

# Negligent tort research paper sample

[Sociology](#), [Violence](#)



## **Introduction**

Negligent tort refers to the harm caused by a person to another due to the failure to act reasonably towards a person to whom a duty of care is owed. Negligent torts are among the most prevalent types of torts. It is however important to note that negligent torts are not caused by deliberate acts (Owen, 2007). This kind of tort originate when a person or an entity fails to act reasonably leading to personal harm on a person or persons to whom the person or entity owes a duty to. Negligent acts lead to personal injury to an individual or individuals and in other cases monetary damages.

## **Elements of negligent tort**

The elements of negligent tort are:

- A person or entity must owe a duty of care to the victim in question;
- The violator must breach the duty of care;
- the victim must suffer injury as a result of the breach of that duty; and
- The injury suffered must have been reasonably predictable as a consequence of the negligent actions.

With regard to the foregoing, a person alleging negligent tort must be able to prove the foregoing elements if he/she is to succeed in seeking to have a person or entity held liable for the injury suffered. In a nutshell, negligent tort is the carelessness of an individual or entity and failure to exercise prudent actions that any reasonable person would exercise while faced with similar situations. In most instances, car accidents and medical malpractices fall within the negligent tort category.

The principal idea with regard to negligence is that individuals and entities

should always exercise reasonable care while implementing certain policies. This can be done by prior consideration of the potential detriment that certain acts may culminate and which may consequently harm other persons.

## **Negligence**

In tort law, the component of negligence has to be proved in most instances encompassing personal injury claims. For instance, injuries arising from the premises liability actions or motor vehicle injuries are often premised on the notion that the offender was negligent. In such cases, the person alleging must prove that the injury suffered was as a result of the negligent act or omission. This way the claimant is able to prove proximate cause. As such, in personal injuries for a defendant to be held liable the plaintiff must establish negligence as well as proximate cause.

In tort law, there is also an issue of gross negligence. A person or entity is held to have conducted self in gross negligence where the act or omission is so careless that it shows a considerable want of concern for whether harm will result. In certain instances, it is important to establish gross negligence instead of ordinary negligence in order to avoid legal obstacles. For instance, if the person liable for personal injuries is an employee of the government, ordinary negligence may not be enough to find the defendant liable but such an employee remains liable for gross negligence.

Consequently, in a competition a person may sign a release before entering a competition. This is usually for the reason of public policy where most jurisdictions would relate a release only to such conducts that constitute ordinary negligence but not to the acts that have an element of gross

negligence. This approach is usually adopted in order to ensure that a person is not permitted to escape liability where one exercises reckless indifference to the detriment of the wellbeing of others especially where a person creates unsafe conditions or is profiting from such actions. This usually the approach employed by the companies that engage in extremely precarious recreational activities. Where a person engaging in such activities and is injured due to the failure of safety precautions or equipment provided by the company, a valid release may safeguard the company from a possible court case. However, the release does not protect the company where the establishment had prior information that the device is faulty.

With regard to children, a different standard of care to that applied to adults is held. As such, the negligence of a minor is usually assessed against what a reasonable minor of the same age, experience, and mental capacity would have exercised while put in a similar or same set of circumstances.

Nevertheless, very young minors and particularly children under the age of seven are usually presumed as being incapable of negligence. This is because most jurisdictions consider the fact that a minor acts in accordance to and upon childish impulses when considering liability and injuries to minors. A defendant must therefore know or must have known that children were there or were likely to be at the place where the injury occurred. As against a child, the defendant is therefore required to exercise a higher level of vigilance. An example would be where a person is driving near a playground where children often play. Within the vicinity of such places, a driver of an automobile ought to know that a child may unwarily chase a ball into the motorway.

## **Contributory negligence**

Contributory negligence is usually applied in cases where the complainant contributed to his/her own injury. If it is found that the complainant contributed to own injuries he/she is not allowed to recover any damages. This approach usually has punishing consequences and such concerns have led many jurisdictions to abandon the approach. One control that has been adopted in a bid to vindicate the injured person from contributory negligence has been to examine the context upon which the accident occurred and who between the injured person and the accused had the last opportunity to avoid the occurrence of the accident. While using this approach, the injured part is excused from contributor negligence if the accused is found to have had the very last opportunity to avoid the incident but failed to utilize that opportunity to do so.

## **Comparative negligence**

Comparative negligence is usually applied in instances where the injury is not in its entirety as a result of the negligence of the defendant and where the Plaintiff is also at fault. As such, in cases where the comparative negligence is applicable, the award to the injured person is usually abridged in proportion with the fault of the complainant.

## **Proximate cause**

Proximate cause exists in cases where claimant is injured as a consequence of the negligent conduct. As such, the injury to the complainant must have been an expected the probable result of a negligent act. The law of tort postulates the conduct of the defendant not as 'the proximate cause' but as

‘ a proximate cause’ of an accident. However it is important to note that some accidents have more than a single proximate cause. In such cases, the complainant can accuse more than one defendant as having contributed to the injury even where the negligent acts of the defendants were distinct and whether or not the negligent acts of the defendants were concurrent. Alternatively, the injured person may opt to blame one defendant if he/she so wishes even though the injury is a result of varied proximate causes.

## **Vicarious liability**

This is a situation where a person or an entity is held liable for the negligent acts of another. It is usually applied in the context of employment where the employer is held responsible for the negligence of the employees. The employer may therefore be negligent by virtue of the employees’ negligence in service delivery. Likewise, a parent may be held liable for the negligent acts of the child. However it is noteworthy that many jurisdictions have limited and in some cases exempted parental vicarious liability.

## **Conclusion**

The essence of the negligent tort is that a person is subjected to liability for recklessly causing harm to another (Feinman, 2010). The tort of negligence has developed over the years through court pronouncements which have assorted the tort into essential parts of ‘ elements’ which are premised on the failure to exercise due care resulting to injury. The advancement of this tort has culminated to approaches whereby negligence is formulated with regard to duty, breach, cause, and harm. Thus far, courts have established

four elements of negligence but commentators differ on what the four elements should comprise.

## **References**

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