

# Negligent Torts: Liability

by Sophia



## WHAT'S COVERED

In this lesson, you will learn about negligent torts and how parties can be held liable for them. Specifically, this lesson will cover:

## 1. Determining Liability for Negligence

There are two components to tort cases:

- Liability— Should the defendant be held responsible?
- Damages— If so, how should the plaintiff be compensated?

### IN CONTEXT

**Consider the case of Colgan Air Flight 3407.** Ordinarily, we don't expect perfectly good airplanes to fall out of the sky for no reason. When it happens, and it turns out that the reason was carelessness or a failure to act reasonably, then the tort of negligence may apply.

All persons, as established by state tort law, have the duty to act reasonably and to exercise a reasonable amount of care in their dealings and interactions with others. Breach of that duty, which causes injury, is negligence.

Negligence is distinguished from intentional torts because there is a lack of intent to cause harm.

➞ **EXAMPLE** If a pilot intentionally crashed an airplane and harmed others, the tort committed may be assault or battery. When there is no intent to harm, then negligence would more likely apply and hold the pilot or the airline liable, for being careless or for failure to exercise due care.

Note that the definition of negligence is purposefully broad. Negligence is about breaching the duty we owe others, as determined by state tort law. This duty is often broader than the duties imposed by law.

➞ **EXAMPLE** Colgan Air may have been fully compliant with applicable laws passed by Congress while still being negligent.

In a way, the law of negligence is an expression of democracy at the community and local level, because ultimately, citizen juries (as opposed to legislatures) decide what conduct leads to liability.

To prove negligence, plaintiffs have to demonstrate that four elements are present:

1. That the defendant owed a duty to the plaintiff
2. That the defendant breached that duty
3. That the defendant's conduct caused the injuries
4. That the injuries are legally recognizable

We'll address each of these elements in turn.

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## 2. Duty of Care

First, the plaintiff has to demonstrate that the defendant owed him or her **duty of care**. The general rule in our society is that people are free to act any way they want to, as long as they don't infringe on the freedoms or interests of others.

That means that you don't owe anyone a special duty to help them in any way.

➞ **EXAMPLE** If you're driving along a deserted rural highway at night in a snowstorm, and you see a car ahead of you fishtail and drive into a ditch, you are entitled to keep driving and do nothing, not even report the accident, because you don't owe that driver any special duty. On the other hand, if you ran a stop sign, which then caused the other driver to drive into a ditch, you would owe that driver a duty of care.

Another way to look at duty is to consider whether or not the plaintiff is a foreseeable plaintiff. In other words, if the risk of harm is foreseeable, then the duty exists.

➞ **EXAMPLE** Take the act of littering with a banana peel. If you carelessly throw away a banana peel, then it is foreseeable that someone walking along may slip on it and fall, causing injuries. Under tort law, by throwing away the banana peel you now owe a duty to anyone who may be walking nearby because any of those persons might foreseeably step on the peel and slip.

An emerging area in tort law is whether or not businesses have a duty to warn customers of, or protect customers from, random crimes committed by other customers. By definition, crimes are random and therefore not foreseeable.

However, some cases have determined that if a business knows about, or should know about, a high likelihood of crime occurring, then that business must warn or take steps to protect its customers.

### IN CONTEXT

In one case, a state Supreme Court held that when a worker at Burger King ignored a group of boisterous and loud teenagers, Burger King was liable when those teenagers then assaulted other customers. *Iannelli v. Burger King Corp.*, 145 N.H. 190 (2000).

In another case, the Las Vegas Hilton was held liable for sexual assault committed by a group of naval aviators because evidence at trial revealed that the hotel was aware of a history of sexual misconduct by the group involved.

The concept of duty is broad and extends beyond those in immediate physical proximity.

## CASE STUDY: *Weirum v. RKO General*

In a famous case from California, a radio station with a large teenage audience held a contest with a mobile DJ announcing clues to his locations as he moved around the city. The first listener to figure out his location and reach him earned a cash prize. One particular listener, a minor, was rushing toward the DJ when the listener negligently caused a car accident, killing the other driver. During a negligence trial, the radio station argued that hindsight is not foreseeability and that the station therefore did not owe the dead driver a duty of care.

The California Supreme Court held that when the radio station started the contest, it was foreseeable that a young and inexperienced driver may drive negligently to claim the prize and that therefore a duty of care existed. Radio stations should thus be very careful when running promotional contests to ensure that foreseeable deaths or injuries are prevented. *Weirum v. RKO General*, 15 Cal.3d 40 (1975).

This lesson apparently eluded Sacramento station KDND, which in 2007 held a contest titled “Hold Your Wee for a Wii.” Contestants were asked to drink a large amount of water without going to the bathroom for the chance of winning a game console. An otherwise healthy twenty-eight-year-old mother died of water intoxication hours after the contest, which led to a lawsuit and a \$16 million jury verdict.

The general rules surrounding when a duty exists can be modified in special situations.

➔ **EXAMPLE** Landowners owe a duty to exercise reasonable care to protect persons on their property from foreseeable harm, even if those persons are trespassers. If you are aware of a weak step or a faucet that dispenses only scalding hot water, you must take steps to warn guests about those known dangers.

Businesses owe a duty to exercise a reasonable degree of care to protect the public from foreseeable risks that the owner knows or should know about.

➔ **EXAMPLE** There are many foreseeable ways for customers to be injured in retail stores, from falling objects improperly placed on high shelves, to light fixtures exploding or falling due to improper installation, to accidents caused by forklifts in so-called warehouse stores.

