

Assignment

TORT OBLIGATIONS

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Advice to Claude

Issue:

- The issue in this case is whether Claude can seek damages under the issue of intentional tort against Doug.
- The other issue is whether Claude can claim damages and compensation for the tort of negligence against Doug Rugby Club (DRC) for the conduct of Ralph, their employee.
- Can Claude bring a case against Ralph for negligence while performing his refereeing duties?

Rule:

Claude against Doug

Intentional tort occurs when there is a direct challenge against the victim. The defendant would act recklessly and unlawfully, causing bodily harm to the victim. Furthermore, intentional tort is proved when the defendant foresaw harm that may result from their activities. Despite the ability to predict the damage, the defendant still engaged in the risky tackle or body contact. The law that establishes and proves the element of an intentional tort is *R v G [2003]*, where the court held that an action could be considered a tort if the defendant acts recklessly and is aware of the risks of their actions¹. Also, despite being aware of the risks of their actions, the defendant still engaged in the reckless act. This case study reveals that a battery or intentional tort is the unlawful application of force against the victim. Furthermore, the claim against deliberate tort can be reinforced by the law, *Collins v Wilcock [1984]*, where the court ruled that the body of a person is inviolable, and unlawfully touching it without informed consent is an act of battery².

Claude's Claim against Doug Rugby Club

Claude has to show that Doug Rugby Club owes him a duty of care. The courts recognized this principle in the 1932 case of *Donoghue v Stevenson*. The Lords explained that one has to show that the defendant owed him a duty of care, and it is because of breaching it that the claimant suffered³. In this ruling, the House of Lords denoted that a company owes a duty of care to its customers. Thus, they have to take steps to protect their clients' interests. The element of duty of care was further reinforced in *Dorset Yacht Co Ltd v Home Office*, where the House of Lords ruled that proving a duty of care was breached is a fundamental requirement for the claim of negligence to withstand⁴.

¹[2003] 3 WLR

²[1984] 3 All ER 374

³*Donoghue v Stevenson* [1932] AC 562

⁴[1970] UKHL 2.

But, while proving the element of negligence, the defendant has to ensure that the harm caused emerged because of the negligent act. This is an aspect that is contained in *Caparo Industries Plc v Dickman*, where the House of Lords ruled that the element of causation is essential when proving negligence⁵. In *Blake v Galloway* [2004], the court denoted that for a negligence case to thrive, the element of causation must exist. The act or injury in question should be caused by breaches in the duty of care owed⁶.

Additionally, Doug Rugby Company is Ralph's employer, who failed to exercise due care while refereeing. Still, in the case of *Mohamud v WM Morrison Supermarket* [2016], what emerged is that an employer is responsible for the negligent acts of their employees. But, these actions have to be within the scope of employment of their workers⁷. This fact is reinforced in the case of *Various Claimants v Catholic Child Welfare Society* [2012]. *In this case*, the UK Supreme Court came up with elements that must exist for an employer to answer to the negligent acts of their workers. These elements are⁸:

- a. The employee was employed by the employer
- b. The employee engaged in an activity that he was employed to do.
- c. There is a risk of tort occurring in the activity that the employee was conducting
- d. The injury or tort occurred because of the negligent acts of the employee

Claim against Ralph

To determine whether Claude can bring a successful claim against Ralph, there is a need to look at the principles of vicarious liability established under *Various Claimants v Catholic Child Welfare Society*. Under this rule, an employer is liable for the breaches of a duty of care. Also, *Mohamud v WM Morrison Supermarket* established the tort of vicarious liability.

Application

Claude can successfully bring a case against Doug. That is under intentional tort. The reason for taking this position is that Doug's actions were reckless. Throughout the match, Doug had high-tackled several players. He engaged in this behaviour despite knowing the risks involved. That is, the tackles were unnecessary and against the rules. Besides, the high tackles could result in injuries suffered by other players. Therefore, Doug's actions violated the ruling in *R v G* [2003] that prevented them from acting recklessly and harshly.

