

Enterprise Law

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INTRODUCTION

The given assignment is about studying law of negligence under Civil Liability Act 1936 of South Australia. It describes various conditions to be achieved in order to claim damages under the give law. There are various conditions under this law. It comes under law of torts where in the plaintiff is awarded compensation due to negligence on the part of the defendant.

Case 1

Facts and Issue:

In this case, the school has taken a group of seven- year old students for an excursion to the zoo. The students were given permission for wandering in the zoo in pairs by the teacher. The students were taught about the dangerous characteristics of animals before when they were taken for such visits. Simon and his friend during the visit started feeding an animal in the zoo that was put behind the cage. There was a proper safety in regards with the animal as there was a proper distance of fence and the cage of the animal. Simon got an injury on his face and upper body when the animal grabbed him and injured him. Simon had claimed the fence to pick up the bag of nuts when it was fallen or he must have fallen on the fence. Simon suffered an injury. Simon wants claim under negligence law of Australia.

Regulation:

This case is covered under law of negligence as per Civil Liability Act 1936 of South Australia. This law related to the negligence by a person and the obligation it bears due to their negligent act. The act says that when a person or the property of the person suffers injuries or damages due to the negligent acts by another person then the person can claim compensation. That means the person who has suffered injury is entitled to file a case for negligence on the part of another person. The person can get compensation for all the damages suffered by the person. If no negligence would be there then no damage would be there.

Ways of determining negligent acts:

- Whether the negligent is responsible for a duty of care to defendant?
- Whether negligent has committed breach of duty of care?
- Is plaintiff has suffering any loss or injury?
- Is the breach of duty of care responsible for damages?

It is very necessary to fulfill these conditions I order to claim compensation. If any of the conditions do not get satisfied then plaintiff cannot claim.

There are even laws provided for children and the negligence related to them. If a child does wrongful acts, he will be responsible for his acts. But the act of child plays a very major role in deciding the level of liability. It depends on the age of child for the level of care taken by them.

Analysis:

In the given case, Mr. Philpott had allowed seven year old children to wander in the zoo but they were already being taught about the dangerous characteristics of all the animals in the zoo. Mr. Philpott has already taken and followed the duty of care by informing the kids about the danger of animals in the zoo. Simon had fallen on the fence due to falling of his peanuts bag.

Conclusion:

Simon can be awarded compensation but under other law and not under negligence law. Mr. Philpott is not held responsible for law of negligence. Although he must have restricted the child to feed the animal but then it does not be responsible under law of negligence

Case 2:

Facts and Issue:

John and Natalie wanted to purchase a country motel enterprise. They are married couple. The couple did not have any experience in this field before. John and Natalie were being told about the good side and bad side of this motel industry. Both John and Natalie worked respectively in some companies. They were doing great at their work too. John was used to handle accounts at his company and Natalie was working in the post of receptionist. The couple sold out their family home in return they received \$40000. After a long wait, John and Natalie were being offered the motel business for \$ 100000 which was situated at Burradoone by Mrs. Wentworth who was selling the motel business on behalf of Mr. Holgate. At their initial meet, Mrs. Wentworth represented herself as if she is the owner of this motel industry. She assured them that she has a lot of experience in this field, she has also sold many motel businesses and she never dealt with any wrong and losing suffering motel business. The motel business was a new one and Mr. Holgate was selling it because of his bad health. All the financial accounts were disclosed to the couple as it was running unprofitably. There was some amount of water when John and Natalie were buying the motel business in Lake Eldon at Burradoone. When they were signing the contract, Mrs. Wentworth started telling them that they are doing a great job as this is a very good business. Even she could have bought it if she was not engaged anywhere else. Mr. Holgate us also selling the business because of bad health otherwise he would not have sold this business and the selling price of this business which is being offered to the couple is also very less. And they are getting the best deal. Later after 6 months, John and Natalie suffered huge losses. They are expecting to sue Mrs. Wentworth for supplying wrong knowledge and charging her under law of negligence. They want the claim against the damages suffered by then after busying this business.

Regulation:

The above case is covered under the law of negligence. This is a law of torts which is explained in Civil Liability Act 1936 in Australia. This law deals with the damages suffered by a person due to negligence acts of another person. The person suffering the damages personally or damages to the property can ask for the claims against such losses. The plaintiff has an authority to sue the defendant against the charge of law of negligence. Since the plaintiff has suffered losses and damages due to the wrongful and negligent act done by the defendant, he can seek compensation in return of it. It is the duty of the person to disclose all the material information. There are different types of negligent acts such as negligence while driving car, professional negligence etc.

There are various factors which are needed to be satisfied before concluding that the person should be charged under law of negligence. If any of the factors do not get fulfilled, then the person will not be liable for any damages suffered by the plaintiff. Following are the conditions to be fulfilled:

1. It is necessary to first know whether the defendant needs to perform a duty of care towards the plaintiff.
2. If the above answer to the question is yes, then the next test will be whether the defendant acted in such a way that he lead to breach of duty of care?
3. It is very essential to know whether the plaintiff has got affected that is whether he/she is suffering from damages and losses.

4. Then it is required to find out the reason for such loss and damages to the plaintiff is due to the act of breach of duty of care done by the defendant.

Analysis:

In the given case, there are various points to be noted which make Mrs. Wentworth liable under law of negligence. All the points are given below:

1. John and Natalie did not have much knowledge and experience about the working of motel business earlier when they entered in this field.
2. Secondly Mrs. Wentworth wrongfully introduced herself as if she is the owner of the motel business and she had already sold many such businesses without selling any wrong one. This made them get influenced.
3. Information regarding water in Lake Eldon at Burradoone was not disclosed to John when he was buying the business by Mrs. Wentworth. It was her duty to disclose and follow duty of care by informing all details as they were fresher in this business.
4. Before signing the contract, Mrs. Wentwooth was still praising about the business and explaining why they should not leave this deal as it is a great business. She could herself buy it if she was free. She also explained that the price they are offering is very low. This is has also influenced the couple.
5. Mrs. Wentworth has done breach of duty of care. The couple is suffering financial constraints and losses after buying this business. The acts of Mrs. Wentworth are leading to breach of duty of care which affected the couple. They suffered huge losses due to breach of duty of care by Mrs. Wentworth.

Conclusion:

It is been concluded that Mrs. Wentworth is held liable under law of negligence and John and Natalie can seek claims and financial compensation for the losses they suffered from the negligent acts of Mrs. Wentworth.

Conclusion

The law of negligence is briefly explained and understood from the above case studies which describe application of law of negligence. There are various case studies to understand it well. It depends on satisfying all the conditions mentioned in the given regulation in order to claim damages. If any of the conditions is not fulfilled then this law will not be applicable. In this way, law of negligence is practically being applied.

References

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