

Discussion on negligence law company business partnership essay

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Law of tort is the law that offers remedies to individuals harmed by the unreasonable actions of others. Law of tort usually involve state law and are based on the legal premise that individuals are liable for the consequences of their conduct if it results in injury to others. Law of tort also involve civil suits which means that the individual's private rights are being protected by actions. One of the major categories of torts is negligence. Negligence under the law of tort, is defined in 'winfield and Jolowiz' on tort as 'the breach of a legal duty to take care which result in damages, undesired by the defendant to the plaintiff. Negligence occurs when someone injures or causes a loss to another because of their careless or reckless behaviour. Negligence could include a lack of care for the consequences of one's actions or using less care than that of a reasonable person. Negligence is defined by statute. In such cases, negligence is determines by failure to comply with the statutory requirements. it is a legal cause of damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such damage, so it can reasonably be said that if not for the negligence, the loss, injury or damage would not have occurred. Negligence misstatement can be defined as giving the wrong fact of information given by the defendant and the plaintiff relied on it. The defendant had breach of duty of care in a legal duty, which the wrong fact given has caused damages, undesired by the defendant to the plaintiff. if one party gives advice, information or an opinion to another party in circumstances where the other person reasonably relied upon the advice, information or opinion, the first person may be liable for any loss or damage caused of the advice, information or opinion was given negligently. Generally under negligence misstatement, a special relationship

will exist where the adviser knows that the other party is justifiably relying on him for his skill, expertise or knowledge. It is the action that a person voluntarily takes it upon themselves to act on behalf of, or to advise, another in a professional capacity, they assume a duty to that other person to act or advice with care. Duty of care is one of the element of the negligence.

Donoghue v Stevenson (1932) is the first started case of duty of care. It was formulated in terms of the neighbourhood principle by Lord Atkin, stated that every person owed a duty of care to his neighbours and should take reasonable care to avoid any acts which reasonably foresee would likely harm his neighbours. It is refers to the circumstances and relationships which the law recognizes as giving rise to a legal duty to take care. A failure to take such care can result in the defendant being liable to pay damages to a party who is injured or suffers loss as a result of their breach of duty of care. Therefore it is necessary for the claimant to establish that the defendant owed them a duty of care. The existence of a duty of care depends on the type of loss and different legal tests apply to for psychiatric injury, pure economic loss and defective items. Professional negligence is the carelessness caused by the defendant in breach of legal duty care who engaged in a transaction in which he represent himself as having professional skill in his field of expertise, giving service or advise that injures someone physically or economically, that the defendant not performing as the usual standard. This set of rules determines the standards against which to measure the legal quality of the services actually delivered by those who claim to be among the best in their fields of expertise. Professional negligence is same with any other type of negligence. Three elements must

be proven to the court by the plaintiff which included duty, breach and causation. A professional is required to meet the standard of the ordinary skilled man exercising and professing to have the special skill in question. An error of judgment not counted as negligence unless the professional did not perform as with the normal standard of other same field of professional will act to the same situation. The extent of a professional's duty to warn of risk is also assessed by reference to the standards of the profession. Case Fact 1) Smith v Eric Bush (1990) [HL] A surveyor, Eric Bush, was employed by a building society, Abbey National, to inspect and value 242 Silver Road, Norwich. Eric Bush disclaimed responsibility to the purchaser, Mrs Smith, who was paying a fee of £36.89 to the building society to have the valuation done. The building society had a similar clause in its mortgage agreement. The property valuation said no essential repairs were needed. This was wrong. But Mrs Smith relied on this and bought the house. Bricks from the chimney collapsed through the roof, smashing through the loft. Mrs Smith argued there was a duty of care in tort to exercise care in making statements and then that the clause excluding liability for loss or damage to property was unreasonable under 2(2) and 13(1) of UCTA 1977. Judgement- Lords concluded that even though the defendants had issued a disclaimer, but it still could not stand up to the test of reasonableness under s. 11. Because the purchase of a house by a private citizen, Mrs Smith was bound to be one of the most expensive in a lifetime, and it was more reasonable that a professional surveyor, Eric Bush to bear the risk of liability. The Lords did however say that not all exclusion clauses used by surveyors would be unreasonable, such as in big property developments. 2) Hedley Byrne & Co

Ltd v Heller & Partners Ltd [1964] AC 465 Hedley were advertising agency who had made some advertising work for Easipower. Hedley was responsible for any amount which was not paid by Easipower since they have to pay for advertising orders. Later on Hedley became curious about a financial position of Easipower to afford another advertising which Hedley may give them on credit. The bank of Easipower [the defendant] gave a report of Easipowers financial position that they have enough resources for ordinary business proceedings, but stated that the report was given " without responsibility." Based on the report which was given by the respondents, Hedley added another orders on behalf of Easipower which later on were not covered by sufficient resources. It meant a loss of £17, 000 for Hedley Byrne. Hedley sued the respondents for damages under the tort of negligence. Judgement- The court found that the relationship between Hedley Byrne and Heller was sufficiently as to create a duty of care. They should have known that the information that they had given would likely have been relied upon for entering into a contract. The court said, to a ' special relationship'. In which the defendant would have to take sufficient care in giving advice to avoid negligence liability. However, on the fact, the disclaimer was found to be sufficient enough to discharge any duty created by Heller's actions. There were no orders for damages. 3) Capora Industries Plc V. Dickman (1990) Dickman was the auditor of the company accounts which is the well known firm of chartered accountants. They were the auditors of a public limited company, Fidelity Plc, which carried on business as manufacturers and vendors of electrical equipment of various kinds and whose shares were quoted on the London Stock Exchange. Capora alleged that in negligence a

duty was owed to Capora. The auditors had been negligent in auditing the account. The share Capora acquired from Fidelity Plc and the subsequent bid were all relying on published or audited accounts which is inaccurate, misleading in a number of respect and in particular in overvalue stock and underproviding for after sale credit. Capora purchase further share form the company as the account were overstated for the company's earning and no stated down there have been making a loss in this company. Judgement: Decision of the court of appeal that there was no relationship between an auditor and a potential investor sufficiently proximate to give rise to a duty a care at common law. However, there was such a relationship with individual shareholders, so that an individual shareholder who suffered loss by acting in reliance on negligently prepared accounts, whether by selling or retaining his shares or by purchasing additional shares, was entitled to recover in tort. From the decision of the Court of Appeal the auditors appealed to the House of Lords, with the leave of the Court of Appeal, and Capora cross- appealed against the rejection by the Court of Appeal of their claim that the auditors owed them a duty of care as potential investors. (Eva, K. 2013).