⁵[1990] UKHL 2

⁶[2004] 3 All ER 315

⁷[2016] UKSC 11

⁸[2012] UKSC 56

Claude can bring a successful case against Doug Rugby Club. The reason is that Doug Rugby Club owed a duty of care to ensure its employees acted ethically. For instance, the rugby club should have created measures to prevent Doug from recklessly harming Claude. On the other hand, Doug Rugby Club is Ralph's employer. Mr. Ralph was the referee and ignored Doug's various bad tackles. Thus, he breached his duty of care that he owed to the players. Because of these breaches, Doug engaged in a reckless tackle against Claude. Therefore, because of the principles established in *Muhammad v Morrison*, Doug Rugby Club owed a duty of care to Claude, and it was breached through Ralph. Therefore, Claude can bring a successful claim against Doug Rugby Club.

Finally, Claude cannot bring a successful claim against Ralph. The reason is that Ralph was an agent of Doug Rugby Club. He was engaged in an activity that the club employed him to do. That is, a referee. As established in *Various Claimants v Catholic Child Welfare Society*, an agent cannot be held liable for his actions on his employer's behalf. The reason is that while employing the agent, there was a foreseeable notion that the activities of an agent could result in a tort.

Conclusion

In conclusion, Claude can successfully bring a case against Doug. The reason is that Doug was reckless and engaged in tackles against the game's rules. Doug engaged in high tackles against other players. Thus, his actions were intentional and reckless. This breached the provisions established under *R v G*, which denotes that a successful claim can be brought against a defendant if they acted recklessly and knew that their actions could result in harm.

Regarding Doug Rugby Club, Claude can get a successful claim against them, and this is because they are Ralph and Doug's employers. For instance, Ralph was employed as a referee for the organization. He was negligent while conducting his duties. Negligence arose because he ignored and did not punish the high tackles caused by Doug. Because of this negligence, Doug caused harm to Claude. *Mohamed v Morrison* recognizes the principles of vicarious liability. From this ruling, an employer should answer to the negligent acts of their employees. But, an employer would be responsible if the action was done within the scope of their workers' duty. Ralph Claude cannot bring a successful claim against him. This is because Doug Rugby Company employed Ralph. In the field, he was urgent for his employer.

Advice to Wilma

Issue

Are the defendants, Doug and Doug Rugby Union, liable for the injuries suffered by Wilma due to the bad tackle her husband received while playing the game?

Rule

The primary rule to establish the negligence of third parties is the ability to foresee that the action can result in damage against the parties concerned. For instance, in *Franks v Englis [2021]*, the court denoted that one of the primary elements that can be used to determine if the defendant is liable to third parties is the notion of foreseeability⁹. The defendant must foresee that their actions can cause harm to third parties. In *David Topp v London County Bus*, the court found out that the bus company did not owe a duty of care to David Topp because the harm that occurred to them was not foreseeable¹⁰. For instance, in this case, the court explained that the defendant was unable to successfully prove that the bus company foresaw an event where the bus was stolen by a joy rider, which in turn caused death.

From this court ruling, it is evident that foreseeability is essential when determining if the defendant is liable for the parties' actions. Furthermore, in *David McClean v Andrew Thornhill KC*, the court also denoted that a critical test to determine if a defendant has a duty of care towards a third party is if they could foresee the breaches.¹¹ Moreover, in *Multiplex Construction v Bathgate Realizations Engineering*, the court established the rules to guide them when determining if the defendant is liable for damages caused to third parties. The tests are¹²:

- a. Is the defendant responsible, or can he be held accountable for the breach?
- b. Is the foreseeable loss reasonable? Also, is giving the defendant a duty of care towards the claimant fair? How close is the third party to the breach that occurred?
- c. Did the third party rely on the defendant for the services?

