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INTRODUCTION

A duty of care is a legal obligation imposed on any reasonable person to act in a way that does not cause harm or damage to another of their property.(Yu 2023) A duty of care demands that a reasonable man be watchful and attentive while in the ordinary course to prevent doing acts or omissions that would lead to a cause of action.

The house of lords in (**Donoghue V Stevenson**), in defining a duty of care stated that a person MUST take reasonable care to avoid acts or omissions which he/she can foresee would be likely to injure their neighbour.

A tort is defined as a civil wrong that is an act or omission committed or omitted by a tortfeasor and that causes another person to suffer damage.(Kouroutakis 2019) The aim of the tort law is to place the injured party back to the state he was in before the injury. In this regard, one is condemned to be in breach of a duty of care when the reasonable man's test imposed on him has not been observed and thus leading to the cause of harm to another party. It is therefore sufficed to say that a breach of duty of care is an element that is considered in establishing negligence.

The Reasonable Man's Test

This test is a legal standard that is used to evaluate whether a person and or his actions in a given scenario met the threshold of care that is expected to be met by a reasonable person in a hypothetical situation.(Collar 2002) In considering or ruling on the issue of negligence, the court

assesses the situation considering whether the defendant's conduct fell below the standard of care expected of a reasonable man in similar circumstances. If the assessment is in the negative, then the conclusion becomes that the defendant would have taken more precaution to prevent himself from harming or causing harm to the plaintiff.(Fitzpatrick & Reed 1999)

The case of (**Blyth v Birmingham Waterworks Co.**), defined negligence in relation to the reasonable man's test. In a nutshell, the court observed that negligence is the act or omission to do something which a reasonable man would do in the ordinary hypothetical circumstances. The court held that negligence ought to be judged based on what a reasonable man would do in similar circumstances.

The Tests used to Establish Causation in relation to a Breach of Duty of Care

In order to establish causation, the courts are guided by several tests and principals. Such principals are discussed hereinbelow;

The But for Test

In establishing causation, this test is used to determine whether the defendant's action were the actual and direct actions that led to the harm caused to the plaintiff.(Hylton & Lin 2013) This test relies on the premise of whether the injuries or harm caused to the plaintiff would have actually been suffered 'but for' the defendant's actions. In this test, if it is established that the injury suffered by the plaintiff would not have been suffered if the defendant had not acted negligently, then the defendant's acts or omissions are deemed as the most probable cause of harm. In a nutshell, this test establishes the nexus between the defendant's actions to the plaintiff's injuries or harm suffered.

The court in (**Barnett v. Chelsea & Kensington Hospital Management Committee**) applied the but for test to establish causation in medical negligence. In this case, the victim died of poisoning, which condition had not been diagnosed by the hospital during the victim's visit. The court held that the hospital's failure to diagnose the poisoning was not the cause of his death as the harm would have occurred but for their negligence.

The Proximate Cause Test

This test is also commonly called the direct cause test, which determines whether the defendant's acts or omissions were the primary cause of the plaintiff's harm. Literally speaking, this test assesses the proximity of the defendant's conduct to the harm suffered by the plaintiff.(Manopo & Robert Merkin 2021) This test also speaks into the foreseeability of a consequence resulting from the acts of a defendant likely to cause harm to the plaintiff. Thus, the court in applying this test looks at whether the type of harm was foreseeable at the time of breach of the duty of care.

In the case of (**Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd**) the court relied on the aspect of foreseeability to rule in favor of Railroad. The court held that the Railroad could not have foreseen that its actions could have resulted to the injuries sustained by the plaintiff. The holding of the court was guided in consideration on whether the harm suffered by the plaintiff was directly linked to the defendant's conduct.

The Material Contribution Test

This test is used by courts to determine negligence in cases where it is apparent that there could be a likelihood that multiple factors contributed to the harm suffered by the plaintiff.(Collins & McLeod-Kilmurray 2012) Ideally, when it is apparent before the court that there lacks a direct link between the defendant's negligence and the harm sustained by the plaintiff, this test comes to play.

The material contribution test enables liability to be assigned to a defendant if their negligent behavior significantly contributed to the harm experienced by the plaintiff, even if other factors or third parties were also involved. This principle acknowledges that, in certain situations, determining the exact cause of harm can be challenging due to complex circumstances or multiple contributing factors.

The House of Lords in (**Bonnington Castings Ltd v. Wardlaw**) applied the material contribution test in holding that the defendant's acts of negligence materially contributed to the plaintiff's harm. That the defendant had not issued protective equipment to the plaintiff contributed to the injuries sustained by the plaintiff. The court held that the same was 'material contribution.'

