

Duty of care imposed on tort of negligence law essay



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The essay below deals with the legal issue of whether a duty of care should be imposed on the tort of negligence. The law of England and Wales has only recognised negligence as a tort in its own right since the case of *Donoghue v. Stevenson*. In the latter case, Lord Atkin stated that in certain situations, people are under an obligation to take reasonable care in order to avoid damages to others. While taking into consideration this statement made by Lord Atkin, a number of seminal cases will be discussed and reviewed prior to deciding whether such an obligation should be imposed. In addition, the judgement in *Dorset Yacht Co. Ltd v. Home Office* [2] shall be taken into account when critically assessing the remaining of the essay. And finally, after reviewing the decision in *Dorset Yacht Co. Ltd v. Home Office* [3], all relevant cases involving claimants attempting to argue that liability arising from the criminal acts of third parties should be imposed will be considered, together with a conclusion drawn as to whether English courts are in actual fact reluctant on imposing such liability.

In its broadest sense, negligence can be defined as some sort of wrong; carelessness due to which somebody suffers injuries of some kind, or as has been put by Winfield and Jolowicz, it is “ a breach of legal duty to take care which results in damage to the claimant” [4]. And, since under the law of tort the burden of proof always falls on the claimant and not the defendant, it is up to the claimant himself to prove if he is to succeed in a claim in negligence. Moreover, there are some criteria that need to be met before a claim for damages is allowed; if there was a duty of care owed by the defendant to the claimant, if there has been a breach of that duty which

caused the claimant to suffer a loss or damage and if the breach was caused by the defendant's negligence.

There can be different types of 'duty of care', for example, a statutory duty of care (where the duty is stated in an Act of Parliament), a contractual duty of care (where the duty is specified in a signed contractual document), or even a professional duty of care (where the duty of care is dictated by work ethics). And where none of the above apply, then the courts can push forth and impose a duty of care but this requires some pre-conditions, which have been subject to a lot of discussion and debate from the first general theory established in *Donoghue v Stevenson* [5], to the two-stage test of *Anns v Merton London Borough Council* [6], to the now leading authority on the matter – *Caparo Industries Plc v Dickman* [7]. Indeed, before duty of care could be enforced, there is a now another test, commonly known as the 'three-stage test' that needs to be satisfied.

In *Dorset Yacht Co. Ltd v. Home Office* [8], the scope of the law of negligence was extended to situations where the criminal acts of a third party, some borstal boys who were in their care, had the effect of imposing a duty of care on the Home Office. Lord Reid one of the judges of the case, gave the leading judgement, stating that "the well-known passage in Lord Atkin's speech should I think be regarded as a statement of principle. It is not to be treated as if it were a statutory definition. It will require qualification in new circumstances. But I think that the time has come when we can and should say that it ought to apply unless there is some justification or valid explanation for its exclusion" [9]. The statement of principle issued in this case was important as it confirmed a duty of care <https://assignbuster.com/duty-of-care-imposed-on-tort-of-negligence-law-essay/>

could be imposed on a party to prevent damage caused by the actions of others, a point that was not previously regarded as part of the liability in negligence. The legal basis for the decision itself is perhaps even more important than the basic principle of law created. Liability hinged on the “special relations” [10] between the Home Office and the third party who caused the damage, to the effect that the third party could be held liable for failing to prevent the damage. “ This together with a high degree of foreseeability – escaping and causing damage was the ‘ very kind of thing’ the boys were likely to do – made the Home Office liable” [11] . Following this statement, it can be said that the extension of the ambit of negligence liability to acts of third parties carries a number of caveats and it is these caveats which (as will be explored below), have a tendency to negate liability in the majority of similar scenarios.

Decisions in favour of statement

There have been a number of instances where the courts have been required to consider the issue raised in *Dorset Yacht Co. Ltd v. Home Office* [12] , namely in circumstances where a party would become liable for the criminal actions of another. The first major case to consider this particular issue was *Hill v. Chief Constable of West Yorkshire Police* [13] . The mother of the last Yorkshire Ripper’s victim argued that the negligent investigation by the police resulted in Peter Sutcliffe murdering her daughter. However, the main difference with this case and that of the *Dorset Yacht* case was that there was no special relationship between the police and the accused who had been interviewed by the police. What is more, for the courts to hold that the

police could be liable for less than thorough investigations would in all likelihood lead to the imposition of crushing liability.

