

Tort law case essay sample



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Intentional conduct – deliberately harming others.

Negligent conduct – deliberately slandering others.

Negligent acts or omissions – fail to do something that results in harming the other person. Eg careless driving. Negligent misstatements – wrong advice or information. Negligence – failure to take reasonable care, by causing damage to other party. Duty of care – legal duty is essential. Case on pg 498. A is not feeling well. B gets drink for A. there is no privity of contract between the seller and the sick person. A drank it and drink was decomposed and she became very ill. Retailer says he did not make the drink, cannot sue him. A decided to sue the manufacturer in negligence and succeeds. This case is foundation of product liability. Neighbour principle stems from them.. eg if u r a highway, the other roads are your neighbours. Someone drowning in pool, do you owe a duty of care? No you are not a life guard. Although it appears sinful. Doctor owes duty to a patient, not to his family.

Page 503 case... sets down the requirements of duty of care. 2 stage test. This is normally satisfied, factual foreseeability. You should know by your action that you will cause damage. Page 502 case man mohan singh... concerns accident involving 2 children who died in a car driven by defendant (culprit). He ran away. Zurich insurance handled the case. The singhs claimed many things, both children died, so they wanted to have more children by fertility and tests all failed and became an expense.

Zurich ins must pay to the singhs. Judge said the tests are not foreseeable. 2nd test is proximity, how are you connected with the parties, what is your

relationship with the party (eg manufacturer and consumer, doctor and patient). Prima facie duty of care would arise. Does policy cancel the duty? No. Policy will cancel the duty if there are indefinite number of claimants (unlimited claims), you open the flood gates to litigation (everybody can sue). Page 515 case. Eg – child knocked down by car. Father gets heart attack and mother faints. The driver owes the duty of care to child, mother and father. Singapore case, Andrea d’cruz.. manufacturer owes duty of care. Breached duty –

Loss – injury, property damage, not too remote means it is reasonably foreseeable. Recognisable psychiatric harm, grief or sorrow by itself is not psychiatric harm. Page 515 case. The wife felt betrayed. Seng was injured, taxi driver came to help. Wife said he was part of accident so can she claim? No. Car driver hits child. Child is primary victim. Then mother is affected. Mother is secondary victim. Applies for nervous shock cases. Mcloughlin v o’brian, life threatening injury. Mother reacted by going to nervous shock. Court said she could succeed as secondary victim. Case on page 514, pang. Primary victim is daughter and mother is secondary victim.

Doctor operated on young lady on tumour. Critical position, doctor careless and fluids started to leak and patient starts screaming, painful death. Mother went to nervous shock. Mother sued doctor, she was successful. Eg.. you leave home for holiday. Locked up. Thieves come to home, one makes coffee and left gas open. Left after robbing. After they left, explosion happened. In hdb apts, neighbouring house affected. Neighbour sue for duty of care? There was no carelessness on your part. So cannot be sued. Not foreseeable. Factual foreseeability is not satisfied. Eg 2... bank robbers being chased by

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police. Robber car flips and one died. Suffers injury. No duty of care from robbers, case dismissed. Breach of duty - failure to take reasonable care. Level of skill or experience... case on page 505. Likelihood of injury, case on page 506. The more serious the harm the more care you take. Paris case on page 506. Case of one eyed workman.

A piece of metal went into the other eye. Those days goggles were not compulsory, said the head. But judge said it was high risk. Eg... case of defective gun. Case involving 2 guys in factory. He shot a few times. The nails started to break. He shot the last time and it hit the pupil... cannot close the eye.. operation. Were they negligent? Yes, if something was wrong with the gun you should stop. As the likelihood of injury is so serious. Cost - if risk is high, low cost, take precautions. Eg if nail is breaking stop shooting. High risk high cost, take precautions. Very low or negligible risk. Very low or negligible risk and high cost. Page 507. The facts speak for itself, plaintiff uses this. Read req to be used for this. Eg dad and son walking in ecp, car driving at 140, hits the 2, the driver was careless. Doctor completes operation, scissors inside patient.

Katherine docks (falling objects), whole shelf falls on u, this statement can be used here. Causation

But iff test.

Eg.. Victim of slow poisoning, he is going to die. Admitted to hospital.

Hospital discharges him and he dies. The person would have died none the less. So failed on the butt-for test. Case on page 509. Remoteness

Reasonable foreseeability test. Too remote not liable. Ship a and some distance away ship b. ship a discharges oil into water. B is doing welding works. Port master called ship chemist. Is there a chance of fire? Oil on water will not ignite. He is right. Unforeseeable thing happened. In welding u have sparks. Whole harbour caught fire. Ship b is not liable. Damage is too remote. Egg shell skull rule.

Defences

For other losses, must satisfy the test of reasonableness.

Smith and bush case on page 523.

Pure economic loss

Loss that is directly not connected to property. Since u knocked down a person he cannot go for a meeting where he was supposed to get money.

Pure economic loss is not claimable. Case Spartan steel v martin & co, accidentally cut electric supply in factory. Direct physical damage can be claimed. Purely a policy argument. Murphy v brentwood, building was a house. The plan for the house must be approved by district council. A got plan approved. He sold house to B. B discovered some foundation problem, not secure. B sued district council, why did you approve.

Eg... renovation for hdb flat. Contractor must get approval from hdb. But renovation is poor. Sell flat to buyer. Can this buyer sue hdb? Hdb says our job is to approve the plan. They will be liable for so many plans in the future. So buyer cannot sue. Eg.. condo launch, you are 1st buyer. But u don't want to live. You sell to buyer 2. Called a sub sale. He finds some defects, can he

sue the developer in negligence? Yes, but he didn't buy it directly. But that doesn't matter. Rsp architects planners case. Negligent misstatements

Piece of careless advice given to someone. Previously looked at negligent actions. Case on page 516, Hedley. Hedley Byrne asks Easy Power that they want to acquire their company. They said check with bankers (Heller and Partners). Free advice given by Heller. Easy Power is credit worthy. They buy. Easy Power goes into liquidation after purchase by Hedley. They cannot sue Heller as the advice was given free of charge. You must establish that they have a duty of care. Hedley failed to prove duty of care, Heller said without responsibility.

Words without responsibility avoided the duty of care. This case applies when, special relationship (goes towards the element of proximity). When you rely on advice given. When is reliance not reasonable? Advice given in social/informal occasion will not amount to duty of care, as it is not reasonable to rely on the advice, no reliance too. If you are professional, unlikely duty will arise, unless you put a disclaimer (without responsibility).

Case on page 517, Esso Petroleum. Scope of negligent misstatement

Negligent misstatement can cover advice or information. Advice given that is incorrect. After proving duty of care, you must prove breach. Is the person professional in giving advice? Page 520. For breach ask if person is professional. If he has failed, breach is proven. Disclaimer court will consider the reasonableness.

The bargaining strength of the parties is what the court considers. Remedies For negligence you only get damages.

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Vicarious liability - employer liability. When employee is in tort. Because you are in the employee and employer relationship, virtue of the relationship.

Condition for VL -

1 Tortfeasor must be employee. 2) Employee must be at fault.. eg.. bus a collides with bus b. you must be at fault before vl can come in. 3) it must be work related. The more control there is the more likely you are the employee. Independent contractors are consultants, architects, doctors. Hes an employee for specific purpose. Employer is liable when the employee is at fault. Cases - koh get kee v low beng, samin v government of Malaysia ... he takes vehicle out and accident, unauthorised, not connected with his job.

Question 26, part 3, if he cannot make profit, claim reliance loss. Question 30 and 31 important on negligence.