

Introduction To The Law Of Torts

INTRODUCTION TO THE LAW OF TORTS

The law of torts in itself is a very vast subject. In this module we try to focus only on certain torts that concerns businesses. Since everyone who takes this module might not be from a law background, some of the fundamental aspects of torts are discussed as well.

OVERVIEW OF THE LAW OF TORT

WHAT IS TORT?

Tort is a civil wrong. Ideally, it can be defined as “The breach of a duty primarily fixed by law” (Roger Winfield & Jolowicz On Tort)

Tort is mainly a common law principle not based on statutes in most of the jurisdiction.

Some of the common torts would be

- Negligence
- Nuisance
- Trespass
- Assault

THE OBJECTIVES OF TORT

- Compensation
- Protection of interests eg. Land, property, bodily integrity
- Deterrence
- Retribution
- Vindication
- Loss distribution

HOW DOES IT DIFFER FROM CRIMINAL LAW?

Some situations may give rise to both criminal prosecutions and to tort actions. For example, Assault is both a criminal offense and an offence under tort. The main difference can be analysed by analysing the following:

- Different burden of proof.
- Criminal prosecution brought by State.
- Action in tort brought by individual.

A detailed difference can be found in one of the unique LP materials give in this module.

NEGLIGENCE

OVERVIEW OF THE ELEMENTS OF NEGLIGENCE

(In this note, we discuss only negligence to give the non-lawyers learning this course a foundation of the law of torts. In the following pages there are several case laws that are discussed. This is to give you an understanding on how negligence and duty of care operates)

To bring a case of Negligence, there has to be:

1. Duty of Care
2. Breach of that Duty
3. Some damage that occurred because of that breach

Earlier, duty of care in relation to negligence was accepted in cases where there was a relationship between the parties, i.e. the claimant and the defendant, such as employer and employee, and so on. The landmark case, *Donoghue v Stevenson (1932)*, established the duty of care of the manufacturer to the final consumers. The first rule pertaining to duty of care was formulated by *Lord Atkin* in the said case, wherein a manufacturer owes a duty to the consumer to take reasonable care in preparing or using a product which would otherwise cause damage or injury to the consumer's person or property. This decision led to the creation of a test called the **neighbour's test** with regard to duty of care.

Case Law:

1) ***Donoghue v Stevenson:***

Facts of the case:

In the present case, one Ms. Donoghue consumed ginger beer that had been manufactured by the defendant. The product was not visible through the bottle. According to the claimant, the drink contained the decomposed remains of a snail which could not be detected until most of the ginger beer had been drunk by her. She claimed that consuming the ginger beer had caused her shock and also made her severely ill.

Judgment and Rationale:

The defendant Stevenson, who was the manufacturer of the ginger beer, had filled the product in a bottle through which the product was not visible and therefore the contamination present in it was not seen. The manufacturer owes a duty of care to the consumer, in this case Ms. Donoghue, that there are no harmful materials in the product. In the present case, the defendant failed to do so and was therefore found liable.

In this case, ***Lord Atkin*** formulated the neighbour's test. In this regard:

"The rule that you are to love your neighbour becomes a law you must not injure your neighbour... You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour... who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

Here, it can be seen that in the tort of negligence, consideration is given only to damage caused to person or property and not for psychological damage or economic loss.

Two-Stage Test:

A two stage test to find out whether there is a duty of care existing between the parties was formulated by Lord Wilberforce in the case of ***Anns v Merton London Borough Council***.

Case laws:

- 1) ***Anns v Merton London Borough Council [1978] AC 728 (House of Lords):***

Facts of the case:

In the present case, the claimants were tenants in a block of apartments which had insufficient foundations and therefore had various structural problems. The defendant Council was responsible for inspecting the foundations during the construction of the flats but failed to do so.

Judgment and Rationale:

The *House of Lords* held that the defendant owes a duty of care to ensure that the building had adequate foundation. Lord Wilberforce introduced a two stage test for imposing a duty of care, though this has been overruled in the case *Caparo v Dickman*.

The two-stage test formulated by Lord Wilberforce states that "in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter—in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise."

Present Test:

Case Laws:

- 1) ***Caparo v Dickman:***

Facts of the case:

A negligent statement made by the defendant caused financial loss to the claimant.

Judgment and Rationale:

The *House of Lords* held that though the published accounts influenced investors, the persons who produced these accounts, i.e. the accountants could not be held liable for the consequent losses since there is no proximity between the accountants and the persons who rely on the accounts produced by them.

The decision in the previous case was overruled in the present case. The ingredients for proving the existence of a duty of care, such as foreseeability of the loss, proximity between the parties, and reasonableness in imposing such duty, were established in the present case.

