

Structures grandstand scaffolding ladder law contract essay

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Based on the case that has been given to me, the case is based on two parties which are Demoloni Housing Development Sdn Bhd and Ah Yam. Demoloni Housing Department is the company who has been given a license to construct a shopping complex at Bandar University. Ah Yam who is a common people, who has entered a land on his way to the stall, was hit by an object which fell on his head. He died from his injuries and his representative wanted to sue Demoloni Sdn Bhd for the dead of Ah Yam. However, Demoloni Sdn Bhd contended that Ah Yam was a trespasser that makes developer not liable under occupier's liability. Occupiers liability is refer to:" Occupier's liability is the liability of a person who controls land or building for damages caused to others who enter thereon" definitions. uslegal. comBased on the definition, we can state that occupier's liability is the responsibilities of the owner of land who is controllable towards the person who are enter to their premises. The have the power toward their premises. In the occupier's liability and law term, the premises are all form of building. This is including: Land spacesVehicles used for carrying personStructuresGrandstandScaffoldingLadderWallBasically they are 4 types of entrants and the standard of care which are: Contractual entrantsIn contractual entrants, they are the person who is having a main purpose to enter the premises. Basically it gives an ancillary purpose which is giving an economic advantage to the owner of the premises. The owner should take reasonable care to avoid injury from foreseeable danger. InviteesInvitees are the person who are legally authorized and the business visitor who can bring the economic advantage. The owner should take reasonable care to prevent injury arising from usual and unusual danger. LicenseesLicensees are the

person who is entrants to the premises as of right from the owner. Basically it consists of the social visitor and by implied permission. In the standard of care, the owner should take responsibility from concealed danger or from something hidden. Trespasser According to <http://www.businessdictionary.com/definition/trespasser.html>, trespasser is "A person who has entered onto another's private property without being given permission to do so." Based on the definition above, we can see that trespasser is the people who are entered into the premises that are not belong to him / her without permission. Even they are not allowed because of entered the premises without permission, the owner still has duty and liability towards them. Based on the case, we can see that even Ah Yam was a trespasser, Domoloni Sdn Bhd still have the responsibility towards him to prevent the trespasser from injury. For example, they should provide a warning signs. As state in the case, Domoloni has not carry responsibility as the licensee that constructed a shopping complex. They were no fence around the building, no warning signs and the public had the access to the stall. This we can in vicarious liability. According to <http://www.investopedia.com/terms/v/vicarious-liability.asp>, vicarious liability is "A situation in which one party is held partly responsible for the unlawful actions of a third party." Based on the definition above, we can state that vicarious liability is the responsibility of the employer towards to the employee. For example, an owner of the premises has a responsibility to take action to bring peacefully to their premises from any injuries case. If they are not taking action to make their premises from any injuries, they will be liable to bring into the court. We must see if the requirements of the vicarious liability meet into the case.

The first requirement is content tort. Tort is divided into 2 which is wrongful act or wrongful omission. Wrongful act is the act against the law of tort and wrongful omission is the act should be done or need to do but the person are not doing it will cause damages to other person. Based on the case, Demoloni Sdn Bhd are not applicable to provided safety place by not provided warning signs. The action that they are doing is against the law and it are below of the wrongful omission that they should do in order to make the premises prevent from injuries. The next requirement is special relationship. In special relationship, they are 3 test to know whether it below under what criteria. It consists of control test, organization test and multiple tests. In control test, we can refer to the case short v Henderson. The fact about the case is they are 4 powers that can terminate whether the person is under the power to take action or not. It consist of the power of selection, power in determining the salary or other remuneration, power to control the method of doing the work and the power to terminate. The second one is organization test. For organization test, they will be having a test whether the person is concerned works as part of the organization and his work forms an integral part of the organization. The last one is the multiple test. This test is performing to cover the control test weaknesses. For multiple test, it really mixed concrete which is consist of: The employee agrees that he will use his own expertise and the employer pays him either in monetary form or other remuneration. The employee agrees that he will be bound by the employer's instructions All other condition in the agreement is consistent with the nature of the job being a contract of service. The last requirement that is needed to define the vicarious liability is within the course of employment.

