

The Bus Stop Problem

Queenie, a single parent, lived with her son Brian, who was six years old, and her four month-old baby girl, Jemima. Queenie woke up late one day because Jemima had kept her up most of the night with her crying. Queenie woke Brian up so as to drive him to school in her new car. Once they were in the car, Brian insisted that she drive faster and faster as they were late. As they were approaching the school at high speed, Gertie, a classmate of Brian's, ran out into the middle of the road without looking and Queenie swerved out of the way to avoid hitting her. As a result, Queenie's car crashed into a bus stop opposite the school. Sam and Wendy were the only people waiting at the bus stop. Sam had just seen his daughter, Mary, off to school. Queenie's car hit him and he was killed. Mary was inside the school when the accident happened and a teacher prevented her from seeing what had happened to her father. She only saw her father's dead body that night, in the company of her mother. Mary now suffers from severe depression. Wendy was untouched by the car but the incident has left her with a fear of going out in public and she has had to quit her job. Brian was killed when Queenie's car ploughed into the bus stop; he was catapulted through the front window of Queenie's car, having neglected to put his seat belt on. Gertie saw what happened to Brian and now suffers from post-traumatic stress disorder, as does the teacher, Fiona, who was on duty at the school entrance at the time of the accident and went to help Brian, Queenie and Sam in the immediate aftermath of the crash. Queenie suffered minor cuts and bruises as a result of the accident. She blamed Jemima for what had happened and beat her up. As a result, she was sent to prison for two years.

Discuss.

Model answer

Taking each possible claimant in turn –

Mary

Mary may want to sue Queenie and Gertie in negligence for damages to compensate her for her depression. In order to bring such a claim she will have to show that Queenie and Gertie owed her a duty to take care not to cause the accident in which her father, Sam, died. In order to show this, she will have to show that: (1) she was in a 'close and loving relationship' with Sam and it was therefore reasonably foreseeable that she would develop a psychiatric illness in the aftermath of Sam's death and (2) she developed her psychiatric illness as a result of witnessing the accident which killed Sam or as a result of seeing Sam in the immediate aftermath of that accident.

It will be presumed that (1) is true: see the *Alcock* case where the House of Lords presumed that the parents of a fan who died at Hillsborough were in a 'close and loving relationship' with the deceased. However, Wendy will not be able to show that (2) is true. She did not witness the accident and she only saw her father's body several hours after he died; it is doubtful whether this means she saw Sam in the 'immediate aftermath' of the accident that killed him. Given this, it is doubtful whether Mary can sue Queenie and Gertie for compensation in respect of her depression.

Wendy

Wendy can probably sue Queenie and Gertie in negligence for compensation in respect of the psychiatric illness she has developed in the aftermath of the accident at the bus stop. It was reasonably foreseeable that she might be injured in the accident, so Queenie and Gertie both owed Wendy a duty to take care not to cause that accident to happen – which duties they each breached (Queenie by driving too fast as she approached the school and Gertie by running out into the road without looking). Admittedly, Wendy was not actually injured in the accident but developed a psychiatric illness instead. However, *Page v. Smith* seems to indicate that Wendy’s psychiatric illness will be actionable – it will count as the same “kind of damage” that it was reasonably foreseeable Wendy would suffer if Queenie and Gertie caused Queenie’s car to crash into the bus stop.

Fiona

Fiona will want to sue Queenie and Gertie in negligence for damages to compensate her for the post-traumatic stress disorder (PTSD) that she has suffered in the aftermath of the accident at the bus stop. She will have no problem establishing that it was reasonably foreseeable that she would develop such a disorder in the aftermath of the accident; she went to aid the victims of the accident and it was reasonably foreseeable that someone who did such a thing might develop a psychiatric illness as a result of what he or she saw or heard in aiding the victims. However, the decision of the House of Lords in *White v. Chief Constable of South Yorkshire* (otherwise known as *Frost*) indicates that for Fiona to have been owed a duty of care by Queenie and Gertie, it has to be shown that Fiona was in danger or thought she was in danger when she aided the victims of the accident. There is nothing in the facts given to suggest that this condition is satisfied so Fiona’s claim in negligence against Queenie and Gertie will probably fail.

Gertie

Gertie may want to sue Queenie in negligence for compensation for the PTSD that she developed in the aftermath of the accident at the bus stop. She could put her claim in two ways.

First of all, she might advance a *Page v. Smith* style argument, viz. Queenie owed me a duty not to drive her car so fast in approaching the school because it was reasonably foreseeable that doing so would expose me and other children at the entrance to the school to an unreasonable risk of being injured; she breached that duty; had she not breached that duty the accident at the bus stop would never have happened and I would not have developed PTSD; the PTSD that I suffered as a result of Queenie’s negligence is actionable because it counts as the ‘same kind of damage’ that it was foreseeable I would suffer (physical injury) if Queenie drove too fast as she approached the school gates: *Page v. Smith*. This argument will probably fail as, unlike the case in *Page v. Smith*, Gertie’s PTSD did not arise because she was put in fear for her life as a result of Queenie’s negligent driving.

Second, she could argue: Queenie owed me a duty to take care not to cause the accident at the bus stop because it was reasonably foreseeable that I would develop

PTSD as a result of witnessing the accident – while I was not in a ‘close and loving relationship’ with anyone involved in the accident, the accident was so horrific that any reasonable bystander who witnessed it could have been expected to develop a psychiatric illness as a result; Queenie breached that duty and I developed PTSD as a result. This argument will probably fail as the courts seem to have taken the position that a ‘mere bystander’ who develops a psychiatric illness as a result of witnessing an accident occurring will never be able to establish that the people who caused that accident to occur owed him a duty to take care not to cause that accident to occur: *McFarlane v. EE Caledonia*; *White v. Chief Constable of South Yorkshire*. This is despite the fact that in *Alcock*, at least three members of the House of Lords explicitly acknowledged that someone in Gertie’s position might be able to bring a claim in negligence for compensation for her psychiatric illness.

