

Tort



Introduction Negligence is characterized as ??? conduct that falls below the level reasonably necessary to protect others against significant risks of harm??? (Mallor, Barnes, Bowers, & Langvardt, 2010, pp.

206). It is a common claim with injury lawsuits (Larson, 2003). To evaluate negligence, the plaintiff must that prove that ???(1) the defendant owed a duty to the plaintiff; (2) the defendant violated that duty; (3) the defendant??TMs violation was the proximate cause of the injury to the plaintiff??? (Mallor, Barnes, Bowers, & Langvardt, 2010, pp. 206). The elements of a negligent tort are vital in the court of law (Larson, 2003). Without all of the elements of a negligent tort met, negligence is unable to be proven (Larson, 2003).

Duty? ? ? ? ? ? ? ? ? ? The first step is to prove the plaintiff was owed a duty from the defendant and that duty was breached (“ Elements of a,”). ??? Such a duty arises when the law recognizes a relationship between the defendant and the plaintiff, and due to this relationship, the defendant is obligated to act in a certain manner toward the plaintiff??? (“ Elements of a,???).

For example, a teacher has a duty to their students, a doctor has a duty to their patients, and an employer has a duty to their employees. If a golfer is hitting balls on the golf course and the wind picks it up and the golf ball hits a random person walking around the golf course, then the golfer may not have had a duty to the random person. Alternately, if the golfer is hitting balls in their neighborhood at home and a random person walking around the neighborhood gets hit with the golf ball, then the golf may have had a duty to the random person.? Proximate Cause??? Proximate cause exists where the plaintiff is injured as the result of negligent conduct, and the

plaintiff's injury must have been a natural and probable result of the negligent conduct (Larson, 2003). Although many proximate causes can contribute to the injury of the plaintiff, only the ones attributed to the defendant have to be proven (Larson, 2003). For example, if it is raining outside, and the floor at the entrance to a supermarket becomes slippery due to water dripping inside, if a customer slips and falls and injures themselves, the grocery store not warning customers of the wet floor and/or drying the floor is a proximate cause to the injury of the person that fell. The rain would also be a proximate cause to the injury, but it would not have to be proven in court.

Within proximate cause comes the but-for rule, which considers whether the injury would not have occurred but for the defendant's negligent act (Duhaime). This is a test used to determine if an action done by the defendant is an actual cause to the injury of the plaintiff. In a case where a child was bitten by a neighbor's dog, it can be said that but for the neighbor letting her dog out the house, the child would not have been bit. Conclusion Negligence has grown to be a tort that was unable to be proven in the court of law to being proven everyday (Mallor, Barnes, Bowers, & Langvardt, 2010, pp. 206).

Although injuries are the most common kinds of damages filed, property damage can also be a damage sought to be recovered from negligence (Larson, 2003). The importance of all the elements is crucial to winning a negligence case. One step cannot exist without the next (Larson, 2003). If it happens to be so that only two of the three elements of negligence are proved, then the incident at hand is not a negligence case. As ambiguous as

the law may be, there is little room for error in proving a negligent tort in front of a judge. References

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