

By way of example, the following edited case of *Caldwell v. Bechtel, Inc.* is presented and then briefed using Llewellyn's suggested format. (Note: The cases in the rest of

this text have their facts and decision summarized for the reader's convenience. The edited portion of the case begins with the judge's name.)

CALDWELL V. BECHTEL, INC.

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT, 1980
631 F.2D 989

OPINION MacKinnon, J. We are here concerned with a claim for damages by a worker who allegedly contracted silicosis while he was mucking in a tunnel under construction as part of the metropolitan subway system (Washington Metropolitan Area Transit Authority [WMATA]). The basic issue is whether a consultant engineering firm owed the worker a duty to protect him against unreasonable risk of harm.

In attempting to convince the court that it owes no duty of reasonable care to protect appellant's safety, Bechtel argues that by its contract with WMATA it assumed duties only to WMATA. Appellant has not brought action, however, for breach of contract but rather seeks damages for an asserted breach of the duty of reasonable care. Unlike contractual duties, which are imposed by agreement of the parties to a contract, a duty of due care under tort law is based primarily upon social policy. The law imposes upon individuals certain expectations of conduct, such as the expectancy that their actions will not cause foreseeable injury to another. These societal expectations, as formed through the common law, comprise the concept of duty.

Society's expectations, and the concomitant duties imposed, vary in response to the activity engaged in by the defendant. If defendant is driving a car, he will be held to exercise the degree of care normally exercised by a reasonable person in like circumstances. Or if defendant is engaged in the practice of his profession, he will be held to exercise a degree of care consistent with his superior knowledge and skill. Hence, when defendant Bechtel engaged in consulting engineering services, the company was required to observe a standard of care ordinarily adhered to by one providing such services, possessing such skill and expertise.

A secondary but equally important principle involved in a determination of duty is to whom the duty is owed. The answer to this question is usually framed in terms of the foreseeable plaintiff, in other words, one who might foreseeably be injured by defendant's conduct. This secondary principle also serves to distinguish tort law from contract law. While in contract law, only one to whom the contract specifies that a duty be rendered will have a cause of action for its breach, in tort law, society, not the contract, specifies to whom the duty is owed, and this has traditionally been the foreseeable plaintiff.

It is important to keep these differences between contract and tort duties in mind when examining whether Bechtel's undertaking of contractual duties to WMATA created a duty of reasonable care toward Caldwell. Dean Prosser expressed the relationship in this terse fashion.

[B]y entering into a contract with A, the defendant may place himself in such a relation toward B that the law will impose upon him an obligation, sounding in tort and not in contract, to act in such a way that B will not be injured. The incidental fact of the existence of the contract with A does not negative the responsibility of the actor when he enters upon a course of affirmative conduct which may be expected to affect the interests of another person.

Analyzing the common law, Prosser noted that courts have found a duty to act for the protection of another when certain relationships exist, such as carrier-passenger, innkeeper-guest, shipper-seaman, employer-employee, shopkeeper-visitor, host-social guest, jailer-prisoner, and school-pupil. These holdings suggest that courts have been eroding the general rule that there is no duty to act to help another in distress, by creating exceptions based upon a relationship between the actors.

We find that case law provides many such analogous situations from which the principles deserving of application to this case may be culled. The foregoing concepts of duty converge in this case, as the facts include both the WMATA-Bechtel contractual relationship from which it was foreseeable that a negligent undertaking by Bechtel might injure the appellant, and a special relationship established between Bechtel and the appellant because of Bechtel's superior skills, knowledge of the dangerous condition, and ability to protect appellant.

We reverse the summary judgment of the district court, and hold that as a matter of law, on the record as we are required to view it at this time, Bechtel owed Caldwell a duty of due care to take reasonable steps to protect him from the foreseeable risk of harm to his health posed by the excessive concentration of silica dust in the Metro tunnels. We remand so that Caldwell will have an opportunity to prove, if he can, the other elements of his negligence action.

BRIEF OF CALDWELL V. BECHTEL, INC.

FACTS Caldwell was a laborer who now suffers from silicosis. He claims that he contracted the disease while working in a tunnel under construction as part of the Washington Metropolitan Area Transportation Authority (WMATA). He brought his action for damages against Bechtel, Inc., a consultant engineering firm under contract with WMATA for the project.

ISSUE Did Bechtel breach a duty of due care owed to Caldwell to take reasonable steps to protect him from the foreseeable risk of harm to his health posed by the excessive concentration of silica dust in the subway tunnels?

DECISION In favor of Caldwell. Summary judgment reversed and case remanded to the district court.

REASONS Caldwell has not brought an action for breach of contract as Bechtel seems to believe. Rather, he

seeks damages for an alleged breach of the duty of reasonable care. Unlike contractual duties, which are imposed by agreement of the parties to a contract, a duty of due care under tort law is based primarily on social policy. That is, the law imposes upon individuals the expectation that their actions will not cause foreseeable injury to another. These societal expectations comprise the concept of duty—a concept that varies in response to the activity engaged in by the individual. Moreover, the duty is owed to anyone who might foreseeably be injured by the conduct of the actor in question. In contrast, under contract law, a duty is owed only to those parties specified in the contract. Here, by entering into a contract with WMATA, Bechtel placed itself in such a relation toward Caldwell that the law will impose upon it an obligation in tort, and not in contract, to act in such a way that Caldwell would not be injured.

You can and should use this same legal analysis when learning the substantive concepts presented in this text and applying them to the end-of-chapter questions and case problems. By way of example, in a number of chapters throughout the text we have included a boxed feature called **Applying the Law**, which provides a systematic legal analysis of a single concept learned in the chapter. This

feature begins with the facts of a hypothetical case, followed by an identification of the broad legal issue presented by those facts. We then state the **rule**—or applicable legal principles, including definitions, which aid in resolving the legal issue—and **apply** it to the facts. Finally we state a legal **conclusion**, or decision in the case. An example of this type of legal analysis follows.

APPLYING THE LAW

