

Business Law: CIMA Year One

Negligence

Negligence is a tort law; that is, it falls within civil law (it is a 'civil wrong') but it is not a voluntary agreement such as a contract. Other examples of tort law include assault, nuisance, assault, defamation, and trespass. 'Tort' comes from Norman French 'to twist'.

Whereas a contract law case depends on breach of contract, a tort law case depends on breach of duty.

To prove negligence in a civil court, three elements must be proven by the claimant:

- Duty
- Breach
- Damage

The basis of most negligence law is *Donoghue v Stevenson* (1932). D was bought a drink in a coffee shop by her friend; there was therefore a contract between the friend and the coffee shop. Inside the opaque bottle containing D's drink was a dead snail; D suffered shock and stomach pains. D could not sue the café for breach of contract since no contract existed. Similarly, the café could not have known or checked that the bottle contained a snail, since it was opaque. D sued the manufacturer, S. It was ruled that S should take care to not injure (or otherwise adversely affect) anyone who it could reasonably foresee would be affected by its actions.

In the case *Home Office v Dorset Yacht Co* (1970)¹, it was the boys that damaged the yacht, but the prison officers were sued. It was judged that due to the proximity of the camp to the shipyard, the damage was foreseeable.

In the case of *Alcock v County Commissioner of South Yorkshire Police* (1991), the case hinged again on proximity. While the personal and relationship proximity was very high, geographic proximity was not. The courts ruled that those which were in attendance at the football ground were sufficiently close to win damages, but those that saw the event from afar or on television were not sufficiently close.

In some cases, it is considered that negligence cases cannot be successful on public policy grounds – for example, the police could not cope with everyone who witnesses a murder suing them. Such exceptions are likely to diminish over the coming years due to the Human Rights Act, and the question of proximity is likely to become more and more important.

¹ Note, this was an appeal case, so the names of claimant and defendant are switched

In the cases discussed thus far, it has been a physical act causing physical damage. Note that physical damage includes adversely affecting mental well-being; it is used to differentiate between those case where damages are purely financial.

Damage

Damage must be proven; furthermore, it must be proven that the breach of duty caused the damage.

Barnett v Chelsea Hospital Management Committee (1969)

On New Year's Eve, B's workmates poisoned his tea for a joke. He went to hospital feeling ill. The doctor told him he was drunk and to go home and sleep it off. B went home and died. If he had been treated properly, he would have died anyway. His widow sued the hospital and lost.

Here, the hospital has a duty to B; the hospital was in breach of this duty, but B's death was not caused by this breach.

Professional advisors

There is a difference between standard negligence cases and those involving the duty of care by professional advisors. In the latter case, there is a non-physical act and a purely financial loss. If an auditor fails to value a PLC properly, the shareholders may lose money and therefore want to sue for negligence.

Did the defendant know that the information would be communicated to the claimant?
Did the defendant know that the claimant would rely on the information?
Did the defendant know the nature of the transaction?

We can derive that members of the public cannot claim against the auditor, as the auditor did not know that they would buy shares. Also, shareholders will not tell the auditor that they are buying more shares, so again there is a lack of knowledge.

Only losses on existing shares can be considered, since these are all the auditor knows of.

However, note the case of ADT Ltd v Binder Hamlyn (1996). B were a firm of accountants hired to audit a company purchased by A. This audit was found to be false and negligent. Ordinarily, there would be no grounds for negligence. However, at the time of acquisition A asked B whether they stood by their audit. The court decided that B had assumed responsibility, and had know the purpose of the audit. B lost.