

Blaw law of tort

Law



Ngee Ann Polytechnic School of Business & Accountancy Diplomas in ACC, BIT, BS, BFS & IBZ Business Law LAW OF TORT STUDENTS' COPY Tutorial Questions Section B: Problem Questions (Use LAC format to answer, with supporting cases) 1. Last month, Raj bought a pair of Flying Eagle inline skates from his neighbourhood shop. Flying Eagle inline skates are made in a factory in Tampines owned by the Kang Brothers. Unknown to Raj, the particular model of inline skates had a manufacturing defect. Two weeks ago, while Raj was skating down the Bukit Timah Hill, the brakes on the skates failed, causing him to roll down the hill.

Raj suffered multiple bruises on his head, elbows and knees and a fracture of his right wrist. Raj was hospitalised and was unable to work for three weeks as a part-time delivery boy at the Prata Hut. Required: a) Advise Raj whether he can successfully claim compensation under the tort of negligence. Legal principals Negligence is not doing something that a reasonable man would do, or doing something that a reasonable man would not do. A duty of care firstly requires factual foreseeability owed to any person whom we can reasonably foresee will be injured by our acts or omissions to test the remoteness of damage.

It is also known as the 'neighbour principle'. Secondly, there must be legal proximity based on the closeness and directness of the relationship between the parties, physical proximity or causal proximity. Lastly, there is a consideration of all policy matters applicable to the situation which might remove the duty of care which had been established. Whether or not the duty of care is breached determines on the standard of care expected from

the person who owes the duty. Factors like the level of skill, likelihood of injury and seriousness of the injury are taken into consideration.

The plaintiff must then show that he suffered damage or loss as a direct result of the defendant's breach. This can be done using the 'but for' test, in which if the plaintiff would not have suffered damage but for the defendant's negligence, then the negligence is a direct result and breach of duty of care. Application Flying Eagle owes its customers a duty of care to ensure that its skates are free of defects. It is factually foreseeable that if the skates had defects, the person wearing the skates will eventually be injured.

There is casual proximity involved as the skates were bought from a shop that sells Flying Eagle skates. Using the 'but for' test, Raj is most likely not to have suffered injuries if there were not any defects. Conclusion In conclusion, Raj is able to sue Flying Eagle for damages regarding his hospitalisation fees and loss of income. b) Discuss briefly whether it will make a difference to your answer if the medical report showed that the injuries suffered by Raj could have been less serious if he had worn a safety helmet, and protective pads while skating.

Under the Contributory Negligence and Personal injuries Act, the plaintiff's injury was partly contributed by his own fault. The court will apportion the liability between the parties. In Raj's case, his injuries would have been less serious by wearing his safety equipment. Thus, the extent of injury was partly contributed by his own fault and he will not be able to claim as much compensation as compared to the first scenario. 2. Wanda was very unhappy with her boss, Glenda.

After she resigned, she decided to vent her frustration by sending e-mails to her company's clients and some of her colleagues that her boss is " a fraud and a tyrant who runs the company like an army regiment. " These statements are totally untrue and the company's clients do not have a good opinion of Glenda anymore. In fact, since the e-mail started circulating, the company's business has suffered badly. Required: a) Advise Glenda whether she will be successful if she sues Wanda for defamation. Legal principals

Defamation occurs when a statement is published which leads to the lowering of a person's reputation in the estimation of members of society. The accused must have made the publication with the intention to harm the reputation of the person defamed, and knows or believes that such injury will result. This constitutes as a criminal offence under the Penal Code (Chapter 224). However, under the law of tort, no intention needs to be proved, Damages are presumed to result from a libel (written statements) and no necessity to prove actual loss capable to being measured in monetary terms.

Slander requires proof to special damage. For the statement to be considered as defamatory, it must be published and sent to any person other than the person who is the subject of the statement, untrue and effect of lowering a person's reputation generally. Application Wanda is guilty for defamation because her statements were published in the form of emails and she had the intention to harm Glenda's reputation as she was unhappy with her. Also, there were damages in the form of business loss and this is capable of being measured in monetary terms as well. Conclusion

Glenda will be successful if she sues Wanda for defamation. b) What are the possible remedies available to Glenda in this situation? She will be awarded

damages to compensate for the loss of reputation. The amount of damages may be aggravated by malicious motives and the prominence of both the plaintiff and defendant, seriousness of the libel and the manner and extent of the publication as well as the conduct of the defendant. Glenda can also seek an injunction to prevent the future publication of any defamatory matter and destruction of all defamatory materials published.