Take Home Exam

Dawn v Prison Authority (PA)

This issue deals with omissions because PA failed to act. Well done

Well done

Duty: There is no general duty to take positive steps for the safety of others but exceptions exist. This is an exception due to the relationship between the defendant and Aaron. PA's control over Aaron, a prisoner, establishes a duty to protect others from Aaron (*Dorset Yacht Co Ltd v Home Office* [1970] AC 1004).

Breach: The standard of care, prescribed in s31 of the *Civil Liability Act 1936* (SA) ('*CLA*'), is that of a reasonable person in the defendant's position and s32 is the calculus of negligence given legislative form. The court determines whether the standard was met by considering what a reasonable PA would have done. A reasonable PA would have transferred Aaron to a higher security prison or arranged more guards to watch him, since PA ought to have known Aaron is a violent criminal. In failing to do anything, PA has breached their duty by not meeting the required standard. Unborn...duty

1

Causation: Burden of proof lies with the plaintiff (s 35 *CLA*). The starting point in causation is the legislation (*Adeels Palace Pty Ltd v Moubarak* (2009) 239 CLR 420 (*Adeels*)). This also applies to causation discussed below in other cases.

Factual causation is established using the 'but for' test, *CLA*, s34(1)(a). But for PA allowing Aaron to escape, Beth would not have prematurely given birth to Dawn, causing ongoing physical problems. It was a necessary condition of the harm.

Scope of liability needs to be determined (s34(1)(b) *CLA*). The facts are analogous to *Godfrey v New South Wales* (2003) Aust Torts Reports 81-700 (*Godfrey*). PA could argue they are not liable because the incident did not occur within the immediate vicinity of the jail or within the course of escape while control can still be asserted. If the court followed *Godfrey*, PA would not be liable to avoid indeterminate liability. The court would most likely distinguish *Godfrey* because this incident occurred close to the time of escape in the neighbouring suburb, therefore reasonable for PA's liability to extend to these circumstances.

2

Beth v PA

Duty: Mental harm was suffered so *CLA*, s53 and s33 must be considered. Section 53(1)(a) allows Beth to recover damages because she was present at the scene of incident. Furthermore, Beth suffers a recognised psychiatric illness (s53(2) *CLA*).

The test, *CLA*, s33(1), is whether it was reasonably foreseeable that a person of normal fortitude would suffer a psychiatric illness. It is reasonably foreseeable that a person would suffer psychiatric illness after having a gun held to her, contributing to a premature birth. The court considers factors in *CLA*, s33(2). Beth was at the scene of the accident and put in peril. It is likely PA owes Beth a duty.

Word Count: 1500

MH, consequential

Breach: It is likely PA breached their duty as discussed above.

Causation: Factual causation is established; but for allowing Aaron to escape, she would not have had a premature birth and developed clinical depression (s34(1)(a) *CLA*). Scope of liability (s34(1)(b) *CLA*) issues are the same as above.

Con v Enviro Ceilings, *Con v Dr D*

Duty: Enviro Ceilings owes Con a duty of care because it is reasonably foreseeable that negligently replaced ceilings could collapse, causing physical harm (*Tabet v Gett* (2010) 240 CLR 537 (*Tabet*)). The established duty category between a doctor and patient (*Rogers v Whitaker* (1992) 175 CLR 479) means Dr D owes Con a duty.

EC negligent on facts

Breach: The standard is that of a reasonable person in the defendant's position, *CLA*, s31, and s32 is the calculus of negligence. The court considers what a reasonable person would have done. A reasonable person would have properly replaced the ceiling. Enviro Ceilings has breached duty by failing to meet their required standard.

The standard required of Dr D is found in *CLA*, s41. *CLA*, s41(1) considers whether the defendant acted in a widely accepted manner in the profession. The 'probably ineffective' treatment had been clearly rejected by the mainstream medical profession. He would most likely be found to have failed to meet the required standard.

Causation: The 'but for' test (s34(1)(a) *CLA*) would fail because there are two tortfeasors. Section 34(2) *CLA* directs the court to consider each defendant separately and whether they materially contributed to the harm (*Fairchild v Glenhaven Funeral Services Ltd* [2002] 3 WLR 89). Both defendants materially contributed.

The scope of liability issue is whether Enviro Ceilings' liability extends to harm caused by subsequent negligent medical treatment (s34(1)(b) *CLA*). It is reasonably foreseeable that injured plaintiffs will seek medical treatment that may be negligently administered (*Mahony v J Kruschich (Demolitions) Pty Ltd* (1985) 156 CLR 522 (*Mahony*)). Thus, chain of causation remains intact and does not relieve the first tortfeasor of liability for the subsequent harm (*Mahony*). Liability for subsequent harm would be shared between Enviro Ceilings and Dr D. However, it is likely Dr D will be found to have been grossly negligent, constituting a novus. Enviro Ceilings would only be liable for harm they caused, the six months of deteriorated health and Dr D would be liable for the additional harm, the further two years (*Mahony*).

3

Take Home Exam

Fiona v Pub

Duty: There is no general duty to take positive steps to protect others. This is an exception due to the relationship between an occupier and entrant (*Neindorf v Junkovic* (2005) 222 ALR 631 (*Neindorf*)) because the defendant controls the premises. The pub owes Fiona a duty.

