

The Bully Problem

Eric is a pupil at The Beeches School. David is the headmaster of the school. For a number of weeks Eric has been subject to severe bullying from Bob, a fellow pupil. David, the headmaster, is aware that the bullying is taking place but takes no steps to remonstrate with, or punish, Bob. Bob continues to bully Eric. Eventually, Eric can take no more and swallows some bleach in an attempt to kill himself. Zelda discovers Eric foaming at the mouth and goes into shock. Sam rings for an ambulance. The ambulance takes one hour to arrive when the normal response time would be twenty minutes. By the time the ambulance arrives Eric is dead. It is determined that had the ambulance arrived twenty minutes after Sam's call, Eric would probably have died anyway but there was a 20% chance that with proper treatment he would have pulled through. Zelda now suffers from severe depression.

Discuss.

Model answer

Taking each possible claimant in turn –

Eric's estate

Claim against Bob for harassment/battery

Bob committed a tort in relation to Eric in bullying him – either the tort of harassment (Protection from Harassment Act 1997) or battery (assuming the bullying consisted in hitting Eric). Eric's estate will be entitled to sue Bob for damages in respect of the injuries and consequential pain and suffering experienced by Eric as a result of Bob's bullying before he died.

Claim against David in negligence

David owed Eric a duty to take reasonable steps to see that he would be physically safe at school: *X v. Besd CC*. So – when he was alerted to the bullying that Eric was being subjected to while at school, David owed Eric a duty to take reasonable steps to stop the bullying happening. David probably breached this duty in failing to do *anything* to stop the bullying; it is unlikely that, applying the *Bolam* test, that there is a body of opinion among headteachers that the best way of dealing with bullying is to ignore it. If David did breach the duty of care that he owed Eric in failing to do anything about the bullying Eric was being subjected to, it still has to be established that had David not breached this duty of care, Bob would have stopped bullying Eric. If he would have, then Eric's estate will be entitled to sue David for compensation for the injuries and pain and suffering that Eric experienced at Bob's hands after David became aware of the problem. If Bob would have continued bullying Eric whatever David did then Eric's estate will not be entitled to sue David for damages – while David was negligent in relation to Eric, his negligence did not cause Eric to suffer any loss before he died.

Eric's parents

Eric's parents will want to bring an action for bereavement under the Fatal Accidents Act against Bob, David and the ambulance service.

Claim against Bob

Eric's parents will probably be able to succeed in bringing an action for bereavement against Bob. To succeed, they would have to show that: (1) Bob committed a tort in relation to Eric in bullying him; (2) Bob's tort caused Eric to die; and (3) had Eric lived, he would have been entitled to sue Bob for compensatory damages. We have already seen that (1) is made out. It could be argued that (2) is not made out; it could be argued that Eric's suicide was a voluntary and unreasonable act which had the effect of breaking the chain of causation between Bob's bullying and Eric's death. However, it is doubtful whether such an argument would succeed – Eric hardly acted voluntarily in killing himself. Finally, there is no doubt that (3) is made out.

Claim against David

Eric's parents will also be entitled to bring an action for bereavement against David – so long as it can be shown that David was negligent in failing to deal with Bob's bullying of Eric and that Bob would no longer have bullied Eric (and therefore Eric would not have killed himself) had David not been negligent.

Claim against the ambulance service

An action for bereavement against the ambulance service will fail. It is strongly arguable that the ambulance service committed the tort of negligence in relation to Eric; it owed him a duty to take reasonable steps to get him to hospital as quickly as possible (*Kent v. Griffiths*) and it is strongly arguable that it breached that duty in the absence of any explanation for the 40 minute delay in picking Eric up. However, even if the ambulance service was negligent, it cannot be shown that the ambulance service's negligence caused Eric to die – on the balance of probabilities, Eric would have died anyway, even if his ambulance had turned up on time.

