

Case formulation: case analysis

Business



Facts of the case: Smiley, a buyer from Carrefour Fashions, entered the store of a rival firm, Boulevard Boutique. The reason for his visit was to find out about the latest lines that Boulevard was carrying. Once Smiley entered the store he was recognized by Maldini, the store manager of Boulevard, who immediately called the store detective and told him to keep an eye on Smiley. Maldini then called the police, notifying them that he had a shoplifter in the store.

Smiley never tried to leave, believing that Rocco, the store detective, would not permit him to do so.

Once the police took Smiley to the station he explained the situation and was released. Questions: 1. What might Smiley have against Boulevard, Maldini or Rocco? 2. Does Boulevard have any cause of action against Smiley? In order to answer these questions there are a few tort liability issues that need to be discussed.

The first issue is false imprisonment. “ False imprisonment is the intentional confinement of another person within fixed boundaries without lawful justification. ” (Kerr, 19) In this case, Smiley could have left the store, but was led to believe that Rocco would stop him if he tried.

There was no physical restraint in this situation and no justification on suspicion of shoplifting; however, the detention was psychological. Smiley believed that Rocco would physically restrain him if he tried to leave the store. If this tort was brought in court, Rocco could use the defence of legal authority.

“ The defence of legal authority is raised where the defendant claims that a statutory provision authorizes the conduct that would otherwise constitute a tort. ” (Kerr, 29) Since Rocco is considered a private citizen and not a police officer, he can only make an arrest if a crime is actually being committed at the time.

Rocco believed that Smiley was committing a crime because he was informed so by Maldini. In this case, however, Smiley was not committing the crime of shoplifting and Rocco would be held liable for the tort of false imprisonment. The second issue in this case is the tort of deceit. “ The tort of deceit occurs if the defendant makes a false statement, which it knows to be untrue, with which it intends to mislead the plaintiff, and which causes the plaintiff to suffer a loss.

” (McInnes, 107) By stating that Smiley was a shoplifter, Maldini caused him to suffer the loss of being perceived as an honest man.

Society is not fond of shoplifters, because they are considered to be dishonest and a contributing factor to the downfall on the economy. In this particular case, the tort of deceit goes hand in hand with the third issue of this case; the tort of defamation. “ Defamation occurs when the defendant makes a false statement that could lead a reasonable person to have a lower opinion of the plaintiff. ” (McInnes, 116) By stating that Smiley was a shoplifter, Maldini committed the tort of slander defamation.

Maldini lowered Smiley’s “ estimation of right-thinking members of society.

” (Kerr, 22) This caused Smiley to suffer the loss of being perceived as an honest man in society. Therefore, by making that statement, Maldini has

placed Smiley in a position where people will look at him differently. There are three defences to defamation; justification, absolute privilege, and qualified privilege. The statement that Smiley was a shoplifter cannot be justified because the police had proven that there was no proof that any shoplifting took place.

An absolute privilege is usually limited to statements made during parliamentary proceedings; between high government officials who are dealing with government business; by a judge, lawyer, litigant, or witness in the context of legal proceedings; and between spouses.

(McInnes, 118) Since Smiley, Rocco, and Maldini do not fall into those categories, the defence cannot be upheld. The defence of qualified privilege “ may apply whenever (i) the defendant has a legal, moral, or social obligation to make a statement, and (ii) the statement is made to someone who had a similar duty or interest in receiving it. (McInnes 118) Maldini did not have an obligation to make the statement that Smiley was shoplifting because he knew who Smiley was and the store he represented. Therefore, Maldini acted maliciously when stating to the police that he had a shoplifter in his store. The following issues represent the legal actions that could be taken against Smiley.

The first issue is the tort of trespass to land. “ Trespass to land involves the intentional interference with land owned by or in the lawful possession of another person. ” (Kerr, 21) By entering Boulevard Boutique to view the latest fashions, Smiley was there for the wrong reasons.

Competitor firms are usually very aware of who enters their store to shop and who enters to view their fashions and maybe even copy the designs; which can lead to an economic loss for Boulevard. Since Maldini recognized who Smiley was and that he was an employee of Boulevard's rival firm, he was determined to make him leave the store.

