

Commercial Law

Name:

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Course:

Date:

Question 1

In the first case, Thomas, Fatima, Tony and Jack are the victims of a negligent act committed by Mark, therefore they have the right to prove the defendant negligent and liable for the injuries occurred, they need to prove all of the components. As an example, one of the component is damages, referring the plaintiff need to have suffered damages, loss or injuries in order for the Mark to be held accountable. So even if the victims can prove that Mark indeed acted negligently, they may not get damages if they did not undergo any injuries. Jurisdictions are direct to contrast the facts, evidence and testimony with the following components before deciding an action ¹.

- Damages
- Proximate Cause
- Cause in Fact
- Breach of Duty
- Duty

The results of few negligence cases rely on whether the suspect owed a responsibility to the plaintiff. This duty emerges when the law identifies a relationship between the plaintiff and the defendant, and because of this association, the suspect is responsible to act in a specific way toward the plaintiff. Rather than a jury, a judge commonly defines whether a suspect owed a duty of concern to a plaintiff. Where an accountable individual would seek that a duty persists under a specific set of situations, the court will commonly discover that such a duty exists².

¹ Lynn S. Chancer, *High-Profile Crimes: When Legal Cases Become Social Causes* (University of Chicago Press, 2010).

² Janet Dine, James Gobert and William Wilson, *Cases And Materials On Criminal Law* (Oxford University Press,

Mark will be liable under the act of Tort of Negligence since he had neglected a foreseeable incident that can cause harm to the passer-by. An example of a similar case is mentioned below:

Ogwo v Taylor (1987) HL- a case of damage- foreseeability

In this case D carelessly fire to his home while using a blowlamp. A fireman (C) received injuries while firefighting.

Held: the injuries of the fireman were a predictable outcome of D's negligence. It was also irrelevant that he was working as a fireman and supposed to take jeopardies as part of his employment. Therefore, the fireman won the case³.

In the given example, involving Mark building a wall around his front garden even though he had the idea about a foreseeable bad weather which caused incidents with Thomas, Fatima, Tony and Jack. A court would require to determine whether Mark and the victims had an association like that Mark was needed to exercise appropriate concern in building the wall in a bad weather. If the construction of an incomplete brick wall was not built in a bad weather, then the court may be more probably to find that Mark owed a responsibility to the victims. Mark is responsible for negligence when he breaches the duty that he owes to the plaintiff. March breaches such a duty through failing to practice appropriate care in completing the duty. Not like the query whether a duty persists, the incident of whether Mark breached a duty of care is determined by a jurisdiction as a query of fact. Therefore, in the given case, a jurisdiction would determine whether Mark practiced appropriate care in building the wall in a bad weather.

6th ed, 2010).

³ *Tort Damage Foresee ability* (1987) HL *Ogwo v Taylor*.

Under the conventional regulations in negligence examples, a plaintiff must determine that Mark's activities actually determined the plaintiff's damage. This is mostly related to as but-for action. In other terms, however for the Mark's actions, the victims' injury would not have happened. The victims injured by Mark who built the wall in a bad weather could prove this component by expressing that for the Mark's negligent action of building the wall, the victims would have suffered injuries⁴.

Proximate cause refers to the extent of the responsibility of the defendant in a case of negligence. Mark in this case, is merely accountable for those injuries he could have foreseen by his actions. If Mark has caused injuries that are external to the extent of the risks that he could have predicted, then the victims cannot prove that his actions were the proximate cause of their injuries.

In the case given in the question, the victims injured by the wall bricks would determine proximate cause through depicting that Mark could have predicted the damage that would have caused from the bad weather. Equally, if the injury is something more distinct to Mark's activity, then the plaintiff will be less probable to prove this component. Assume that when the victims struck by the wall bricks, they received injuries.

Victims in a negligence case need to verify a legally determined damage, normally in the form of physical harm to an individual or to an asset. It is not adequate that the defendant did not exercise the duty of care appropriately. The failure to practice appropriate concern need outcome in actual harms to an individual to whom the defendant owing an obligation of care. Even if the victims are confident that all the elements for a negligence case are there, it requires a professional lawyer to create a powerful case and eventually win. Also,

⁴ Michael T. Molan, *Cases & Materials On Criminal Law* (Psychology Press, 3rd ed, 2005).

since the victims can have the claim evaluated at reasonable costs, there is no risk in getting advice from attorney or consultant if the victims have been injured as a consequence of someone else's carelessness⁵.

