

NEGLIGENCE

What is Negligence?

Negligence is the breach of a legal obligation to take care which results in undesired damage to the plaintiff by the defendant.

Essential Elements of Negligence

1. The defendant owes a duty of care.
2. The defendant must make a breach of that duty.
3. The plaintiff suffers damages as a consequence thereof.

The essentials of negligence are discussed below:

- 1. Duty of care to plaintiff:** For an action to be negligent it is necessary that the defendant owed a specific legal duty of care to the plaintiff which has been breached. The existence of duty of care could be examined by the three fold test. The requirements of the test were:
 - (i) The injury caused to the plaintiff must be reasonably foreseeable by a prudent man.
 - (ii) Relationship of proximity must exist.
 - (iii) It must be reasonable and fair to impose liability.

Case law:

- *Donoghue v. Stevenson*, (1932) A.C. 562.: It is a leading case popularly known as “snail in the bottle case”. In this case, the appellant (Donoghue) drank some ginger beer from a bottle which was brought by her friend from a retailer. The appellant already drank some part of the ginger beer before discovering that the bottle contained decomposed body of snail. An action was brought against the respondent (*Stevenson*), the manufacturer. The manufacturer of the bottle was held responsible for negligence by Lord Atkin. The manufacturer owed a reasonable duty of care to its neighbours i.e. the consumer of the good.
- *Rural Transport v. Bezlum Bibi*, A.I.R. 1980 Cal. 165.
- *Ryan v. Youngs*, (1943) A.C. 488; (1943) 2 All E.R. 44.

- 2. Breach of Duty:** Breach of duty means non-performance of due care which is essential in a particular situation. The standard of care required is that of a reasonable or prudent man.

Essentials for the existing of a duty of care towards the plaintiff are:

- (i) The object to be attained must be great importance.
- (ii) The magnitude of risk must be examined.
- (iii) The amount of consideration charged.

Case law:

- *Latimer v. A.E.C. Ltd.*, (1953) A.C. 643.
- *K. Nagireddi v. Government of Andhra Pradesh*, A.I.R. 1982 A.P. 119.

- 3. Damages:** It is one of the essential conditions that the breach of duty caused damage to the plaintiff. The damages suffered should not be too remote.

Res Ipsa Loquitur (Proof of Negligence)

This legal Latin maxim means ‘the thing speaks for itself’. Ordinarily, the plaintiff is required to prove that the defendant owed him a duty of care which was breached. But according to the doctrine of ‘res ipsa loquitur’ an inference of negligence is allowed when:

- The act is of such a kind which normally would not occur without someone’s negligence.
- The act is caused by something which was in exclusive control of defendant.
- The defendant has knowledge of the consequences of the event.
- It is not due to any contributory action on the part of the plaintiff.

Case law:

- *Municipal Corporation of Delhi v. Subhagwati*, A.I.R. 1966 S.C. 1750: It is one of the leading cases popularly known as the “Clock-Tower Case”. In this case, the Clock Tower situated in the main bazaar of Chandni Chowk, Delhi collapsed due to which a large number of people died. The court held that the control was exclusively under Municipal committee therefore doctrine of res ipsa loquitur applied here.
- *Byrne v. Boadle*, (1863) 2 H. & C. 722.

Defences to Negligence

1. Inevitable Accident
2. Vis Major (Act of god)
3. Volenti non fit Injuria
4. Contributory Negligence of plaintiff

Each of the defences are discussed below:

1. **Inevitable Accident:** Inevitable accident means unpredictable injury which could not be foreseen and avoided. In spite of the reasonable care by the defendant if an inevitable accident takes place then it is a good defence.
2. **Vis Major (Act of God):** Act of God is a kind of inevitable accident in which the loss is caused because of sudden, violent, unpredictable and irresistible act of natural forces.
3. **Volenti non fit injuria:** Volenti non fit injuria is another defence against negligence. In this case the plaintiff voluntarily accepts to suffer the harm. Here the consent of the plaintiff serves as a good defence against him.
4. **Contributory Negligence:** When the plaintiff voluntarily contributes to the damage caused by the negligent conduct of the defendant, he is considered to be responsible for contributory negligence. Here plaintiff being negligent does not mean breach of duty by the other party but it means absence of care on plaintiff’s part about his safety.

Case law:

- *Butterfield v. Forrester*, (1809) 11 East 60.

The Last Opportunity Rule

When a negligent act occurs because of the contributory negligence of both the parties then he alone will be liable to the other who had the last opportunity of avoiding the incident.

Case laws:

- Davies v. Mann, (1882) 10 M. and W. 546.

Doctrine of Alternative Danger

When some dangerous situations are created by the defendant, the plaintiff is allowed to take risk in such a situation he will not be held guilty of contributory negligence.

Case laws:

- Jones v. Boyce, (1816) 1 Stark, 493.

Doctrine of Identification

The defence of contributory negligence can also be pleaded against plaintiff when the negligent act is performed by the plaintiff's agent or servant during their course of employment, this is known as doctrine of identification.

Case laws:

- Bernina Mills v. Armstrong, (1881) 13 A.C. 1.

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