While determining whether the defendant is responsible for the damages suffered by third parties, the claimant should prove that the negligent act caused the harm. For example, in *Home Office v Dorset Yacht Co Ltd*, the court ruled that the element of foreseeability is not enough when proving the negligence of third parties¹³. The plaintiff has to explain to the courts how the foreseeable action led to the harm suffered. This is a fact that was reinforced in *Lamb v Camden LBC*¹⁴. Thus, the liability emerges if the action and harm were foreseeable.

Therefore, it is evident that a third party will bring a successful claim against a defendant if a breach occurred and the harm resulting from the breach was foreseeable. Additionally, in *Multiplex*

⁹[2021] 5 WLUK 531

¹⁰[1993] EWCA Civ 15

¹¹[2023] EWCA Civ 466.

¹²[2021] EWHC 590 TCC

¹³[1970] AC 1004

¹⁴[1981] QB 625

Construction v Bathgate Realizations, the court denoted that it has to be specific while examining the duty of care towards a third party. For example, is it an economic, physical, or social duty?

Application

The identified rules show that Wilma can bring a successful case against Doug and the Doug Rugby Union. For example, the harm caused to Wilma was foreseeable. It is foreseeable in the sense that Wilma is the wife to Claude, and she might be psychologically affected when the husband is knocked down unconscious. In *Frank v Englis*, the court established that foreseeability is essential when determining the negligence of third parties.

Furthermore, the injuries Wilma suffered resulted from the negligent acts of Doug and the Doug Rugby Union. The reason is that Wilma has been diagnosed with shock and PTSD after watching the hard tackle against her husband. Thus, the causation element has been proved, as established in *Home Office v Dorset Yacht Co Ltd*. In this case, the courts established that a claim can only be brought if the plaintiff can establish the presence of a cause-effect doctrine.

Furthermore, in *Multiplex Construction v Bathgate Realization*, the court established that proximity should be present. In this case, the element of proximity is there. The reason is that Wilma is Claude's wife. The two are close enough, and any harm caused to Claude can negatively affect Wilma. Furthermore, Wilma witnessed the hard tackle on Claude. Nobody told her. She saw Doug unlawfully challenging Claude. Furthermore, Wilma witnessed the biased referring by Ralph. Thus, the element of proximity is proved.

Finally, it is possible to hold Doug and Doug Rugby Union accountable to Wilma, and this is because they are liable for harm caused to Claude. By this liability, Doug and Doug Rugby Union had a duty of care towards Wilma. They were responsible for acting prudently and ensuring that no harm was caused to Claude. This is because any harm caused to Claude would affect his family and those associated with him. For example, Wilma is Claude's wife. The harm caused to Claude would affect Wilma.

Conclusion

Wilma can bring a successful challenge against Doug and Doug Rugby Union for negligence. The reason is that the harm caused to Wilma was foreseeable, and it emerged because of the negligent acts of Doug and Doug Rugby Union. For example, in *Francis v Englis*, the court ruled that foreseeability must be present if a third party wants to succeed in the case of tort. Harm to Wilma was foreseeable because she could see the game, and a hard tackle on her husband could cause psychological problems to her. Thus, the requirement of foreseeability was established. Also, in *Home Office v Dorset Yacht*, the courts established that foreseeability is insufficient. The court denoted that the negligent act should be the primary cause of the harm. This is an aspect that is present in the case of Wilma. The reason is that Wilma was shocked and acquired PTSD because she witnessed a hard tackle against her husband. Also, she witnessed the biased refereeing from Ralph. Thus, the negligent acts of the defendant directly contributed to the harm that

Wilma experienced. In *Multiplex Construction v Bathgate Realizations*, a third party can successfully claim negligence under tort law if they can prove the element of proximity. This means that the third party was close to the event, and the negligent acts caused harm to him. In this case, Wilma was close to the event. She watched the match on television and saw the hard tackle on her husband. This led to shock and PTSD.

Advice to Mother

Issue

Does the Rugby Union owe a duty of care to the mother of the 10-year-old boy?

