

Case study of tort law assignment

Law



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In tort with contractual liability Contrast allowably In tort with contractual allowably. There are three differences between liability and contractual liability: A. The difference of base. Contractual liability means that due to the breach of duty, contractual collateral obligation of contract or violates the “contract law” provisions of the obligations. Finding out a contractual liability has to be in terms of contract.

However, there are no needs for liability, which point liability are monetary damages hat are sought from the offending party. They are intended to compensation the injured party for the injured suffered. B. Contractual liability Is not necessary to prove that If there are some mistakes for one party who breaks a contract, importantly, It Is Just to Indicate whether contract Is performed. On the other hand, liability Is established on basis of accident and negligence of party who has tort behavior. C. The standard and principle of payment is not same.

Contractual liability is on the basis of the valid contract, and others are in terms of actual position to pay. Scenarios There is liability in this case since Tom injured him badly, which is meant to be tort liability of negligence. In this case, Tom is an employee of the firm, and a teenager wants to steal some sugar from the lorry of enterprise, indicating that his starting point is to protect the property of enterprise, however his behavior is excessive.

When a tort Is committed the remedy Is an action at common law for unlimited damages (I. E. Images not established by a formula In a contract), which represent such compensation as the court may see fit to award. The principles of tort are based n rights, the related duty to respect them and compensation for infringement. Tort law protects a variety of injuries and

provides remedies for them, under tort law; an injured party can bring a civil lawsuit to seek compensation for a wrong done to the party or the party property. Task 2 Tort is divided into two categories. One of them is negligence. Explain the nature of liability In negligence.

Negligence The meaning of Negligence 1 . There is a distinct tort of negligence which is (briefly) causing loss by a failure to take reasonable care when tenure is a duty to 00. 2 1 nee attendant may not walls inflict injury but by his carelessness he allows it to happen. The wrong is unintentional but negligent and so the defendant is held to be at fault for the negligent. There are some points to be successful in a negligence lawsuit, the to claimant must prove that: 1. The defendant owed him (the claimant) a duty of care to avoid causing injury to persons or property. 2.

There was a breach of that duty by the defendant 3. In consequence the claimant suffered injury or damage or (in some cases) finical loss. Duty of care The obligation we all each other not to cause any unreasonable harm or risk of arm The courts apply a reasonable person standard Defendants with a particular expertise or competence are measured against a reasonable professional standard. The development of the doctrine of duty of care The narrow doctrine of the neighborhood principle has been much refined in the seventy-odd years since the snail made its celebrated appearance.

At the present time, it is perhaps fair to say that whether or not a duty of care exists will be assessed on the basis of some or all of the following four tests. I Test I Meaning I I Reasonably foreseeable I Was the damage reasonably foreseeable by the defendant as I damage to the claimant at the

time of the negligent act or omission? Proximity Is there sufficient proximity, or neighborhood, between the parties? Fair, Just and reasonable Is it fair, Just and reasonable that the law should impose a Duty on the defendant on the facts of the case?

Public policy Is there a matter of public policy that requires that no duty of care should exist? Restricting the duty of care In any given case, if a reasonable man could have foreseen the consequences then a duty of care may be owed; whether it has actually arisen or not depends on the facts. The duty may be restricted or ignored completely in the following circumstances.

Scenarios The element that must be proven by a claimant in an action for negligence is that there was a breach of the duty of care by the defendant.

This is a matter of determining whether the defendant's act or omission fell below the standard that could be expected of a reasonable person in the same circumstances. The reasonable man means a person should act as a reasonable and prudent man. The standard of reasonable care requires that the person concerned should do what a reasonable man gauges upon tense constellation wanly aurorally regulate ten induct of human affairs' act would do and abstain from doing what a reasonable man would not do.

In this case, Penny was a new driver, indicating that Penny could be certain to understand and know how to drive for her and a series of driving skills or methods. When she crashed the car into a lamppost, and a cyclist on the sideway was injured, explaining that Penny's driving operational proficiency is below the normal standard, namely, Penny is not a reasonable man, although Penny knows how to operate, she was lack of cautious, can not be

experienced to control and drive, showing that Penny did not accomplish the cautious driving responsibilities.

In addition, a cyclist was injured, further indicating that the performance of Penny damaged the health of cyclist and infringes others' right because of her negligence, thereby, this case proves the performance of Penny is a behavior of negligence, and she should be sued for tort by the injured cyclist. Like , the defendant was a learner driver who crashed and injured the passenger, despite doing her best to control the car. The standard required of a learner driver is the same as that of any other driver. Incompetent best is not good enough.

