

Business law, tort law assignment

Law



**ASSIGN
BUSTER**

Business Law 1 Mid Term Teshvinder Singh Chopra SEGi University College: American Degree Program 2 July 2010 Accordingly, as with the situation, Tim has sustained injuries from the incident. The person at fault for Tim's condition is surely Danny, as he had parked his car illegally, which definitely breaking the rules, and he as well forgotten to engage the parking brake. This caused the car to roll back and eventually hits an electric wire and the sparks from the ignition of the electric wire spreads to a nearby car.

The car then explodes and a piece of it injures Tim, a pedestrian, like any other, who coincidentally was passing by. In this case, Tim can definitely claim against Danny as Danny has surely commit a tortuous action towards Tim. Tort is a French word for wrong and tort has three categories namely intentional torts, unintentional torts (negligence), and strict liability (Cheeseman, 2010). This case is specifically classified as unintentional tort or negligence. The victim could claim damages sought from the offending party (Cheeseman, 2010).

Since Tim was injured, he could bring a civil lawsuit against Danny. This is possible as there are criteria concerning the conduct of negligence. Firstly, Danny owed Tim the duty of care. Meaning of duty of care is the obligation people owe each other not to cause any unreasonable harm or risk to them (Cheeseman, 2010). Danny has the obligation to make sure that his car did not cause any harm or injury towards others or the environment, which is definitely not the case as he had forgotten to put on his handbrake. A perfect case example is of the *Liebeck v.*

McDonald's Restaurants(1994), where the plaintiff were awarded \$200000 compensatory damages(reduced by \$40000 for her own negligence) because of McDonald's negligence. Liebeck was injured in her thighs, legs, groin and buttocks, as she opened the lid of the coffee cup she bought from McDonald's, which she put it on her lap. The contents in the cup spilled all over her legs and she sustained 3rd degree burn injuries. The jury concluded that McDonald's were reckless and favored Liebeck (Cheeseman, 2010). This is a perfect example of business premises owing a duty to make safe products.

Another case that could be related to this is the case of *Tedla v. Ellman*(1939). The plaintiffs, Ann Tedla and her brother, John Bachek were walking along a road to the right of the center-line in violation of a traffic statute, when they were hit by a passing automobile, operated by Ellman, the defendant. A jury found that the accident was due entirely to the negligence of the defendant. Accordingly, the court affirmed the judgment when plaintiffs' failure to observe a statutory rule of the road did not constitute contributory negligence as a matter of law (Casebriefs, 2010).

This case is important to the welfare of pedestrians. Hence, it is important to understand that Danny has a responsibility towards the safety of others as constituted by the law. Tim may sue Danny in terms of pedestrian law protection. Secondly, Danny breached the duty of care towards the environment or Tim. A breach of duty care is defined as a failure to exercise care or to act as a reasonable person would act (Cheeseman, 2010). Danny did not act reasonably, and as a result, caused the accident and injury to

Tim. A reasonable person would always be reminded and would always be aware that he must engage his vehicle's handbrake.

Case related to the breach of duty is the case of *Donoghue v.*

Stevenson(1932). Donoghue went to a cafe and consumed the drink. While pouring out the rest, she found out that the drink contained decomposed remains of a dead snail. She became unwell and brought a claim of tort negligence against the manufacturer. The House of Lords did decide that the manufacturer could be liable in certain circumstances. One of the Judges, Lord Atkins commented that “ you must not injure your neighbor” (Jepson, 2010). this is the attitude Danny should impose on himself.

Pertaining to the mentioned case, as the manufacturer should inspect all its products as it is in the norm and a reasonable act, it failed to do so to maintain the safety of its products, hence the act of negligence is done. The case applies well to Danny, who neglects his duty to assure that he had engaged his hand brake. As Tim sustained injury from the accident, he may as well sought compensation from Danny. This breach of duty may as well be represented in the case of *Paris v. Stepney Borough Council*(1950). Mr. Paris was employed as a garage mechanist and he had lost sight to one eye during the war.

In order to loosen a stiff bolt he struck it with a hammer; a piece of metal flew off and because he was not wearing goggles the metal struck him in his good eye, causing him to become totally blind. Mr. Paris sought compensation for the injury caused and he won the case. Stepney Borough Council failed to supply Mr. Paris with goggles and breached the duty of care

and was negligent (safetypphoto, 2010). Failure to adhere to the duty of care or the breach of it is a negligent conduct and the crime is applicable in the civil court. Tim could use this point as Danny has failed in his duty of care towards others, specifically, Tim.

