

Negligence and its Defences

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Tort is a civil wrongful act, committed against a person or property, either intentional or negligent. Thus tort law is the area under the legal field which covers only civil suits, except contractual disputes. Tort law permits the injured parties to seek damages equal to the value of the injury. As said earlier a tort is committed by a person either intentionally or due to negligence. Now let us examine the meaning of negligence in Tort law, the required actions amounting to a tort due to negligence and its probable defences along with some case laws.

¹In common usage or in the English language, the word negligence only means mere carelessness. In the legal sense, negligence signifies failure to exercise a particular standard of care which the doer as a reasonable man should have exercised in particular situation or circumstance. The defendant's 'intention' to cause a particular harm or injury is not involved in the torts caused due to negligence. Negligent torts are different from intentional torts that centre on the intent of the defendant. Negligence is sometimes known as the "catchall" as it covers harm due to actions or inactions that were unreasonable under certain circumstances. In an action due to negligence, in order for the defendant to be held liable there must have been harm to the plaintiff. Let us take an example, suppose Sam spills some water on a wooden floor and fails to clean it up. After a short while, Kim enters the room, slips on the water, falls and breaks his arm. As a result of Sam's failure to wipe the floor, Kim was injured. Now Sam's actions were considered negligent and were the cause of Kim's injury.

Negligence is that conduct of a person which falls below the standard established by law for the protection of others. A negligent conduct may be either-

1. An act that the actor as a reasonable person should recognize as involving an unreasonable risk of causing an invasion of interest of another, or
2. A failure to do an act that is necessary for the protection or assistance of another and that the actor is under a duty to do.

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¹ <http://www.legalservicesindia.com/article/1297/Negligence-As-A-Tort:-Meaning-Essentials-And-Defences.html>

Negligence is an important tort that covers a wide range of situations where persons negligently cause harm to others. In order to succeed to prove negligence on the part of the defendant, the claimant must establish the following elements-

1. The defendant owed the claimant a duty of care.
2. The defendant breached the duty of care.
3. Reasonably foreseeable damage was caused by the breach of duty.

In the case of ²**Municipal Corporation of Delhi vs. Subhagwanti, 1966 (AIR 1966 SC 1750)** a clock tower collapsed in Chandni Chowk, Delhi causing death of many people. The structure was 80 years old whereas its normal life was to be 40-45 years. The municipal corporation of Delhi was responsible for the structure and therefore was held liable. The doctrine res ipsa loquitur (things speak for itself) was applied to this case as according to the facts of the case the Municipal Corporation was solely responsible for the ownership and control of the clock tower and owned the duty of care to the deceased. Thus the corporation was held liable for tort due to negligence.

Negligence in tort does not refer to a state of mind. When a court accuses someone of being negligent it is making an ex post assessment of their conduct. A person who disregards safety of others but does no harm to them is not guilty of negligence, although they may be morally wrong. On the other hand, a person who tries his best, but falls below the standard set by the court and causes damage will be held liable. The standard set by the court is objective. The court will analyse what a reasonable man would have done in the defendant's position.

Some Defences Against the Tort of Negligence

As each and every case and wrongful actions have certain defences, similarly, negligence also has a few defences. They are as follows:

1. **Contributory Negligence** - This defence will apply when the damage which the claimant has suffered was partly caused by their own fault and partly by the defendant's fault. In this defence the defendant has to prove that the claimant failed to take precautions for their own safety and this failure was the cause of their damage. If

² Municipal Corporation of Delhi vs. Subhagwanti and Ors, 1966 AIR 1750, 1966 SCR (3) 649

contributory negligence is well established in the court, then according to the modern law the claimant will have their damages (compensation) reduced by the court in proportion to their fault. **For e.g.** If the claimant would have received Rs. 10,000 as a compensatory amount, but was found to be 25% contributory negligent, then the damages will be reduced to Rs. 7,500. But this is not always the case. In common law, if the court found that the claimant was partially at fault for their injuries, they received nothing at all. In this case, contributory negligence acted as a complete defence. The burden of proof is on the defendant to show-

- a. The claimant failed to take proper care in the circumstances for their own safety.
- b. The failure to take care was a contributory cause to the damage suffered.