Basically the act is due to carelessness in the performance of the job. The worker or the employees are making the damages due to careless in doing their job. Next, is unauthorized mode in doing something authorized. In this situation, the workers are un-liable to do something against the law. Other than that, other course of employment is worker acting for his own benefit. They should be doing the task of his / her job without making any damages to other person and prevent them from doing un-focusable. However in the case, we can see that Domoloni has not taken action from doing and prevent the premises from any signs in construction site. We can see that they were no fence around the building and no warning signs. In the law, the constructed should provide a warning signs in their premises. This is because, without any warning signs and the think that should provide to prevent the injuries and accident is against the law and the employer who is liable to their employee will be responsible if any injuries happen. Even though the employer is not doing unlawful act, in vicarious liability, the employer is the one who are responsible is anything happen in their premises. Additionally, they were hacking walls in preparation for plastering that has no safety net was use. The court will liable to take action against Domoloni due to not having any action to prevent the injuries from happen. So as conclusion, even though Ah Yam was a trespasser, Domoloni still have a responsible to make their premises from any injuries and take action by giving warning signs to the trespasser if anything happen to them and they will not liable if anything happen. The occupier liability is towards Ah Yam who is trespasser and the vicarious liability towards the Demoloni Sdn Bhd

because of not provide a safety condition in their premises and provide a warning sign to the entrants and the worker.

Question b

Question b requires me to describe the rule of safety and health in a construction site. Safety management is identification and implementation of action intended to control safety threats or threats of harm. Basically they have 2 situations which is Dangerous Practices (D. P) and Dangerous Condition (D. C) Dangerous Practices Practices that violate the rules in a place of work. It also know that a work or do something against the law. Dangerous Condition Condition which can cause accidents Basically, to prevent the accident, we use domino's theory which is consisting of: Law Policy Rules In tem of law to prevent the accident, we will refer to AKTA S14 (1994) Occupational and Safety Health (OSHA). According to <http://www.mysafetyandhealth.com/2011/08/law-malaysia-osh-1994.html>, OSHA 1994 defines the general duties of employers, employees, the self-employed, designers, manufacturers, importers and suppliers of plant or substances. Based on the definition above, we can say that in OSHA, they have created the law to make the work place in a safety mode. It also shows if they are no safety step are taken, the employer will be given a penalty based on their wrongful act. For example in in section 15 of OSHA it stated the duty of the employer that must be followed that is to ensure the safety, health and welfare of the employees and visitor. We can see the duties of employer by referring in OSHA 1994 section 15-19 which stated that: To provide information, instruction, training and supervision To provide safety workplace including the entrance and exit To provide safety and health environment If

the employer cannot do as stated in OSHA 1994 section 15, they will be given penalty under section 15 which is: FINE RM50, 000. 00 or Imprisonment not exceeding 2 years or Both Even though employer are liable towards their premises if any think happen, the employee also will be liable if they are not doing the responsibility towards the employee. We can see the employee responsibility under section 24, Act 514, it states the employee responsibility which is: Ensure the safety of self and other person Cooperate with employer and other workers Use Safety uniform If they are failing to do so, they will be given penalty under section 24 which is: FINE RM1, 000. 00 or Imprisonment 3 years or Both In order to make workplace are in a safety and health, under OSHA 1994, they have state how the workplace should be in order to maintain and gain as stated in section 30 which is : " Compulsory to form a safety and Health Committee at workplace which consist of 40 or more workers." If they are fail to do so, the owner of the building or premises will be given penalty under section 30 which is: FINE RM5, 000. 00 or Imprisonment 6 month or Both In term of policy, we need to know what types under of policy. Basically, they are 4 types of the policy which is a chairman, a secretary, employee and employer. For the purpose of doing on the policy, they should provide the function of committee that will be handling on doing something of task which is: Assist in development of safety and health rules and safety system of work. Review the effectiveness of safety and health program Carry out studies on safety and health Somehow, the function of committee is mostly like to make and handle the think or maintain the committee to be safety and health workplace by doing a meeting whether they should follow up the rules or make it the new