Next, is the point of injury. As it is known in the situation, Tim suffered injury from the incident and because of this, he is viable to seek compensation from Danny. A defendant's negligent act is not sufficient for a lawsuit to follow. The plaintiff must have suffered some injury before he or she can recover any damages (Cheeseman, 2010). By definition, injury is a plaintiff's personal injury or damage to his or her property that enables him or her to recover monetary damages for the defendant's negligence. A perfect example is the case of *Wozniak v.*

Alexander(2008), where the plaintiff were injured. *Wozniak* nearly lost her foot by the propeller of the towing boat operated by one defendant. In her case, the court awarded *Wozniak* general damages for loss of pleasure and enjoyment of life at \$120, 000; cost of future care and housekeeping at \$40, 000; and loss of earning capacity at \$50, 000. The ruling is basically due to the injury sustain by *Wozniak* and the breach of duty by the rental company by not taking enough precautionary steps to determine the experience level of those who would operate the vessel (Giaschi, 2010).

It can be presumed that Danny did not take precautionary steps to make sure that his car is safely parked and because of the absence of his precaution, Tim sustained injury from the accident and should sue Danny for that. Another similar case that is related to personal injury is the case of

Hawkins v. The “ Margaret Elizabeth No. 1” et al. , (June 10, 1997). A 17 year old plaintiff was injured when the rigging of a fishing vessel struck a light pole on a wharf causing it to fall and strike the Plaintiff.

The fishing vessel was held 100% liable in this case and the plaintiff is awarded \$438, 000, even though the defendant blames the owner of the wharf, Crown, for the responsibility of causing injury (Giaschi, 2010). Tim may argue that even if the car is claimed not of Danny’s or that he was not directly liable, Danny is still the cause of the accident to happen. The point of actual cause or causation will further be discussed in the next paragraph. Danny’s negligence is the actual cause to the injury sustained by Tim. As defined, actual cause is the actual cause of negligence.

A person who commits a negligent act is not liable unless actual cause can be proven. In this case, the defendant’s act caused the plaintiff’s injury, where Danny parked his car illegally and forgot to engage his car’s parking brake and then caused the explosion of the car and therefore injured Tim. That is considered as an actual cause. The case for causation in fact is the case of Zuchowicz v. United States(1998), where doctors gave the plaintiff wrong dosages of Danocrine, after which she developed primary pulmonary hypertension (PPT), a very rare disease, and then died.

Experts concluded that the high dosage of Danocrine caused the PPT. Thus, the defendant has the burden to prove it otherwise (Garret, 2003). Another case is the Summers v. Tice(1948) case where Summers seek a lawsuit against both the defendants Tice and Somonson. Tice flushed a quail which flew between Summers and the defendants. Defendants fired their shotguns

and Summers was struck in the eye and upper lip. The court affirmed the judgment for Summers because there was a causation (Lawnix, 2010).

Hence, in the scenario, Danny is inadvertently, the cause of Tim's injury.

There is also some special doctrines or conditions that is applicable to this situation. Firstly, there is this issue of Danny parking his car illegally.

Generally, Danny is purely responsible for his act of parking his car illegally.

In addition, his park his car at his own risk and unfortunately, caused an accident which includes an injury to a pedestrian. Danny would and may be fined or imprisoned for this parking violation. And it is a strong case against him since he had broken the rules and regulations of parking lots and spaces.

Next, is the condition where Tim may experience the negligent infliction of emotional distress. He may sue Danny if he had suffered any emotional distress caused by this incident. Negligent infliction of emotional distress means that a tort that permits a person to recover for emotional distress caused by the defendant's negligent conduct (Cheeseman, 2010). A case pertaining to this is of the *Wilkinson v. Downton* (1897) case, where Downton told Wilkinson a joke about her husband being seriously injured in an accident and was lying in a ditch with broken bones.

She was too distressed and was shocked and this resulted in weeks of suffering and incapacity. Wilkinson took the matter to court and won the case (Lawnix, 2010). Tim may also claim damages, if to presume he had a violent shock or an emotional distress due to the accident caused by Danny's negligence. Finally, there is also a transferred intent, which is the same as

recklessness. It is true that the main intention of Danny is to park his car illegally and the result of the following events led to the injury of another passer by.

Instead of violation the parking laws, Danny had also committed the crime of negligence or unintentional tort. Related cases are the Carnes v. Thompson (1932) where D attempted to hit X an hit P instead. Where A intend to do B but instead causes damage to C(in this case, Danny intends to park his car illegally and causes damages to Tim). A is liable to C. Hence, Danny is liable to Tim (Lecture notes). There is also the case of Bradshaw v. Richey(Nov. 28, 2005) where the Supreme Court reversed a grant of habeas relief to an Ohio inmate convicted of aggravated murder and sentenced to death.

Richey had set fire to an apartment to kill his ex-girlfriend and her new boyfriend; they escaped unharmed by a two-year old daughter died in the fire. Richey was convicted on a theory of “ transferred intent. ” Federal habeas relief was granted on the ground that Ohio law does not recognize a transferred intent theory (Cone, 2005). If Tim would look into the factors that may enable him to claim damages from Danny, he would most probably win due to the fact that Danny was negligent and he breached the duty of care towards his environment and caused the accident to happen, therefore, Tim was injured.

Danny had also parked illegally, which would make him more viable for damages and could possibly imposed emotional distress unto Tim. With these factors and evidences, Tim should definitely claim against Danny.

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