Application of the Test:

Case Laws:

1) *Bourhill v Young (1943)(House of Lords):*

Facts of the case:

A Motorcycle accident killed the rider, whose negligence caused the accident. Hearing the noise, a pregnant woman got off at the place of accident. Her claim was that seeing the blood, she had suffered shock and consequential premature labour and loss of the baby and therefore she claimed damages for the same.

Judgment and Rationale:

The *House of Lords* held that there was no close proximity between the claimant and the motorcyclist. Hence there was no duty of care and moreover, she had reached the place where the accident happened after the incident took place. In cases dealing with psychiatric injury, and the like, the courts require a very close degree of proximity between the parties.

2) *Hill v Chief Constable for West Yorkshire(1988) HL:*

Facts of the case:

In the present case, the defendant was sued for not apprehending the "Yorkshire Ripper". The claimant was the mother of one of the victims. She claimed damages for negligence and as well as lack of efficient handling of the case.

Judgment and Rationale: It was held that the victim was not owed a duty of care by the defendant since she had not been at a risk that was higher than that of any one of the general public.

3) *Vowles v Evans, Welsh Rugby Union:*

Facts of the case:

In the present case, amateur players were permitted by the referee David Evans to make a move which was very risky. Consequently, the claimant, who was one of the players, broke his neck and also suffered other injuries to his spine. He sued the referee as well as the WRU, claiming that a duty of care was owed to protect the amateur players.

Judgment and Rationale:

The Court held that there was enough proximity between the parties that the injury was foreseeable and that it was reasonable to impose a duty of care under the circumstances. The referee in a game owed a duty of care to the players and that there could be no difference with regard to whether the player was amateur or professional. Therefore the defendant was held liable.

4) *Brooks v Commissioner of Police for the Metropolis [2005] 1 WLR 1495 :*

Facts of the case:

The claimant who was present during the racist killing of his friend Stephen Lawrence was also subjected to attack and abuse. He claimed that the defendant did not provide him with the protection and security that would normally be given to those who are victims of such grave offences. As a result, he was suffering from a stress disorder. The defendant sought to quash the case on the grounds of absence of reasonable cause of action.

Judgment:

The case was quashed against which the claimant filed an appeal in the *Court of Appeal*, which allowed the same on the ground that there was proximity in relationship. The case went on further appeal to the *House of Lords* wherein it was held that no cause of action arose, on the basis of the decision in the case of *Hill v CC Yorkshire*.

5) *West Bromwich Albion FC v El-Safty:*

Facts of the case:

The claimant was a football club that signed a player by name of Michael Appleton for a long- term contract commencing from the year 2000. However, the subsequent year, the player met with an injury for which he was advised surgery by the defendant doctor. The surgery was not a success, and resulted in the player's retirement, thus causing financial loss to the claimant. Further, it was found that the advice of surgery was a negligent one and had the player been given other treatment, he would have recovered. The case was therefore filed by the football club against the doctor for the losses suffered through the injury and consequent retirement of the player, due to the negligence of the doctor. The defendant contended that there was no contract with the club and that there was also no duty of care owed to the club.

Judgment and Rationale:

It was held that since there was no contract between the claimant and the defendant, no duty was owed by the defendant. The player was referred to the defendant doctor by the club physiotherapist. Based on the test in the case of *Caparo v Dickman* [1990] 2 AC 605, with regard to duty of care, while some financial loss could be foreseen as a result of the player's injury and negligent treatment, nonetheless there was no proximate relationship no reasonableness in imposing a duty of care. Therefore the defendant was held not liable.

Omissions:

Case Laws:

1) *Smith v Littlewoods:*

Facts of the case:

The defendant was the owner of a dilapidated theatre that was set on fire by some miscreants. This caused damage to some surrounding properties as well. The claimants did not inform the defendant or the police with regard to the trespassing of the miscreants into the theatre property on earlier occasions.

Judgment and Rationale:

It was held that the defendant did not owe a duty of care to prevent the actions of third parties from causing damage to the claimant. Further, as the trespassing by the miscreants was not known to the defendant, the subsequent act of setting the fire could not have been foreseen. Therefore the defendant was not liable.

2) Home Office v Dorset Yacht Club:

Facts of the case:

Some boys escaped from under the supervision of Borstal officers, who were the employees of the defendant Home Office, and stole a boat belonging to the claimant and caused damage to other boats as well. The case was filed against the defendant for negligence of the employees in failing to control the escaped boys.

Judgment and Rationale:

The *House of Lords* applied the neighbour's test formulated in the case of *Donoghue v Stevenson* in a new way in the present case. The damage to the claimant here had not been committed by the defendant but rather by third parties. However, the employee of the defendant had failed to prevent the said third parties from committing the damage. Therefore the liability was on the basis of an omission, i.e., the failure to prevent the Borstal boys from causing the damage.