Queenie

Queenie may want to bring two kinds of claims against Gertie.

Claim in negligence against Gertie

First, she may want to sue Gertie in negligence for damages to compensate her for: (1) her cuts and bruises; (2) the fact that she has been imprisoned for two years.

Gertie undoubtedly committed the tort of negligence in relation to Queenie by running out into the middle of the road without looking. It was reasonably foreseeable that doing so would expose someone like Queenie – someone driving down the road as Gertie ran out into it – to an unreasonable risk of being injured and so Gertie owed Queenie a duty not to do what she did. Gertie’s negligence caused Queenie’s cuts and bruises – there was no break in the chain of causation between Gertie’s negligence and the accident as Queenie acted reasonably in swerving out of the way (or if she acted unreasonably, she hardly acted voluntarily) – and so Queenie will be entitled to sue Gertie for damages in respect of her cuts and bruises.

It is more doubtful whether Queenie can recover anything for her two years’ imprisonment, for three reasons. First, it could be argued that Gertie’s negligence did not cause Queenie to be imprisoned – while Queenie would not have gone to prison but for Gertie’s negligence (had Gertie not run into the road, the accident at the bus stop would never have happened and Queenie would have had no occasion to beat Jemima up), as Queenie acted voluntarily and unreasonably in beating up Jemima, there was a break in the chain of causation between Gertie’s negligence and Queenie’s being sent to prison. Second, it could be argued that Queenie’s imprisonment is non-actionable as it did not result from her suffering the kind of loss that the duty of care breached by Gertie was imposed on her in order to avoid – the duty of care breached by Gertie was imposed on her to help ensure that Queenie would not suffer some kind of personal injury; but Queenie did not beat up Jemima because she was injured in the accident. So Queenie’s imprisonment may be a non-actionable consequence of Gertie’s negligence on the ground that it counts as the *wrong kind of loss*. (In *Meah v. McCremer* a claimant who suffered injuries in a car crash that was negligently caused by the defendant suffered a change in personality as a result of his injuries and consequently attacked two women. He was imprisoned and was allowed to sue the defendant for compensation for his imprisonment. That case may be distinguished as there the imprisonment was a consequence of the claimant

suffering the kind of loss – personal injury – that the duty of care breached by the defendant was imposed on him in order to avoid. The claimant only attacked the two women in question because the injuries he sustained in the car crash caused his personality to change.) Third, it could be argued that Queenie will be barred from suing Gertie for damages to compensate her for her imprisonment because the maxim *ex turpi causa non oritur actio* applies – Queenie has only been locked up because she committed a criminal offence: *Clunis v. Camden & Islington Health Authority*. *Meah v. McCreamer* may be distinguished on the ground that the defence of illegality was not pleaded in that case.

Claim for bereavement against Gertie

Queenie will be allowed to bring an action for bereavement against Gertie under the Fatal Accidents Act. Gertie was negligent in relation to Brian in running out into the middle of the road without looking – it was reasonably foreseeable that doing so would expose someone like Brian to an unreasonable risk of being injured; Gertie's negligence caused Brian to die; and had Brian survived the car crash, he would have been entitled to sue Gertie for compensation in respect of his injuries. But the damages payable would have been reduced to take account of Brian's contributory negligence in urging his mother to drive faster and faster and accordingly the fixed sum that is normally payable for bereavement will be reduced.

Jemima

Jemima will, of course, be entitled to sue Queenie for damages in respect of the injuries suffered by her when Queenie beat her up as Queenie will undoubtedly have committed the tort of battery in so doing.

Comments on the model answer

(1) It probably wasn't necessary to include the last bit about Jemima; it's such an obvious point that you wouldn't really mention it except for the sake of completeness. If you were doing this question under time pressure, you wouldn't lose much – if anything – by not mentioning this point. One thing which I did omit to deal with was the question of whether Sam's dependants could bring an action for loss of support against Queenie and Gertie. (Answer: yes they can.) The reason for omitting this was that the question didn't seem really directed at that issue – it's much more a question about who can sue for compensation for a psychiatric illness suffered in the aftermath of an accident. Again – if you did this question and you had the time, you should probably mention the issue of Sam's dependants bringing an action for loss of support. But if you were under time pressure, you would gain far more by ignoring this issue and getting onto the questions which the examiner meant you to address in setting the problem than by spending time on the loss of support claim and missing out a consideration of, say, whether Queenie could sue Gertie for damages to compensate her for being locked up.

(2) Notice that there is absolutely nothing in the problem question to suggest that Queenie developed a psychiatric illness in the aftermath of the accident at the bus

stop. If she had it would be perfectly understandable – but don't think that she did if the problem question does not suggest that she did. And don't say something like – “If Queenie *had* developed a psychiatric illness in the aftermath of the bus stop accident, she would have been entitled to sue Gertie in negligence for damages in respect of that illness”; don't invent facts and then consider what the legal position would be if those were the facts in the case you are considering. Students – at least the ones I come across – seem very keen on finding psychiatric illnesses all over place. A passing reference to someone in a problem question being “depressed” at some bad news is enough for some students to find that that someone developed a psychiatric illness in the aftermath of hearing that news. There is a big difference between getting depressed and suffering a psychiatric illness. Trigger words which should make you think that a particular person in a problem has developed a psychiatric illness are: “psychiatric illness” (obviously), “post-traumatic stress disorder”; “prolonged depression”; “mentally traumatised”.