A variable standard for different levels of experience would create too much uncertainty. Subject to this case, there are same between Penny and the learner driver, Penny should be cautious to drive or operate in the road, due to damage the rights of cyclist and violate the reasonable man, Penny should be sued. Scenarios Strict Liability There are torts which result from breach of an absolute duty: the defendant is liable even though he took reasonable care. The defendant is held liable even through he did not intend to bring about the undesirable result, and even though he behaved to utmost carefulness.

And there three types: animal, abnormally dangerous activities and product liability. Product liability 1 . A seller of a product is liable without fault for personal injuries caused by the product if the product is sold in a defective condition. 2. The plaintiff may be the purchaser, user, or bystander whom the defective product causes injury to. 3. The defendant may be

manufacturers, retailers or other suppliers. Supplier (selling, hiring, lending or supplying) can also be liable if 1. The consumer requests the supplier to identify the producer; 2.

The request is made within a reasonable time and the consumer cannot reasonably themselves identify the producer; 3. The supplier fails to comply with the request within a reasonable time. Consumer Protection Act 1987
Strict liability on a producer for damages caused by a defective product. The producer can also be manufacturer, someone who is 1. An 'own brander' of the product 2. An importer of the product or 3. Processor of the product or 4. The person who imported the product into the European Community. Burden of proof on the consumer 1.

The product contained a defect 2. He suffered damage. The damage resulted from the defect and 4. The defendant was either the producer or some other person listed above. There could be four circumstances in this case to specify the relationship between Lucy and HAPPY-VILLA. The first one is that if things happened and leading to the personal injury for Lucy, Lucy has adequate rights to sue to preserve her legitimate interest, and in this case, which did mention to personal injury, it is just financial loss, therefore, personal injury did not belong to this case.

The second condition is that HAPPY-VILLA is a well-known supermarket in London in his case, Lucy purchased a tumble dryer in the HAPPY-VILLA, but while she was doing a cleaning, a latent defect in the wiring of the appliance caused it to short circuit with the result that it caught fire and Lucy's new-fitted kitchen was completely destroyed, indicating that there are financial loss

for Lucy. Actually, this accident also demonstrates that product's quality is defective, or there is fault for product in the manufacturing process resulting in that the latent risk is in using or operating.

Thereby, if HAPPY-VILLA is producer or maker, HAPPY-VILLA has to take susceptibilities to this accident, and pay for relevant loss for Lucy. The third condition is that if HAPPY-VILLA is only supplier, and they can be certain to tell Lucy about the product's detail information, like manufacturer, within the reasonable time, HAPPY-VILLA could not be liability for them, which means that HAPPY-VILLA have no right to be responsible for accident and relevant loss.

The last circumstance is that the product of HAPPY-VILLA cause Lully's financial loss, if HAPPY-VILLA is only supplier and in charge of sales of this product but HAPPY-VILLA cannot be specific to tell Lucy about the product's detail information, like manufacturer, within the reasonable time, which means that HAPPY-VILLA has right to take responsibilities to this accident, and cannot be relief for them, so HAPPY-VILLA has to undertake strict liability for Lully's loss, and Lucy need be responsible for burden of proof on the Lucy as well.

Although HAPPY-VILLA has told Lucy about manufacture, Lucy has to testify the truth of manufacture, which means that manufacture should admit that the product is produced by them, and then HAPPY- VILLA could be not liability. Scenario 4 Occupier One area of law tort which can potentially have a significant impact on business is occupiers' liability for damage or injury caused to people coming in to their premises. An occupier of premises is any

person (not necessarily the owner) who has control or possession of them. Occupation may be shared by two or more persons. Neither statute defines the term 'occupier'. Instead, s. (2) states that the common-law rules apply. Under common law, the test as to who can be considered an occupier is one of control, i. e. someone who has some degree of control over the premises. This means that the occupier need not necessarily be the owner of the land or premises but may instead be a tenant or an independent contractor employed to carry out work. Indeed, there may be more than one occupier at the same time (see *Wheat v E. Alcoa and Co.*, 1966). By statute (*Occupiers' Liability Acts 1957 and 1984*) an occupier owes a duty (a common duty of care) to all visitors to the premises and must take such permitted to enter them.

An occupier of premises is the person who has control of the premises. Ownership alone is not sufficient to constitute occupancy. In *Wheat v E. Alcoa and Co.*, 1966 it was held that the owners of a public house, which was managed by a manager, were nevertheless occupier of it because of the degree of control they exercised over it. Visitor has two meanings in this: 1. A person who enters the premises with the actual or implied permission (or invitation) of the occupier. 2. A person such as a health inspector who has a legal right of entry.

A person who enters to do business with the occupier is deemed to have implied permission although he may in fact not wish to see the visitor- as an example, a casual call by a sales representative hoping to sell his products to the occupier would make him a visitor. But there is no duty of care to a visitor who, after entering the premises, exceeds the limits of the permitted

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purpose, say by straying into parts of the building unconnected with his visit; he then becomes a trespasser.

