

Law essays - negligence damages breach



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Negligence Damages Breach

For the purposes of this paper, it is assumed that liability for negligence rests solely on the Umbridge Village Fête Committee (UVFC) with regard to the damages suffered by Tony and Will as it is generally accepted that legal responsibility should lie with the event organiser/hirer.

The insurance policy should indemnify the Dorsetshire County Council (DCC) against all activities on the agreed land, except to the extent that the damage is due to any act or omission of the DCC.

In order to succeed in a claim for negligence, the claimant must prove that they were owed a duty of care, that the duty was breached, and that the breach resulted in the damage complained of. The authority for duty of care is the leading case of *Donoghue v Stevenson* (1932) and it is well established law that event organisers owe a duty of care to the participants, spectators and the general public who attend their events.

It follows that the UVFC had a duty to ensure that all foreseeable risks had been adequately assessed and that the appropriate safety measures had been put in place with regard to the planned competitions. Given that a duty has been established, it must now be determined whether the UVFC has breached that duty.

According to Alderson B, in *Blyth v Birmingham Waterworks* (1856), to avoid breaching a duty of care, the defendant must meet the standard of a “reasonable man”. This test is objective and recognises that the average person can not foresee every risk. Case law has established that anyone

acting within a specific area of skill must show the same standard of care as a reasonable person with that particular skill.

Therefore, the question to ask is “ what would a reasonable event organiser, placed in the same position as the UVFC, have done, and did the UVFC meet that standard?” If it can be shown that the UVFC did not use sufficient care with regard to the competitions, liability in negligence may arise.

Tony

On the facts, it was wholly unreasonable to allow a competitor to use a garden trowel as a spile given the nature of the game. Any reasonable person would have recognised that using such an implement in that manner could result in serious injury. Therefore, the UVFC is in breach of its duty.

It is readily apparent that ‘ but for’ the negligent act of the event organiser in allowing the trowel to be used in the competition, this injury would not have occurred. Therefore, the UVFC will be liable for the injury unless the damage is too remote. The test for remoteness of damage as held in *The Wagon Mound* (1961) is that the damage must have been reasonably foreseeable.

This is readily established because all Tony must prove is that some personal injury was foreseeable. The precise circumstances need not be foreseeable, as damages can be recovered for an “ unforeseeable form of a foreseeable type of injury”, and for “ unforeseeable consequences of a foreseeable type of injury” Therefore, it is likely that the UVFC will be liable for Tony’s injury.

The UVFC may argue *volenti non fit injuria* . Case law has established that spectators assume the risk of injury when attending certain events and thus

indemnify the organisers. For example a person attending an ice hockey event accepts the risk they could be injured by a puck. Similarly, a spectator at a golf tournament “ runs the risk of the players slicing or pulling balls which may hit them with considerable velocity and damage.”

However, *Wilks v Cheltenham Home Guard Motor Cycle and Light Car Club* (1971) established that a spectator can recover damages for injury resulting from the negligent act of one of the competitors or the failure of the event organiser to guard against accidents which are “ foreseeable and not inherent in the sport or entertainment”, unless it can be shown that the spectator agreed to take the risk of being injured.

Therefore the UVFC would need to prove that Tony “ freely and voluntarily, with full knowledge of the nature and extent of the risk he ran, impliedly agreed to incur it.”

Tony is regarded as having accepted the risk of injury due to foreseeable playing errors but not the risk of injury due to a reckless disregard of his safety. On the facts, Tony could not have assumed the risk of injury, as it was not foreseeable or inherent, that such an implement would be used in the event. If the court agreed, the defence would fail.

Will

It has already been established that the UVFC owes a duty of care.

Therefore, Will must demonstrate that the UVFC was in breach of its duty.

Would the reasonable event organiser, having regard for the safety of the competitors, allow the game to be played in the river? It is accepted fact that football matches are played on a pitch.

Furthermore, it is common knowledge that rocks are usually present along riverbeds and that they can be slippery. Thus, there was an obvious danger of a slip and fall injury. The reasonable organiser would have recognised the risk and selected a more suitable site for the match. Therefore, the UVFC is in breach of its duty.

Can it be said that the accident would not have occurred 'but for' the negligence of the UVFC? Undoubtedly, Tom's act of tackling Will for the ball was a contributing factor in the incident. Did it constitute a *novus actus*?

Can it be said that Will would have suffered injury 'but for' the negligence of either the UVFC or Tom?

The courts have made it clear that they approach causation as a matter of common sense. Therefore, the judge must decide, of the two acts, which was the effective cause of Will's injury. In applying the common sense approach to this scenario, the act of a third party will not be treated as the effective cause of the damages unless it was entirely unreasonable and independent of the original negligent act.

It appears that the negligent act of holding the match in the river will be considered the effective cause of Will's injury. Tom's tackle was an incidental risk of the game and was neither unreasonable nor independent. Again there is no issue of remoteness, as personal injury was foreseeable. Does UVFC have any available defences to avoid liability?

It could be argued that Will voluntarily consented to the risk of injury by participating in the match. It is accepted that a person engaged in playing a lawful game takes on himself the risks incidental to being a player. However,

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according to *Gillmore v LCC* (1938), he does not take on himself additional risks due to the provision of unsuitable premises or inadequate safety precautions.

Gillmore was distinguished from the usual *volenti non fit injuria* cases on the grounds that the council, in allowing the game to be played on a highly polished surface, added a danger beyond the usual dangers involved in the playing of the game. Will may contend that holding the game in the river was an added danger. To succeed, the UVFC will have to prove that Will chose to run the risk having full knowledge of both the nature and extent of the risk, that he agreed to waive his rights in respect of such damage, and that he was not acting under any relevant pressure. If this is proven, Will's claim will be unsuccessful as the defence operates as a full waiver of liability.

