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校本經驗分享研討會(中學組)

學校體育活動的 法律責任

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General Introduction

Hong Kong English-Chinese
Legal Dictionary:

- *Liability in tort generally arises when one breaches his common law or statutory duty of care to the person injured. Joint tortfeasors are jointly and severally liable to the plaintiff. Each tortfeasor may claim for contribution from the other tortfeasor for any sums paid out by way of settlement.*

General Introduction

- a tort is a *civil wrong* (民事錯失) committed by one person against another and
- torts can and usually do arise outside of any agreement between the parties



CATEGORIES

1. Intentional wrong to person
 - a. *Battery* 毆打
 - b. *Assault* 襲擊
 - c. *False imprisonment* 禁錮
 - d. *Infliction of mental distress* 精神困擾
2. Intentional wrong to property
Trespass to land 擅闖
3. Unintentional wrong to person or property
 - a. *Negligence* 疏忽
 - b. *Nuisance* 滋擾
4. Wrong to reputation
Defamation 誹謗
5. Strict liability 嚴格的法律責任
 - a. *Breach of statutory duty* 違反法定責任
 - b. *Vicarious liability* 轉承法律責任
 - c. *Dangerous land uses (rule in Rylands v Fletcher)*

Elements of Tort of Negligence

1. Duty of Care (謹慎責任)
2. Standard of Care (謹慎標準)
3. Breach of Duty (違背責任)
4. Causation (因由)
5. Remoteness of Damage (太間接的損害)
6. Defences (辯護理由)

Duty of Care

- Well-established categories :

Parent/child

Employer/employee

Occupier/visitor

Carrier/passenger

Doctor/patient

Hotel/hotel guests

teacher/student

- Neighbour Principle :

Donoghue v Stevenson [1932] : where an established duty of care does not already exist, a person will owe a duty of care not to ***harm*** those who, it can be reasonably foreseen, would be affected by his acts or omissions.

** a manufacturer of drinks owed a duty of care to a consumer*

Duty of Care

- Modern Approach :

Caparo Industries Plc v Dickman [1990]

- (1) foreseeability of damage;
- (2) a relationship characterised by the law as one of proximity or neighbourhood; and
- (3) the situation should be one in which the court considers it would be fair, just and reasonable that the law should impose a duty of given scope on one party for the benefit of the other.

Types of Harm

1. Physical harm to property or person
2. Economic loss following property damage or death or personal injury of the plaintiff
3. Pure economic loss
4. Psychiatric injury (or nervous shock)



Standard of Care

- A duty of care imposed on D does not make him liable for negligence
- D must have failed to measure up to the standard of the 'reasonable man'



Standard of Care

- Standard of a 'reasonable man'
= Objective Standard
- the standard of care expected from this defendant is objective; not taking into account his own characteristics or weaknesses
- E.g. a reasonable driver, a reasonable doctor, a reasonable occupier

Defendants engaged in sport

- Those engaged in sport owed a duty of care to other competitors in the sporting event and to spectators
- There was negligence if injury was caused by an error of judgment that a reasonable competitor, being the reasonable man in the sporting world, would not have made.

Defendants claiming to have special or professional skill

Bolam v Friern Hospital (1957)

- (1) Where D purports to have a special skill, D's conduct is judged according to the standard of a reasonable person having the skill D claims to possess
- (2) The law will not regard a professional defendant as having fallen below the required standard of care if it is shown that D's conduct is regarded as proper by one responsible body of professional opinion

Breach of Duty

- The burden is on P to prove on the balance of probabilities that D's act has fallen below the reasonable standard
- D is at fault, thus he is negligent
- Expert evidence is very often required in respect of special trade and activities, or professional fields

Causation

- P must prove that he has suffered loss or damage as a result of D's breach of duty
- The damage must be caused by the breach of duty
- Factual causation v Legal causation



Factual Causation

- “But for” test (要不是因爲某人〔某事物〕)
- P must prove, on the balance of probabilities ($>50\%$), that harm would not have occurred “but for” the negligence of D

Legal Causation

- D's act was an '**operative and substantial**' cause of the consequence and that there was no intervening event



Remoteness of Damage

- D is only liable for loss or damage which is reasonably foreseeable
- As long as some personal injury is foreseeable, it does not matter that the exact consequences were unforeseeable



Thin Skull Rule

- If some personal injury was foreseeable, D is liable for the full extent of P's injuries, even if P was particularly susceptible.