Question 2

The case presented in question 2 is linked to the case of misinterpretation. Misinterpretation is a false statement of reality made by one individual to the other which was deliberated and did induce the person involved to enter into the agreement. Act of misinterpretation is a tort and a civil wrong. That means that an act of misinterpretation can produce civil obligation if it results in a monetary loss. As an example, if we assume a real estate investor owns a swamp land however advertises it as important business zone area. This is misinterpretation of a fact. If someone purchases the land depending on the investor's statement that is commercially important, the purchases may sue the investor for financial losses emerging from the deal⁶.

To generate liability for the producer of the statement, an act of misinterpretation must be dependent on by the reader or listener. Moreover, the speaker need to know that the listener is depending on the factual precision of the statement. Eventually, the listener's dependence on the statement need to have been appropriate and validated, and the misinterpretation must have caused in a monetary loss to the listener. A statement of misinterpretation require not be deliberately fake to produce accountability. A statement created with deliberate ignorance or a careful disrespect forth reality can generate accountability. Non-disclosure of material or crucial aspects through a fiduciary or a

⁵ Michael T. Molan, *Cases & Materials On Criminal Law* (Psychology Press, 3rd ed, 2005).

⁶ Janet Loveless, *Complete Criminal Law: Text, Cases, And Materials* (Oxford University Press, 4th ed, 2014).

professional, like a doctor, accountant or a lawyer can result in an accountability. If the presenter is involved in the business of marketing goods, any statement, no matter how blameless, may generate accountability if the statement concerns the trait of quality of an item and the statement is not valid. In such a scenario, the statement need to be one of the fact⁷.

In the given case, Maria misinterpreted the information provided to his friend regarding Magnum Ltd. which caused Sam a monetary loss. This does not comprise of puffing act, or the glowing ways of a marketer in the course of a sales statement, rather it seems to be an unintentional act conducted by Maria since Sam was her friend and she would not want a monetary loss for his friend.

A misinterpretation in a deal can offer a party the right to rescind the agreement. A rescission of an agreement returns the individuals involved they sustained before the agreement was created. A party can withdraw an agreement for misinterpretation merely if the statement was critical or material to the agreement. An example of a case similar to the one given has been mentioned in order to understand the legal decision and rights involved⁸.

Bisset v Wilkinson [1927] AC 177

The accuser bought from the defendant two land blocks for the aim of sheep farming. While the negotiations were conducted, the defendant expressed that if the place was

⁷Janet Loveless, *Complete Criminal Law: Text, Cases, And Materials* (Oxford University Press, 4th ed, 2014).

⁸ Janet Dine, James Gobert and William Wilson, *Cases And Materials On Criminal Law* (Oxford University Press, 6th ed, 2010).

operated adequately, it would hold 2000 sheep. The accuser purchased the place assuming that it would have 2000 sheep. Both of them know that the defendant had not held sheep farming on the area. In an act of misinterpretations, the pertinent judge expressed that in general conditions, any statement made by the owner who has been owning his own farm as to its holding capacity would be related as a statement of reality. However, this is not such a condition, in these situations, the defendants were not validated in regarding anything expressed by the plaintiff as to the holding potential as being anything more than a statement of his opinion of the topic. The Privy Council agreed in this perception of the matter, and thus held that, in the lack of fraud, the buyer had no right to rescind the agreements⁹.

The above example helps us in understanding the given case situation in which there seems to be an absence of fraud and therefore Sam would not be able to rescind the contract since Maria did not intentionally made that misinterpretation of the factual accounts which could have saved Sam to invest in a company leading towards a bankruptcy.

⁹ Janet Dine, James Gobert and William Wilson, *Cases And Materials On Criminal Law* (Oxford University Press, 6th ed, 2010).

References

Chancer, Lynn S., *High-Profile Crimes: When Legal Cases Become Social Causes* (University of Chicago Press, 2010)

Dine, Janet, James Gobert and William Wilson, *Cases And Materials On Criminal Law* (Oxford University Press, 6th ed, 2010)

Loveless, Janet, *Complete Criminal Law: Text, Cases, And Materials* (Oxford University Press, 4th ed, 2014)

Molan, Michael T., *Cases & Materials On Criminal Law* (Psychology Press, 3rd ed, 2005)

False statement of fact (1927) AC 77 Bisset v Wilkinson

Tort Damage Foresee ability (1987) HL Ogwo v Taylor