

Negligent Torts: Damages and Defenses

by Sophia



WHAT'S COVERED

In this lesson, you will learn what can happen once a party has been held liable for a negligent tort. Specifically, this lesson will cover:

1. Damages for Negligence

There are two types of award damages in tort law:

- Compensatory damages
- Punitive damages

1a. Compensatory Damages

Compensatory damages seek to compensate the plaintiff for his or her injuries. Compensatory damages can be awarded for medical injuries, economic injuries (such as loss of a car, property, or income), and **pain and suffering**.

They can also be awarded for past, present, and future losses. While medical and economic damages can be calculated using available standards, pain and suffering is a far more nebulous concept.

Juries are often left to their conscience to decide what amount of money can compensate for pain and suffering, based on the severity and duration of the pain as well as its impacts on the plaintiff's life.



TERMS TO KNOW

Compensatory Damages

A form of monetary award intended to make a victim whole by compensating the victim to place him or her in the position he or she would have been in had the damage not occurred, and nothing more.

Pain and Suffering

Damages in tort actions involving physical distress and discomfort as well as emotional and mental discomfort.

2a. Punitive Damages

Punitive damages work differently. Here, the jury is awarded a sum of money, not to compensate the plaintiff, but to deter the defendant from ever engaging in similar conduct.

The idea behind punitive damages is that compensatory damages may be inadequate to deter future bad conduct, so additional damages are necessary to ensure the defendant corrects his or her ways to prevent future injuries.

Punitive damages are available in cases where the defendant acted with willful and wanton negligence, a higher level of negligence than ordinary negligence.

Bear in mind, however, that there are constitutional limits to the award of punitive damages.



TERM TO KNOW

Punitive Damages

Also referred to as exemplary damages; damages that are awarded to make an example of a plaintiff's wrongdoing on an increased scale above what is compensatory, usually requiring conduct that is violent, oppressive, malicious, or wanton and wicked to compensate the victim for the wrong and also punish the liable party.

2. Defenses to Negligence

A defendant being sued for negligence has three basic affirmative defenses:

- Assumption of risk
- Contributory negligence
- Good Samaritan law

An affirmative defense is one that is raised by the defendant essentially admitting that the four elements for negligence are present, but that the defendant is nonetheless not liable for the tort.

2a. Assumption of Risk

The first defense is **assumption of risk**. If the plaintiff knowingly and voluntarily assumes the risk of participating in a dangerous activity, then the defendant is not liable for injuries incurred.

➞ **EXAMPLE** If you decide to bungee jump, you assume the risk that you might be injured during the jump. It's common for bungee jumpers to experience burst blood vessels in the eye, soreness in the back and neck region, and twisted ankles, so these injuries are not compensable.

On the other hand, you can only assume risks that you know about.

➞ **EXAMPLE** When a person bungee jumps, one of the first steps is for the jump operator to weigh the jumper, so that the length of the bungee can be adjusted accordingly. If this is not done properly, the jumper may overshoot or undershoot the expected bottom of the jump. While you can assume known risks from bungee jumping, you cannot assume unknown risks, such as the risk that a jump operator may negligently calculate the length of the bungee rope.

A related doctrine, the **open and obvious doctrine**, is used to defend against suits by persons injured while on someone else's property.

➞ **EXAMPLE** If there is a spill on a store's floor and the store owner has put up a sign that says, "Caution— Slippery Floor," yet someone decides to run through the spill anyway, then that person would lose a negligence lawsuit if he or she slips and falls because the spill was open and obvious.

Use of the open and obvious doctrine varies widely by state, with some states allowing it to be used in a wide variety of premises liability cases, and other states circumventing its usefulness.

Both the assumption of risk and open and obvious defenses are not available to a defendant who caused a dangerous situation in the first place.

➔ **EXAMPLE** If you negligently start a house fire while playing with matches and evacuate the house with your roommates, and one of your roommates decides to reenter the burning house to rescue someone else, you cannot rely on assumption of risk as a defense since you started the fire.



TERMS TO KNOW

Assumption of Risk

A defense to tort liability where the plaintiff assumes the risk of an activity, such as when a person attends a baseball game and is hit with a ball.

Open and Obvious Doctrine

A defense to premises liability that states the landowner is not liable because the hazardous condition would be discovered and avoided by any reasonable person.

2b. Contributory Negligence

The second defense to negligence is to allege that the plaintiff's own negligence contributed to his or her injuries. In a state that follows the **contributory negligence** rule, a plaintiff's own negligence, no matter how minor, bars the plaintiff from any recovery.

This is a fairly harsh rule, so most states follow the **comparative negligence** rule instead. Under this rule, the jury is asked to determine to what extent the plaintiff is at fault, and the plaintiff's total recovery is then reduced by that percentage.

➔ **EXAMPLE** If you jaywalk across the street during a torrential thunderstorm and a speeding car strikes you, a jury may determine that you are 20 percent at fault for your injuries. If the jury decides that your total compensatory damage award is \$1 million, then the award will be reduced by \$200,000 to account for your own negligence.



TERM TO KNOW

Contributory Negligence

A defense to a tort action alleging that the defendant's negligence also caused the harm. Depending upon state law, it may reduce or even negate plaintiff's claim for damages.

Comparative Negligence

A defense to a tort action involving the defendant's negligence that measures negligence in terms of percentage and reduces any award proportionately.

2c. Good Samaritan Law

Finally, in some situations, the **Good Samaritan law** may be a defense in a negligence suit. Good Samaritan statutes are designed to remove any hesitation a bystander in an accident may have to providing first aid or other assistance.

They vary widely by state, but most provide immunity from negligent acts that take place while the defendant is rendering emergency medical assistance.

Most states limit Good Samaritan laws to laypersons (i.e., police, emergency medical service providers, and other first responders are still liable if they act negligently) and to medical actions only.



TERM TO KNOW

Good Samaritan Law

Typically provided by statute in most states, a law that protects from liability a volunteer rescuer whose negligence is not helpful so long as the rescuer uses reasonable care.



SUMMARY

In this lesson, you learned that two types of **damages for negligence** are awarded: **compensatory damages** (to compensate the plaintiff for physical, emotional, or economic injuries) and **punitive damages** (to deter the defendant from engaging in similar conduct in the future). There are three affirmative **defenses to claims of negligence**, including the **assumption of risk** and **contributory negligence** on the part of the plaintiff. The **Good Samaritan law** also protects laypersons (but not professional first responders) who unintentionally inflict harm while providing assistance in an emergency.

Best of luck in your learning!

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