

The College Problem

Ambrose College is a college in Camford. Consider what, if any, liabilities in tort will arise in the following situations:

(a) Ambrose College's most famous feature is a clock tower which forms part of the college library. Dave was hired to renovate the clock on the clock tower as it had fallen into disrepair. Theo, one of Ambrose College's students, attempted one night to climb the scaffolding which Dave had placed around the clock tower. Having reached the top of the scaffolding, he slipped on some oil which had been spilled by Dave that evening just before he knocked off work for the day. Dave had planned to clean up the oil the next day as soon as he came in for work. Theo fell off the scaffolding and broke both his legs.

(b) Randy, an unemployed resident of Camford, sneaked into Ambrose College late at night to spend the night with his girlfriend, Yolanda, who was a student at Ambrose. Randy knew that the College regulations prohibited anyone but Yolanda from spending the night in her room. The light on the staircase leading up to Yolanda's room was broken and the College authorities had taken no steps to mend it. In the early hours of the morning, Gordon (another student at Ambrose who was unaware of Randy's presence in the College) set off the College fire alarm for a joke. Awoken by the fire alarm – and aware that when a fire alarm went off, the Ambrose College porters did room-to-room checks to see that they had been vacated – Yolanda told Randy to get out of the College as quickly as possible so that his presence in the College wouldn't be detected. Randy ran down the stairs leading to Yolanda's room but due to the lack of lighting, he lost his footing and fell down the stairs, breaking an arm. Despite the fact that he was in obvious pain, the porters refused to summon an ambulance for Randy until he told them what he was doing in the College. He eventually lied and said that he had been spending the night with Sally, an enemy of Yolanda's who lived on the same staircase. Sally was fined £500 for infringing the College regulations.

Model answer

Taking each possible claimant in turn –

(a)

Theo

Claim against Dave

Theo will want to bring a claim in negligence against Dave under the Occupiers' Liability Act 1984. (No claim can be brought under the 1957 Act as Theo was not a 'visitor' when he went onto the scaffolding.)

It is pretty clear that Dave owed Theo a duty under the 1984 Act to take reasonable steps to clear up the oil spill. Dave 'occupied' the scaffolding (he was in effective control of the scaffolding). He knew of the existence of the oil spill and the risk it posed to people coming onto the scaffolding; he knew that a trespasser coming

onto the scaffolding was likely to come into the vicinity of the oil spill; and the risk created by the oil spill was one which Dave could reasonably have been expected to offer trespassers some protection against.

But did Dave breach the duty he owed Theo to take reasonable steps to clear up the oil spill? He did nothing to clear the oil spill up the night Theo went climbing up the scaffolding but that might have been a reasonable thing to do if the risk that a trespasser would attempt to scale the scaffolding was exceedingly small and the time and trouble that would have been involved in cleaning the oil spill up that night rather than the day after was very large. We would need more information on these matters before we could judge whether Dave was negligent in relation to Theo when he failed to clean up the oil spill before knocking off work for the night.

If Dave was negligent in not cleaning up the oil spill immediately then Theo will be able to sue Dave in negligence for damages to compensate him for his broken legs. However, the damages will be reduced to take account of Dave's contributory negligence in climbing up the scaffolding in the first place.

Claim against the College

It is doubtful whether Theo could bring a claim against the college for compensation for his broken legs. The college was not responsible either for the presence of the oil spill at the top of the scaffolding or for the failure to clean it up before Theo climbed to the top of the scaffolding.

(b)

Randy

Claim against the College

Randy may want to bring a claim in negligence against the college under the Occupiers' Liability Act 1984. He will claim that the college owed him a duty under the 1984 Act to take reasonable steps to mend the broken light on Yolanda's staircase and that his leg was broken because the college breached this duty.

It seems strongly arguable that the college did owe Randy the duty of care contended for. It clearly 'occupied' the college at the time Randy was on the premises. It knew that there was a risk that someone using Yolanda's staircase would be killed or injured by virtue of the fact that the staircase was unlit at night. It must have known that a trespasser such as Randy might use Yolanda's staircase at night and might as a result be killed or injured because it was unlit at night. And this danger was something which the college could reasonably have been expected to do something about. Given all this, it is strongly arguable that the college owed Randy a duty to take reasonable steps to mend the broken light on Yolanda's staircase. On the other hand, section 1(6) of the Act provides that 'No duty is owed by virtue of this section to any person in respect of risks willingly accepted by him'. If Randy was aware when he went to spend the night at Yolanda's that the light on her staircase was defective, then it could be argued that he willingly took the risk that he might be killed or injured if he had to use her staircase at night. Then again, it could be argued that even if Randy knew that the light on Yolanda's staircase was defective, he could hardly have supposed that he would have to use the staircase at night when it would

be dark and, given this, he did not 'willingly accept' the risk that he would be killed or injured in using Yolanda's staircase.

If the college did owe Randy a duty to take reasonable steps to mend the broken light on Yolanda's staircase, it seems clear that they breached this duty (they seem to have had ample opportunity to mend the light which they did not take) and that Randy broke his leg as a result of that breach. So if the college did owe Randy the duty of care contended for, Randy should be able to sue the college for damages to compensate him for his broken leg.

Claim against Gordon

It is unlikely that Randy will be able to sue Gordon in negligence for damages to compensate him for his broken leg – Gordon did not owe Randy a duty not to switch the fire alarm on because it wasn't reasonably foreseeable that someone like Randy might be injured if the fire alarm were turned on.

Claim against the porters

Randy may want to sue the porters for damages to compensate him for the fact that porters refused to call him an ambulance immediately – with the result that the pain and suffering experienced by him as a result of his having his leg broken was prolonged unnecessarily. However, it is difficult to see how Randy could make out such a claim.

If Randy sued the porters in negligence, they would be able to meet his claim on the ground that they did not owe him a duty to take reasonable steps to call him an ambulance. The common law does not require strangers to take steps to help those in difficulty absent 'special circumstances' – and there were no 'special circumstances' here. The porters were not responsible for the fact that Randy's leg was broken and they did not – on the facts as presented – discourage anyone else from calling him an ambulance. They did not 'assume a responsibility' to Randy or take on the job of treating him.

Sally

There is little doubt that Sally will be able to sue Randy for damages to compensate her for the £500 she paid out to the college as a result of Randy's allegations. Randy committed the tort of malicious falsehood in relation to Sally when he told the porters that he had spent the night with her. The tort is committed when A maliciously makes a false statement to B that refers to C and C suffers loss as a result. All these requirements are made out here. Randy's statement obviously referred to Sally; it was false; Sally suffered loss as a result of that statement being made; and Randy acted maliciously in making that statement in that he knew that it was not true when he made out (it does not matter that he made the statement simply to get himself out of a tough spot – the requirement of maliciousness is satisfied on proof that the statement was made with knowledge that it was untrue). As Randy committed the tort of malicious falsehood in relation to Sally in making his statement to the porters, Sally will be entitled to sue Randy for compensation in respect of the loss that his statement caused her to suffer.

Comment on the model answer

Assuming that 'little' torts such as the tort of malicious falsehood are on your syllabus at your university (as they should be), it is worthwhile taking a little time to master them. They are not too hard to grasp and they can crop up in a wide variety of problem questions – such as the one above. It would be a shame to lose marks because you failed to consider whether a particular 'little' tort was committed in a given problem question when, with half an hour's effort before the exam, you would have been able to see quite easily whether or not that tort was committed.