



Session 30

Tort Law 2

Negligence and intent

Negligence and intent

Negligence occurs when the following three conditions are satisfied

- The action is unintentional
- The action is unplanned
- An injury results

Example: if one does not clear a slippery sidewalk where one should have done so, and someone gets injured, there is negligence.

Negligence and intent (cont.)

Intent occurs when the following conditions are satisfied

- The action is intentional
- The action is unplanned
- An injury results

Example: if one punches another there is intent as that person desired this action and caused an injury as a result.

The above show that in the absence of injury, a certain degree of interference with rights does not result in tort.

Elements in a negligence suit

In a negligence suit the following take place:

- Establishing the duty of care i.e. the legal duty that has been place upon us in that our actions must not cause harm to others or their assets.
- Establishing whether there is breach of the duty of care, i.e. that the defendant has failed to meet the expected standard of care or a reasonable person[1].
- Establishing the direct causal relationship between the defendant's behavior and the injury as effect.
- Establishing that injury has indeed occurred.

[1] The principle of 'reasonableness' is based on that of 'foreseeability' in that a reasonable person in similar circumstances can foresee the injury to a victim as a result on one's action.

Defense in a negligence suit

In a negligence suit, defendants may adopt any of the following strategies:

- Contributory negligence to argue and show the extent to which the plaintiff is to some extent liable for the injury.
- Example: finding in a car accident that the plaintiff and the defendant are liable to a 25-75 proportion respectively (and not 0-100).
- Voluntary assumption of risk to argue and show that the plaintiff has had knowledge of the risks involved and made a choice to assume that risk.
- Example: being hit by a baseball is unlikely to result in a suit given the voluntary assumption of the risks in this game.

Defense in a negligence suit (cont)

- Inevitable accident to argue and show that the situation is unavoidable, no matter what precautions a reasonable person could have taken under the circumstances.
- Example: if lightning strikes a car thereby losing control of it the driver cannot be held liable since under similar circumstances another driver would not have reacted differently to prevent loss of control.

Common unintentional torts

Occupier's liability concerns the responsibility of the occupier (i.e. lessor or lessee) towards:

- Invitees (i.e. people who enter a property for a purpose other than a social visit such as students attending a school, store customers, delivery persons, and service personnel): a high standard of care is expected.
- Licensees (i.e. people who enter a property for a social purpose with the implied permission of the occupier such as friends asked for dinner): a high standard of care is expected but less than that of invitees.

Common unintentional torts (cont)

- Trespasser (i.e. people who enter a property without permission such as burglars or wanderers or even guests who overstay their welcome): if a high standard of care is not expected, a duty of common humanity to act with respect and to act in a safe manner is expected especially when it concerns children who trespass because of allurements.
- Commercial invitee (i.e. people who go to bars and restaurants – extended to include social hosts): a high standard of care is expected in terms of preventing invitees from driving while being intoxicated.

Common unintentional torts (cont.)

Driver's and vehicle owner's liability concerns responsibility of the driver or car owner concerning (Gibson et al., 2003: 352-355):

- Intoxication: a driver is liable for passenger safety and should not be intoxicated; a passenger, who accepts a ride with an intoxicated driver, accepts the risk
- Safety belts: a driver is liable for passenger safety and must incite all passengers to wear a seat belt, (considering that the advantages outweigh the drawbacks of wearing them); a passenger who fails to wear seat belt can be held liable for this action.
- Use by others: owners of a vehicle have the duty of care to lend their vehicle only to those who are competent to drive them safely – vicarious liability

Common unintentional torts (cont.)

Professional liability concerns people's expectations of professionals (i.e. doctors, dentists, engineers, architects, accountants, and lawyers) and the services they provide in that, as experts in their field, they have specialized knowledge, and therefore must exercise a certain standard of care.

Common intentional torts

The following:

- Assault and battery: assault occurs when the victim has reason to believe or fear that bodily harm may occur and battery refers to the follow-through of assault as trespass to another person (i.e. unlawful and intentional touching of a person without that person's consent).
- False imprisonment: involves confining or restraining a person without consent to a particular place but not necessarily a prison.
- Trespassing: the act of entering a property without permission.
- Nuisance: involves one person's unreasonable use of land that interferes with the enjoyment and use of adjoining land

Common intentional torts (cont.)

Defense strategies include:

- Consent, used in cases involving trespass to the person, especially battery, the defendant seeks to establish that the plaintiff willingly consented to action.
- Example: if one agrees to voluntarily play a game and gets injured during the game, this person will not succeed in claiming damages.
- Self-defense, used as long as the force is not excessive and it is reasonable and necessary in the circumstances to prevent injury.
- Example: in the absence of provocation, to strike a blow on another person as the only means of self-protection against imminent threat.

Defamation of character

Defamation of character is an unjustified or untrue attack on a person's reputation and involves:

- Slander: making negative comments through spoken words, sounds, physical gestures or facial expressions – may be unintentional.
- Libel: negative portrayal through permanent visual and audible forms in radio or television broadcasts, publications, cartoons, photographs.

Note that defamatory libel is [criminal](#)

Defamation of character (cont.)

Defense strategies include:

- Prove that the statements presented are true and justified.
- Claim absolute privilege (for members of parliament, government, and courts).
- Claim qualified privilege (for professionals) so long as the statements are made in good faith and without malice.
- Prove the statements are part of a fait comment so long as they are fait and not malicious.