




ASSIGNMENT



Brett Stevens – 1940 7580
BLAW2000 Curtin University

Contents

1	Question 1	1
1.1	Area of Law.....	1
1.2	Principles of Law.....	1
1.3	Applications of Facts	2
1.4	Conclusion	3
2	Question 2	4
2.1	Area of Law.....	4
2.2	Principles of Law.....	4
2.3	Application of Facts	4
2.4	Conclusion	5
3	References	6

1 Question 1

Using the 4-step process explain what liability (if any) Solomon Fielder has to Shane King in the common law Tort of Negligence.

1.1 Area of Law

The area of law assessed in Question 1 is the common law Tort of Negligence. A *tort* is described as a legal wrong committed by one person or entity against another for which damages may be awarded (ALRC 2015). The following section (1.2) will outline the legal definition of *negligence* and use several cases to demonstrate what must be considered for a defendant to be proven negligent.

1.2 Principles of Law

To understand what negligence is, one must first understand the term “duty of care”. Duty of care is defined as the legal responsibility of an organisation or person to avoid reasonably foreseeable behaviours or omissions that could cause harm to others (“Duty of Care” 2017). This reasoning is clearly outlined in the case of *Donoghue v Stevenson [1932] AC 562*. After finding the remains of a decomposing snail at the bottom of a ginger beer and falling ill after consuming most of the drink, Mrs Donoghue took legal action against Mr Stevenson, the ginger beer manufacture, claiming Mr Stevenson owed a duty of care to ensure that his products were safe for consumption. The court ruled in favour of Mrs Donoghue giving two elements that exhibited Mr Stevenson’s duty of care of Mrs Donoghue, they were: (1) that it was reasonably foreseeable that Mr Stevenson’s actions were likely to cause injury or damage to another; and (2) that Mr Stevenson had a duty to those who were likely to be closely and directly affected by his actions. The second of these two reasons deals with the concept of “proximity”, which is further explored in the case of *Jones v Bartlett (2000) 205 CLR 166*. In the case of *Jones v Bartlett*, Mr Jones suffered an injury after walking through a glass door in a house that his parents were renting from Mr and Mrs Bartlett. At the time of the injury, the offending door was too thin to comply with the modern standards. Mr Jones alleged that the Bartlett’s were negligent in failing to bring the house, and consequently the glass doors, up to code. The court held that the landlord was responsible for both tenants and third parties in respect to any dangerous defects that were known or reasonably should have been known; although in this case, the glass door was not considered a dangerous defect as it complied with building standards of when it was built (late 1950’s). Given that Bartlett’s action of not replacing the glass doors was considered reasonable conduct of a landlord, it was not considered fair, just or reasonable to say Mr Jones’ injury was closely and directly affected by the Bartlett’s actions.

Given that a duty of care between the defendant to the plaintiff is established, the next step to determine negligence is to ascertain whether the defendant breached said duty by not upholding the required *standard of care*. Standard of care, as a general rule, is defined as how a “reasonable person” would exercise in a given situation and is therefore very circumstantial as the perception of “reasonable” changes from situation to situation (“Negligence and the 'Reasonable Person'” 2018). A “reasonable persons” conduct in a given situation will be influenced by the degree of risk and the amount and care required to

provide a reasonable standard of care. One important factor used when assessing the standard of care in any given situation is considering the inherent danger of said situation. A good example of this is the case of *Dominion Natural Gas Co Ltd v Collins and Perkins [1909] AC 640*, where Collins was injured and Perkins killed in an avoidable gas explosion. The court held that the defendant was liable given that a greater standard of care to avoid such an issue was required for such an inherently dangerous situation.