Breach: An occupier's standard of care is prescribed in *CLA,* s20. The nature of the premises is not residential but commercial, thus a higher standard (*Neindorf*). The facts are analogous to *Lanahmede Pty Ltd v Koch* [2004] SASC 204. It was held that proprietors of hotels should maintain their grounds and be aware that intoxicated entrants will be unable to take due care of themselves. Given the carpark was poorly maintained and it was a pub with entrants likely leaving drunk, it is most likely the defendant failed to meet the required standard.

Very good

Causation: Factual causation is established, but for the poorly maintained carpark, Fiona would not have tripped (s34(1)(a) *CLA*). There are no issues with scope of liability (s34(1)(b) *CLA*).

Greg v Holi

Driver passenger...established duty...Imbree

Duty: The test is the reasonable foreseeability test (*Tabet*). It is reasonably foreseeable that a driver using a mobile phone while driving could lead to an accident, injuring the passenger. Holi owes Greg a duty of care.

Breach: The standard of care, *CLA*, s 31, is that of a reasonable person in the defendant's position. Given the clear facts, the court may not run the calculus of negligence (s32 *CLA*). It considers what a reasonably prudent driver would have done (*Cook v Cook* (1986) 162 CLR 376; *Imbree v McNeilly* (2008) 236 CLR 510). A reasonably prudent driver would not use a mobile phone; therefore Holi has not met the required standard.

Causation: *CLA,* s34(1)(a) requires factual causation. But for Holi's negligent driving, Greg would not have been injured. The issue is whether Holi's liability should extend to the exacerbation of Greg's injury(s 34(1)(b) *CLA*). The court considers whether Greg's subsequent voluntary act constitutes a novus, thus breaking chain of causation and Holi would not be liable (*McKew v Holland* [1969] 3 All ER 1621). In determining this, the reasonableness of Greg's conduct in the situation is considered. Greg could argue it was necessary for him to play as AFL selectors were present, thus reasonable. It is more likely the court will find it unreasonable, given the doctors warning to not play and Holi would be liable until the exacerbation of the injury.

Good

Ingrid v Jen

Assault is an intended act or statement by the defendant that directly causes reasonable apprehension in the plaintiff's mind of imminent physical contact. The first element of directness is satisfied because Jen's words directly caused Ingrid to apprehend imminent physical contact (*Reynolds v*

Word Count: 1500

Clarke (1726) 93 ER). Another element is an intention to cause apprehension (*Rixon v Star City Pty Ltd* (2001) 53 NSWLR 98) which is apparent. Jen may argue that she did not intend to hurt Ingrid or possess a gun but an intention to complete a battery is not necessary (*Brady v Schatzel* [1911] St R Qd 206). Reasonable apprehension is determined through an objective test (*Barton v Armstrong* [1969] 2 NSWLR 451). A reasonable person in Ingrid's position would have apprehended imminent physical contact. Ingrid will most likely be successful.

Ingrid v Jen

There is a potential action in false imprisonment, a voluntary act of the defendant causing total deprivation of the plaintiff's freedom of movement, whilst lacking lawful justification. The act is clearly voluntary. Total restraint is necessary and need not be physical restraint (*Myer Stores v Soo* [1991]2 VR 597). It is satisfied if there is no reasonable escape route (*Zanker v Vartzokas* (1988) 34 A Crim R 11). There was no reasonable escape route, including the window because it was dangerous, as Ingrid feared leaving the house with Jen outside. Jen lacks lawful justification. Ingrid will most likely be successful.

Good

Good

Well done, you have identified the causes of action really well and your discussion is to the point but sufficiently detailed , a pleasure to read. Only a few minor things to improve.

Paula Meegan

Paula Meegan

Word Count: 1500

Take Home Exam

GRADEMARK REPORT

FINAL GRADE

87 /100

GENERAL COMMENTS

Instructor

PAGE 1

Text Comment. Well done

Text Comment. Well done

QM

Unborn...duty

Consider duty to unborn foetus: it is accepted that a duty can be owed to an unborn foetus who is unborn at the time of the negligent act but who suffers damage through the continuing consequence of that act, Watt v Rama Textbook, Richards, p267

Comment 1

Good

Comment 2

Yes, good, more of a Dorset situation here.

PAGE 2

QM

MH, consequential

Many students have dealt with Beth's harm as pure mental harm. In fact it is consequential mental harm. However we are not deducting marks because it is a reasonable approach given that the facts do not mention any physical harm. The real focus we are looking for is section 34, causation.

QM

EC negligent on facts

No need to consider each step of negligence regarding EC because you are told they were negligent on the facts

Comment 3

Well done, good discussion and very economical with words

Text Comment. Very good

Text Comment. Driver passenger...established duty...lmbree

Text Comment. Good

Text Comment. Good

Text Comment. Good

Text Comment. Well done, you have identified the causes of action really well and your discussion is to the point but sufficiently detailed , a pleasure to read. Only a few minor things to improve.

Text Comment. Paula Meegan

QM

Paula Meegan
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