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Tort of Negligence – Punishing “Carelessness”?

Civil Litigation Practice Series





“In a Nutshell”

Tort of Negligence

What can one do when he/she suffers a loss as a result of the negligent act/omission of another?

Setting the Context

The law of negligence addresses a civil wrong suffered by one as a consequence of the other party's “carelessness” or lack of reasonable care.

For example (*Donoghue v Stevenson* (1932) AC 562), “**A**” (wholesale manufacturer of food) sells certain products to “**B**” (distributor) who thereafter directly sells such products to the ordinary consumer “**C**”. However, the product is in fact defective and **C** suffers food poisoning.

Whilst **C** has a direct contractual relationship with **B** and can sue **B** directly, **C** has no immediate nexus with **A**. **A**'s contract is with **B** and not **C**.

In a nutshell, the tort of negligence allows **C** to directly sue **A** for being negligent

(i.e. not for a breach of contract) if certain pre-requisites can be satisfied (see below).

Bases of Liability

The concept of wrongfulness; one basis for imposing liability on **A** is premised on the public sentiment that the law should intervene to require **A** to compensate for the harm it has caused **C**. Certain interests are so crucial to **C** and so vulnerable to accidental harm, that negligence on the part of **A** suffices to engage its liability in tort.

To briefly highlight the elements of negligence in tort:-

- a) The plaintiff must establish that the defendant owed him a duty to take reasonable care to protect him from the kind of harm suffered [**duty of care**].
- b) The defendant was in breach of that duty [**breach**]; and
- c) It was that breach of duty that caused the plaintiff's injury [**causation**].

Duty of Care

- *Spandek Engineering (S) Pte Ltd v Defence Science Technology Agency [2007] SGCA 37* (“Spandek”)

In 2007, the Singapore Court of Appeal clarified in *Spandek* that a “single test” will be applied to determine the imposition of a duty of care in all claims arising out of negligence, irrespective of the type of damage claimed.

Specifically, the Court of Appeal formulated the following two-stage test:-

a. Threshold Issue – Factual Foreseeability

First, reasonable foreseeability – in the factual sense – of the damage or injury suffered is a preliminary threshold requirement which a plaintiff in a negligence action must satisfy.

In *Ngiam Kong Seng and Another v Lim Chiew Hock* [2008] SGCA 23, this requirement was not satisfied – “*To hold that it is reasonably foreseeable that the mere communication of the information in question without more could result in harm to a party boggles the imagination and stretches the realms of reality.*”

b. 1st Stage – Legal Proximity

“Proximity” includes the twin elements of assumption of responsibility and reliance as a starting point. Other proximity factors may also be considered, such as; control,

vulnerability and knowledge (*Anwar Patrick Adrian & Anor v Ng Chong & Hue LLC & Anor* [2014] SGCA 14).

c. 2nd Stage – Policy Considerations

Assuming the pre-requisite of factual foreseeability and the 1st stage proximity requirement are satisfied, a duty of care is prima facie imposed on the defendant. The Court will then assess whether there are residual public policy considerations to justify negating such liability.

Duty of Care v. Standard of Care

Whether a defendant has breached a duty of care, is a mixed question of law and fact; but the standard of care required of a defendant is an exclusively legal construct and based on the standard of a hypothetical reasonable person i.e. as a matter of law, if A owes B a duty of care, A must attain the standard of a ‘reasonable person’ in order to discharge that duty. In short, the duty is for one to take ‘reasonable care’.

Causation

The plaintiff has to prove, on a balance of probabilities, that the defendant’s negligence and/or breach of duty caused or materially contributed to his/her loss. That said, where a man is part author of his own injury, he cannot call on the other party to compensate him in full. (*Asnah Bte Ab Rahman v Li Jianlin* [2016] SGCA 16)

“Duty of Care,
Standard of Care,
Breach of Duty of Care,
Causation”



Other Developments

- a) **Occupier's Liability**; Pre-2013, an occupier of a premise, owed a separate duty to an invitee on his/her premise to prevent damage or injury from any unusual dangers on the premises he/she knows or ought to know and which the invitee does not know about. Post 2013, the Court of Appeal in Singapore clarified that occupiers' liability should be subsumed under the tort of negligence (Spandeck Test). (**See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others** [2013] SGCA 29)
- b) **Psychiatric Harm**; where a plaintiff is alleging to have suffered psychiatric harm, the Spandeck Test will be applicable. The plaintiff must first prove that he / she has suffered a "recognisable psychiatric illness". Legal proximity in such cases focuses on the closeness of the relationship between the parties themselves, including, physical proximity, circumstantial proximity and causal proximity. (**Ngiam Kong Seng and Another v Lim Chiew**

Hock [2008] SGCA 23)

- c) **Medical Negligence**; in 2017, the Singapore Court of Appeal clarified that the Bolam-Bolitho test in respect of the appropriate standard of care of a medical practitioner no longer applies to the provision of medical advice. Whilst the Bolam-Bolitho test still applies to the areas of medical diagnosis and treatment, a new 3-stage test applies specifically to medical advice - (1) The sufficiency of information given to the patient from the patient's perspective; (2) whether the doctor was in possession of the information (which pursuant to the first stage of the inquiry is relevant and material); (3) If the Court is satisfied that the doctor possessed the information which the patient has demonstrated is relevant and material, at this third stage of the inquiry, the doctor has the burden to justify why he chose to withhold the information. (**Hii Chii Kok v Ooi Peng Jin London Lucien and another** [2017] SGCA 38)



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