

The Fireman Problem

John and Margaret, a divorced couple, held a birthday party at John's house for their young son, Charlie, and Charlie's friends. Charlie and his best friend, Peter, were playing with matches in Charlie's upstairs bedroom during the party when they accidentally started a fire. Charlie and Peter panicked and ran out of the house without telling anyone about the fire. The fire was discovered shortly afterwards. John summoned the fire services while Margaret ushered all the children she could find out of the house. The first fire crew sent to the scene was involved in an accident due to the negligence of Stephen, the driver of the fire crew's engine, and was as a result unable to get to John's house. Stephen radioed headquarters and asked for another fire crew to be sent to the scene. By the time the second fire crew arrived, the fire was raging out of control in the upper half of John's house. William, the leader of the second fire crew, asked John and Margaret whether anyone was still in the house. Margaret told William that she thought Charlie and Peter were still trapped upstairs as she hadn't seen them leave the house. William ran into the house without bothering to put on any breathing apparatus. As he ran up the stairs, he put his foot through a rotten floorboard on the stairs and could not free it. John had known about the rotten floorboard for a couple of months and had put a sign next to the stair in question saying "Avoid using this step" but had otherwise taken no measures to deal with the problem. William had failed to see the sign due to the amount of smoke in the house. When William failed to reappear after a few minutes, the other members of the fire crew went into the house to investigate and found him on the stairs. He was taken to hospital but died shortly afterwards as a result of inhaling too much smoke. Margaret and Stephen both developed depression at the thought that they were responsible for William's death. John's house was completely destroyed by fire. It was found that but for Stephen's negligence, the first fire crew would have arrived at John's house within 10 minutes of being summoned there and would have put the fire out before it did any permanent structural damage to John's house.

Discuss.

Model answer

Taking each possible claimant in turn –

William's dependants

William's dependants may want to sue the following people for compensation in respect of the loss of support suffered by them as a result of William's death:

John

In order to sue John, William's dependants will have to show that: (1) John committed a tort in relation to William that caused William's death; and (2) had William not died as a result of John's tort but suffered a lesser injury, he would have been entitled to sue John for damages in respect of that injury.

On the issue of whether (1) is made out – John owed William a duty under the Occupiers' Liability Act 1957 to take reasonable steps to ensure that he would be reasonably safe for the purposes for which he was on John's premises. (William

counts as a “visitor” under the 1957 Act under s 2(6) of the Act.) Did he breach that duty? It is submitted that he did. It was foreseeable that someone like William could be injured as a result of the step on John’s staircase being defective and the warning that John placed beside the step was not enough to enable William to be reasonably safe given that he was going into John’s premises when they were smoke filled. Causation is made out here: had John mended the step instead of just putting a warning sign beside it, William would not have put his foot through the step and would not have died of smoke inhalation.

Had William not died as a result of John’s negligence but merely suffered a lesser injury, would he have been entitled to sue John for damages in respect of that injury? It might be argued that the answer is “no”. Suppose William survived the fire but the smoke inhalation caused him some sort of injury to his lungs – would he have been entitled to sue John for damages in respect of that? It might be argued that he would not be on the ground that it was not reasonably foreseeable that William would suffer that kind of injury as a result of John’s failure to mend the step. It was reasonably foreseeable that William might break his leg; it was reasonably foreseeable that William might be burned – but it might be argued that it was not reasonably foreseeable that William would suffer damage to his lungs as a result of John’s negligence because it could reasonably have been expected that William would have gone into the house wearing breathing equipment. On this argument, had William survived and merely suffered smoke-related damage to his lungs, he would not have been entitled to sue John for compensation for that damage because that damage would have been a remote consequence of John’s negligence. If this argument is right then (2), above, is not made out and William’s dependants will not be entitled to bring a claim for loss of support against John.

On the other hand, it might be argued that it was reasonably foreseeable that someone like William would – in the pressure of an emergency – go into the house without wearing breathing equipment. If this is right then it was reasonably foreseeable that William might suffer some kind of smoke-related damage to his lungs as a result of John’s negligence in failing to repair the step on his staircase and there would have been no problem with William’s suing John for damages had he survived the fire and merely suffered smoke-related damage to his lungs. So – on this view of things both (1) and (2) are made out and William’s dependants will as a result be entitled to bring a claim for loss of support against John under the Fatal Accidents Act – but the damages payable to William’s dependants will be reduced to take account of William’s contributory negligence in failing to wear breathing equipment in going into the house.

Charlie and Peter

Again, William’s dependants will only be entitled to sue Charlie and Peter for compensation for the loss of support suffered by them as a result of William’s death if: (1) Charlie and Peter committed a tort in relation to William which caused William’s death; and (2) had William survived the fire, he would have been entitled to sue Charlie and Peter for damages in respect of the injuries suffered by him in the fire.

