

Tort Law Essay Example (Problem Question, OSCOLA)

Psychiatric Injury and the Control Mechanisms After *Page v Smith* [1996]

Question

A speeding delivery van driven by Daniel ignores a red traffic light and crashes into several vehicles outside a railway station.

Emma is driving one of the cars involved. Although she suffers only minor bruising, she later develops severe post-traumatic stress disorder (PTSD), despite having a history of anxiety.

Oliver is standing nearby waiting for a taxi. He witnesses the collision from only a few metres away and sees his wife, Sophie, trapped inside another vehicle. Sophie suffers multiple fractures but survives. Oliver develops recognised psychiatric illness several months later.

Lucy, Sophie's sister, is working overseas when the accident occurs. Twelve hours later she watches graphic television coverage showing the immediate aftermath and recognises Sophie's badly damaged car. She later suffers severe depression.

James is a firefighter who attends the accident approximately forty minutes after the collision. He assists in removing injured victims from the wreckage before developing PTSD.

Advise each claimant whether they are likely to recover damages for psychiatric injury.

Word Count: Approximately 1,600 words

Introduction

The issue concerns whether the claimants may recover damages in negligence for psychiatric injury following Daniel's negligent driving. English law distinguishes between **primary victims**, who are directly involved in the accident, and **secondary victims**, who suffer psychiatric injury from witnessing injury to others. Different legal requirements apply to each category following *Page v Smith* [1996] AC 155 and *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310.

Each claimant will therefore be considered separately using the ILAC structure.

1. Emma

Issue

Can Emma recover damages for psychiatric injury despite suffering only minor physical injuries and having a pre-existing anxiety disorder?

Law

A defendant owes a duty of care to those foreseeably endangered by negligent driving (*Donoghue v Stevenson* [1932] AC 562).

Where a claimant is a **primary victim**, *Page v Smith* establishes that the defendant need only foresee **some personal injury**, not psychiatric injury specifically.

Once physical injury is foreseeable, the defendant is liable for the full extent of psychiatric injury under the "eggshell skull" principle.

This was confirmed in *Smith v Leech Brain & Co Ltd* [1962] 2 QB 405.

Application

Emma was directly involved in the collision.

She was within the zone of physical danger and actually suffered bruising.

She is therefore clearly a **primary victim**.

Daniel's careless driving made physical injury entirely foreseeable.

Under *Page v Smith*, Emma does not need to prove that PTSD itself was foreseeable.

Her previous anxiety disorder is irrelevant because defendants take victims as they find them.

Although Daniel could not have predicted the severity of her psychiatric illness, the thin-skull rule makes him liable once some injury was foreseeable.

Conclusion

Emma will almost certainly recover damages for her psychiatric injury.

2. Oliver

Issue

Can Oliver recover as a witness who develops psychiatric illness after seeing his injured wife?

Law

Oliver was never physically endangered.

He therefore falls within the category of a **secondary victim**.

Secondary victims must satisfy the control mechanisms established in *Alcock*.

These require:

- recognised psychiatric illness;
- close tie of love and affection;
- proximity in time and space;
- perception through unaided senses;
- psychiatric injury caused by sudden shocking event.

Spouses enjoy a presumed close tie of love and affection.

Application

Oliver develops medically recognised PTSD.

His relationship with Sophie satisfies the requirement for close ties.

He witnessed the accident only metres away.

He observed the collision directly with his own eyes.

His illness resulted from a single horrifying incident rather than gradual stress.

Every control mechanism appears satisfied.

Unlike the claimants in *Alcock*, Oliver experienced the accident personally at the scene.

The facts closely resemble those in *McLoughlin v O'Brian* [1983] 1 AC 410, where recovery was permitted because of close temporal proximity.

Conclusion

Oliver has a strong claim and is likely to recover damages.

3. Lucy

Issue

Can Lucy recover after seeing television footage many hours later?

Law

Secondary victims must satisfy all *Alcock* control mechanisms.

Television broadcasts normally fail the proximity requirement because edited footage lacks the immediacy of direct perception.

The House of Lords specifically rejected claims by relatives who viewed the Hillsborough disaster on television.

Furthermore, siblings do not benefit from the presumption of close ties.

They must prove an exceptionally close relationship.

Application

Lucy was overseas.

She witnessed no part of the accident directly.

She watched television approximately twelve hours later.

This significantly weakens temporal proximity.

Recognition of Sophie's damaged vehicle is insufficient because she never witnessed Sophie herself.

Even if Lucy proves an unusually close relationship with Sophie, she fails the requirement of direct perception.

The delay also breaks the necessary proximity.

Her situation resembles unsuccessful claimants in *Alcock* rather than successful claimants in *McLoughlin*.

Conclusion

Lucy is unlikely to recover damages.

4. James

Issue

Can a firefighter recover psychiatric injury sustained while attending the aftermath?

Law

Rescuers do not receive automatic protection.

In *White v Chief Constable of South Yorkshire Police* [1999] 2 AC 455, the House of Lords held that rescuers must qualify either as primary victims or satisfy the secondary victim requirements.

Being a rescuer alone creates no separate category.

Primary victim status requires actual or reasonably perceived physical danger.

Application

James arrived forty minutes after the collision.

Nothing suggests he was personally endangered.

He therefore cannot rely upon *Page v Smith*.

He also struggles to qualify as a secondary victim.

He lacked a close tie of love and affection with the victims.

His psychiatric illness resulted from witnessing horrific scenes during rescue efforts rather than injury to a close relative.

The House of Lords rejected very similar claims in *White*.

Conclusion

James is unlikely to recover damages.

Overall Conclusion

Daniel clearly owed a duty of care to all road users by driving with reasonable care.

His negligent driving caused the collision.

However, English law imposes strict restrictions upon claims involving psychiatric injury.

Emma succeeds because she is a primary victim under *Page v Smith*, requiring only foreseeable physical injury.

Oliver also succeeds because he satisfies every *Alcock* control mechanism applicable to secondary victims.

Lucy is unlikely to recover because television broadcasts and delayed knowledge fail the proximity requirements established in *Alcock*.

James likewise fails because rescuers receive no special status after *White* unless they qualify independently as primary or secondary victims.

Accordingly:

Claimant Likely Outcome

Emma ✓ Claim succeeds

Oliver ✓ Claim succeeds

Lucy ✗ Claim fails

James ✗ Claim fails

OSCOLA Bibliography

Cases

Alcock v Chief Constable of South Yorkshire Police [1992] 1 AC 310.

Donoghue v Stevenson [1932] AC 562.

McLoughlin v O'Brian [1983] 1 AC 410.

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Smith v Leech Brain & Co Ltd [1962] 2 QB 405.

White v Chief Constable of South Yorkshire Police [1999] 2 AC 455.

Books

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Jenny Steele, *Tort Law: Text, Cases, and Materials* (5th edn, Oxford University Press 2021).

Nicholas J McBride and Roderick Bagshaw, *Tort Law* (7th edn, Pearson 2020).

Journal Articles

Peter Handford, 'Psychiatric Injury in the House of Lords' (1996) 59 *Modern Law Review* 420.

Mullany N and Handford P, 'Moving the Boundary of Liability for Nervous Shock' (1995) 54 *Cambridge Law Journal* 507.