

Cheryl's case

Business



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A tort is a civil wrongdoing, independent of a contract that arises from individuals in their capacities as individuals and whose remedy is given by an award of unliquidated damages (Geoff, 2003). A person who is liable under a tort must have been assigned some duties to perform which he breaches so that the plaintiff suffers injuries, losses, or damages. Examples of torts include negligence, nuisance, defamation, malice, and trespass among others.

Tort being a civil wrongdoing is actionable in a court of law, and, as such, it is actionable per se. An example of tort that is connected with Cheryl's case at hand is the tort of negligence. Negligence can be defined as failure to do something which a reasonable man guided upon those considerations that regulate the conduct of human beings would actually do (Stephen, 1982). It refers to doing something which a reasonable man would not do. For the tort of negligence to be actionable in the court of law, the following three elements or ingredients must be proved before the court: duty of care, breach of the duty of care, and the injury to the plaintiff.

In the case at hand, Cheryl visited her doctor to ask for injections and tablets to safeguard her health during and after visit to India. Therefore, there was a duty of care endowed upon Cheryl's doctor to administer all the tablets and injections deemed necessary to safeguard Cheryl against any ailments that she may be predisposed to including malaria (Williams, 1951). This was entirely up to the doctor to execute his work too diligently as failure of the same would result in breach of duty of care and subsequent injury or losses to Cheryl. Unfortunately, the doctor fails to prescribe the recommended malaria tablets to Cheryl who had endowed him with a duty of ensuring that

she is well covered against any ailments during and after her visit to India. Thus, there is a breach of duty of care on the part of the doctor for failing to prescribe the recommended malaria tablets and injections to Cheryl ; therefore, he should be held accountable should Cheryl contract malaria and fall sick (Williams, 1951).

Upon Cheryl's return from India, she becomes very ill, and she is hospitalized for several weeks. She sustains some injury since her hospitalization renders her unable to publicize the release of her latest single causing her sales revenues to plummet drastically; therefore, she loses her album's stock. She ends up making losses that she never even anticipated (Currie, 2000). This loss is attributed to the doctor's negligence because had he prescribed for Cheryl malaria tablets and administered some injections to her, she would have gone ahead and released her album upon her release. Cheryl has a legal right to sue her doctor as a plaintiff and the doctor as the defendant in the court of law for damages would have to compensate her for all the sales she lost because of failing to release her album as planned upon her return from India (Geoff, 2003). The doctor's negligence is actionable in the court of law, and he should be brought to compensate Cheryl for all the losses sustained by her.

The legal grounds to sue for Cheryl is to demand compensation from the doctor as a result of revenue losses she incurred for failing to release her single album due to malaria sickness (Currie& Cameron, 2000). Had she been adequately consulted by her doctor, she would not have contracted malaria and would have gone ahead and released her album and make sales as expected. It was as a result of malaria (injury) that she ended up not

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releasing her single album, making low sales, and incurring losses causing damages to her. Therefore, she is entitled to sue the doctor and claim for compensation. The doctor, on the other hand, could raise defenses that eliminate or justify his reasons for failing to prescribe the malaria tablets and injections to Cheryl through defenses available to him in a court of law.

These defenses include, first and foremost, contributory negligence (Atiyah, 1997). The defendant who, in this case, is the doctor could justify his reason for not prescribing the tablets and injections to Cheryl on the ground that he had already administered other prescriptions to her, and since she never mentioned any possibilities of her contracting malaria, there was no need of him to cover an ailment that is easily treatable in any country with India being not an exception. He would, therefore, convince the court in the lack of need to cover an ailment that can be treated so easily without fuss and that it was entirely on the part of Cheryl (plaintiff) to request for prescription protecting her from malaria. The second defense is one bent on the assumption of risk (Coase, 1960). Under this defense, the doctor (defendant) can avoid liability for his negligence by convincing the court that Cheryl voluntarily went to India for performance knowing all too well that she can contract malaria without asking to be covered against the same (Craythorne, 2006). She, therefore, assumed the possibility of her getting malaria upon her return and chose to go ahead without asking for prescription from her doctor.

Her getting malaria is just bad luck since she assumed least the possibilities of falling sick. The doctor could also prove that it was not his fault as far as Cheryl got back from India without contracting malaria and got the ailment

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when she returned. Cheryl would have gotten back to her doctor upon her return to have her checked and screened for any ailment. This way she would have avoided it altogether. Hence, the doctor could conclusively argue that it was the plaintiff's fault not to consult with her doctor first thing when she got back from India (Harry, 2010).