In the case of ³**Butterfield vs. Forrester, 1809**, the plaintiff rode his horse violently and collided with a pole which the defendant had negligently left on the road. The obstruction was visible from the distance of 100 yards. It was held that if the plaintiff had used ordinary care the accident would not have happened. The plaintiff was therefore guilty of contributory negligence and could recover nothing.

2. **Act of God** – In a simple sense, Act of God means any act of nature like wind, flood, rainfall, earthquake etc. As in law it means an unprecedented or extraordinary act of nature which cannot reasonably be anticipated. It is such an unexpected force that no human sight could be expected to foresee it. Any act of nature which is:

Unprecedented+ unforeseen+ irresistible = Act of God

In the case of ⁴**Nichols vs. Marsland, 1875**, Marsland was the owner of a series of artificial lakes and Nichols was the surveyor of some country bridges. A very heavy unprecedented rainfall caused the lake to overflow which carried away four bridges of the country due to the force of the water. The plaintiff, on behalf of the country alleged the defendant to be negligent. But it was held that the overflow of water was due to the Act of God. Hence, the defendant cannot be held liable.

³ Butterfield vs. Forrester, 1809 103 E.R. 926

⁴ Nichols vs. Marshland, 1876

Since Act of God amounts to a strong defence, it is necessary to prove that such an event could not have been prevented by reasonable care on the part of the defendant.

3. **Inevitable Accident** – Inevitable accident also works as a defence to negligence. Inevitable accident is that which is physically unavoidable. It is that which could not possibly be prevented by the exercise of reasonable care, caution and skill. If in a lawful act, done with a reasonable care, damage happens due to unavoidable reasons, that damage does not amount to any legal action.

In ⁵**Holmes vs. Mather, 1875**, two horses were been driven by the defendant. But suddenly some dogs started barking there due to which the horses started running very fast. The defendant made all possible efforts to control them but could not do so. The horses went out of control and injured the plaintiff. The defendant was not held liable on account of an inevitable accident.

4. **Volenti Non Fit Injuria** – The Latin maxim “**volenti non fit injuria**” means “**voluntarily suffered injury is not fit for action**”. No man can sue for a tort which he had consented either expressly or impliedly. When the harm is caused because of negligence of the defendant, it gives rise to certain difficulties. The defendant has to show that the claimant assumed the risk of injury in circumstances where the defendant's act would otherwise amount to negligence.
5. **Ex Turpi Causa** – It is the case when the claimant suffers an injury while participating in a criminal activity. In case of negligence the court may find that no duty of care was owed in the situation. For e.g. if the defendant plans a robbery and the plaintiff freely helps the defendant in executing it, if during the robbery the plaintiff sustains an injury due to the negligence of the defendant, it would not amount to any action as the plaintiff participated in a criminal activity.

Conclusion

⁵ Holmes vs. Mather, 1875 LR 10 Ex 261

To conclude, a tort due to negligence is the most common tort under the Tort Law. Generally, the defence for an action due to negligence is a little difficult to prove as the burden of proof lies completely on the defendant that the injury caused to the plaintiff was due to certain unforeseen and unavoidable circumstances or due the negligence of his own actions or involvement in a criminal activity. Though this type of wrongs may not be codified under concrete laws, they indeed hold a lot of weightage and importance which are periodically established through various precedents by the courts.

References

- <http://www.legalservicesindia.com/article/1297/Negligence-As-A-Tort:-Meaning-Essentials-And-Defences.html>
- Municipal Corporation of Delhi vs. Subhagwanti and Ors, 1966 AIR 1750, 1966 SCR (3) 649
- Butterfield vs. Forrester, 1809 103 E.R. 926
- Nichols vs. Marshland, 1876
- Holmes vs. Mather, 1875 LR 10 Ex 261