Defences

- Contributory Negligence
- Voluntary Assumption of Risk (*Volenti Non Fit Injuria*)
- Illegality (*Ex Turpi Causa Non Oritur Actio*)

Contributory Negligence

- A partial defence
 - It reduces D's liability according to the degree of P's negligence
 - D bears the burden of proof
 1. P's negligence
 2. Causal link between P's negligence and the damage
- e.g. P refused to wear safety devices when climbing down steep hills

Voluntary assumption of risk

- P consented to a course of conduct which caused harm to him and, by virtue of such consent, lost the right to a remedy in tort
- An absolute defence, but rarely successful

Illegality

- P is engaged in illegal activity
- P suffers some injury or damage from such activity
- P cannot sue another for damages that arose out of that illegal activity

Occupier's Liability

- Occupiers' Liability Ordinance (Cap 314) imposes a common duty of care on all visitors on the premises with express or implied permission
- Occupier is liable for injuries arising from the defective state of the premises
- “小心地滑”，“高空工作，行人小心”

Breach of Statutory Duty

- Statutory duties imposed on employers -
 1. Provision of a competent staff of men
 2. Adequate material
 3. Proper system and effective supervision
 4. Provision of a safe place of work



Employees' Compensation Ordinance (Cap 282)

- Employees injured at work by accident have the right under ECO to recover compensation from their employers
- No-fault basis
- Based on existence of employment relationship



Employees' Compensation Insurance

- According to Section 40 of ECO, all employers are required to take out insurance policies to cover their liabilities both under the Ordinance and at common law for injuries at work in respect of all their employees, irrespective of the length of employment contract or working hours, full-time or part-time, permanent job or temporary employment

Vicarious Liability

- Not a tort, but a rule of responsibility
- The relationship between the person who has committed the tort and the person who in law is responsible for his actions
- Examples of relationship
 - employer/employee
 - parent/child
 - principal/agent
 - partnership/individual partner

Vicarious Liability and Employee

- Employee committed a tort
- Existence of employer/employee relationship
- The employee acted in the course of employment when committing the tort in question
- Victim can sue the employee in tort (personal liability) AND/OR
- Victim can sue the employer (vicarious liability)

Existence of Employer/Employee relationship

1. Contract of service – employee
2. Contract for services – independent contractor



Fatal Accidents Ordinance (Cap 22)

- Where a victim dies as a result of the tort, FAO allows dependants of the deceased to bring an action against the wrongdoer for damages for loss of dependency

Liability Insurance

- Employees protection insurance (mandatory)
- Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap 272) (mandatory)
- Public liability insurance (non mandatory)
- Accident insurance (on individual basis) (non mandatory)

Fowles v Bedfordshire County Council





- In that case the plaintiff suffered serious injury when he attempted to perform a forward somersault without supervision.
- The plaintiff had laid out the crash mat on which he was performing the somersault right up against the wall, when he over-rotated in performing the somersault his forward momentum catapulted him into the wall.



Held: A local authority was held to be in breach of statutory duty and negligent in permitting young persons at a youth centre to undergo gymnastics without supervision and without a proper system of instruction that should include an express prohibition against practising hazardous manoeuvres in the absence of a qualified supervisor.

Case studies

- A was a student of a Kendo class taught and supervised by Y. One day, A was the subject of a demonstration conducted on him by Y for the participants of the class. A was struck very forcefully at top of the helmet near his forehead by Y a number of times with a bamboo sword. As a result of this, A sustained neck injury. Will A succeed in her civil action against Y?



(1) Whether Y owed A a duty of care;



(2) If so, what is the nature and extent of care;



(3) Whether there been a breach by Y of the duty of care;

(4) If so, whether it caused A's injuries.



REFERENCE

Glofcheski, R. (2002). *Tort law in Hong Kong*. Hong Kong: Sweet & Maxwell Asia.



Questions & Answers