

McHale v Watson (1964) 111 CLR 284: Judgement of Windeyer

Facts:

- McHale, Watson, and another young girl were playing tag.
- Watson was 12 years old at the time. At the end of the game,
- Watson threw a sharpened metal rod at a piece of wood and it bounced off and hits McHale in the eye causing permanent blindness.
- McHale sued for damages.
- McHale was unsuccessful at the lower court. McHale appealed.
- Plaintiff claim against Barry Watson is framed both in trespass to the person and in negligence. It is alleged that he threw the article, however it be described, at the plaintiff intending that it should hit her; alternatively it is said that he was negligent in throwing it as he did. It is alleged against the parents that they were negligent in permitting their child to have the article, or alternatively in failing to supervise and control him in the use of it.

Issue:

- Should children be assessed based on the adult standard of care?
- Liability of parent for allowing child to have instrument & which caused injury - Liability in tort of a child and his parents.

Held:

- A parent may be liable for the consequence of his child's wrongdoing if his own negligence caused or provided the occasion for it. In that case the parent is not vicariously liable: he is liable because of his own negligence. Such negligence may arise from his failure to exercise a reasonable control of the activities of his child.
- **It has been strongly urged for the plaintiff that, in considering whether Barry was negligent, I must judge what he did by the standard expected of a reasonable man, and that that standard is not graduated according to age.**
- But whatever the position would be if the facts were different, my conclusion on the facts of this case is that the injury to the plaintiff was not the result of a lack of foresight and appreciation of the risk that might reasonably have been expected, or of a want of reasonable care in aiming the dart. I find that Barry Watson was not negligent in the legal sense. I therefore dismiss the case against him.
- Watson was acting as a normal 12-year-old boy would, and cannot be expected to have the perceptions of risk that an adult should have. The act was not done intentionally to hurt McHale, and the judge states that a "reasonable" 12-year-old boy would not expect this action to create this outcome.
- The adult standard of care should not be used to assess negligence in children.

Rixon v Star City Pty Ltd (2001) 53 NSWLR 98 - Judgement of Sheller:

Facts:

- The Plaintiff [Rixon], who was subject to an exclusion order (i.e., wasn't allowed in the casino), was playing roulette at the Defendant's premises [Star City Casino].
- Rixon was approached by an employee of the Defendant [Mr. Sheldon].
- Mr. Sheldon placed his hand on the Plaintiff's shoulder, and took him to a room.
- He was detained in the room for approximately 1.5 hours whilst waiting for the police to arrive.

Issue:

- Could a case be made out against the defendant for an intentional tort in Assault, Battery or False Imprisonment?
- Did Mr Sheldon act outside the powers conferred upon him by the Casino Control Act 1992?

Held:

- In relation to **battery** – It was held that hostility is not a necessary ingredient of battery:
 - **'The absence of anger or hostile attitude by the person touching another is not a satisfactory basis for concluding that the touching was not battery...any touching of another person, however slight, may amount to battery'.**
 - **Generally any form of contact can be battery, with the exception of conduct, which is 'generally acceptable in the ordinary conduct of everyday life'.**
 - This means that some conduct is presumed to be made with the consent of the plaintiff
 - In this case, the conduct of Sheldon was to engage the Plaintiff's attention and was generally acceptable in everyday life. There was no battery
- In relation to **assault**:
 - 'Proof of assault requires proof of an intention to create in another person an apprehension of imminent harmful or offensive contact...proof of the assault does not require proof of an intention to follow it up or carry it through'.
 - In this case, the alleged act of assault (placing the hand) lacked this intent. It was merely meant to get the Plaintiff's attention.
- In relation to **false imprisonment**:
 - s 84 of the Act very clearly states that the person designated could detain the suspected person on reasonable grounds. The Plaintiff was not detained for any longer than was necessary; detention was on reasonable grounds, and the police were notified immediately.
 - Thus, the detainment was not unlawful and there is no false imprisonment.