Rule

The case *Caparo Industries PLC v Dickman* helped offer insights into the requirements of the duty of care principle to hold in contractual and non-contractual relationships¹⁵. The case brings forth the threefold Test to help highlight incidences of negligence when applied in other settings. Below are some of the components of the threefold Test;

- The defendant's conduct must result in the harm that is reasonably expected
- Relationship proximity rule
- Just, reasonable and fairness in assuming a duty of duty

From this test, what emerges is that the harm caused to the plaintiff should have emerged from the conduct of the defendant. This is an important principle in tort law. It recognizes the fact that a negligent breach, is only possible, if harm resulted from the actions of the defendant. This is an aspect that is also recognized in *Donoghue v Stevenson*. Furthermore, the element of proximity applies when a third party is close or directly affected by the negligent acts. In *Blake v Galloway [2004]* the court re-established the causation rule. The courts believed that a negligent action can only thrive if it was caused by the breach under consideration¹⁶.

Thus, before determining the liability of a defendant, the courts have to look at whether the harm was caused by the negligent acts under investigation. Also, there is a need to analyze if holding the defendant liable to harm caused to a third is just and reasonable. Failing to analyze the presence of this element can result to a miscarriage of justice.

Still, the proximity rule was applied in *Multiplex Constructions v Bathgate Realizations*, when the court ruled that a third party can successfully bring a negligent claim against the defendant by invoking the proximity rule¹⁷. The defendant has to be close, to the extent that they are affected by the events or

¹⁵[1990] UKHL 2

¹⁶[2004] 3 All ER 315

¹⁷[2021] EWHC 590 TCC

negligent actions. The closeness can either be physical, emotional or social. Physical proximity is when the third party was physically present during the breach, and it had a negative effect on their health. On the other hand, social proximity emerges when the plaintiff has a social connection to the victim. This connection is strong to the extent where harm caused to the victim, also affects the plaintiff.

Thus, in *Peabody Donations (Governors Funds) v Parkinson & Co Ltd*, the courts held that because of the lack of a proximate relationship between Lambeth and Peabody, Lambeth did not owe the plaintiff a duty of care¹⁸. This is because the plaintiff acted on informal approval indicators to inform their decision without entering into a contractual relationship with the defendant. The courts also highlighted the role of Lambeth, stating that it was not within their duty and responsibility to shield the building developers from economic loss because of failure to adhere to pre-approved plans. Lord Keith also highlighted the fears brought by the literal application of the threefold Test, reiterating the need to consider the circumstances of the case as seen in the case *Ann's v. Merton London*.

In *Ann's v Merton London*, the courts imposed on the local council the duty of care towards the occupants of the house and the owner of the house¹⁹. This is because it was their duty to inspect the building during construction. The statute of limitations of action did not apply in this case because the duty of care does not exist regardless of time because of the relationship between the parties. Lord Wilberforce, who administered the leading judgment, reiterated Lord Keith's sentiments. That is, it becomes unnecessary to analyze the duty of care using previous circumstances because the situation and context in each case are unique. Here, the principle of proximity used was extended. The Lords established that the wrongdoer's action could have a ripple effect on third parties, in this case, home occupants, such that negligence on one client can cause harm to another.

Ann's Test brought forward two requirements, including foreseeability proximity of relationships and facts that could result in difficulties imposing a duty of care. Ann's case was further interpreted to imply the duty of care existed because of the contractual function of the local council brought by the legislative laws. This was an issue of public laws because of the source of contractual relationships. Ann's Rule was further elaborated in the case of *Murphy v. Brentwood District Council*²⁰. In this case, the courts introduced the need for physical injury incurred by the victim when determining liability.

Application

The circumstance, in this case, can be analyzed using *Ann's v Merton London*, *Peabody Donations Fund v. Parkinson & Co Ltd*, *Caparo Industries Plc v Dickman* and *Murphy v Brentwood District Council*.