For the reasons given above, Smiley committed a trespass to land by interfering with Boulevard's business. His presence at the store implied that he was there to compare the two firms. The second issue is the tort of nuisance, which could be compared to the tort of trespass to land. Nuisance occurs when the defendant unreasonably interferes with the plaintiff's use and enjoyment of its own land. " (McInnes, 112) Once Maldini recognized who Smiley was, his enjoyment of land was interfered with.

Maldini was worried that Smiley was there to steal designs, since he was from a rival firm. He was not able to help out customers because he was busy resolving the issue of Smiley being in his store. By not being able to serve customers, which enhances his business, Maldini was not enjoying his land. Facts of the case:

While walking to a school party together, Madeline and Sam were approached by a group of kids who informed Madeline that she should go home immediately because her mother had suffered a heart attack and may not survive. Madeline ran home with Sam accompanying her.

Once they approached an intersection, Sam was hit by a car while trying to inform Madeline of the same situation happening to her. Madeline then called 911 and ran home to her mother. Once she got home, Madeline

realized that her mother was perfectly fine and that she had no idea why someone would say such a thing.

Sam survived the car accident with only a broken leg. Questions: 1.

Discuss Madeline's and Sam's tort claims. Explain your answer. The first tort liability issue in this case is the intentional infliction of mental suffering, which is " the performance of an act or the making of a statement (probably false) that is calculated to cause mental anguish to the plaintiff and, which in fact, causes such mental anguish. " (Kerr, 23) By informing Madeline that her mother had suffered a heart attack and may not survive, the group of kids caused Madeline to suffer mental anguish.

They also caused her to run home and almost get hit by a car, as well as witnessing her friend, Sam, getting hit by one.

The group of kids may have thought that the statement was just a practical joke; however, they were not aware that it would cause such effects. The statement caused Madeline serious emotional distress. Sam was a victim of this statement as well. By being a good friend, she accompanied Madeline to her home, but was hit by a car on the way there. If the statement was never to have been said, Sam would have not gotten hit by a car.

The second issue in this case is negligence, which affected Sam.

" The tort of negligence determines whether the defendant can be held liable for carelessly causing injury to the plaintiff. " (McInnes, 129) By not paying attention to the road, the driver hit Sam and caused her to break her leg.

The tort of negligence requires the plaintiff to prove that the defendant owed

a duty of care, in that it was required to act carefully toward the plaintiff; breached the standard of care by acting carelessly; and caused harm to the plaintiff. (McInnes, 129) The driver is responsible to be careful when driving on the road. There are many factors that have to be considered when driving; for example, rain, snow, hail, animals, and of course people. Therefore the driver owes a duty of care to Sam because he is required to drive carefully and pay attention to the road.

The driver broke that duty of care by hitting Sam and causing her harm by breaking her leg. The driver also broke the standard of care by acting carelessly. A reasonable person would take precautions against the reasonably foreseeable risks of driving.

Lastly, the driver caused harm to Sam by not paying enough attention to the road, hitting her, and as a result breaking her leg. If the case was brought to court, the driver would be able to use three defences, the first of which is the defence of contributory negligence.

“ The defence of contributory negligence occurs when a loss is caused partly by the defendant’s carelessness and partly by the plaintiff’s own carelessness. ” (McInnes, 148) By running across the street and not paying attention to the traffic, Sam put herself in danger of getting hit by a car.

The driver’s carelessness of not paying attention to the road and seeing Sam there, along with Sam’s carelessness of running across the street without paying attention to oncoming traffic, resulted in the negligence of both the parties. In this case a judge would award damages to the parties

appropriately. Another defence that the driver could use in court is the defence of illegality.

“ The defence of illegality may apply if the plaintiff suffered a loss while participating in an illegal act. ” (McInnes, 149) Jaywalking is a reckless illegal act.

Sam was crossing the street without looking at the road and probably either running a red light or crossing the street where there was not a sidewalk. Unlike the defence of contributory negligence, which is a partial defence, the defence of illegality is a complete defence, and if proven the judge will award the case to the defendant. The defence of illegality goes hand in hand with the defence of voluntary assumption of risk. “ The defence of voluntary assumption of risk applies if the plaintiff freely agreed to accept a risk of injury.

(McInnes, 148) By carelessly crossing the street, Sam agreed to accept the risk of injury. She was not paying attention to the road and had put herself in a situation in which she was harmed due to her carelessness. Bibliography 1. Kerr, Margaret, JoAnn Kurtz, and Olivo Laurence M. Canadian Tort Law.

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