The Scope of Liability Test

Simply put, this test is used by courts to determine the question of the extent to which a defendant can be held liable in relation to the injuries or damage sustained or caused to the plaintiff.(Turton 2009) Similarly close to the material contribution test, this test focuses on whether the harm suffered by a party was a directly and reasonably foreseeable consequence of the acts or omissions of the defendant. This therefore means that if the defendant acted in a manner without the scope of what a reasonable man could have done, and resultantly the harm suffered by the plaintiff was a foreseeable direct consequence of the act, then the defendant is held liable for breach of duty of care.

The court, in the case of (Caparo Industries plc v Dickman), relied on the scope of liability test to support the defendant. The court observed that the railroad's actions were not a proximate cause of the injuries sustained by the plaintiff.

Further in the case of (**Wagon Mound**), the court considered and addressed the scope of liability test in negligence. The central issue in the case was whether the defendants could be held

responsible for the fire damage, given their argument that they could not have anticipated the risk of fire from the oil spill. The court determined that the defendants were liable for the damage, even though the sequence of events was not foreseeable.

The ruling in *Wagon Mound No. 1* highlighted that the foreseeability test in negligence is not about whether the exact harm was predictable, but rather whether the general type of harm, like fire, was foreseeable. This case significantly influenced the development of liability scope in negligence law, clarifying that liability can encompass unforeseen outcomes if the general type of harm was foreseeable.

Intervening Causes Test

This test determines whether an intervening act gets in between or rather breaks the chain of liability between the defendant's actions and the harm alleged to have been suffered by the aggrieved party. This is to say that this test appreciates the likelihood that an intervening act gets into the way of a defendant and causes him/ her to afflict harm on a plaintiff. (Hylton et al. 2015)

Further, this test interrogates whether the intervening act was foreseeable and whether it was the immediate and direct cause of the harm caused to the plaintiff. In summary, the intervening causes test of liability evaluates how intervening events or actions contribute to the harm to ascertain if the defendant's original negligence is still the main cause of the plaintiff's injuries. Key factors in assessing liability include the foreseeability and direct impact of the intervening cause on the harm.

The House of Lords in (**Kirkham v. Chief Constable of Greater Manchester**) applied the Intervening Causes Test in its determination on the issue of liability. The main issue before the court for determination was on whether the intervening act was paramount the circumstances and

in inflicting harm on the plaintiff. The jury was specific on the determination on whether there was a break of chain of causation between the defendant's actions and the harm suffered by the plaintiff.

Further, the House of Lords in **(Baker v. Willoughby)** [1970] AC 467

, considered the usage of this test in negligence cases. The court held that the defendant was fully liable for the full extent of the harm caused by their negligence despite any subsequent intervening act. This case created a precedent that a negligent act of a defendant which leads to harm on the plaintiff continues to be so (liable) even if a subsequent intervening act contributes to the injuries suffered by the victim.

Skull Test

The skull test, also known as the "take your victim as you find him" rule, is a principle in tort law that holds a defendant liable for the full extent of a plaintiff's injury, even if the injury is more severe than what could have been anticipated. This doctrine emphasizes that a tortfeasor is responsible for the consequences of their actions, irrespective of the plaintiff's pre-existing vulnerabilities or conditions.

Under common law, the skull test is often illustrated by the case of **(Smith v. Leech Brain & Co. Ltd. (1962))**, where a factory worker suffered a fatal reaction to a burn caused by the defendant's negligence. The defendant argued that they should not be held liable for the worker's death because it was caused by a pre-existing cancer condition that made him more susceptible. The court ruled that the defendant was liable for all damages incurred, reinforcing the idea that the defendant must take the plaintiff as they find them, regardless of any underlying conditions.

Res Ipsa Loquitor

This is a Latin phrase in the law of tort that means “something that speaks for itself”(Jerrold 2004)

This test of causation in negligence allows a plaintiff to establish a prima facie case without direct evidence of the defendant’s breach of duty of care. This test merely relies on the circumstances in which the accident occurred without the need of adducing much evidence.

In the case of (**Scott v. London & St. Katherine Docks Co**) the court held that the circumstances under which the accident in question happened, negligence could be easily inferred and the burden automatically shifted to the defendant.

CONCLUSION

To sum it up, the above analysis discusses the tests used to establish causation in relation to breach of duty of care in the law of torts. This test aids the courts to determine which side the blame and subsequent liability should be shifted.

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