

Essay Sample on Tort Law

Tort Law - Duty of Care and Negligence

At the surface of the facts surrounding tort law, the disagreement evolving around it, rear up with respect to the specific labels which are utilized in defining the basic aspects. It is a second nature of lawyers and specifically law scholars to examine the doctrines of liability on a spectrum which ranges from intentional acts of tort though the foggy boundary jurisdiction of recklessness or carelessness, continues with a level of negligence and comes to a halt with absolute liability and strict liability. In negligence tort, the doctrinal content and definitions are extremely controversial. According to its formal definition, negligence may be applied on conduct and risk as illustrated by the case, *Heaven v. Pender*, which rests on the charter of duty as derived from the relations between the parties. Nonetheless there are other definitions, as given by the culpability spectrum, where the judgment that an individual was found guilty of an extremely slight act of negligence is indicated in the doctrine borrowed from the ancients, Roman law. Acts of negligence often result in damages, which range depending on its impact. The most challenging damage is the psychiatric damage, which is the injury to an individual's state of mind, scientifically, a neuro shock. Psychiatric damage emerging out of a physical injury to an individual is unproblematic and easily recoverable. However, psychiatric damages inconsequential to physical injury can also be the subject of negligent action including the duty of care between the Def; the victim and the PI; the cause in this case, the damage may be purely psychological such as depression, or post-traumatic stress, or may be physical such as heart attack.

With the case involving the fire which razed down Dwain's knitting needle factory, there is a great challenge of determining whether the liability to pay damages resulting from the negligently inflicted psychological injuries. With the claim made by Anne, Michael, Colin, and Eric's estate in suing Dwain, it is clear that there is no liability to pay the damages. As indicated in the case of *McLoughlin v. O'Brien*, a cause of action cannot be established in the case of Dwain. The ingenuity of the argument that Dwain negligently caused the fire should be admitted. The statement of claim fails to establish a cause of action. There have been significant developments in the cases involving liability for psychological injury which to a greater extent may form the damage's head. For instance, Lord Wilberforce in deciding the case, *McLoughlin v. O'Brien*, recognizes that a claim may be made for psychiatric shock even though there is no immediate aspect of causation or if there exists a fear of direct

personal injury to the Def, who in the case are Annabel, Bilal, Colin, and Eric's estate. However, Lord Wilberforce accepts that there are various limitations on the class of persons who are not injured but may claim damages. For example, when individuals are not in a position to hear or see the consequences of the event resulting in injury to some other person (Horsey&Rackley 2013).

These restrictions were clearly spelled out in the case, *Alcock & Ors v Chief Constable of South Yorkshire* (Bar, Blackie, Clive, Swann & Study Group on a European Civil Code 2009). It was accepted that an individual who is claiming damages though not directly involved in the disastrous event should have heard or seen the event or come across it in the immediate consequences as per Lord Oliver and Lord Ackner. In the claims made by the Defs, all claims reasonably have an immediate involvement with the consequences of the fire death. However, in the case, *Frost* [1999] 2 AC 455, the reasons behind distinction of psychological and physical harm were analyzed by Lord Steyn illustrating why the law has ensued cautiously in recognizing the genuine claims for psychological harm. For example, it is difficult to differentiate between psychiatric injury and severe grief to broaden the range of recognized claims. This might not only aggravate additional claims but also levy a uneven liability on the defendants in a case where personal injury to the Defs could not be rationally have been foreseen.

Nonetheless, there is no liability to pay damages to Annabel, Bilal, Colin, and Eric's estate, majorly because a cause of action could not be established with the defendant. It cannot be established that Dwain acted negligently. There is substantial or circumstantial evidence which can be relied on in determining negligent act with Dwain. Although Dwain owns the farm, he is not directly involved in the installation or the repair of the electric wiring system. Therefore, he did not owe any duty to the plaintiff. Although, he owes his employees the duty of care, this duty is limited only to them alone. Lastly in the case of Eric's estate no liability could exist in common law for psychological injury to individual who were informed of incident, and did not essentially recognize the event and its consequence, thus the damages claims could be inconsistent and could not stand in determining the damages. The need for an abrupt shock or undeviating perception of an event or its consequence indicates that the presence of an owed duty requires excessively reasonable foreseeability of psychological injury.

On the other hand the claims made by Dwain seeking damages for the negligent inflicted psychological injury against the contractor can be justified. As seen in the case, *Attia v British Gas Corporation*, where the Attia hired

the defendant to set up a central heating system in her home. Upon her returning from work she found her house in fire and by the time the fire brigade arrived, the fire could not be put out (Abbott, Pendlebury & Wardman 2007). Although the defendant admitted the act of negligence and went on to pay the damages, British Gas Corporation declined to pay the damages to the psychological injury suffered by Attia. It disputed the claim, arguing that it was rationally unforeseeable, thus damages could not be recovered. However, it was ruled that the incident was reasonably foreseeable. Similarly with the claims made by Dwain, the incident of fire was foreseeable as the contractor had poorly installed the electric wiring system. The psychological injury to Dwain was a result of negligent actions of the contractor which, when judged by the principle of reason, ought to have been foreseen. Additionally, it should be considered that in determining the scope of liability in negligence, it is essential to recognize the concerns which was satisfactory to appeal to any legal protection.

References

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