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Negligence

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The underlying duty

All persons (including companies and other entities) have a duty to act reasonably and to exercise reasonable care in dealing with others.



Breach of the duty



When the duty of care is not followed,
and there is resulting harm (usually
physical injury) → Negligence

- A tort (wrongful infringement of a right)
- Basis for a *civil* claim
- Compensated for with damages

The elements of negligence



1. A duty of care was owed
2. A person/company breached the duty
3. Breach of the duty caused injury

Duty of care was owed



How would a “reasonable person” have acted in the same circumstances?

- Camper: Duty to put out camp fire
- Homeowner: Duty to keep snow off sidewalk
- Food company: Duty to make food that is safe to eat
- Car manufacturer: Duty to make cars that are reasonably safe and not dangerous

Two notes on the duty of care:

- Even careful conduct can breach the duty of care (e.g., careful construction of building using inferior materials).
- Professionals (doctors, lawyers, dentist, architects, etc.) are held to the standard of a reasonable professional with the learning, skill, and knowledge commonly held by members of that profession.



Duty was breached

Courts will generally ask:

- Did the defendant's conduct fall short of what would be expected from a reasonable person?
- Could the defendant have foreseen the risk of harm to the plaintiff?



Breach *caused* injury



1. Was the injury *in fact* caused by the wrongful conduct?
 - Usually a straightforward concept
 - Can be difficult to prove in medical context

2. Was the injury foreseeable, or was it too remote from the wrongful conduct?
 - “Natural and direct” or “proximate” cause so as to legally support liability?

Defenses to negligence



1. Assumption of risk

- Plaintiff understood the risk
- Voluntarily assumed the risk

2. Comparative negligence

- Plaintiff was also negligent
- Recovery should be limited accordingly

Joint & several liability



Two or more parties are held responsible for all of a plaintiff's damages, without regard to each party's actual share of fault.

- Where parties acted in concert to cause the plaintiff's injury
- Still seen in some exposure cases
- Concept also shows up in some statutes

Strict liability



Holding a person or company responsible for damages even if there was no fault or negligence involved.

- Manufacturing defects
- Abnormally dangerous activities, e.g.:
 - Blasting operations
 - Transporting highly combustible material
 - Disposing of chemical waste

Class actions



A type of lawsuit where a named plaintiff sues on behalf of a group of “similarly situated” parties.

- Commonly used where individual damages are too low to bring separate lawsuits
- Class members have opportunity to “opt out”
- Efficient and get a defendant’s attention
- Sometimes results in “coupon settlements”

Tort reform



State-by-state legislation designed to limit recovery in negligence claims and other tort cases.

- Caps on damages (especially medical malpractice)
- Limits on punitive damages
- Higher pleading standards