Introduction to Negligence

Where the laws of intentional torts allow a plaintiff to sue for harm the defendant caused on purpose, the laws of negligence allow a plaintiff to sue for harm the defendant caused either by accident or through reckless behavior. With that in mind, please keep negligence in the back of your mind when you are analyzing a scenario involving intentional torts because you may find that a plaintiff will be able to recover in negligence even if he cannot recover for an intentional tort. For example:

Bruce Wayne is the head librarian at the Gotham City Library. Bruce hires Peter Parker, a private security guard, to monitor the library at night. Peter’s job is to walk through the library at closing time to make sure no patrons are still in the building and then lock the doors for the night. One night, Peter locks up like he is supposed to but he forgets to walk through the building first. Unfortunately, Clark Kent, an avid reader, is in the library and does not realize that the library has closed. Because Peter forgot to walk through the building, he does not realize that Clark is still inside and Clark gets locked inside the library for the night. If Clark sues Peter for False Imprisonment, Clark will lose because Peter did not intentionally lock Clark in the library. However, even though Clark will not recover for an intentional tort, he can still sue and possibly recover against Peter for negligently locking him in the library.

The four elements that a plaintiff must prove to win a negligence suit are 1) Duty, 2) Breach, 3) Cause, and 4) Harm. When trying to establish a case for negligence, you must make sure that all four elements have been met:

(1) Duty:
The first step in analyzing a negligence scenario is to establish whether or not the defendant owed the plaintiff a duty. There are two kinds of duty that a defendant could owe the plaintiff. The first is the general "duty of care". The duty of care is simply a duty to conduct yourself as a reasonable person, acting under similar circumstances, would conduct himself. In any negligence suit we look at the defendant’s actions and try to determine whether a reasonable person would have acted the way the defendant acted had the reasonable person been in the same circumstances that the defendant was in. If the defendant’s behavior matches the reasonable man’s behavior the defendant has fulfilled his duty of care. If the defendant’s actions fall below what a court determines the reasonable man’s actions would have been the defendant has breached his duty.

The second duty is a "special duty" imposed by statute or case law which may exist either in addition to, or in place of the regular duty of care. For example:

A state passes a law requiring all home owners to shovel snow from the sidewalks in front of their houses. Thanks to this law, every home owner in the state has a special duty to all pedestrians to make sure that his sidewalks are clear of snow.

In order to determine duty you must look at the relationship between the plaintiff and the defendant and identify whether or not, based on that relationship, the defendant owed duty to the plaintiff.

(2) Breach
Once you have determined the existence of a duty, you must determine whether or not the defendant has breached his duty. A defendant can breach his duty both by acting in a certain manner or by failing to act in a certain manner. That is to say, a defendant can breach his duty either by acting in a manner that violates the reasonable man test, or by not acting in a situation where he is legally required to act.

(3) Cause
Once you have demonstrated that the defendant owed a duty to the plaintiff and that the defendant breached that duty, you must show that the breach was both the actual and proximate cause of the plaintiff’s harm.

(4) Harm
Finally, you must show that the plaintiff suffered harm as a result of the defendant’s breach. If a plaintiff does not suffer harm, he can not sue for negligence. For example:

Hermann is an avid skier. One day, while practicing his slaloming technique, he suffers a bad fall and breaks his right leg. At the hospital, the doctor accidentally casts Hermann’s left leg. The left leg remains in a cast for two months while the broken right leg goes untreated. Somehow, the broken right leg heals by itself and Hermann suffers no harm because of the doctor’s mistake. Because Hermann has not suffered any harm, he will not be able to sue the doctor for negligence.

Please note that, as with intentional torts, there are several possible defenses to a charge of negligence. As the final step in your analysis you must go through these possible defenses to see if the defendant can use one of them to insulate himself from liability.

# Negligence Tort Law

In day to day life, the word ‘negligence’ means nothing else but carelessness. Under the legal sense, it highlights the failure to perform the basic of care which the performer as a reasonable man should perform have in all the situations. In general, there is a legal duty to consider when it can be foreseen that failure to do so can cause harm. Negligence is a mode in which many types of injuries may occur by not considering such suitable precautions. Hence, in this article, we will study the ‘Negligence Tort Law’.



## Definition of Negligence

According to Winfield and Jolowicz “Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.”

Lord Wright states that “Negligence means more than headless or careless conduct, whether in commission or omission; it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owed.”

## Essentials of Negligence Tort

### 1. Duty to Take Care

There is an important condition under the liability for negligence that the defendant owes a legal duty towards the plaintiff. The following case laws will help us to understand the important element.

In Grant v. Australian Knitting Mills Ltd., 1935 AC 85;  From a retailer, the plaintiff purchases two sets of woolen underwear. After wearing it, he suffers from a  skin disease. This problem occurs due to the excess amount of sulphates present in the wool and not removing it at the time of washing it due to the negligence at the time of washing it. In this case, the manufacturers are completely liable as they are not able to perform their duty correctly.

### 2. Duty to whom

Donoghue v. Stevenson, 1932 AC 562, adds further to this idea and expands the scope of duty by stating that the duty so raises extends to our neighbor. While explaining who is my neighbor LORD ATKIN states that the answer must be “the persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question”.

### 3. Duty must be towards the plaintiff

It is not ample that the defendant owes a duty to take care of. A duty should be there, according to which, the defendant should owe a duty of care towards the plaintiff.

### 4. Breach of Duty to take care

One very important condition for the liability in negligence is that the plaintiff must prove that due to the negligence the defendant is not able to perform his duties.

In Municipal Corporation of Delhi v. Subhagwanti, AIR 1966 SC 1750; a number of persons died due the collapsing of a clock-tower in the heart of the Chandni Chowk, Delhi.

The normal life of such structures are normally 40 45 years but the tower was around 80 years old. The Municipal Corporation of Delhi is held liable as it is under their hands and they are not able to take care and perform their duties efficiently.

## Question on Negligence Tort Law

Question: How is ‘Consequent Damage’ an important element of negligence?

Answer: The last important requirement for the tort of negligence is that the damage which happens to the plaintiff will be the result of the breach of the duty. The harm may fall into the following categories:-
1. Firstly, physical harm
2. Secondly, the harm of reputation;
3. Thirdly, harm to property
4. Money or economic loss
5. Lastly, mental harm or nervous shock.