mutually communicated expressly or impliedly. Doug, after viewing Harry invitation to offer (*Partridge v Accredited* 1968 1 WALL 1204) in the newspaper, expressed the interest in purchasing the car and making an offer. Thus, both parties exhibited intention, as the first criterion for an enforceable contract was fulfilled.

Triple defines an offer as an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed. As illustrated above, Doug made an offer of 5,000 in exchange for Harry car, which expressed his willingness to enter into a contract (with Harry) on certain terms. As a result, the second criterion, offer, was fulfilled. The third element, acceptance, must be certain. As held in the case *Talleyrand Co City Ltd v Nathan Merchandise* (1957) 8 CLC 93, the contract is not made until acceptance has been communicated to another party.

As a general rule, silence does not amount to acceptance. Certainly, the offer cannot force acceptance upon the offeror according to the case *Flophouse v*

Bindle (1862) CHEW CAP J 35. Doug rang Harry offering to buy the car, Harry responded to think about for a week. Doug said if he did not hear from Harry, he would consider the car as his. However, Harry silence could not be regarded as acceptance in this circumstance. The final criterion is consideration. Every simple contract must be supported by consideration.

This has been a rule of the common law since *Ran v Hughes* (1778) 101 ERE 1014 settled the matter in the late eighteenth century. A promise to do something is one of the examples of consideration. In this case, Harry did not respond within one week. In this way, Harry consideration is giving his car to Doug. However, Doug did not have any consideration if he is going to regard the car as his. Therefore, this consideration held no legal rights in this case. In summary, the intention to make a contract existed and an offer was made. However, Doug's offer was neither accepted nor given reasonable consideration.