Did Charlie and Peter owe William a duty not to play with the matches? Normally, one would say yes as it was reasonably foreseeable that playing with the matches would start a fire and someone like William – a fireman – would be exposed as a result to an unreasonable risk of suffering some kind of physical injury. However, *Mullin v. Richards* indicates that in determining what is reasonably foreseeable we

have to ask: would a reasonable person of the same age and maturity as Charlie and Peter have appreciated that there was a risk that playing with matches would start a fire which would endanger other people such as the firemen who would be called to fight it? The answer is undoubtedly yes – Charlie and Peter would not have been playing with matches if they were unaware of its fire-starting properties. So Charlie and Peter owed William a duty not to play with the matches; they breached that duty; and their breach caused William to die. So (1) is made out.

Whether (2) is made out will depend on whether it was reasonably foreseeable that starting the fire would result in someone like William suffering smoke-related damage to his lungs. We have already dealt with this issue above – if it was reasonably foreseeable then (2) will be made out and William's dependants will be entitled to bring an action for loss of support against Charlie and Peter, subject to a deduction to take account of William's contributory negligence. If it was not reasonably foreseeable then (2) will not be made out and no claim for loss of support can be brought against Charlie and Peter.

Margaret

No claim for loss of support can be brought against Margaret – Margaret committed no tort in relation to William in telling him that there might still be people in the house; she acted perfectly reasonably in so doing.

John

John may want to sue Stephen in negligence to compensate him for the damage done to his house. Such a claim will fail. The case of *Capital & Counties* establishes that Stephen did not owe John a duty to take reasonable steps to get to and fight the fire which broke out on his property. The common law does not impose liability for negligent omissions outside cases where there existed some sort of "special relationship" between the defendant and the claimant and there existed no such relationship here.

Margaret and Stephen

Margaret and Stephen may want to sue Charlie, Peter and John in negligence for compensation for the depressions suffered by them in the aftermath of William's death.

Charlie and Peter

In order to sue Charlie and Peter, Margaret and Stephen will have to show that Charlie and Peter owed them a duty to take care not to cause the fire which triggered their psychiatric illnesses. While it was reasonably foreseeable that they would develop psychiatric illnesses in the aftermath of the fire started by Charlie and Peter because they felt responsible for William's death in the fire, reasonable foreseeability is not enough to establish that Charlie and Peter owed them a duty of care. The case of *Hunter v. British Coal Corp* indicates that they had actually to have witnessed the incident that caused William's death. Neither Margaret nor Stephen seem to satisfy

this requirement. Margaret may have a stronger claim in that she was actually in the vicinity of the house when William went into it and presumably saw him being carried out and taken to hospital. However, on the current state of the authorities it is doubtful whether, even on those facts, Margaret will be able to make out a claim in negligence against Charlie and Peter.

John

For similar reasons, Margaret and Stephen will find it difficult to make out a claim in negligence against John for damages in respect of their depression. Moreover, John was merely guilty of an omission in this case and it is doubtful whether someone who merely fails to prevent an accident occurring can be held liable for the psychiatric illnesses suffered by people in the aftermath of that accident.

Comments on the model answer

(1) Students often feel a great temptation, when dealing with problems that involve the interpretation and application of a particular statute (as this problem does), to quote reams and reams from the statute. It is hard to know why students do this – after all, in virtually all universities students are allowed to take statute books into the exams so an examiner is not going to be impressed by a student who quotes heavily from a particular statute; there is no great skill involved in copying chunks out of a statute book. Maybe it reflects a nervous tic on the part of students – students often feel better once they have gotten about half a page into a problem answer and they don't much care what they've said in that half a page; they just want to feel that they've done *something*. Anyway, the temptation should be resisted. You won't get any marks for quoting chunks from a particular statute – so don't do so unless it serves some useful purpose (which it hardly ever will).

(2) There are some claims considered in this problem answer that would, in the real world, never be brought – like William's dependants suing Charlie and Peter and Margaret and Stephen suing Charlie and Peter. That doesn't matter – you should still consider them to see whether a claim *could* be brought as the law stands at the moment. If a claim could be brought in theory, then you must say so.

(3) Notice that in this problem answer I've paired a couple of defendants (Charlie and Peter) and a couple of claimants (Margaret and Stephen). Normally you should not do this – you should consider each possible claimant separately and each possible defendant separately. By doing so you will be alerted to possible distinctions between the different claimants/defendants that you might not adverted to had you bunched them together. But here it was so hard to see a distinction between Charlie and Peter/Margaret and Stephen that it felt safe just to lump them together.

(4) There was one possible claim that I could have dealt with in the problem answer but chose not to. That was William's dependants suing Stephen in negligence – the idea being that had Stephen not carelessly crashed the first fire engine, William would never have been summoned to the fire and would not have died. But it seemed so obvious that such a claim would fail that it felt safe to ignore it. If you are under some kind of time constraint, you may be forced to ignore some claims that might be

brought but that would obviously fail. If you do have time to consider one of these might be brought/bound to fail claims, dispose of it very quickly – you'll get no extra marks for banging on and on about why this claim is so obviously flawed.