

TORT OF NEGLIGENCE

QUESTION 1

(a) Richard's painting business has become very successful over the past few years. As a result of this growth in his business, Richard has been able to employ a supervisor, Jed. While working at a height of 6 metres on his business's home-made mechanical platform Jed has an epileptic seizure and falls to the ground breaking his leg. The mechanical platform was unsafe because it did not comply with the Australian Safety Standards. Jed is now suing Richard, at common law, for not providing a safe system of work. Advise Richard, using the basic information above, as to whether Jed could bring a successful claim against him in the Tort of Negligence. In answering the question explain what each of the elements of negligence are and how they would be applied. (10 Marks)

The issue identified here is whether Jed could successfully sue Richard in the tort of negligence for providing an unsafe and hazardous work environment.

Negligence is defined by the failure to extend a duty of care, to prevent others from getting injured through an individual's advertent or inadvertent acts or omissions. In order to build a case through the tort of negligence, the plaintiff must prove that the defendant had a duty of care, breached that duty of care and consequently resulted in loss, damage or injury to the plaintiff. A duty of care is owed to all those who are closely and directly affected by an individual's act. According to the neighbourhood principle, a duty of care is owed to all those with whom the individual is in a proximate relationship. Most often employer and employee relationships involve an established duty of care where the employer owes a duty of care in terms of safety to his/her employees working in close proximity.

Furthermore, risk of injury in a workplace could be reasonably foreseeable if safety standards are not properly complied with. In this case, as Jed's employer, Richard has an established duty of care to Jed and as the relationship is sufficiently close, Richard should take enough care not to put Jed at risk.

As Richard's mechanical platform was not upto Australian safety standards, there was a foreseeable risk of employees getting injured. Thus, Richard owed Jed a duty of care.

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Kidner's Casebook on Torts Kirsty Horsey, Erika Rackley, 2015 The essential companion for undergraduate tort law students providing a comprehensive portable library of leading tort cases Horsey Rackley bring together a range of carefully edited extracts combined with insightful commentary questions and annotated cases to help students identify and analyse the key elements of a case

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