

CHAPTER 11: THE TORT OF NEGLIGENCE

QUESTION 1

Discuss what is meant by 'a duty of care' in the tort of negligence.

Answer:

- Negligence is an important Tort that covers a wide range of situations where persons negligently cause harm to others.
- In order to succeed in an action for negligence it is necessary for a claimant to establish the defendant owed the claimant a duty of care, breached that duty of care and reasonably foreseeable damage was caused by the breach of duty.
- A duty of care is owed by the defendant to certain persons. To ascertain whether there is a duty of care in a particular case, firstly it has to be established whether there is any existing legal authority for a duty of care in those circumstances.
- If there is no pre-existing duty established that the courts use a three stage test for establishing whether a duty of care exists, *Caparo v Dickman* (1990).
- Was the harm or loss caused reasonably foreseeable, was there a sufficient relationship of proximity between the claimant and the defendant for a duty to be imposed and in all circumstances is it fair, just and reasonable that the law should impose a duty on the defendant.

QUESTION 2

Explain the test which is applied in the tort of negligence to determine whether the defendant breached the legal duty of care owed to the claimant. What factors would a court take into account when determining how a reasonable person would act?

Answer:

- To succeed in a claim for negligence the claimant must establish that the defendant broke his duty of care. He must prove that the defendant did something that a reasonable man in the circumstances would not have done, or that the defendant failed to do something that a reasonable man in the circumstances would have done.
- The standard of care is an objective test. The defendant must act with the degree of care and skill expected from the reasonable person, *Nettleship v Weston* (1971).
- The standard of care expected by professional persons is the standard that a reasonably competent person in that profession would show, *Phillips v Whiteley Ltd* (1938).
- The court will take into account a number of different factors when deciding whether a duty of care has been broken.
- The factors include, the probability of harm being caused to the claimant, *Bolton v Stone* (1951), *Miller v Jackson* (1977).
- The potential seriousness of the harm that is likely to be caused, *Paris v Stepney Borough Council* (1951).

- The reasonableness/practicalities of taking precautions to prevent the harm occurring, *Haley v London Electricity Board* (1965), *Latimer v AEC* (1953).
- The value to society/usefulness of what the defendant was attempting to achieve, *Watt v Hertfordshire County Council* (1954).

QUESTION 3

Ruby, who recently passed her driving test, decides to drive into town. On turning right at a junction, she negligently fails to see a car being driven by Sapphire and crashes into it. Sapphire was not wearing a seatbelt at the time of the accident, and was badly injured. Sapphire's husband, Tom, hears the crash and rushes to the scene of the accident; he is so shocked at seeing Sapphire's injuries that he shortly afterwards develops a psychiatric illness.

Explain the essential ingredients of a negligence action and consider the legal liability of Ruby in the Law of Torts.

Answer:

- The 3 essential elements for a Tort action - duty of care, *Donoghue v Stevenson*, breach of duty and damages as a result, *Barnett v Chelsea & Kensington Hospital Management Committee* (1969).
- As a driver Ruby owes a duty of care to other road users. The standard of care is an objective test, *Nettleship v Weston* (1971), lack of experience is not taken into account and Ruby will be judged as a reasonable competent driver.
- Ruby owed a duty of care to Sapphire as a fellow road-user, Ruby breached that duty by failing to exercise reasonable care. Ruby will be liable for damages.
- Ruby may raise contributory negligence on Sapphire's part as a partial defence as permitted by the Law Reform (Contributory Negligence) Act 1945. Failure to wear a seat-belt is contributory negligence unless wearing it would have made no difference, *Froom v Butcher* (1976).
- Ruby may argue that if Sapphire had been wearing his seat-belt her injuries would not have been so severe and if the court agrees Sapphire's damages for her injury will be reduced by whatever proportion the court finds just and equitable.
- A duty of care for psychiatric injury is owed to secondary victims where there is a close tie of love and affection, *Hinz v Berry* (1970), *Mc Loughlin v O'Brian* (1982), *Alcock v CC of West Yorkshire* (1991). Tom is a secondary victim and as he was at the scene and he does have ties of love and affection (Sapphire is his wife) Ruby will be liable for his injuries.

QUESTION 4

Fraud and Co, a firm of accountants and auditors, were employed to prepare the accounts and balance sheet of Apple plc, knowing the accounts were to be sent to Bill, a private investor, who was thinking of buying a majority shareholding in Apple plc. The accounts were negligently

prepared and showed the company as financially stable, whereas in fact the opposite was true and the company had large debts outstanding. Bill showed the accounts to his friend Richard. Bill purchased £500,000 worth of shares and Richard purchased £200,000 worth of shares. Within six months, Apple plc went into liquidation and both Bill and Richard lost their investments.

Advise Bill and Richard on the likelihood of them succeeding in their actions against Fraud and Co.

Answer:

- It may be possible to claim for pure economic loss where there has been a negligent misstatement, *Hedley Byrne v Heller* (1964) but there must be a 'special relationship' between the parties, *Caparo v Dickman* (1990).
- In order to succeed the claimant must show that the defendant knew that the statement would be communicated to the claimant (either a named or unnamed individual or an identifiable group of persons).
- The advice was given specifically in connection with an identifiable transaction or transactions of a particular kind.
- The defendant reasonably anticipated that the claimant was likely to rely on the statement for the purpose of the transaction without seeking further independent advice.
- Fraud and Co were aware that the accounts were being sent to Bill who was thinking to invest, provided they reasonably anticipated that the claimant was likely to rely on the statement (and Bill did rely on it) then Bill may have a claim, *Morgan Crucible v Hill Samuel Bank* (1991), *Sebry v Companies House* (2015).
- There appears to be no special relationship between Richard and Fraud and Co and therefore Richard will not be successful in an action for negligent misstatement, *James McNaughten v Hicks* (1991).

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