one if they are injuries and accident happen while working. The committee should be more effective in order to prevent the accident while working. They are several roles of management that should have in order to maintain the safety and health workplace which are: Inspect of workplace Set up health and safety committee Monitory policy In making the workplace safety, the committee should take action and review the system starting from the workplace until the policy that should have to prevent the injuries. Based on the case, we can see that the workplace are not safety because the employer are not carry safety and health condition while working such as no fence around the building to prevent any object from fall into the outside land and building. Last but not least while I am using the domino's theory in order to prevent the accident in a construction site, they should have rules that can make a warning to the worker and entrants. For example, they should have a specific site rules that consist of different main purpose. There are consists of color: Red - Prohibition Blue - Mandatory Yellow - Warning Green - Safe Condition The red color in a site rules is to make sure that they are the think that the worker or entrant of the land should not liable to do. This is because, from the red site rules, they will make the injuries happen and can cause damages to both party. For example for red site rules is an entry site (See appendices 1). For blue color, it will show the mandatory site which is the worker or the entrant should do in order to prevent they form accident and to make sure they are safety while in the premises. For example wear mask sign. (See appendices 2). Next one is yellow. Yellow color is to make sure that it should not do because it is against the law and will cause the damages. For example nuclear zone signs. (See

appendices 3). The last one is green color which consists of safe condition like an information and first aid kit. (See appendices 4) From this all of the requirement meet and the domino's theory that I have used, basically, to prevent the accident and any injuries happen while working and in the premises, they should prevent dangerous practices happen first. Because the worker or entrants that do they think against the law will make and cause the injuries happen. Based on the case, I can see that Demoloni Sdn Bhd are not use a right way how to prevent from accident happen and they also not have applied the safety and health act in OSHA. Somehow, they are no construction sign in the land that they constructed. Even the rules of sign and policy of management also they are not apply in order to prevent the damages happen. From this on, Demoloni Sdn Bhd can be judge because are not able to make the premises in a safe condition and can be give penalty under the OSHA 1994. So as conclusion, for safety and health construction site, Demoloni are no apply any of the following ways or step in order to make their premises not liable to take responsibility if any think happen to entrants. They will be liable to take law action due to dead of Ah Yam.

Question c

Question c required to make a comparison between above torts with the strict liability. The above torts are from the occupier liability and vicarious liability which is the constructed are not apply safety and health procedures in their premises. Firstly, we can see the differences between occupier liability and vicarious liability and strict liability is based on their definition. For the strict liability, according to Wikipedia. com strict liability is the

imposition of liability on a party without a finding of fault. Occupier's liability
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is the liability of a person who controls land or building for damages caused to others who enter thereon. And vicarious liability is a situation in which one party is held partly responsible for the unlawful actions of a third party. The strict liability is liability that is liable towards the defendants that the defendants are fault because of their conduct. Occupier's liability is the responsibilities of the owner of land who is controllable towards the person who are enter to their premises. Vicarious liability is the responsibility of the employer towards to the employee. To make it more easily to understand, we can see the differences between them in the elements. Occupiers
Liability Vicarious Liability Strict liability Landlord liability

Second and third parties to a contract entering the property

Tortuous act / wrongful act Special Relationship Within the course of employment Dangerous thing Escape Intentional Storage Non-use of land Foreseeable damage Based on the elements, we can see, in the strict liability, for the dangerous thing, the party is doing something that is able to make an injury to other person. Based on the case study, we can see that, Demoloni Sdn Bhd are constructed a shopping complex at Bandar University. They are doing a constructed building which is using the dangerous think. In case of make it safety, they should provide a safety place to the worker and make a procedures in prevents the injury form happen. But then, they are not doing their own duties to prevent from any injuries happen. We can see that they are not provided warning sign. This is against the law. In the construction site the employer provide a warning site because they are many dangerous think can happen if they are not created a safety workplace. To make it more understandable, we can refer to the case of <https://assignbuster.com/structures-grandstand-scaffolding-ladder-law-contract-essay/>