Explanation:

In relation to the neighbourhood principle formulated in the case of *Donoghue v Stevenson*, the employees of the defendant owed a duty of care to the claimant since the Crown was not considered to have any special immunity in this matter. However, the liability was only towards the owners of those boats that were in the immediate neighbourhood since their loss was foreseeable and not to others.

3) Barrett v Ministry of Defence:

Facts of the case:

A naval airman died after drinking heavily. It was recorded that he had died after inhaling his own vomit. The claim against the defendant was that no steps were taken by the defendant to prevent such drunkenness.

Judgment and Rationale:

The Court held that the dead person only was liable for his actions and not the defendant. However, when he had collapsed, the duty of care was voluntarily take up by the personnel in the service of the defendant, and subsequently there was negligence in such care. For this, the defendant was held liable.

4) Mitchell v Glasgow City Council:

Facts of the case:

The claimant and one James Drummond were tenants of the defendant. The husband of the claimant, was frequently threatened by James Drummond and on one occasion was attacked and consequently died.

The claim was filed by the wife and daughter of the deceased person against the landlord city council for negligence in failing to protect the deceased person in spite of the foreseeability of the harm, on the basis of the earlier threats that had been made against him by James Drummond.

Judgment and Rationale:

It was held that foreseeing the harm was in itself neither sufficient nor reasonable to impose a duty of care to protect against the actions of third persons.

Explanation:

This was on the basis of the three fold test formulated in the case of *Caparo Industries plc v Dickman [1990] 2 AC 605*, wherein for an imposition of duty of care, the three elements required are foreseeability of harm, proximity of relationship, and reasonableness for imposing such duty of care.

In the present case, on the question as to whether there was reasonableness in imposing a duty of care on the defendant to protect a person against the offence of a third party, the Court decided that such a duty would occur only when the defendant had assumed such responsibility/duty for protecting the person either through words or action.

5) *Baker v TE Hopkins & Son Ltd [1959] 1 WLR 966:*

Facts of the case:

The defendant had employed two persons by names of Ward and Wileman to clean out a well. The defendant having tested the safety of the surroundings in the well, the two persons and the defendant started pumping out the well and left the engine turned on. The defendant warned the two men against entering the well in his absence. However, they failed to abide by the warning and went into the well. The claimant, who was a doctor, also went in to save the men. Consequently all the three died of carbon monoxide poisoning.

The claim was brought by the executors of the doctor's estate. A defense of *Novus actus interveniens* and *Volenti non fit injuria* was raised by the defendant.

Judgment and Rationale:

The defense was rejected on the ground that since the defendant's actions had placed another person in the way of harm, the doctor's actions were foreseeable and within reason. The basis was that danger invites rescue. Moreover, since the doctor had not voluntarily accepted the risk, the defense of *Volenti non fit injuria* also was not applicable.

The doctor had also taken sufficient precautions before going down the well. Therefore he had not acted negligently or recklessly and so the claim made by the executors of his estate was allowed by the Court.

IMMUNITY

Case Laws:

1) *Hill v Chief Constable for West Yorkshire(1988) HL:*

Facts of the case:

In the present case, Peter Sutcliffe, who was also known as the Yorkshire Ripper had committed several murders and attempted murders over a period of years. Hi last victim was a person by name of Jacqueline Hill. A claim was filed by the mother of the victim against the defendant for negligence and inefficiency in conducting the case. The defendant sought for quashing of the case on grounds that no duty of care was owed by the police to the victim.

Judgment and Rationale:

The court held that the risk was not higher to the victim than that to any other member of the general public and as such the police did not owe a duty of care to her. The police also relied on various legislations in their defence.

The Court observed that in such cases while a higher degree of care would be in the interest of the public, this would not be feasible in the case of activities relating to the police since a great deal of effort, time and expense would have to be expended for conducting such a case. Consequently, the attention of the police would be diverted away from the prevention and detection of crime, which is their main duty. Further, investigations which had been closed would have to be reopened and re-investigated just to find out whether they had been efficiently conducted, and not for the purpose of apprehending the criminal.

Therefore, it was concluded in the *House of Lords* that the decision of the Court of Appeal that **police were immune** from such an action was the right one.

2) *Osman v Ferguson [1993] 4 All ER 344:***Facts of the case:**

In the present case, a student by name of Ahmet Osman became the target of improper attention from a teacher by name of Mr. Paul Pagett Lewis. The teacher was consequently placed under suspension. The teacher was also involved in harassing the student and his family members. The police had also been involved on various occasions and the teacher admitted that he was likely to commit a wrong doing against the student. The teacher later shot the student and killed his father. He was convicted of manslaughter.

Osman's mother brought an action for her husband's death and Osman brought an action against the police for the personal injuries he sustained due to the lack of action on the part of the police in apprehending the teacher or providing adequate protection for Osman himself. The defendant sought to have the case quashed on the grounds that there was no reasonable cause of action.