Nevertheless, from 1990 onwards, *Caparo Industries Ltd v. Dickman* [14], became the leading authority on cases involving whether a duty of care should be imposed. According to the *Caparo Industries Ltd v. Dickman* [15], three requirements must be satisfied in new factual situations before a court can impose a duty of care. The three requirements were held to be;

“ the damage must be foreseeable; there must be a sufficiently proximate relationship between the parties; and it must be fair just and reasonable for the court to impose a duty” [16]. All the remaining cases will be examined in light of this judgement.

Topp v. London Country Bus (South West) Ltd [17], is one of the few cases which does not involve a public body, yet it tends to support the contention raised in the above statement [18]. In *Topp v. London Country Bus (South West) Ltd* [19], the action was brought by a person who was injured when a bus was stolen, and the legal argument was whether it was reasonable to impose a duty of care on the bus company for failing to secure the bus and preventing the injury occurring. The criteria set out in *Caparo v.*

Dickman [20] was applied and the courts took a different approach to that in *Dorset Yacht Co. Ltd v. Home Office* [21], where it was alleged that a duty of care would be imposed. In *Topp* however, there was not sufficient proximity between the bus company and the person who stole the bus for it to be reasonable to impose a duty of care. In addition, the case further supports the contention raised in the quotation mentioned above about courts

generally unwilling to impose liability for criminal acts of others. This unwillingness was yet supported by the case of *Alexandrou v Oxford* [22], where it was held that the police do owe a duty of care to the victims of a crime which they investigate but fail to prevent. In other words, there was not enough proximity between the burglars and the police for a duty of care to arise.

The case of *Cowan v. Chief Constable for Avon and Somerset* [23], involved an unlawful eviction which was allowed to continue despite the police arriving at the scene to control the peace. This case reinforced the point of criminal actions of people which could have been easily stopped by the police but was not. Once again, the courts came to the conclusion that no special relationship existed between the police and the people carrying out the eviction, therefore, no duty should arise. “As a result it has been held that the police do not owe any duty to a victim of crime, not only for negligence in the investigation of crime but also in the training of its officers on how to handle racial incidents” [24]. Moreover, the case of *K v. Secretary of State for the Home Department* [25], supported the statement made by *Turner and Hodge* [26]. This involved the Home Office releasing a sex offender who seven months after his release sexually assaulted a person. The Home Office was held not to be liable by the courts for the damage caused by the released prisoner, stating that “there was insufficient proximity between the claimant and the Home Secretary for a duty to be imposed” [27]. It is apparent that from the cases considered above, that in the vast majority of situations, the courts are indeed reluctant to impose a duty of care on a party as a result of crimes committed by another person.

Cases against the statement

On the other hand, despite the reluctance of courts allowing liability claims to succeed, the courts do in some instances rule out judgements in favour of claimants and impose such liability on third parties. The case of *Swinney v Chief Constable of the Northumbria Police* [28], is a rather unusual one, as it involved a couple who were physically injured by a gang of criminals after the police to whom they had provided information relating to the gang's criminal activities permitted their identities to fall into the gang's hands. There was nonetheless, a significant disparity between the latter case and the cases examined earlier. Namely, there was a greater degree of proximity between the victims and the police. Moreover, there was the public policy argument put forward by Lord Justice Ward, who supposed that "the welfare of the community at large demands the encouragement of the free flow of information without inhibition. Accordingly, it is arguable that there is a duty of care, and that no consideration of public policy precludes the prosecution of the plaintiffs' claim, which will be judged on its merits later" [29]. On this basis, the courts felt there was in fact a duty of care owed by the police, given there was "sufficient proximity" [30] between the parties and damage of that kind was clearly foreseeable.

Conclusion

Taking all the facts and judicial decisions relevant to this topic into consideration, it does seem that there is a distinct unwillingness on behalf of the courts to impose liability on a party who failed to prevent a criminal act committed by another party. In addition, given the obvious point that public policy issues play an important part, as the defendant in question is normally

a public institution, it is also worth noting that this judicial view can even be stretched to the purely private action in *Topp v. London Country Bus (South West) Ltd* [31] .

The main argument raised by the courts however, to justify their decisions is that “ there was no proximity because the real culprits were the third parties” [32] . It seems therefore that for the courts to impose liability the defendant would have to have “ taken on extra responsibilities” [33] as has been demonstrated by the case of *Swinney v. Chief Constable of the Northumbria Police* [34] . It can therefore be said as a final point, that the decision in *Dorset Yacht Co. Ltd v. Home Office* [35] is as a matter of fact analogous and that the subsequent decisions have to all intent and purposes simply tried to limit its impact within the tort of negligence.