Ryland v Fletcher. The facts are: the defendant mill owner employed some independent contractor to build a reservoir. Beneath this reservoir were some iron shafts that went through a mining area and which were connected to the plaintiff's mine. The defendant did not know of the existence of these shafts and the contractor was negligent in not blocking the shafts. The plaintiff's mine was flooded when the reservoir was filled with water. As we can see in the fact case, the dangerous thing in the case is the iron shaft. "Iron shafts that went through a mining area". Through this case, we can see that the dangerous thing is the things that are capable of making damage. The next element is escape. In this situation, escape means that the thing or some thing that is dangerous or will make the damage to the other party has escaped from premises or land. Based on the case study, as we can see, they do not think that the escape from Demoloni's constructed site but Ah Yam who was the one who came into the land or premises of the constructed site. So that the element for the case study are not liable for Demoloni. But in the case of Ryland v Fletcher, we can see that "The plaintiff's mine was flooded when the reservoir was filled with water". From this on, it is the water from the reservoir that has escaped from the defendant's land. Even though the defendant is not able to know the existence of the iron shaft, he is liable to take action against the law because he is the one who has the power to conduct the contractor to build the reservoir. Next one is about intentional storage. Intentional storage is the intention to do something into their premises. Based on the case study, as we can see Demoloni Sdn Bhd is having the intention to construct a shopping complex. In this case, if someone who has the intention to do something about

their land, they should provide safety place and prevents from any injury happen. Back to the case, the defendant has his intention to build the reservoir. This is proven by " the defendant mill owner employed some independent contractor to build a reservoir". From the statement, we can see, fletcher is known that he wanted to build a reservoir on his land. It means that he has intention towards the storage. Next element is about non-natural use of land. From this element, what I have understand about the non-natural use of land is means by the unpredictable and rare think that someone wants to do and it is different from other person. As we can see, in the case study, Demoloni intend to build a reservoir on his land in Bandar University. He has been given a license to construct the shopping complex. For me, they are no non-natural use of land because he has a license to build a shopping complex in the right place. It is normal to build a building onto their land. But for the case Ryland v fletcher, we can see that fletcher wanted to build a reservoir in his land. From this we can see that it if unpredictable that someone needs to build a reservoir. Additionally, in fact, as a result from the court, the requirement of non-natural use of land, the scope liability under the rule was narrowed and restricted. We can see that applying a non-natural use of land is one of the important elements that bring the fault to the defendants in the strict liability. Last but not least, is about the foreseeable damage. Foreseeable damage is means by what we can see through if we are doing something. Based on the case study, we can see that, if Demoloni are constructed a building, they will be a damages that might be occur. For example, worker can easily step on a nail if they are not applying safety procedure like wear safety cloth. Even they are know that

the damages will happen, Demoloni should provide safety procedure in order to prevent the damage and injury happen, but as we can see, they are no safety procedure they were applied for. It is same goes to the case of Ryland v Fletcher. When Fletcher intends to build a reservoir, he should know what can be happen towards the situation. In fact of the case, they are some iron shaft that went through a mining area and which was connected to the plaintiff's mine. Other than that, what we can see through if he build a reservoir, when a heavy raining, it can cause flooding on his land and also can make the damages to other land like an iron shaft was filled by water and make flooded to plaintiff's mine. For the occupier liability, the landlord liability is to make the visitor are no having injury. In order to maintain the safety place, the landlord should take action by repair and maintain the property. Next is about the Second and third parties to a contract entering the property. The duty of care from the visitor should have and occupier by the owner of the land. As I mention above, there are 4 types of entrants in occupier liability that the promises should be safe as it should be reasonably and all the activities carry out on the premises should prevent the damages form happen. We can refer to the case of Wheat v Macfarlane & Co. Ltd. The fact case is it should have immediate supervision, control over the premise and the power of permitting and prohibiting. Last is the vicarious liability.

