AILET

Legal Aptitude for CLAT: Law of Torts: Negligence

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Negligence is a civil tort which occurs when a person breaches his duty of care which he owed to another due to which that other person suffers some hard or undergoes some legal injury.

In layman's terms, Negligence can be explained as the failure of discharge or the omission to do something due to careless behaviour.

In tort law negligence can be:

- A mode of committing other torts like trespass or nuisance
- A separate tort in itself

Essentials of Negligence

- Duty of Care: The plaintiff needs to prove that the defendant owed him a duty of care and made a breach of the same. The nature of duty for negligence is purely legal and not moral or religious. 'Duty' can be seen as an obligation to be careful towards others.
- Breach of Duty: When the first condition is established, the second step is to establish that there was a breach of duty. The defendant is supposed to carry out his duty like a reasonable man. The deciding test is to see whether the defendant has taken reasonable care or not.
- Damage: As a result of the breach of duty by the defendant, the plaintiff must suffer some damage.

Donoghue v Stevenson [case law]

Donoghue v Stevenson is a landmark case on the tort of Negligence. In this case, the plaintiff had gone to a cafe to have a ginger beer, the bottle of which was sealed with an opaque cork. On emptying the contents of the bottle, a decomposed body of a snail came out, The plaintiff was taken ill due to the part consumption of the contaminated contents of the bottle.

It was held by the court that the manufacturer who manufactures the product for the end consumer with the assumption that with the lack of reasonable care in his part the consumer will suffer an injury, such a manufacturer owes a duty of care to the plaintiff.

Medical Negligence

A person is expected to possess the required skill and understanding of his duties when he is in a particular profession. Especially in the medical profession where the stakes are very high, a huge onus lies on the practitioner to take care while choosing and administering a particular treatment for his patient.

A breach of this duty amounts to medical negligence.

Eg: A doctor administers anaesthesia to a patient before surgery but the amount of anaesthesia is significantly more than the average dosage for an adult. This causes the death of the patient, this amounts to medical negligence.

Res Ipsa Loquitor

Generally, in cases of negligence, the onus of proof lies on the plaintiff. It is the plaintiff's job to prove that the defendant had not only been negligent but it also caused damage to the plaintiff.

In some cases, there is no need for it, the occurrence of such negligence suffices. It is in these circumstances that the principle of '***Res Ipsa Loquitor***' is invoked, the meaning of which is ' things speak for themselves'.

In cases where the circumstances themselves point towards the defendants for his negligence, the court presumes that the defendant was negligent and the damage was caused to the plaintiff due to his wrongful actions.

Eg: A doctor leaves his watch inside the stomach of the patient after he performs surgery. If such a case comes to the court, the circumstances speak for themselves and the defendant is presumed guilty.