Premises include not only land and buildings, but also fixed and movable structures; Case law suggests that this definition is wide enough to include a mechanical digger, scaffolding and a lift. The duty of care may vary with the visitors. An occupier is entitled to assume that lawful visitors will display ordinary prudence while on his premises. 1. If the visitor is a specialist, for example a technician called in to do repairs, he is deemed to be aware of special risks incidental to his calling (e. G. O liability for the death by carbon monoxide poisoning of two sweeps called in to close a hole in a boiler chimney: *Roles v Nathan* 1963) 2.

It need be a canny, a enlarge standard AT care is impose occupier. The occupier may discharge his duty to visitors as follows 1 . By taking reasonable measures, such as repair work, to eliminate a hazard. He is not responsible for faulty work of an independent contractor, brought in to do specialist work. But he should inspect it. Thus an occupier will not be liable for the unsafe state of a lift due to negligence of the specialist firm employed to repair it but he remains liable when a school cleaner leaves slippers ice on a step (not a specialist task) 2.

By giving warnings where a warning is enough to enable the visitor to be reasonably safe. A visitor who ignores warning may be consenting to the risk or may be guilty of contributory negligence. But a warning is not a sufficient precaution in some cases. It depends on the facts. Occupiers of premises owe a duty. There is no definition of ' premises', but s. 1(3) of the Occupiers'

Liability Act 1957 states that the term includes not only land and buildings but also fixed or movable structures that include vessels, vehicles and aircraft.

David as a visitor was shopping in a grocery when he accidentally slipped and fell down, indicating that grocery damaged the relevant interests of David as a visitor. Besides, grocery has to keep a safe environment for customers who are shopping, but in this case, there is insecure in the grocery, some lube was found to have been unexpectedly spilled on the floor where the accident took place, resulting in David has dreadful pain in his waist, which means that this accident cause personal injury for David.

For grocery, their duty is to ensure the safe floor for shopping environment, but they did not clean the floor, it is fault and without carrying on their duty of care, which adequately proves that grocery is lack of duty of care for visitors. Thereby, this grocery is responsible for David has suffered. Occupiers' Liability Act 1957 sets out the duty of care owed to visitors. A person will be classed as a visitor if he or she has permission to enter the premises. This permission may be express or implied. Anyone without permission is classed as a trespasser, and the 1957 Act will not apply.

Instead, the Occupiers' Liability Act 1984 contains the relevant provisions. While the Occupiers' Liability Act 1957 applies to visitors, the Occupiers' Liability Act 1984 governs an occupier's duty to non-visitors or trespassers.

1. General defenses In an action for a particular tort the defendant may be able to rely on a defense applicable to Tort automation or Tanat nee took reasonable care if he is sued for

negligence. But those particular defenses are not available in every tort action. For example, reasonable care is no defense in a tort of strict liability.

There are, however, general defenses which may be pleaded in most actions in tort. Of these general defenses the most important is consent. 1. 1

Consent Violent non fit injury (no wrong is done to a person who consents to it) is the maxim which describes consent as a defense in tort (sometimes abbreviated merely to violent). It must however be true consent, which is more than mere knowledge of a risk, and also a consent which is freely given. In this case, Jack violated the safe operation leading to traffic collision, which means this accident is Jack fault and John has no responsibilities for this.

Assuming that Jack and John both violated the safe operation in the process of working and did not operate in terms of relevant rules, indicating that both of them have known relevant rules and still operate this series of programs, then the accident happened, and Jack and John both has rights to be responsible for this because it is their common fault, thereby, employer has no right to take responsibilities for this accident. 1. 2 Rescue cases A person who accepts a risk in order to effect a 'rescue' does not lose his rights against the defendant if he is injured since his consent to the risk was constrained and not freely given.

But the principle only applies when the risk is taken in order to upgrade others from the probability of injury for which the defendant is responsible. A person who creates a risk of personal injury to others cannot contract out of his liability for personal injury or death, for instance by giving notice (in

circumstances of business liability): Unfair Contract Terms Act 1997. 1. 3 Unavoidable accident Accident is a defense only if it could not have foreseen nor avoided by any reasonable care of the defendant. 1. Act of God Act of God, which is an unforeseeable catastrophe, is a special type of unavoidable accident. This defense is rarely available. 1. 5 Statutory authority If a statute requires that something be done, there is no liability in doing it unless it done negligence. If a statute merely permits an action it must be done in the manner least likely to cause harm and there may be liability in tort if it is done in some other way. If a person causes damage or loss in the course of his duties for the State, he may claim Act of State.

But it is not a defense in any case where the claimant is a British subject or the subject of a friendly foreign power. 1. 7 Necessity An act which causes damage may be intentional. If this is so, the defense of necessity may be raised in the following circumstances.) The act is reasonable-such as shooting a dog to prevent it worrying sheep b) The act was done to prevent a greater evil c) It was done to defend the realm. The defense of necessity is usually raised in cases involving intentional interference with persons or property. Defendant reason cannot be found subject to this case.

