AILET

Know All About The Tort Of Negligence for CLAT 2021

Aparna Shukla · 08 Jul 2021



You may have come across the word ‘negligence’ many times. It could be in a book or even the newspaper. Negligence, in simple terms, is doing something carelessly or even failing to do something. For instance, various incidents took place in the country wherein certain medical staff injected individuals with the wrong second dose of the Covid-19 vaccines. This is a classic example of negligence. This article deals with the tort of Negligence and its defences.

The tort of Negligence in India is developed by the courts based on Justice, equity and good conscience. The origin of the word ‘Negligence’ lies in the Latin term *Negligentia* which means failing to pick up. In our daily lives, the term negligence is equated with carelessness.

Winfield defined Negligence as ‘the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.’

In simple words, the tort of Negligence makes sure that in case a person fails to exercise the due reasonable care that a reasonable person should have exercised, then he will be punished for it.

Such failure must cause injury to a person to make the negligence punishable.

Essential Elements of Tort of Negligence

1. Duty of Care

Before the tort of Negligence is established, the court needs to determine whether the accused owed a **duty of care** towards the affected party or not.

Duty of care as per a dictionary definition means, “a moral or legal obligation to ensure the safety or well-being of others.”

This duty of care need **not be necessarily a legal duty.** Rather it could be reasonable care that a person was expected to take in such circumstances.

Illustration: ‘A’ was loading bricks in a truck and accidentally a few bricks fell on the head of a child standing near the truck. Here, ‘A’ owed a duty of care towards the child if it was a public place.

2. Breach of Duty

The next step is that the duty which was owed to the other person, wasn’t fulfilled. The duty breached must be by the absence of the exercise of **reasonable care** by the accused. Also, the injury caused due to such breach should also be **foreseeable**.

Breach of the duty of care must be caused by the accused to claim compensation for Negligence.
Illustration: ‘A’ was loading bricks in a truck and accidentally a few bricks fell on the head of a child standing near the truck. Here, the court would determine whether ‘A’ exercised reasonable care in loading the bricks in the truck.

3. Injury

An **injury** must be caused to the plaintiff because of the breach of duty. A **‘but for’** test is conducted for this i.e. ‘but for’ the breach of duty, such injury would have not been caused to the plaintiff.

Illustration: ‘A’ was loading bricks in a truck and accidentally a few bricks fell on the head of a child standing near the truck. Here, the point worth examining is whether the child’s head would have been injured if ‘A’ would have not breached the duty.

Another point that you must keep in mind is that the accused will be liable for only such injury which could have been foreseen in case of breach of that duty.

Illustration: Illustration: ‘A’ was loading bricks in a truck and accidentally a few bricks fell on the head of a child standing near the truck. It was negligent and it caused injury on the head of the child. Listening to this news, the child’s grandmother passed away. Here, ‘A’ is responsible only for a child’s injury and not grandmother’s death as it was not a foreseeable consequence.



Defences to the Tort of Negligence

1. Inevitable accident: This defence refers to the situation where even if the reasonable care and caution were exercised by the accused, the injury could not have been avoided. For instance, if a person is driving a car responsibly but suddenly due to some mechanical fault, the car hits a person on the road, the incident would be termed as an inevitable accident.
2. Contributory Negligence: In any case where the plaintiff’s negligence also played a role in the injury, he cannot recover compensation for it. For instance, in the car illustration if the individual was driving rashly and the individual he hit was jaywalking, it would be a case of contributory negligence. But here, Last Opportunity Rule comes into play. If the plaintiff can show that the defendant had the last opportunity to avoid the act/ accident that caused the injury, the plaintiff will be able to recover the damages. So if the person could show that the car driver could have applied the brakes in time, his suit would still succeed.
3. Act of God: This defence can be used in situations where the act of nature could not have been predicted or prevented by human foresight or any human skill. For example Earthquakes.

Here are some sample questions for you to check your understanding of the concept:

Using the given principle and its explanation attempt the following questions:

Principle: Every person is under the obligation to exercise reasonable care so as to not to cause damage to another person or the property of others.
Explanation: No person can bring a suit for negligence if his act has directly contributed to the damage caused to him.

1. Facts: The Municipal Corporation of a city was reconstructing a water pipeline. A newly constructed water tank was left open to be dried up. The boundary of the same was clearly marked and the road was well lit. A, a drunkard fell inside the tank and received some injuries. He sued the Municipal Corporation for negligence and claimed damages. Choose whether: A. A can claim damages as the MC failed to exercise reasonable care. B. A cannot claim damages as he directly contributed to the damage caused. C. A cannot claim damages as the MC is a statutory body. D. A can claim damages because he was injured due to the negligence of the MC.
2. Facts: Ram works with petroleum products. One day a truck driver complained to Ram about a leakage in the diesel container. After emptying the container, he called Raju to weld the leakage gap. Upon Ram's assurance that the container was empty and completely dry, Raju started welding. The container caught fire immediately which resulted in several burn injuries to Raju. Upon a suit for negligence, confirm whether his claim against Ram will: A. Succeed as Ram failed to exercise reasonable care to confirm that the diesel container was dried up. B. Fail as Raju directly contributed to the injury caused. C. Fail as Raju did not wear protective gear before welding. D. Succeed as the injury was caused in the course of employment.

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