¹⁸[1983] EWCA Civ J0729-9

¹⁹[1978] AC 728

²⁰[1991] 1 AC 398

In these cases, the three-threshold rule established the duty of care. One of the items in the three-threshold rule was the proximity of the relation. In this case, there was no direct relationship between the 10-year-old's mother and the Ruby Union. However, the case *Ann v Merton Lond* introduced the foreseeable proximity of relationships. In this case, the existence of the foreseeable proximate relationship existed. This is considering the mother of the 10-year-old is the boy's legal guardian. A factor indicating that anything happening to the boy would directly impact the guardian. The second rule was establishing the occurrence of harm that is reasonably expected. There was harm that was reasonably expected because of the relationship between the mother and son. The case *Murphy v Brentwood City Council* introduced the concept of physical injury. In this case, there was physical injury attributed to psychiatric shock caused by the injuries sustained by the boy. Hence, it would be fair and reasonable to impose upon the rugby union a duty of care to the third party.

Conclusion

In this case, the Ruby Union owes the mother of the 10-year-old boy the duty of care. This is because of the extension of the proximity rule seen in the case *Ann v Merton*. In this case, a wrongdoer's actions have a foreseeable impact on the third party based on the nature of the relationship. In this case, the nature of the relationship was based on statutory laws. In this case, the mother is a legal guardian who can directly be impacted by the wrongdoer's action based on the nature of the relationship between mother, son, and the law—an indication there was foreseeable proximity of relation in this case. Similarly, there was physical harm experienced as mandated by the case *Murphy v Brentwood City Council*; the psychiatric shock encountered by the mother because of what happened to the son. The mother would be eligible for compensation based on Ann's Test's expansion seen in *Murphy v Brentwood City Council*.

Advice to Sister

Issue

Whether RU is liable for the psychiatric conditions of the sister of a man who was trampled by the crowd?

Rule

Frank v Englis [2021] explains that a defendant is liable to third parties if their action and harm caused are foreseeable²¹. This is an aspect reinforced in the case of *David Topp v London County Bus*, where the court held that for a defendant to be held responsible for harm they caused to a third party, the

²¹[2021] 5 WLUK 531

harm under consideration should be foreseeable. While coming up with this ruling, the court noted the element of causation²². For instance, the court explained that the defendant's negligent act should cause the harm a third party experienced. These rulings indicate that a plaintiff should show the harm caused was foreseeable, for the courts to hold the defendant liable for third party harm.

Still, in *Multiplex Constructions v Bathgate Realizations*, the court identified tests that should be used to determine whether a defendant is liable for the harm caused to a third party²³. One of the tests is that the defendant should have breached their duty of care. When this duty of care is breached, the courts can hold the defendant liable for negligence. The other condition is the element of proximity. This aims to determine how close the victim was to the events that caused him harm. Also, the court raised the issue of causation and effects. Here, the courts denoted that liability would occur if the defendant's actions caused the harm suffered by the plaintiff/third party.

Application

The sister of the trampled man can successfully bring a case against the RU. The reason is that she suffered a psychiatric problem that could easily be foreseeable by the RU. The foreseeability of the event is possible because if the building collapses, then the people who witnessed the event can be traumatized. Moreover, the sister of the trampled man was close to the building. She witnessed the event, and upon realizing that her brother was trampled, she suffered from psychological problems. Therefore, the proximity element is satisfied, as established in *Multiplex Constructions v Bathgate Realizations*.

Conclusion

The sister can bring a successful claim against RU. The reason is that the events that occurred after RU's poor construction were foreseeable. It is foreseeable that the building could collapse and people be trampled upon. Additionally, it is foreseeable that people who witnessed the collapse of the building and the trampling taking place could suffer from psychological problems. Also, the sister suffered from psychological problems because of witnessing the collapse and trampling of his brother. Thus, this satisfies the proximity element established in *Multiplex Constructions v Bathgate Realizations*.

²²[1993] EWCA Civ 15

²³[2021] EWHC 590 TCC

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