One particular area of concern for businesses is liquid on walking surfaces, which can be very dangerous. Spilled product (milk, orange juice, wine, etc.), melted ice or snow, or rain can cause slick situations, and if a store knows about such a condition, or should know about it, then the store must quickly warn customers and remedy the situation.

Business professionals such as doctors, accountants, dentists, architects, and lawyers owe a special duty to act as a **reasonable person** in their profession. Professional negligence by these professionals is known as malpractice.



### TERMS TO KNOW

#### Duty of Care

In tort cases, liability is based on the particular duty of care owed to another person requiring one to conduct him, her, or itself (in the case of a corporation) in a particular manner to avoid liability.

Such a duty varies depending upon the relationship. For example, a Good Samaritan owes a duty of reasonable care towards a person she tries to rescue; whereas, a common carrier such as an airline owes a heightened duty of care towards its passengers.

#### Reasonable Person

Formerly referred to as the “reasonable man,” this term is now gender neutral and refers to the standard one must follow in order to avoid liability for negligence in all circumstances including the ability to foresee harm that might result from one’s actions.

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## 3. Breach of Duty

Once duty has been established, negligence plaintiffs have to demonstrate that the defendant breached that duty.

A breach is demonstrated by showing the defendant failed to act reasonably, when compared with a reasonable person.

It’s important to keep in mind that this reasonable person is hypothetical and does not actually exist. This reasonable person is never tired, sleepy, angry, or intoxicated. He or she is reasonably careful— not taking every single precaution to prevent accidents, but considering his or her actions and consequences carefully before proceeding.

In reality, once a duty has been established, the presence of injury or harm is usually enough to satisfy the **breach of duty** requirement.



#### TERM TO KNOW

##### Breach of Duty

Any omission of a legal or moral duty, particularly with regard to an act done with negligence, oversight, or forgetfulness.

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## 4. Causation

The third element of negligence is **causation**. In deciding whether there is causation, courts have to consider two questions.



#### TERM TO KNOW

##### Causation

Important in torts involving negligence, the act complained of must be the actual cause of any harm that follows.

#### 4a. Causation-in-Fact

First, courts query as to whether there is causation-in-fact, also known as **but-for causation**. This form of causation is fairly easy to prove.

But for the defendant’s actions, would the plaintiff have been injured? If yes, then but-for causation is proven.

➔ **EXAMPLE** If you are texting while driving and you hit a pedestrian because your attention was diverted, then but-for causation is easily met; “but for” your actions of texting while driving, you would not have hit the pedestrian.



#### TERM TO KNOW

##### **But-For Causation**

A type of test for causation in determining tort liability that asks whether the plaintiff would not have suffered harm “but for” the action of the defendant.

## **4b. Proximate Cause**

The second question is tougher to establish. It asks whether the defendant’s actions were the **proximate cause** of the plaintiff’s injury. In asking this question, courts are expressing a concern that causation-in-fact can be taken to a logical but extreme conclusion.

### **IN CONTEXT**

If a speeding truck driver crashes his or her rig and causes the interstate highway to be shut down for several hours, causing you to become stuck in traffic and miss an important interview, you could argue that but for the truck driver’s negligence, you may have landed a new job.

It would not be fair, however, to hold the truck driver liable for all the missed appointments and meetings caused by a subsequent traffic jam after the crash. At some point, the law has to break the chain of causation. The truck driver may be liable for injuries caused in the crash, but not beyond the crash. This is proximate causation.

In determining whether proximate cause exists, we once again use the foreseeability test, already used for determining whether duty exists. If an injury is foreseeable, then proximate cause exists. If it is unforeseeable, then it does not.

In some cases, it can be difficult to pinpoint a particular source for a product, which then makes proving causation difficult. This is particularly true in mass tort cases where victims may have been exposed to dangerous substances from multiple sources over a number of years.

### **IN CONTEXT**

Assume that you have been taking a vitamin supplement for a number of years, buying the supplement from different companies that sell it. After a while, the government announces that this supplement can be harmful to health and orders sales to stop. You find out that your health has been affected by this supplement and decide to file a tort lawsuit. The problem is that you don’t know which manufacturer’s supplement caused you to fall ill, so you cannot prove any specific manufacturer caused your illness.

Under the doctrine of joint and several liability, however, you don’t have to identify the specific manufacturer that sold you the drug that made you ill. You can simply sue one, two, or all manufacturers of the supplement, and any of the defendants are then liable for the entirety of your damages if they are found liable. This doctrine has been used in cases involving asbestos

production and distribution.



#### TERM TO KNOW

##### Proximate Cause

A cause that plays a substantial part in harm that falls upon a plaintiff; such cause is unbroken by any other intervening cause, and the harm would not have occurred without it.

## 5. Legally Recognizable Injuries

The final element in negligence is legally recognizable injuries.

➔ **EXAMPLE** If someone walks on a discarded banana peel and doesn't slip or fall, then there is no tort.

If someone has been injured, then damages may be awarded to compensate for those injuries. These damages take the form of money, as there is nothing tort law can do to bring back the dead or regrow lost limbs, and tort law does not allow for incarceration.

Money is therefore the only appropriate measure of damages, and it is left to the jury to decide how much money a plaintiff should be awarded.



#### SUMMARY

In this lesson, you learned that negligent liability arises when a person fails to exercise a reasonable **duty of care** toward others. **Determining liability for negligence** involves proving that the defendant owed a duty of care to the plaintiff, and that the defendant **breached that duty**. The plaintiff must also prove **causation** between the defendant's actions and the harm suffered, a determination that is reached by testing for **causation-in-fact** and **proximate cause**. Finally, the plaintiff must have **legally recognizable injuries** for a negligent tort.

Best of luck in your learning!

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