

Chapter VII: Torts Law

Unintentional torts:
Negligence, Strict Liability and
Product Liability

Negligence

Unintentional torts: Negligence

- The tort of negligence occurs when **someone suffers injury** because of **another's failure** to live up **to a required duty of care**.
- In **negligence action** you must prove each of the following:
 1. **Duty.** That the defendant “ the wrongdoer” owed a duty of care to the plaintiff “ the injured person”.
 2. **Breach.** That the defendant “ the wrongdoer” breached that duty.
 3. **Causation.** That the defendant's breach caused the plaintiff's injury.
 4. **Damage .** That the plaintiff suffered a legally recognizable Injury, damage or loss.

Negligence conditions: 1. Duty

- **Concept** : That the **defendant owed a duty of care** to the plaintiff and
➤ **to warn** against **foreseeable risks** about **which he knew or should have known**.
- **Defense: Obvious Risks**
- But even if a risk is obvious, that **does not necessarily excuse** a business owner from the duty to protect its customers from foreseeable harm.
(ex: children)

Negligence conditions:2. Breach

- A breach of the duty of care is determined on a **case-by-case** basis : (**reasonable person standard**) It is society's judgment of how an **ordinarily prudent** person *should* act in same conditions .
- **Degree of care** to be exercised varies, depending on the defendant's profession, her or his relationship with the plaintiff, and other factors.

Negligence conditions:3. Causation

- In deciding whether the requirement of causation is met, the court must address **two questions**:
 1. **causation in Fact:** Did the **injury** occur **because of the defendant's act**, or would it have occurred anyway?
 - defendant's breach caused the plaintiff's injury.
 2. **Proximate cause:** Was the act the proximate, or legal, cause of the injury?
 - defendant's **actions** created a **foreseeable risk of injury**.

Case

Ackerman carelessly leaves a campfire burning. The fire not only **burns down the forest** but also sets off an **explosion in a nearby chemical plant** that **spills chemicals into a river**, killing all the fish for a hundred miles downstream and **ruining the economy of a tourist resort**.

Should Ackerman be liable to the resort owners? To the tourists whose vacations were ruined?

Answer

Ackerman will be liable to the resort owners and the tourists whose vacations were ruined based on the negligence tort. All the elements of negligence tort are met. Ackerman breached his duty of care by leaving the campfire burning. This breach was the cause of ruining the economy of the tourist resort and also of running the tourists' vacations. This breach was the legal proximate cause of the damage because it created a foreseeable risk of injury.


Negligence conditions:4. Damage

- That the plaintiff suffered a legally recognizable injury or loss.
- If **no harm or injury** results from a given negligent action, there is nothing to compensate—and **no tort** exists.

Defenses to Negligence

1. the plaintiffs have **failed to prove the existence of one or more of the required elements for negligence.**

2. **Assumption of Risk :**

 A plaintiff who voluntarily enters into a risky place or situation, knowing the risk involved, cannot sue the business owner for negligence

(1) knowledge of the risk by the plaintiff (victim)

and

(2) voluntary assumption of the risk by the plaintiff (victim)

Case

- Delinda Taylor, who was a Seattle Mariners fan, took her sons to see a Mariners baseball game. They arrived early so that they could watch the players warm up and get their autographs. Taylor was standing by her seat near the foul line watching Mariners' pitcher Freddie Garcia throwing the ball with another player. When she looked away from the field, an errant ball got past Garcia and struck Taylor in the face, causing serious injuries. She filed a negligence lawsuit against the Mariners (Baseball Club of Seattle) to recover for her injuries. The Mariners asserted the defense of assumption of risk.

Advise Delinda Taylor.

Answer

- The court ruled that Taylor was familiar with baseball and that she knew about and had voluntarily assumed the risk of getting hit by a thrown baseball. The Mariners won the case by raising the defense of assumption of risk.

Strict Liability

Strict Liability: liability without fault

- **Concept:** people may be liable for the results of their acts **regardless** of their **intentions** or their exercise of **reasonable care** to protect consumers
- **Application:**
 1. **abnormally dangerous activities** involve a **high risk** of serious harm to persons or property that **cannot be completely guarded against by the exercise of reasonable care**. ex: (storing explosives)
 2. **Keeping wild animals**
 3. **Product liability**

Product Liability

Product liability Actions

- **Concept:** Those who make, sell, or lease goods can be held liable for physical harm or property damage **caused by those goods to a consumer, user, or bystander**

1. Action Based on Negligence:

- If a manufacturer fails to exercise “**due care**” to make a product safe, a person who is injured by the product may sue the manufacturer for negligence
- the plaintiff and the defendant need **not** be directly involved in a **contractual relationship** with one another.

2. Action Based on Misrepresentation: must be of a **material fact**, and the **seller must have intended to induce the buyer's** reliance on the misrepresentation on labels or advertisement

3. Action Based on Strict Liability

Strict Product Liability Requirements

1. The product must be in a **defective** condition when the **defendant sells or distributes** it
2. The product must be **unreasonably dangerous** to the user or consumer **because** of its **defective** condition if :
 - a. The product was **dangerous beyond the expectation** of the ordinary consumer or
 - b. a **less dangerous** alternative was economically **feasible** for the manufacturer, but the manufacturer **failed to produce it**.

Strict Product Liability Requirements

3. The plaintiff must suffer **physical harm** to self or property **by use** or **consumption** of the product.
4. The **defective** condition must be the **proximate cause of injury**
5. The **goods** must **not** have been **substantially changed** from the time the product was **sold** to the time the **injury** was sustained.

Product Defects

- **DESIGN DEFECTS:** the product is not reasonably safe when the foreseeable risks of harm posed by the product could have been **reduced or avoided** by the adoption of a **reasonable alternative design**, = a manufacturer or other defendant is liable only when the **harm** was reasonably **preventable** **ex: Toyota case.**
- **MANUFACTURING DEFECTS:** when the **product** **departs from its intended design** even though all possible care was exercised in the preparation and marketing of the product **ex: glass bottle that is made too thin and explodes in a consumer's face**
- **INADEQUATE WARNINGS :** when the **foreseeable risks of harm** posed by the product could have been **reduced** or avoided **by** the provision of reasonable instructions or **warnings** by the seller or other **ex: on shampoo to not swallow, keep out of eyes**

Defenses to Product Liability

1. Assumption of Risk :

➤ the defendant must show that **(1)** the plaintiff **knew** and appreciated the **risk** created by the product defect and **(2)** the plaintiff **voluntarily assumed the risk**.

2. **Obvious Risks:** to the specific plaintiff in the case **ex : warning images to children**

3. Product Misuse

4. **Commonly Known Dangers:** manufacturers need not warn users of those dangers (**sharp knives**)

5. **Knowledgeable User:** If a particular danger is or should be commonly **known by users** of a product the manufacturer need not warn these users of the danger **ex: unhealthful food at McDonald's**

Case

- Sixteen-year-old Gary Crosswhite attempted to do a back flip on a trampoline in his backyard and accidentally landed on his head and neck. The fall fractured his spine and resulted in paraplegia. Crosswhite filed a strict product liability lawsuit against the manufacturer, in which he claimed that the trampoline was defective because of inadequate warnings and instructions. There were nine warning labels affixed to the trampoline, an instruction manual with safety warnings, and a placard attached to the entrance that advised users not to do flips. **Advise Gary**

Answer

- The court found that these warnings were sufficient to make the risks obvious and protect the manufacturer from liability for Crosswhite's injuries.