

Torts mid-semester test essay

Life, Friendship



Torts mid-semester test The tort of negligence is said to have been committed when a three point test is satisfied i. e.

there is a duty of care, it is not followed and there is consequential damage. Consequential damage may be explained through the landmark decision of *Donogue v. Stevenson*. In this case, the respondent due to his negligence left behind the dead body of a snail in the drink manufactured by him. The appellant consumed the drink and fell sick. There was a duty of care on the respondent to ensure his product was safe to consumer and his negligence 'caused' the appellant to fall sick. Therefore, the respondent was held liable for negligence. The duty of care requirement in a negligence action can be proved by satisfying two requirements - there was a special relationship between the parties, the wrong doer could have reasonably foreseen that his negligence would lead to an injury to the claimant.

For example, in *David v. Headley*, the respondent who was a lawyer gave some casual legal advice to one of his friends. The advice turned out to be wrong but the claim was rejected as the advice was given in the capacity of a friend and not as a lawyer due to which no special relationship existed and thus no duty of care was owed to the claimant. The concept of 'sudden sensory perception' in mental harm or nervous shock cases refers to the reflexive state of mind immediately upon the witnessing of a ghastly incident causing damage to the brain or the nervous system. For example, in *White v. Cross*, people watching a football match on television got a nervous shock when there was a stampede in the stadium and people were getting killed.