Zelda

Zelda may want to sue the following people for compensation in respect of her depression:

Claim against Bob in negligence

Zelda will almost certainly be able to sue Bob in negligence for compensation for her depression. Bob caused Eric to die by bullying him; it is assumed that Zelda was in a "close and loving relationship" with Eric; and Zelda's depression was triggered by witnessing her son's death. In such a case, the case of *Alcock* indicates that Zelda will be able to establish that Bob owed her a duty not to bully her son and Bob will be liable for the losses suffered by Zelda as a result of his breach of that duty, viz. Zelda's depression.

Claim against David in negligence

It is doubtful whether Zelda will be able to sue David in negligence for compensation for her depression. David did not bring Eric's death about by performing some positive act – he merely failed to prevent that death occurring. This distinguishes David's case from cases such as *McLoughlin v. O'Brian* and *Alcock* which dealt with the issue: if A has brought about an accident by performing some *positive act* x; and B died in that accident; when will C – who suffered a psychiatric illness as a result of B dying – be able to establish that A owed him, C, a duty to take care not to do x? Does it make a difference that David owed *Eric* a duty to take reasonable steps to stop him being bullied – Zelda cannot get a case against David off the ground by relying on the existence of a duty that was owed to Eric.

Claim against Eric's estate in negligence

While it's unlikely that Zelda would want to sue Eric's estate in negligence for compensation for her psychiatric illness, it is worth considering whether such an action could be brought (if only to see whether Bob, above, could make a claim in contribution against Eric's estate when he was sued by Zelda for compensation for her depression). The case of *Greatorex v. Greatorex* indicates that Zelda will not be able to sue Eric's estate in negligence for compensation for her depression; Zelda will not be able to establish that Eric owed her a duty not to attempt to commit suicide as the existence of such a duty would impinge unacceptably on Eric's right of self-determination.

Comments on the model answer

(1) Of course, this answer could have been much longer and more detailed – but when you're doing an exam, you don't have all the time in the world and you have to learn to keep your answers succinct and to the point. There's not much point in going on and on, for example, about the facts of *Greatorex v. Greatorex* if the result is that you'll get into time trouble later on in the exam and end up only doing half a page on the last question you have to do.

(2) Note that in establishing whether, say, David owed Eric a duty to take reasonable steps to stop him being bullied or whether the ambulance service owed Eric a duty to take reasonable steps to get him to hospital as quickly as possible, I don't ever use the *Caparo* test for establishing that a duty of care was owed. The decided cases already establish that these duties of care were owed to Eric – so there's no need to invoke the *Caparo* test. Suppose you have to determine whether a given duty of care – let's call it "duty C" – was owed in a given situation – let's call the situation in question "situation S". Always look first to see if the decided cases establish that duty C was owed in situation S. If they do, then fine – duty C was owed in situation S. If the decided cases go the other way and indicate that duty C was not owed in situation S, then go with them and conclude that duty C wasn't owed in situation S. It's only if the decided cases have nothing to say, one way or the other, on the issue of whether duty C was owed in situation S that you are going to have to use the *Caparo* test to determine whether duty C was owed in situation S. But that will hardly ever happen – in most problem questions, there'll always be some case which indicates one way or

another whether a given duty of care was owed in the situation presented by the problem question.

(3) Eric died in this problem. Students often find it difficult to handle tort problem questions which involve people dying. Well, Eric's estate can be a claimant in this situation – but it can only claim compensation for the tortiously inflicted losses that were suffered by Eric *before* he died. No compensation is payable for the losses suffered by Eric *because* he died – such as the loss of the enjoyment he would have obtained from life had he survived.

As Eric was a minor when he died, his parents will be entitled to bring an action for bereavement against those who tortiously caused his death – and if they had a reasonable expectation of obtaining some financial benefit from Eric as he grew older, they would also be entitled to bring an action for loss of support. But note that if Zelda – Eric's mother – wants to sue for compensation for her depression, she'll have to bring an action in her own right for such compensation; she can't do it on the basis that her depression was triggered as a result of a tort that was committed in relation to Eric; she has to allege that a tort was committed in relation *to her* and she developed depression as a result.