

VCE Legal Studies: Task

Negligence

This task relates to the elements of the tort of negligence

Outline

You have been briefed to appear for your clients, Mr and Mrs Maldemer from South Melbourne who, to celebrate their 30th wedding anniversary, booked on the American cruise liner "Sapphire Duke" which is owned by the Trumpery Shipping Company of Washington, D.C. Prior to the ship's departure from New York, the company was aware that COVID-19 had affected people in that city and passengers on two of their other ships, including ships in which some of the crew now on the "Sapphire Duke" had sailed.

No health checks were carried out when crew or passengers boarded. After a week at sea, 130 passengers and 11 crew had become ill with sore throats, high temperatures and fever.

The ship docked in Brisbane where Mr and Mrs Maldemer were, with other passengers and crew, admitted to hospital. Your clients spent a week in intensive care and four weeks in rehabilitation. Their solicitor, Miss Ava Rice of Austen, Dickens & Alcott, has briefed you to appear for Mr and Mrs Maldemer in an action for negligence against the Trumpery Shipping Company.

Write your opening address to the court, setting out the arguments you will make on behalf on your clients and the type of damages sought. Also explain how you will deal with any defences which Trumpery Shipping Company might raise.

Opening Address

Your Honour, it is the plaintiff's submission that the defendant, the Trumpery Shipping Company, was negligent in allowing Mr and Mrs Maldemer and other passengers to board the "Sapphire Duke" when they were clearly aware that COVID-19 had affected people in New York City, where the passengers boarded, and that crew members on the "Sapphire Duke" had served in the company's ships where passengers were diagnosed with COVID-19.

A duty of care was owed to Mr and Mrs Maldemer, who were paying passengers, to ensure that travel aboard the "Sapphire Duke" was safe. This duty of care was breached as I have outlined earlier and the plaintiffs seek compensatory damages of one million dollars to cover extensive medical bills and for pain and suffering.

The Trumpery Shipping Company claims that the illness of Mr and Mrs Maldemer was unforeseeable. We will call evidence to show that it was perfectly foreseeable, given that the disease was widespread and there was sufficient knowledge of it for the shipping company to have taken appropriate precautions. It did not act in a reasonable manner in the light of the circumstances of the situation. The duty of care was owed by the Trumpery Shipping Company to Mr and Mrs Maldemer; the duty of care was breached; and the injury to the plaintiffs was caused by the breach of the duty of care.