

Title: Negligence and Tort Law Assignments

Subject: Law

Type of Paper: Assignment

Words: 2466

Question 01:

NEGLIGENCE

Negligence in the legal sense is defined as a disturbance in the right to do what a reasonable person would have done under the circumstances. It is the applicant's responsibility to establish and show that a duty of care was owed by defendant to the applicant. It is the duty of people (including companies and government) law in business because of the amount required to set up a reasonable person (Zipursky, 2009).

Before the plaintiff to recover damages for negligence agreed action, the plaintiff must prove three things:

- The defendant owed the plaintiff a duty of care;
- That the defendant breached a duty of care, and
- Injury or damage to property caused by the applicant as a result of the breach (causality) lost (Young, 2009).

NEED FOR DUTY OF CARE

Giant PLC v Hatchet – There is proximity and it is reasonably foreseeable that misleading company accounts will cause financial loss. It would seem there is special relationship between Giant and Hatchet as discussed in *Hedley Byrne v Heller* (supra) if Giant reasonably relied on Hatchet's advice and Hatchet can be said to have assumed responsibility for giving such advice to Giant. One problematic issue is whether Hatchet had some knowledge of the type of transaction for which the advice is required. See *J.E.B. Fasteners v Marks Bloom & Co* [1981] and *Caparo Industries plc v Dickman* [1989]. It would seem that launching a new venture would be a reasonable activity on learning of the company's solid financial position.

In this scenario it would seem that the Caparo criteria are satisfied so a duty is owed by Hatchet to Giant. In relation to breach of duty it must be determined whether Hatchet reached the standard of the reasonable auditor. The test is objective see *Blyth v Birmingham Waterworks Co*

[1956] however here the accountant is a professional person, so the standard will be that of a professional accountant with the relevant experience and qualifications. (*Bolam v Friern Barnet Hospital Committee* (1957)) Relevant factors the court will look at are the risks inherent in the conduct, -the severity of the likely outcome should any of the risks materialize, whether the defendant's conduct can be gauged with existing standards, and whether the defendant has kept up with changes in professional standards. Giant must also show that Hatched's breach caused their loss. The 'but for' test is applicable here see *Barnett v Chelsea Hospital Management Committee*. The question is 'but for' Hatched's negligent advice would Giant have launched the new venture. In the absence of evidence indicating that Giant would have gone ahead in any event it would seem that Hatched's breach caused the damage suffered by Giant. Giant may therefore have a good arguable claim against Giant. There may however be a claim in contract law as presumably G paid for the advice.

When the judge decides whether it is a duty of care, he considers some of the legal basis and the legal and political factors. In a new situation - if the report is not the report, including the establishment of a duty of care, courts consider many factors. These include:

- The nature of the damage sustained by the applicant (e.g., physical, economic and spiritual);
- Control of the defendants in the situation which led to the damage and vulnerability to harm the applicant;
- The nature of the relationship between the plaintiff and the defendant, as compared to other reports from the destination;
- Issues and ethical and moral requirements in the field of human rights
- Consistency with the principles, rights and obligations (Weinrib, 2012);

There are several reports in duty of care, as occupiers' liability and automobile liability. In those reports, the court must consider the factors listed above in determining duty of care (Toft, 2009). Raz (2010) discussed that although the risk is reasonably foreseeable, the court can not conclude that the defendant has a duty of care. To determine the orientation of the applicant the risk is not insignificant and the types of damage are important considerations. Incompatibility problems with other obligations are incurred by the defendant in other reports as well (Raz, 2010).

For example, if a social worker was accused of allegations of abusing against a child by the parent company, is the loss of reputation and parental employment are damaged. The courts take

into account the obligations of social workers to investigate complaints and relationship between the social worker and the child is entitled to reasonable foresee ability of the risk for an actor to replace (Raz, 2010).

Watt v Hertfordshire C.C. (1854): The petitioner was a fire fighter. A lady had been included in an activity crash and was trapped underneath a lorry. This was 200-300 yards far from the flame station. The flame administrations were called to discharge the lady. They required transporting an overwhelming lorry jack to the scene of the mischance.

The jack could not go on the blaze motor and the typical vehicle for convey the jack was not accessible. The blaze boss requested the inquirer and other fire fighters to lift the jack on to the once more of a truck. There were no methods for securing the jack on the truck and the fire fighters were taught to hold it on the short excursion. In the occasion the truck braked and the jack fell onto the petitioner's leg bringing on serious wounds.

NEGLIGENCE IN DUTY OF CARE – BREACH

To prove negligence, the person must breach a duty of care, which means that the responsibility to act on other interests. In addition, the breach must be the duties. This injury is caused by the injury, causing actual physical injury, financial or emotional. In most countries, the error is a civil offense if a candidate or person to prove that these things happen more than likely (Muchlinski, 2012).

