

The Tort Of Negligence

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The term tort is common within law jurisdictions and refers to a civil wrong that may result in someone else's suffering through an injury or loss of property. As such, a tort results in legal liability to the individual or group of people who commit the act. In this case, such action is a tortious act. The individual or group of people who engage in tortuous acts are tortfeasors. To file for such a case, several legal processes are involved. For example, the injured person or party, commonly referred to as the plaintiff, is required to submit a suit against the injuring party, referred to as the defendant. Such charges, as mentioned before, may incorporate costs for actual damages that may require compensation for the injury caused or expenses to cover the material damage caused in due course.

While summing up the above explanations, Barravecchio (2013) Notes that negligence is a tort law that falls under the section of the civil law, indicating that a wrong has been committed. Furthermore, he demonstrates that negligent behavior is the cause of a negligent tort and happens when a particular person tasked with a given responsibility fails to practice due diligence (p.4).

The Act Of Negligence In The Case Scenario Provided

There are various acts of negligence in the case scenario provided for this study. In one instance, Kim's bodyguards show some attributes of neglect when they leave their boss alone. It is in the same context that the boss gets robbed of his valuables, worth a lot of money. Furthermore, some bodily injuries are recorded in due course, all aspects of negligence caused by the bodyguard.

Responsibilities Owed To Kim by Her Bodyguards under the Tort of Negligence

Duty of Care

According to research, this is one of the duties of the bodyguards that Kim's bodyguards should facilitate. Failure to achieve the same might call for a liability. In this aspect, the duty of care requires that each person should care for their neighbor. In this instance, according to the [law of torts](#), a neighbor refers to someone who might be affected by someone else's action in a direct or indirect manner. Therefore, according to this explanation, each member of the society has the responsibility of acting soundly, which prevents and avoids unreasonable risks to other members of the community. In the case scenario provided, Kim's bodyguards should ensure that their boss is well protected.

Achievement of this objective, as per the above explanation, is as per their contract of work and general requirements of the tort of Negligence. Therefore, the bodyguards owed Kim a duty of care.

Furthermore, according to research, under certain conditions, a special duty can arise for the defendants, in this case, the bodyguards, to offer protection to the plaintiff, in this case, Kim, from harm. There are various sources where such duties can be established. Some of them include contractual relationships and professional responsibilities. In this instance, a contract defines higher and elaborate standards that require that both clients and third parties are allowed to sue for unsatisfying or incompetent performance or, on other occasions, professional work that resulted in causing injuries obtained by them.

There are different aspects where the duty of care can be considered breached. Sources reveal that a duty of care gets breached when someone exposes another person to a given risk or harm. As mentioned before, several bonds tie the two parties together, which can be through a contract or a professional responsibility. Some other scholars argue that breach of duty or negligence occurs when someone does unreasonable practices, which cannot be done by a reasonable person under apparent conditions (Giliker & Beckwith, 2013, p10). Furthermore, according to the law, the aspect of the reasonableness of the risk is weighed by various factors that are dependent on the individual's social utility of the person's conduct or the ability to have the threat minimized.

Causation of Duty of Care

Causation is one of the most remarkable components of the tort. In this case, it is considered that the breach of duty has to be the actual cause of the damage caused to the plaintiff. Therefore, to demonstrate causation, the law requires the plaintiff to determine that the amount of loss or injury suffered was because of negligence on the defendant's side. In this aspect, different types of cases are considered by the law courts.

The first type of cause is referred to as proximate cause. The defendant gets held liable in instances where the conduct associated with him was the proximate cause of loss and injuries recorded by the plaintiff. The second type of such purpose is supervening or intervening causes. As the law requires, in this aspect, the behaviors and actions of the defendant must have been instrumental in bringing or causing the injury or loss of the defendant. However, at times the defendant might escape such liability on instances that the court determines that it was foreseeable to the reasonable individual. Also, on the same note, the defendant might avoid liability if damages or losses recorded by the plaintiff would not be foreseeable to the defendant (Hunter et al., 2007, pp1741-1747).

According to research, the most viable intervening causes defendants usually cite natural conditions and forces and, on some occasions, negligent human conduct, which is unexpected. In this aspect, natural forces include unfavorable and extraordinary weather conditions, volcanic activities, earthquakes and other seismic activities and the behavior of animals. On the other hand, negligent human conditions include some behaviors and conduct that might expose someone to abnormal risks.

However, the law excludes human criminal conduct by a third party as an intervening cause.

Legal Remedies for Torts

In a general perspective, a remedy is a mechanism through which enforcement of a right gets done, and violation of a right gets prevented or redressed. In the legal view, as in this scenario, the word remedy means merely the curing of a breach of a constitutional right. As per the requirements of the law, all rights violations must be redressed. Such is one way of preventing lawbreakers from repeating such offenses and warning others against associating themselves with such crimes. Therefore, remedies are one of the most significant aspects of torts. They are of such importance because it is through them that a person gets restored to the previous situation.

