

Evaluation of tort of negligence in Queensland



Current legislation within Queensland attempts to protect the rights and responsibilities of individuals in their actions towards others. This is supported through the *Civil Liability Act 2003* (Qld), being a key legislation in relation to negligence claims. Negligence is a failure to take reasonable care to prevent injury or loss to another individual (Legal Services Commission, 2013). It is demonstrated by three measures and under the *Civil Liability Act 2003* (Qld), these measures must be established before a negligence claim can be examined. These elements will be evaluated throughout this essay, along with the sub category of contributory negligence, to demonstrate that the defendant, the 20-year-old P plate driver, did owe a duty of care to the plaintiff and is thus liable for compensatory damages. The contributory negligence held by the plaintiff will also be evaluated and analysed throughout the essay. The viewpoints of key stakeholders will be analysed in relation to just and equitable outcomes and will be utilised when reaching an appropriate legal outcome. The *Civil Liability Act 2003* (Qld) and the contributory negligence principle allows stakeholders to achieve just and equitable outcomes in relation to motor vehicle incidents.

The key legislation relating to the Tort of negligence is The *Civil Liability Act 2003* (Qld). Chapter 2, Part 1 of this Act focuses on “breach of duty” with s. 23(1) establishing how the injured party can also be guilty of contributory negligence on the same principles used to identify breach of duty (*Civil Liability Act 2003* [Qld]). Section 23(2) states the factors that the court must consider when coming to the conclusion of whether the person meets the descriptors which include (a) whether the standard of care required of the injured person was that of a reasonable person in those conditions or (b) the

decision by the courts should consider what the injured party knew or ought to have reasonably known at the time of the incident (*Civil Liability Act 2003* [Qld]). For negligence to be proven three measures must be outstanding to the court. The three measures of negligence include that; the plaintiff must demonstrate that there is a responsibility in the circumstances to take care (duty of care); in the conditions, the defendant's behaviour or inaction did not fulfil the standard of care that a rational individual would fulfil in the same conditions (breach of duty); that the plaintiff experienced injury or loss that could have been anticipated by a rational individual in the same conditions (damage) (*Civil Liability Act 2003* [Qld]).

In this scenario, the plaintiff, the passenger in the car, can establish that a duty of care was owed by the defendant, the 20-year-old P plate driver, as he was in charge of the motor vehicle at the time of the incident which resulted in the plaintiff suffering paralysis from the waist down. The Queensland seat belt and child restraint law also states that " In Queensland, it's the driver's responsibility to ensure that seat belts and child restraints are correctly used" (Matthew Izzi, 2018) which further proves that a duty of care by the defendant was most definitely owed. There was also a breach of duty because the driver did not take the precautions and obligations that are required by law. The long term impact of this breach was the plaintiff having suffered extensive spinal injured and was paralysed from the waist down. Although such a severe consequence might not have been as foreseeable, it was still a possible outcome to such a situation. Therefore, in relation to this situation, the three main components, needed in order to continue with a negligence claim, exist. *Imbree v McNeilly [2008] HCA 40*, a case in New

South Wales established the precedent that the plaintiff's understanding of the driver's inexperience was not adequate to warrant the implementation of an amended standard of care, although the problem may be applicable to the issues of contributory negligence (Cambridge, 2017). In this scenario, the plaintiff knew that his supposed acquaintance had lost his licence for six months after being caught speeding on several occasions, therefore the contributory negligence principle should be considered highly. Contributory negligence was introduced " as a type of defence to liability where the defendant may argue that a plaintiff contributed in some way to their own injured or losses" (Legal Services Commission, 2013). In relation to this principle, the plaintiff is guilty of contributory negligence but only to some extent but the defendant still owed a duty of care to the plaintiff. A breach of duty can easily be established as the defendant did not follow safety precautions and obligations. This shows a failure of the defendant to maintain safety considerations for passengers in a motor vehicle they were driving. The consequence of this breach was somewhat foreseeable as since his license had been revoked previously because of dangerous driving in the past, this suggests that the defendant was likely to be incapable of driving safely.

Part 3, Chapter 3 of The *Civil Liability Act 2003* (Qld) refers to the assessment of damages. This section highlights the key information on awarding damages. In this particular case, an important factor to consider is awarding damages for loss of weekly earnings; s. 54 of the Act outlines how the loss of earnings can be calculated. An investigation on appropriate reimbursement for the plaintiff's injury will take place later on in this essay.

Firstly, an analysis on the viewpoints of external stakeholders with regard to safe driving and ensuring fair and equitable results for customers.

Two external stakeholders relating to this particular scenario would be Motor Accident Insurance Commission (MAIC) and the Queensland Governments Road Safety Strategy and Action Plans (QGRSSAP). MAIC is a compulsory third party car insurance scheme which provides an insurance policy for motor vehicle owners, drivers, passengers and other insured persons covering their unlimited liability for personal injury caused by, or in connection with, the use of the insured motor vehicle in incidents covered by the *Motor Accident Insurance Act 1994*. It offers access to common law rights for the injured third party, where the injured individual has the right to seek financial compensation from the individual 'at fault' for personal injury and other associated losses from a law court. It needs evidence of liability as a fault-based system, which means that the injured party must be able to establish negligence against a motor vehicle owner or driver. Accordingly, circumstances may arise where an injured person cannot get compensation, such as when the driver was entirely at fault in the accident because there is no negligent party against whom a claim can be made (MAIC, 2016).

