BLOGS

Negligence under Tort Law

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This article will look at Negligence under Tort Law, its elements and the defenses available against the Tort of Negligence.

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Negligence under Tort Law

Negligence is derived from the Latin word 'Negligentia' which means disregard. When a person who has a duty to do something fails to do the act or fails to do the act properly, it is termed negligence. In ***Blyth v. Birmingham Water Works Co***, negligence was defined as the omission to do something which a reasonable man would do or doing something which a prudent or reasonable man would not do. There can be many forms of negligence; however, the most commonly known is medical negligence. Negligence is essentially a violation of the duty of care which causes damages.

Forms of Negligence

- Nonfeasance: It means the act of failure to do something which a person should have done. eg: a lifeguard not saving a downing child while he's on duty.
- Misfeasance: It means the act of not doing an action properly when it should have been done properly. eg: A surgeon leaving a pair of scissors after operating on a patient
- Malfeasance: It means the act of doing something which should not have been done in the first place itself. eg: Trespassing onto someone's property.

Components of Negligence

1. A duty of care towards the plaintiff
2. Breach of the duty

3. Consequential harm to the plaintiff

It is important to note that the duty of care should be a legal duty, it cannot be a general or moral duty. For example, if during a road accident, a passer-by does not take the injured to a hospital, they cannot be sued for negligence because they did not have a legal duty to do the same, although it was a moral duty. However, if a doctor fails to perform an operation properly, because it was their legal and professional duty to do so, they can be sued for negligence.

Duty of care towards the plaintiff has to be reasonable in nature. The snail in the bottle case, ***Donoghue v. Stevenson***, is perhaps the most famous case related to negligence. Here, a woman who found a dead snail in her bottle of ginger ale after she had already consumed half of it. She fell ill and sued the manufacturers for negligence. It was established that manufacturers have a duty of care towards end customers.

A famous case related to medical negligence is ***Roe v. Minister of Health***, where the Court held that the doctor shall not be liable for negligence if they have taken all the reasonable care and if the risk is not foreseeable. In this case, a spinal anesthetic that was contaminated had been administered to patients.

The defendant must breach the duty of care by failing to act as a reasonable person would under similar circumstances. This breach can involve an action or a failure to act. In breach of duty, defendant is only liable in reasonably foreseeable circumstances and not in exceptional circumstances. In the case of ***Blyth v. Birmingham Waterworks Company***, the defendants, Birmingham Waterworks Company, had been incorporated by statute for the purpose of supplying Birmingham with water. The Company had installed a fireplug into the hydrant near the plaintiff's house and the plug failed during a severe frost in winter causing a flood and damage to the plaintiff's house. The Court held that the severe frost was something that the Company could not have anticipated and Birmingham had not seen such a cold winter in a long time. This rendered the event unforeseeable and therefore, Birmingham Waterworks Company could only have been negligent if they had failed to do what a reasonable person would do in the circumstances.

Consequential harm can be of the following types: Bodily harm, harm to reputation, harm to reputation, financial and mental harm. In case of consequential harm to plaintiff, the plaintiff has to prove that the breach of duty by the defendant was the actual and proximate cause of the harm caused.

Tests to Determine if the Harm was Caused by the Breach

There are two tests to determine if the harm was caused by the breach:

(i) "But for" test : In this test, let's say an act is thought to have caused some harm. The plaintiff here has to prove that the harm would not have occurred if not for the act.
(ii) Substantial Factor test: "Substantial Factor" test states that as long as a defendant's actions were a substantial factor in the crime, the defendant can be found guilty.

Defences Available in Cases of Negligence

- Contributory negligence by the plaintiff: In this case, the immediate cause of the damage is the negligence of the plaintiff himself. Therefore, the plaintiff cannot sue the defendant for damages and the defendant can use the action of the as a defense.
- Act of God: An act of God/ Force Majeure is an event that is beyond the control of human capacity and is therefore not something any human can be held liable for.
- Inevitable Accident: An inevitable accident refers to an accident that had no chance of being prevented by the exercise of reasonable care by a prudent man.

Conclusion

Negligence is a fundamental concept in tort law, forming the basis for claims of civil liability when someone's careless or reckless behavior causes harm to another person. The standard of care required in negligence cases varies depending on the circumstances. It is determined by considering factors such as the nature of the defendant's conduct, the foreseeable risks involved, the likelihood of harm, and the knowledge or expertise of the defendant. Understanding the elements of negligence and the standards of care applicable in different situations is essential for both plaintiffs seeking compensation and defendants defending against claims of negligence.

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