Duty of care requires a person to act in the interests of the other. In most countries, this means waiting to act in a reasonable person in the situation. A written contract is usually not necessary to prove that someone is responsible for this task (Green, 2010).

If a duty of care to demonstrate this commitment must be raped. This means that the person who was required to not act responsibly. The injury does not have proven wilful misconduct (Furlow, 2009).

The applicant must show that the damage is the one that was really bad. Many attorneys refer to this clause, but, for example, making the damage would not be possible, but for the failure of the defendant to act in an appropriate manner. Negligence cannot be returned if it can be shown that the breach of duty to be the real cause of the accident (Zipursky, 2009).

Negligent must have a form of evil, prove negligence. The damage can lead to injury, financial hardship, pain and suffering, or a combination. If one is able to determine the location, which really suffered authorize malpractice claims in many countries to the file (Young, 2009).

In most countries, the burden of proof is usually the one to ask. However, this is usually a civil action, and then the test load less than required in a criminal case. Require judges most neglect attorneys at the preponderance of evidence are likely to mean (Winfield, 2013).

Many malpractice cases settled out of court, rather than discuss. People who are negligent, they are usually required to repay the victims of a sum of money. Detention rare because most believe that the Company judges' people benefit imprisonment is often damaged by unfortunate incidents (Weinrib, 2012).

Question 02:

This problem involves potential claims against Badsum by investors who suffered loss making a decision relying on advice of Badsum published in magazine. They will all be asserting remuneration as harms for careless misquote. It is impossible that the articulation was made to deliberately misdirect the inquirers so tort of misdirection is unrealistic to be argued in case.

To accumulate any case carelessness it is important to demonstrate the three components to be specific obligation of forethought, break of obligation and harm which is an immediate reason for the rupture of obligation and is not excessively remote. Thus, they are guidance is stick to a segment, buyers are looking for speculation counsel, false proclamation is made in association with the buy or offer of securities. It is likewise paramount to think about any potential safeguards.

Negligence and fraud are not equal, nor are the legal effects relative terms. Set deliberate fraud with intent to deprive others of their legal rights. It is good lens coincides with the deliberate act. Negligence, regardless of their rank, is not included in order to make illegal act. This can be demonstrated, but not fraud. Toft (2009) discussed that fraud is still a goal, but the failure neglect of duty, unless the target.

Applying the tort on the basis of false information of Badsum, it is commonly known as negligent deception known, sometimes innocent mistake. This fact has been recognized and applied in different situations investments. In this section an example of the case analyzed i.e. Badsum, showing how the courts have adapted aspects of the law in force in this context (Muchlinski, 2012). This will help Badsum for his case.

It is important for the recovery of the fee, the provider must be in business to provide information to a third party (newspaper in case), and gave this aspect dispute arises investment advice provided by Badsum.

Although the court did not consider that in this case the broker breached its due diligence to update support in the business of supplying information to brokers and brokerage firms, and law apply, therefore. For the court ruled that brokerage firm offers clients Penrod stress not only information, but also provides investment services to customers in possession, and transfer of customer guidance values referring.

Rankow v First Chicago Corp: In this case, the actor, was a participant in the Dividend Reinvestment Plan and provides Share Purchase Plan (the Plan) First Chicago Corp. shareholders plan includes common shareholders; First Chicago reinvested dividends and make payments cash optional additional equity to purchase five percent below the market price of the shares without additional fees or commissions to pay.

Dowling v. Narragansett Capital Corp: In this case, the actor, the former shareholders of the defendant, filed a lawsuit against the company, its directors and officers and certain shareholders of the sale of business assets, which claimed to be the price totally inadequate. The plaintiffs allege that the defendants orchestrated sell their own benefit and requested the approval of the other shareholders, do not adequately disclose the nature of the transaction.

Alton v. Wyland: An investor was has investment in oil and gas investments recommended by their advisers. The investor has filed a lawsuit against investment adviser (employee of the office of financial planning), was negligently fails the nature and extent of the risks they pose to the opening of investments. The investor, however, signed an affidavit in terms of investment in real estate and private placement memorandum, said that investment gained a high level of risk. Badsum can object on the practice as the applicants must participate in the plan and investment strategy involves buying shares at low prices and immediately sells the shares on the open market see *Caparo Industries plc v Dickman*. It was important for the candidates for the calculation of the benefit / risk of reliable information and the calculation procedure reductions (Green, 2010).