In addition, a case could be made that Will accepted that playing in the river increased his risk of injury and as such, his decision to participate anyway was causative. It should be noted that while knowledge of the risk may show contributory negligence, it does not prove voluntary assumption of that risk. On that basis, it may be decided that Will acted carelessly and any damages awarded would be reduced taking into account his contributory negligence.

With regard to Emma's claim, the case of *Cole v Davies-Gilbert and others* (2007) was recently decided on similar facts. The Court ruled that there was no evidential basis on which to hold the event organiser or land owner liable for the claimant's injury.

The *Occupiers' Liability Act, 1957* (OLA 1957), introduced a common duty of care to visitors which is defined under section 2(2). This duty imposes a

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positive obligation on occupiers to ensure visitors are reasonably safe and is not the same as the duty of care in negligence. The definition of premises includes land and buildings, thus clearly encompassing the green.

Section 1(2) provides that visitors are those persons who at common law would be treated as invitees and licensees. Based on the facts, Emma was a visitor because she had implied permission to walk across the green and was not acting outside the scope of her permission to be there. Therefore, she was owed a common duty of care.

Occupier is not defined in the Act, however, according to Lord Denning in *Wheat v Lacon* (1966) “ an occupier is someone who has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there as his visitor.” There can be more than one occupier and physical occupation is not compulsory.

Thus, both the BCC and the UVFC could be considered occupiers under the Act. However, Emma may wish to pursue her claim against the UVFC in negligence rather than under the Act, since it no longer has control over the premises.

The standard of care required of an occupier under the Act is the same as in common law negligence. The Court must look at whether or not the occupier's conduct was below the standard of similar occupiers acting in the same circumstances. If the conduct does not fall below the standard of the 'reasonable occupier' then it will not be said to have acted negligently.

It is easily accepted that a deep hole in the centre of a public green poses a risk of harm and as such is a foreseeable danger. However, it is important to note that it is the visitor who must be reasonably safe and not the premises. Thus the fact that the exposed hole existed does not, *without more*, constitute a breach of duty. Thus the essential point to consider is whether the occupier acted reasonably. In so deciding, we must consider whether the hole had been adequately sealed after the event and whether a reasonable system of inspection and maintenance was in place.

Assuming that this was the first incident involving the hole, it would be reasonable to believe that the hole had been properly sealed given the amount of time which passed without incident. Presumably, the UVFC would have been responsible for reinstating the green after the fête under the hirer's agreement with the BCC. It follows that the UVFC met the standard of care required of an occupier of premises and will not be liable for Emma's injury.

In negligence, the UVFC owes Emma a duty of care under the neighbour principle and as such, it could be argued that the UVFC was responsible for what went wrong. However, the Committee has acted reasonably in sealing the hole.

Therefore there is no breach in negligence either. Finally, any claim against the UVFC would fail unless it could be proven that they knew, or had reasonable grounds to believe, that the hole had been exposed and did not take the necessary steps to avert the danger.

In Emma's claim against the BCC, it is unclear on the facts provided, what knowledge, if any, the BCC had of the exposed hole. Assuming it had no knowledge, Emma would have to prove that the Council's system of inspection and follow up did not meet the accepted standard employed by other councils, or that it acted unreasonably.

This would be difficult given that there were no prior incidents and no mention of complaints by groundskeepers or subsequent hirers of the green. Thus, if it could be shown that sensible and reasonable action was taken with regard to inspecting and maintaining the green, the BCC would escape liability.

Conversely, if the BCC knew the hole was exposed, it could be found liable given the fact that it would not have been onerous to ensure that the hole was filled in properly and a 'reasonable occupier' would have done so. Under s2(4)(a) OLA 1957, it is possible to discharge the duty owed by providing adequate warnings that enable the visitor to avoid the danger.

However, a warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe as explained in *Roles v Nathan* (1963). In *Rae v Mars UK* (1989), it was held that "where an unusual danger exists the visitor should not only be warned of the danger but a barrier or additional notice should be placed to show the immediacy of the danger".

On the facts of the present case, there were no warnings or barriers. Therefore the BCC did not discharge its duty under the provision and should be held liable for Emma's injury.

Section 2(1) *OLA 1957* provides that an occupier may exclude his duty ' by agreement or otherwise'. *Ashdown v Samuel Williams & Sons Ltd* (1957) held that it is sufficient for an occupier to post a " clear and unequivocal notice" at the point of entry excluding liability with respect to non-contractual entrants. Once again, on the facts, this was not done.

A key point here is that the *Unfair Contract Terms Act 1977* controls the exclusion of liability for negligence including the common duty of care under *OLA 1957* . Section 2(1) of the 1977 Act prohibits any attempt to exclude liability for personal injury resulting from negligence, although this is only applicable in a business context.

If Emma could establish that she entered the green under contract she could successfully claim damages against the BCC even if it had posted an exclusion notice.

A final consideration is the *Compensation Act 2006* which serves to remind us that the law does not compensate people who are involved in " pure" accidents. Furthermore, Section 1 draws attention to the fact that in determining whether there has been a breach of duty, the court will consider whether " precautionary and defensive measures, if taken, would prevent desirable activities", thereby attempting to " ensure that normal activities are not prevented due to fear of litigation and excessively risk-averse behaviour."

Therefore, unless Emma proves causative fault against either defendant, her claim should fail as clearly, too high a duty of care imposed by the courts would interfere with the reasonable enjoyment of life. Therefore, in the <https://assignbuster.com/law-essays-negligence-damages-breach/>

absence of any evidence to the contrary, Emma's accident should be considered just that; an accident.