The final element to establish negligence is to prove that the plaintiff has suffered genuine damages due to the defendant's actions or inactions. Such damages can come in the form of damage to property, reputation or mental health, monetary loss, personal injury, or a combination of any of these. The main two questions that should be asked when considering the concept of damage is: (1) what was the causation of the damage? And (2) was the damage of a reasonably foreseeable kind? As a plaintiff will only recover for damages that are reasonably foreseeable. The case of *Cork v Kirby MacLean Ltd [1952] 2 All ER 402* is a good example of a court establishing the cause of damages, in this case death, in which both the employee and employer were contributory to said damages. In this case the aggrieved partner of Mr Cork pleads to establish negligence after her epileptic husband has a seizure and falls from scaffolding that did not have a railing. The defendant was held liable as their breach of duty of care in not installing railing was the core cause of the accident, however the damages were reduced as Mr Cork did not tell his employer that he had been told by a doctor not to work at heights and therefore also contributed to his own demise.

To summarise, the previously discussed three elements must all be considered to establish liability of a defendant in terms of negligence; said three elements are: (1) an established duty of care owed by the defendant to the plaintiff; (2) proof that the defendant has failed to supply a required standard of care and in doing so breached said duty of care; and (3) any damage done to the plaintiff was reasonably foreseeable and can be directly related to the defendant's actions or inactions. Hence, as stated in the article "Negligence" (2018), an entity or person is considered negligent when an owed duty of care is breached and results in another person suffering damages.

1.3 Applications of Facts

In this section all the principles of law described in section 1.4 will be applied to the case of *Shane King v Solomon Fielder Pty Ltd* to assess if Solomon Fielder Pty Ltd (Fielder) has any liability to Shane King. The case of *Shane King v Solomon Fielder Pty Ltd* is outlined clearly in the assignment brief. Shane seeks compensation for loss of future income, medical expenses, the prizemoney of a tennis tournament that he was expected to win and the pain and suffering he incurred from the accident. In the following section (1.4) a conclusion is drawn in accordance to the facts outlined in this section.

The simplest fact to ascertain from the situation is that Shane suffered damages due to the hydraulic line bursting, both physical, in the form of losing his sight in his left eye and reoccurring skin complications, and monetary, as he lost his job and could no longer work in the motor vehicle safety sector. To determine if Fielder was liable for Shane's physical and monetary damages one must ask the questions: Did Fielder owe Shane a duty of care? If so, was that duty care breached? And who was the cause of the accident?

Shane was inspecting Fielder's machinery that he repairs and maintains onsite. Fielder engaged Victor & Co, Shane's employer, to run a safety inspection on the machinery onsite. As Shane was working on Fielder's premises and inspecting Fielder's machinery a duty of care was owed by Fielder to Shane as he underwent his inspection. The standard of care of Fielder should be quite high given that the inherent risk of working with such machinery is also high, as seen by the severity of Shane's injuries. This coalition between high risk and a greater standard of care is echoed in the outcome of the *Dominion Natural Gas Co Ltd v Collins and Perkins* case.

The duty of care was breached as Fielder had reconditioned rather than replaced some of the parts within the hydraulic system. As this action was contrary to the recommendation of the manufacturer, it can be said that defendant did not act within the scope of a "reasonable person", or in this case Fielder did not act within the scope of a "reasonable motor vehicle panel beating and spray painting company".

The causation of the accident stems from both Fielder and Shane. As the bursting of the hydraulic lines is a reasonably foreseeable outcome of not replacing parts within the hydraulic system, Fielder's action of not replacing said parts directly links Fielder to the bursting of the hydraulic lines. Shane's actions of performing his inspections while the booth was operational led to him being in the wrong place at the wrong time. Just as in the *Cork v Kirby MacLean Ltd* case, both parties were contributory to the cause of the damages.

1.4 Conclusion

Fielder owed a duty of care to Shane, breached said duty of care and was partly the cause for the hydraulic lines bursting. Hence, it would appear that Fielder is partly liable to damages suffered by Shane. Given that Shane's actions were also contributory to the accident, it is likely that Shane will only be partly compensated for loss of future income, medical expenses and the pain and suffering he incurred from the accident. It is unlikely that he would achieve any reimbursement for the tennis tournament prize money as there was no guarantee that Shane would have won the tournament.