Towards the elements, the requirement above is needed so that the wrongful acts or omission are not happen like a case study which the contractor cannot provide a right procedures to prevent from injury happen. Next is they should provide a test that consist of control test, organization test and multiple test to gain whether who are capable in power to control of the

premises and to make all the condition are in safety and health. The elements of the vicarious liability are towards of the employer and the employee itself. We can refer to the case of *short v Henderson* which is consist of power of selection, power of determining the salary or other remuneration, power to control the method of doing the work and the power to terminate. So as conclusion, the above torts is to make sure whether the employer and employee are capable in order to make the premises in a safe condition or not. Towards the both tort, they have been a benefit towards the party. For the strict liability, in order to take a legal action against the defendants, basically they might have some of the elements towards the defendants that should be liable.

Question d

Question d require making a compare and contrasting the nature of general tortuous liability with contractual liability. In the definition, the contractual liability law is rules that bond contractual agreements between two parties but for the tortuous liability it is Wrongful Act/ Wrongful omission that is not authorized by law that caused damage. For the elements, the contractual liability has a 5 basic which are offer, acceptance, consideration, intention and capacity. But for the tortuous liability, they are 4 basic which are the duty, breach the duty, injury and breach of duty that cause injury. When in tem of damages if breaches, for contractual liability, the Damages claims are based on expectation of loses and for the tortuous liability, the damages claims is in form of compensatory

Contractual Liability Tortuous Liability Definition Contract law is rules that bond contractual agreements between two parties Wrongful Act/ Wrongful omission that is not authorized

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by law that caused

damageElementsOfferAcceptanceConsiderationIntentionCapacityThe

DutiesBreach of the DutyThe Injury / accidentBreach of duty that will cause if

injury / accidentDamages if BreachesDamages claims are based on

expectation of losesDamages claims is in form of compensatoryFrom the

differences above, we can refer to any case of contractual that has an

agreement between two parties. For tortuous liability, we can refer to the

case of Miller v Jackson 1977. The fact of the case, Miller have are bought a

line of new semi-detached houses. The Millers' garden boundary was only

100 feet (30 m) from the nearest batting crease, and their house only 60 feet

(18 m) further away. Several cricket balls were hit onto their property over

the following years, causing minor damage to their house (chipped

paintwork, broken roof tiles) and risking personal injury to the Millers.

Despite measures taken by the club to minimize recurrences, including the

erection of 8 feet 9 inches (2.67 m) high fence in March 1975 on top of a 6

feet (1.8 m) boundary wall and asking batsmen to try to hit fours rather

than sixes, a few balls continued to be hit out of the ground each

season. The club offered to meet the cost of any property damage (£400),

and suggested further countermeasures, such as louvered window shutters,

and a net over the Millers' garden. The Millers were not content

and sued for damages and an injunction to prevent cricket being played on

the groundBased on the case of miller v Jackson, Miller want to sued Jackson

who is owner of the cricket court because of their properties were broken

because of the ball from cricket court. From this case, we can see that

Jackson is not able to build a wall over the cricket court. It below under

wrongful omission which is the person should do something important or if not able will be judge by the law. As we can see, in the element of tortuous liability, they have duties towards the party to do and make an injury or damages of the other party will be liable to claim in the form of compensatory. For the similarities, there are not many as difference between these two liabilities, but they are having their own similarities. The first think of similarities between these two liabilities is both of them can be join or involved by either individual or the company. All people can be joining into the contract if they are in major age and do not have black list name in a law. The next one is about the impact if they are breach of the contract. As we all know, if they are the contract, when someone breach the contract without permission and agreement between both parties, they will be eligible to pay especially when they are causing the damages to the other party. Last but not least is of the similarities of these two liabilities is to breach the contract or the tortuous liability is against the law or we can said that it is civil wrong if they are no agreement.

APPENDICES

http://www.garantsafety.lt/uploads/images/various/prohibition_sign.jpg

http://www.clker.com/cliparts/0/5/4/5/12456932322116189065cherryie_Nuclear_warning_sign.svg

<http://www.safety-selector.co.uk/images/M33A%20-%20Mandatory%20Breathing%20and%20Face%20Protection%20Safety%20Signs.jpg>

<http://www.safetysignsservice.com.au/media/catalog/product/cache/1/image/5e06319eda06f020e43594a9c230972d/images/SSPRA84R.jpg>

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