The rules and procedures for determining the procedure and the date of the reduction are determined in the prospectus noted in *Smith v Patel (1968)*. Badsum can argue that plans are amended from time to time. But in contrast to the methods applied in the prospectus Badsum

uses a different method to set the date, not knowing the difference of plan participants which translates into a higher price received by the applicant. Referring to *Vowles v Evans [2003]*, Badsum was unaware of the change and confidence of company share performance was calculated as a discount, the Badsum having graduated more shares sold. Similar to *Smith v Patel (1968)*, Badsum further action ashore later buy at even higher prices to cover their sales and damage allegedly caused by the negligence of the first calculation of false statements about company (Young, 2009).

The focus of the respondents could immunize the misrepresentation element of false information for negligent misrepresentation has been expressly messages (or even likely) submitted its comments. Badsum required to have his opinion, and that the contents of the review to be negligent accurately and honestly examine now, as can be seen in *Caparo Industries plc v Dickman*. The view was flipping a coin or consult an astrologer let them lead provided that the letter of opinion was settled with precision.

Thus, the courts have justified confidence in speech found in these cases like *Murphy v Brentwood [1990]* and *Smith v Patel (1968)*, but these cases are often the result had easier access to relevant information and know-how, the applicant is not the defendant. If the complainant is not sophisticated, but the courts ruled that the applicant agreed that the information was to offer assistance in any meaningful way.

Dependency is obviously tied to the Badsum and, as shown in the previous section defines the precise level of transmission is also associated with the Badsums. Therefore, it is not surprising that, however, these cases are the cases a bit of confusion, but compatible with the reform, even if they are not compatible like *Murphy v Brentwood [1990]*. The requirement is addiction, like the rest, is often described as a separate element, as required by the law that the show addresses of legitimate expectations (Toft, 2009).

Courts differ in their interpretation of this element. Some courts have ruled that as long as the investor is provided with written materials reveal no right to negligently misrepresent the risk of the investor see *Caparo Industries plc v Dickman*. The investor could say that it was the affidavit or Private Placement Memorandum is not read as observed in *Alton v Wyland*, but they rely on the advice of their consultants. Similarly, under the facts right is presumed that the investor read the documents that describe the risks associated with the investment and investors should not

claim for negligent misrepresentation to hold the Badsum as happened in *Vowles v Evans* [2003].

This debate reflects the collision of two common law principles. One cannot enter into a transaction with closed eyes and the information provided by Badsum accuses him of betrayal: the Badsum based on this principle. The idea applicant cannot be counted as an expert whose statements or advice and then trust them to stay after someone pressed the Council at its own expense (Green, 2010).

REFERENCES

- Furlow, C. W. (2009). Good Faith, Fiduciary Duties, and the Business Judgment Rule in Delaware. *Utah L. Rev.*, 1061.
- Green, M. D. (2010). Impact of the Civil Jury on American Tort Law, The. *Pepp. L. Rev.*, 38, 337.
- Muchlinski, P. (2012). Implementing the New UN Corporate Human Rights Framework: Implications for Corporate Law, Governance, and Regulation. *Business Ethics Quarterly*, 22(1).
- Raz, J. (2010). Responsibility and the negligence standard. *Oxford Journal of Legal Studies*, 30(1), 1-18.
- Toft, B., & Gooderham, P. (2009). Involuntary automaticity: a potential legal defence against an allegation of clinical negligence?. *Quality and Safety in Health Care*, 18(1), 69-73.
- Weinrib, E. J. (2012). *Corrective justice*. Oxford University Press.
- Winfield, P. H. (2013). *The Province of the Law of Tort*. Cambridge University Press.
- Young, A. (2009). Review: the legal duty of care for nurses and other health professionals. *Journal of clinical nursing*, 18 (22), 3071-3078.
- Zipursky, B. C. (2009). Foreseeability in Breach, Duty, and Proximate Cause. *Wake Forest L. Rev.*, 44, 1247.

Cases Cited

- Alton v. Wyland, 72 Ohio App. 3d 685 - Ohio: Court of Appeals 1991
- Caparo Industries plc v Dickman (see case comment on page 860)
- Dowling v. Narragansett capital corp. Civ. A. No. 87-0213-T. 735 F.Supp. 1105 (1990)
- J Spurling Ltd v Bradshaw [1956] EWCA Civ 3 (26 March 1956)
- Murphy v Brentwood [1990]
- Penrod v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 385 N.E.2d 376 (Ill. App. Ct. 1979)
- Rankow v. First Chicago Corp., 870 F.2d 356 (7th Cir. 1989),
- Smith v Patel (1968)
- Spurling v Bradshaw (1956)
- Vowles v Evans [2003]
- Watt v Hertfordshire County Council, [1954] 1 WLR 835

DO NOT COPY