2 Question 2

Using the 4-step process discuss whether Solomon Fielder has any common law defence to action in negligence (assuming Shane King is successful in proving negligence against him)?

2.1 Area of Law

The area of law assessed in Question 2 is the common law defence against negligence. One common defence used against a claim in negligence is that of contributory negligence ("Defences to a Negligence Action" 2018). The following section (2.2) will outline how a defendant can use this defence against a claim in negligence.

2.2 Principles of Law

As stated in "Defences to a Negligence Action" (2018), a failure to take reasonable care for ones own safety and thereby contribute to ones own damages, be that physical or monetary, is considered contributory negligence. For example, a commonly noted form of contributory negligence is the failure for a driver or passenger to wear a seatbelt resulting in injury ("Defences to a Negligence Action" 2018). When appointing responsibility of the damages to the plaintiff or defendant, the court considers the conduct of both parties in relation to the circumstances of the accident and makes comparisons of each party's actions in relation to their obligations; if it is deemed just and equitable to do so, a court can reduce a plaintiff's damages to up to 100% on account of contributory negligence ("Defences to a Negligence Action" 2018). The case of *Ingram v Britten [1994] ATR 81* is as good example of a court apportioning responsibility to both the defendant and the plaintiff. In *Ingram v Britten*, the plaintiff sued for damages after sustaining an injury from a collision with a tree and subsequent rollover of a tractor he was operating on the defendant's property. The court held that the defendant was negligent as he did not fit a metal frame to the tractor that would have protected the driver. Contributory negligence was also assessed as it was later found that the plaintiff had been recklessly driving at an excessive speed and therefore contributed to the overall damages of the incident. The court appointed 60% of the responsibility to the plaintiff and 40% to the defendant.

2.3 Application of Facts

In this section the principle of law described in section 2.2 will be applied to the case of *Shane King v Solomon Fielder Pty Ltd* to assess if Solomon Fielder Pty Ltd (Fielder) has any common law defence to action in negligence, assuming Shane King was successful in proving negligence against him. The common law defence outlined in section 2.2 and that is most suited as a defence for Fielder is that of contributory negligence. In the following section (2.4) a conclusion is drawn in accordance to the facts outlined in this section.

Shane King's actions were partly to blame for the damages he suffered. This can be seen by the fact that Shane knew that he was supposed to inspect the booths when they were not operational but did so when the booth was operational. Shanes decision to inspect the booths while the machinery was operation is not considered a "reasonable" action for someone in his position. As Shane did not take reasonable care for his own wellbeing it can be said that his negligence towards his own safety contributed to the severity of his injuries.

2.4 Conclusion

It is likely that Fielder would be successful in defending against part of the sort after damages due to Shane King's established contributory negligence. The court would consider Fielder and Shanes conduct and contribution to the accident and appoint responsibility accordingly. A reasonable estimate of the reduction of damages would be between 25-30% of what was originally asked.

3 References

- ALRC (Australian Law Reform Commission). 2015. "What is a tort?" Australian Government. <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/17-immunity-from-civil-liability/what-is-a-tort/#:~:text=A%20tort%20is%20a%20legal,is%20an%20award%20of%20damage>.
- "Defences to a Negligence Action." 2018. Caxton Legal Centre Inc. <https://queenslandlawhandbook.org.au/the-queensland-law-handbook/health-and-wellbeing/accidents-and-injury/defences-to-a-negligence-action/>
- "Duty of Care." 2017. Legal Dictionary. <https://legaldictionary.net/duty-of-care/>
- "Negligence and the 'Reasonable Person'." 2018. FindLaw. <https://injury.findlaw.com/accident-injury-law/standards-of-care-and-the-reasonable-person.html>
- "Negligence." 2018. Legal Aid WA. <https://www.legalaid.wa.gov.au/find-legal-answers/managing-your-affairs/injuries/negligence#:~:text=The%20law%20says%20that%20in,of%20care%20to%20another%20person.&text=Negligence%20is%20where%20a%20person,or%20damage%20as%20a%20result>.