Damages are one of the most significant aspects of legal remedies for torts. As some scholars argue, damages are the primary relief in instances of a tort. They refer to monetary compensation paid by one individual to another for the loss caused, injury and damage. On the same note, damages might be applied when a breach of a tort occurs. As explained in the proceeding sections, there are different types of damages, and they may differ according to the nature of the tort.

The first type of legal remedy is called contemptuous damages. These types of damages are awarded on instances where the claimant establishes that some torts were committed by the defendant, although the claimant suffered no significant losses. Some scholars often argue that such kind of damages are expressive of ridicule and their primary intention is to show some disapproval of the plaintiff's move of taking such a case to court. The amount awarded for such damages is minimal, as it's the opinion of the court that even though the plaintiff suffered such a loss as recorded, he does not deserve to be compensated (Dobbs, 2008, p30).

Such types of damages are very different, depending on the country of origin. In some countries, some amounts get set for pursuing the minimum values of damages. Such a move aims at preventing the filing of unnecessary tort lawsuits that overload civil law courts.

The second type of damage is nominal damage. This type of damages, as research indicates, is awarded to represent a legal recognition that some right of the plaintiff was indeed infringed through the defendant's breach of duty or, in some instances, wanton conduct. Like the previous scenario, the amount of money awarded for such an example varies according to the nature and circumstances that led to the occurrence of the case. Such damages are awarded when the court of law establishes that a wrongful act was done towards the plaintiff, although low opinions of the conduct of merit are formed due to the same. Unlike contemptuous damages, where the plaintiff ought not to have filed the case, nominal damages call for the filing of the suit for an explanation of the plaintiff's rights, ignoring the aspect of monetary compensation as it appears to be less significant.

Furthermore, the third type of damages is referred to as ordinary damages. As opposed to the other kinds of damages discussed above, this type of damage is a representation of the loss incurred,

whether small or significant. When an injury or type of failure is set to be compensated by damages, several considerations have to be enhanced. Such is meant to determine the amount of money that would revert the injured individual or party to the previous position. Furthermore, when deciding on the same, the Plaintiff's estimate for the budget is considered to be the maximum limit (Anderson, 2001, p399). Other legal procedures follow when determining this critical aspect of compensation.

The last type of damages that would be relevant in this scenario is referred to as exemplary damages. In this type of damages, as research concludes, the mannerism in which the tort was committed is taken into consideration by the court when assessing the losses. Furthermore, in these types of damages, the courts often do the awards in an excess limit. Such a move aims at minimizing the recurrence of such behaviors in the future. In other words, this form of punishment is referred to as punitive or vindicated damages. According to Lord Devlin, one of the facilitators of this type of damage, such damages are only relevant in three aspects. For example, exemplary damages might be applied when oppressive or unconstitutional elements are facilitated by governmental servants. Secondly, this may be relevant if, upon calculation, the defendant's conduct is established to make some profits for himself, which is way above the compensation awarded to the plaintiff. Lastly, this form of damage might be affected in instances where exemplary damages are authorized or expressed by a given statute.

Alternative Dispute Resolutions to Avoid Court Rooms

Mediation

This is a voluntary process where a neutral person, referred to as a mediator, helps in the facilitation and promotion of communication and reconciliation between conflicting parties, making them reach an agreement (Sherman, 2002, p401). For an efficient process, the mediator describes the expected methods and the rules that will facilitate the operations. Mediation helps the conflicting parties' understand each other's points of argument. In other instances, the mediator will have to reach the different parties differently to address emotional issues.

Arbitration

It refers to the process of submitting a disputed matter to someone who is impartial in decision-making. It is facilitated by the arbitrator, who controls the whole operation. To efficiently perform his/her duties, the arbitrator has to conduct hearings. During such processes, all parties present their evidence through documents, testimonies, or exhibits. Research indicates that the arbitration process is very useful in solving labor disputes. The results of the same can be binding in instances where all parties agree to the decision made by the arbitrator.

Most contracts, signed between two parties, in many occurrences, require that conflicts arising from the same be arbitrated before seeking a court action. Arbitration processes are offered by many people, although in most instances, attorneys or lawyers, professionals or some groups of professionals provide their services as arbitrators.

Conclusion

The tort of negligence has been used for quite some time in the solving of cases similar to the one described in this article. It would be of importance for Kim to take into consideration the processes mentioned above to ensure that Justice is facilitated. On the other instance, the aspect of out-of-court dispute resolution can also be used in case litigation fails, or on instances that the conflicting embers agree on the same. As research indicates, mechanisms such as arbitration and mediation have been applied for a long. Therefore, their relevancy in this aspect is of vital importance.

Selecting the appropriate method to use when settling a dispute out of court is also important. Some of the critical considerations that need facilitation in this aspect include the nature of the case, whether private or public, decisions made by the Judges or arbitrators, the time span available, costs and other expenditures that might be required, and finally, maintaining the relationships. As a result, Kim should consider the aspects discussed in this paper.

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