The main priorities of the QCRSSAP is to deliver safer roads for Queenslanders, getting people in safer vehicles and encouraging safer road use (2). The scheme covers individuals who are wounded or have died as a consequence of an incident involving a licensed motor vehicle regardless of the location of the motor vehicle. All types of road users are covered through this scheme including passengers which is the title the plaintiff falls under in this scenario. The commission has supported law reform in order to ensure <https://assignbuster.com/evaluation-of-tort-of-negligence-in-queensland/>

just and equitable outcomes. The QCRSSAP allows consumers such as the plaintiff to be made aware of their legal rights and educate them on how to bring civil action against someone for negligence (Queensland Government, 2019).

The decision made in *Imbree v McNeilly [2008] HCA 40*, established that contributory negligence was to be set at 30 percent by the court. This case provides a substantial amount of precedent and could be used to argue that even though the defendant owed a duty of care and was negligent, the plaintiff was also negligent in the fact that he got into the car with a known inexperienced driver and did not put on his seatbelt. In saying this, under law it is the driver's responsibility to ensure that passengers have engaged their seatbelt and are safe and secure before driving the vehicle. Therefore, the contributory negligence should be lowered because the driver should have done something about their passenger not wearing a seatbelt. Another Australian case, *Allen v Chadwick [2014] SASCFC 100* involved the plaintiff, a pregnant woman, suffering severe spinal injuries which resulted in permanent paraplegia. This was a result of the negligent driving of the defendant where the plaintiff was the rear seat passenger. The plaintiff was found accountable for contributory negligence and her damages were lessened by 25% because she did not engage her seatbelt yet, it is still heavily the defendant's negligence that resulted in the incident and only worsened by the plaintiff (Queensland Government, 2019). These two cases will now be used to evaluate a suitable recommendation.

In this scenario, the plaintiff has the onus of proof, which is outlined in s. 12 of the *Civil Liability Act 2003*, and therefore must demonstrate evidence that <https://assignbuster.com/evaluation-of-tort-of-negligence-in-queensland/>

he experienced severe injury from the motor vehicle accident. A doctor's examination as well as appropriate medical tests would be reliable and appropriate evidence. Section. 61 of the *Civil Liability Act 2003*, Chapter 3, Part 3 outlines the courts general assessment on injuries and the compensation awarded to the plaintiff. (1) The injured person's damages must be assigned a numerical value on an injury scale that runs from 0 to 100. (2) The scale assesses the compensation value that should be awarded to the plaintiff in accordance to their injury severity. This establishes that the *Civil Liability Act 2003* (Qld) enables the plaintiff to seek a suitable remedy, claiming general damages as well as injury damages and thus achieving a fair result.

To achieve a fair outcome, the defendant would argue that the severity of the injury could not have been foreseen in an attempt to minimise the claim for injury damages. Section 53 (1) outlines that if a defendant is not satisfied with the outcome that the plaintiff has arranged, they may give the plaintiff written notice suggesting specific action the plaintiff should take to lessen the damages. For example, they may suggest that the plaintiff undergo medical or psychological treatment. For the defendant to have the option to request the plaintiff to undergo any of these treatments they must be notified of the incident straight away. Since in this scenario the defendant was present during the accident, no notification would be needed as they would already be aware. Section 53 (4) the court must assess if the plaintiff has taken reasonable steps to lessen damages by following suggestions given by the defendant or if they have failed to do so. If the court decides that this is the case, they can reduce the plaintiff's damages to an

appropriate extent reflecting the failure of following suggestions and if this was reasonable or not. This allows the defendant to achieve a fair result when something like contributory negligence is present.

The *Civil Liability Act 2003* (Qld) and precedent from previous cases have outlined the key elements to allow stakeholders to bring a successful negligence claim to achieve just and equitable outcomes in Queensland. The elements which must be proven before a negligence claim can be considered have been outlined and supported by case law throughout this essay. Previous precedent assisted in identifying contributory negligence in the scenario, making it achieve just outcomes.

References

- Cambridge, 2017. Categories of duty of care. In: *Investigating Legal Studies for Queensland Second Edition*. s. l.: s. n., p. 8. 3.
- Legal Services Commission, 2013. *What is negligence?*. [Online] Available at: <https://lawhandbook.sa.gov.au/ch29s05s01.php> [Accessed 11 August 2019].
- MAIC, 2016. *CTP cheme*. [Online] Available at: <https://maic.qld.gov.au/ctp-scheme/> [Accessed 25 August 2019].
- Matthew Izzi, 2018. *Defenses to Tort Liability: Contributory Negligence*. [Online] Available at: <https://www.legalmatch.com/law-library/article/defenses-to-tort-liability-contributory-negligence.html> [Accessed 24 August 2019].

- Queensland Government, 2019. *Road safety strategy and action plans*.

[Online]

Available at: [https://www.tmr.qld.gov.](https://www.tmr.qld.gov.au/Safety/Road-safety/Strategy-and-action-plans.aspx)

[au/Safety/Road-safety/Strategy-and-action-plans.aspx](https://www.tmr.qld.gov.au/Safety/Road-safety/Strategy-and-action-plans.aspx)

[Accessed 25 August 2019].

Legislation and Case Law

- *Civil Liability Act 2003* (Qld)
- *Allen v Chadwick [2014] SASCFC 100*
- *Imbree v McNeilly [2008] HCA 40*