Hypothesizing that the front car has been out of control, or the road is required, or the front is downtown area, then driver might try to reduce the damage to a minimum, therefore driver decide to compel car working to stop, causing that car is crashed into a lamppost. It belongs to CT of rescue, which means it is necessity for driver. 1. 8 Mistake An intentional act done out of mistake may occasionally be dependable if it was reasonable. Such a case may be where a person makes a citizen's arrest in the reasonable and <https://assignbuster.com/case-study-of-tort-law-assignment/>

sincere belief that the claimant committed a crime. 1. Self-defense Similarly, self-defense is a valid defense if the defendant acted to preserve himself, his family or his property, so long as the act was reasonable and in keeping with the nature of the threat. But if a blow is struck in response only to verbal attack, there is no defense. 1. 10 Illegality Lastly, the courts may reject a claim for damages if the claimant suffered damage whilst engaged in illegal activity. This defense of illegality is also referred to as *ex turpi causa non orator action* (or *Just ex turpi causa*). Hence a burglar could not sue his getaway driver for damages when the latter crashed the car: *Gaston v Turner*. . Defenses and remedies to an action for private nuisance Prescription As a defense to an action for private nuisance, the defendant may claim a prescriptive right to the nuisance. He must show that the actions causing the nuisance have been carried on for 20 years and that the claimant was aware of this during that period. The actions must have amounted to actionable nuisance for the full 20 year period. 3. Defenses to an action for defamation Justification Justification is a defense. The defendant must show that the statement was true in all material particulars.

Defamation cannot be committed by telling the truth. The defendant need only prove the facts which constitute the 'sting of the charge'. Fair comment For the defense of fair comment to succeed, it must be shown that the statement A fair comment was: On a matter of public interest Insofar as it gave facts they were accurate The defendant was not actuated by malice This allows room for an individual?? e. G. A writer or preacher?? to speak out with an opinion on a matter of genuine concern. It is an important element of the principle of freedom of speech. The opinion expressed on the facts must

be honestly held The defendant must have believed the facts to be true Fair comment, then, must be an opinion rather than a statement of fact?? it is a particular reaction to facts, however extreme or prejudiced that reaction may be. Privilege It is a defense that the statement was protected by privilege, which may be 'absolute' or 'qualified'. This is the most important defense in practice. The difference between absolute and qualified privilege is that absolute privilege remains available as a defense despite any evidence of malice on the part of the person who makes the statement.

It enables Members of Parliament, for example, to make statements with the deliberate intention of causing prejudice to the person about whom the statement is made. Innocence Publishers and distributors of a libel may plead innocent defamation, or a lack of responsibility for publication. Under s. 1(1) of the Defamation Act 1996, the disseminator of defamatory material must show the following:

- a) He was not the author, editor or publisher of the statement.
- B) He took reasonable care in relation to its publication
- c) He did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement.

You will recall that an Internet provider was held liable for defamation where it failed to remove a statement which had been brought to its attention as being libelous. Offer of amends Under Sections 2-4 DAD 1996, a person who has published a defamatory statement may issue a written 'offer of amends'. Such an offer must be an offer to make and publish a suitable correction and apology and to pay any compensation and costs that may be determined to be payable. If the claimant accepts the offer of amends, he cannot bring or continue any proceedings for defamation.

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If he does not accept the offer of amends, the defendant may rely on it as a defense or in mitigation of damages unless he knows, or had reason to believe, that the statement was both false and defamatory. It is a defense to a claim for libel or slander if the defendant can prove that he believed, or had reason to believe, that the statement was both false and defamatory. It is a defense to a claim for libel or slander if the defendant can prove that he believed, or had reason to believe, that the statement was both false and defamatory. It is a defense to a claim for libel or slander if the defendant can prove that he believed, or had reason to believe, that the statement was both false and defamatory. It is a defense to a claim for libel or slander if the defendant can prove that he believed, or had reason to believe, that the statement was both false and defamatory. It is a defense to a claim for libel or slander if the defendant can prove that he believed, or had reason to believe, that the statement was both false and defamatory.

4. Contributory negligence to rate If the damage suffered as a result of negligence was partly caused by the contributory negligence of the claimant, his claim is proportionately reduced: Law Reform Act 1945.

The amount of the reduction will be such ' as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage'. Degree of proof The defendant need not prove that the claimant owed him a duty of care. It is sufficient if part of the damage was due to the claimant's failure to take reasonable precautions to avoid a risk which he could foresee. The test of contributory negligence is what caused the damage, not what caused the accident. It does not apply in torts of strict liability or intentional torts.