Judgment and Rationale:

While there was a proximate relationship as well as foreseeability that harm would occur, the Court, on the lines of the judgment in the case of **Hill v CC of Yorkshire** regarded that as a matter of public policy the police had a blanket immunity in matters of such kind.

Barristers and Local Authorities:

Solicitors and Barristers:

Earlier, barristers and solicitors enjoyed immunity from claims of negligence which arose from their conduct in proceedings in the court.

Case Laws:

1) **Rondel v Worsley [1967] 3 WLR 1666 (House of Lords):**

Facts of the case:

The claimant was charged and convicted in a case against him and filed a claim against the barrister who represented him on the ground that the case was not conducted competently and that all the pertinent evidence had not been placed before the court.

Judgment and Rationale:

The application was quashed on the grounds that it lacked a cause of action since barristers were immune to such claims filed against them for their conduct in court proceedings. On appeal to the *Court of Appeal*, it was dismissed, and went on further appeal to the *House of Lords*.

The House of Lords reiterated the decisions of the lower court and Court of Appeal that barristers are immune from claims of such kind that are based on their conduct of court proceedings.

The House of Lords reasoned that while the barrister has a duty to represent the client to the best of his ability, his primary duty is towards the Court, of which he is an officer. In the performance of this duty, he may not necessarily act in a way which the client may be happy with, and as a result the client may try to make a legal claim against the barrister.

Overruled:

The decision in the above case has now been overruled and barristers and solicitors are no longer immune to claims of negligence made against them. They owe a duty of care with respect to proceedings conducted in the court.

Case Laws:

1) **Arthur Hall v Simons [2000] 3 WLR 543:**

Facts of the case:

The present case dealt with 3 connected appeals which related to claims of negligence that were made against solicitors. The defense of immunity was raised in all the cases by the solicitors.

Judgment and Rationale:

On the basis of the immunity granted to barristers and solicitors, the claims were dismissed at the *Trial Court*. In the *Court of Appeal*, it was held that the claims should not have been dismissed. The case was further appealed in the *House of Lords*, where the immunity to solicitors and barristers was considered as no longer good law.

Explanation:

It was observed that the removal of the immunity would finally be in line with the fundamental assumption that for every wrong, there is a remedy. Moreover, where an advocate performed his duty in a bona fide manner, the Court would not consider him negligent and would be able to differentiate between bonafide and negligent conduct.

Provisions have also been made in the new Civil Procedure Rules, 1999, for summary disposal of such claims. It has also been considered that the removal of such benefit is in the interest of the public.

Local Authorities:

In the case of claims against local authorities, the courts generally hesitate to find liability on grounds of public policy.

Case Laws:

1) **Stovin v Wise [1996] 3 WLR 389:**

Facts of the case:

The claimant was hit by the defendant's vehicle as the defendant was not able to view the traffic due to the presence of a mound of earth. The Norfolk County Council, who was responsible for removing the same, had failed to do so in spite of being aware of its presence.

Judgment and Rationale:

In the Trial Court, both the defendant as well as the Norfolk County Council were held jointly liable, the defendant for seventy percent and the Council for thirty percent, since in spite of being aware of the dangers presented by the mound of earth, they had not taken any action to remove it. This decision was appealed against by the Council.

On appeal, the Council was held as not liable as this was an omission and that duty could not be imposed on a person to take reasonable care to protect another from harm caused by the acts of third parties.

UK Human Rights Act 1998:

The above Act has been enacted in order to promote an understanding of right and wrong and to bring about confidence in the state authorities. Some of the provisions under this Act have particular significance with regard to duty of care.

The Act has an impact on the interaction between individuals and the public authorities and aims to bring about a better understanding of the rights and duties.

Further, according to the Act, when an individual's rights have been impinged upon by a public authority, such individual has the right to go to court and seek redress.

Summary:

Caparo v Dickman (1990):

The concept of duty of care is the deciding factor with regard to liability in claims for negligence. Judicial decisions have established situations where there is a definite duty of care owed by one person to another such as for instance; a driver owes a duty of care not to harm the pedestrians on the road. Employers have a duty to take reasonable care to protect their employees from harm or injury. Nonetheless, every aspect with regard to duty of care is not clear, which is the reason for the *House of Lords* formulating a new test in the case of *Caparo Industries plc v Dickman (1990)*.

In the present case, a threefold test was created by **Lord Bridge** to determine the existence of duty of care. These were: foreseeability of harm, proximity of relationship, and lastly, reasonableness in imposition of duty of care on one person for the benefit of another.

This test has been widely accepted as the fundamental basis for establishing duty of care in a particular situation. However, further rules have developed with regard to particular cases that relate to psychiatric injury, purely economic loss, failure or omission, third parties causing the harm or damage, and where the defendant belongs to the class which come under policy rules, such as public utilities/authorities.