

Tort law

Law



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Tort Law Evaluate and discuss the potential liability (negligence or other torts) of the various parties in the scenario involving but not limited to Bobby, ACE Sports, the nurse, the surgeon and City General. A tort law refers to a branch of study that deals with injuries/loss sustained by the plaintiff as a result of either intentional or unintentional negligence on the part of the defendant. Tort law provide remedies for civil wrong committed against the plaintiff. The most common remedies for a tort are restrictive orders and cash compensations. However, the plaintiff may seek two types of damages namely; punitive and compensation damages. Punitive damages are aimed at punishing the defendant for committing intentional and malicious acts against the plaintiff. This type of punishment may be awarded in some situations such as fraudulent cases, breach of faith or other malicious intentional acts. On the other hand, compensation damages entail payments made by the defendant to the plaintiff for loss or injuries sustained. For example, defendant might be asked to pay for medical bills, compensation for physical and emotional pain inflicted to the plaintiff as a result of defendant negligence. However, the plaintiff has the right to ask for both monetary compensation and relief (World Law Direct, 2011). In this case, the liability of negligence can be observed not only from plaintiff himself (Bobby) but also from ACE Sports, nurse, the surgeon and City General. Whereby, Bobby was directly involved in a tort for personal negligence. This is because he was not careful with his actions despite the fact that he knew that the new volleyball rim installed in school had some protruding sharp metals that could harm him. Instead he went ahead to slam dunk the ball. The other party that was directly liable for a negligence concerning Bobby's injuries was the ACE spot. The company intentionally built and installed a rim with <https://assignbuster.com/tort-law/>

protruding metals despite being aware that such metals could harm students or any other volleyball player. This means that ACE Company was directly liable for a tort of negligence. Therefore, ACE Spot is not only liable for punitive damages but also for compensation damages as a result of causing Bobby to sustain physical and emotional injuries. This case may be decided based on the case of Donoghue versus Stevenson. The case was held that Mr. Stevenson was liable for harm suffered by Ms Donoghue (Adams, 2008). The other party that was involved in a tort of negligence was Nurse William at the city General Hospital; she failed to attend Bobby despite the fact that Bobby condition was so critical. This made Bobby's condition to become worse and the only remedy was to amputate his right wrist. In addition, Nurse William violated the Emergency Medical Treatment and Labour Act (EMTALA). The act states that all patients brought into a hospital emergency department should be attended without any form of discrimination on the basis of colour, gender, age or financial status. Further, EMTALA act requires that all patient to receive treatment with or without insurance medical cover. Therefore, this means that Nurse William at the General Medical Centre did not only commit a tort of professional negligence against Bobby but also violated Bobby's rights as stipulated under the Emergency Medical Treatment and Labour Act (Ashley, 2004). In addition, the doctor at the county hospital committed a tort of professional negligence by amputating the wrong wrist. Whereby, instead of imputing the right wrist he realized he had imputed the left wrist after he was through with the surgery. This indicates that the doctor was not keen/ observant when executing his professional duties and hence, he was liable for a tort of professional negligence (Smith, 2009). Discuss the application of EMTALA. Emergency <https://assignbuster.com/tort-law/>

Medical Treatment and Labour Act (EMTALA) requires that all patient delivered into a hospital emergency department to be attended by nurses and doctors irrespective of whether they have or they don't have medical insurance cover. In addition, the act states that patients should not be discriminated on the basis of colour, age, gender or their financial position. Whereby all patients should receive treatment fairly, however, over the recent times the act has become ineffective in numerous hospitals due to lack of funds to support the emergency programs. This law may be applied in all hospital emergency departments in a situation where the patients do not have the funds to finance their medical bill (Canter for Medicare and Medicaid Services, 2006). For example, in Bobby situation the EMTALA act was supposed to be applied accordingly. Define comparative negligence and discuss its application to the analysis of liability. Comparative negligence entails a law that defines how the responsibilities arising from the accident will be shared among the parties that were directly involved in causing the accident. The amount to be contributed by each party will be based on their contribution towards the loss/risk sustained. For example, in situation where a driver of a motor vehicle was over speeding and accidentally hits a pedestrian who was crossing at a wrong point of the road, the two parties in this case contribute to the accident and hence, both parties should share the liabilities of the loss incurred based on their contribution as defined by the law (Schwartz & Rowe, 2010). Discuss joint and several liabilities. Joint and several liabilities is a law that provides the plaintiff the authority to claim for the loss incurred from one of the parties or from both parties that were jointly responsible for the loss/risk sustained by the plaintiff. For example if there were two parties who contributed to a total loss of \$8millions to the

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plaintiff, whereby, the first party contributed to a loss of \$5 million and the other party \$3millions. The plaintiff may pursue the first party or the second party to pay for the entire liability of \$10millions. The two defendants may be left to settle down their balances at their own convenience between themselves (Best & Barnes, 2007). References Adams, A. (2008). Law for business students. Harlow, England: Pearson Longman. Ashley, R. C. (2004). The fourth element of negligence. *Critical Care Nurse*, 24(4), 78-79. Best, A., & Barnes, D. W. (2007). *Basic tort law: Cases, statutes, and problems*. Austin: Wolters Kluwer Law & Business. Centers for Medicare and Medicaid Services (2006). EMTALA. Retrieved from . Smith, A. (2009). Hospital sued over care of preemie in 2003: Mom says actions led to amputation of toes. *McClatchy - Tribune Business News*. Schwartz, V. E., & Rowe, E. F. (2010). *Comparative negligence*. New Providence, NJ: LexisNexis. World Law Direct. (2011). What is a Tort. Retrieved :< <http://www.worldlawdirect.com/article/1044/what-tort.html> > 6th December 2013.