

# NEGLIGENCE

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# NEGLIGENCE

- Negligence is one of the most common tort. It is formulated in 19<sup>th</sup> century.
- In law of torts, negligence may mean
  - A. A state of mind in which a particular tort may committed or
  - B. An independent tort.

# Definitions

- Austin, ‘ Negligence is a faulty mental condition which is penalized by the award of damage.’
- Winfield, ‘as a mental element in tortious liability, negligence usually signifies total or partial inadvertence of the defendant to his conduct and for its consequences.’
- Clark and Lindsell, ‘negligence is the omission to take such care as under the circumstance it is the legal duty of a person to take.’
- Pollock, ‘ negligence is contrary to diligence.’

# Essential condition to sue for negligence

1. The defendant was under a duty of care to the plaintiff.
2. The duty was towards plaintiff
3. There had been a breach of that duty
4. As a result the plaintiff has suffered damage.

# 1. Duty of care काळजी घेण्याची कर्तव्य

- A man may be as negligent as he pleases towards the whole world, if he owes no duty to them. But when a man does any act and he know its consequence, that it is likely to cause any harm to another; then he is having a duty of care towards another persons.
- If a person driving a vehicle, he must be careful and has duty of care towards pedestrian. If a person carrying sharp thing in crowded place, he has a duty of care not to cause injury to people. A manufacturer must take care for consumers. Doctor while operating must take care of patient. The categories of negligence is never closed.

- The duty of care must be one recognized by law.
- Negligence is not a ground of liability unless the person whose conduct is impeached is under a duty of taking care.
- According to Bowen L.J. ‘the idea of negligence and duty are correlative as there is no such thing as negligence in abstract; negligence is simply neglect of some care which we are bound to exercise towards somebody

# Donoghue v. Stevenson

- In this case, a man bought from a retailer a bottle of ginger beer manufactured by the defendant. The man gave the bottle to his lady friend who became ill from drinking the contents. The bottle contained the decomposed remains of a snail. The bottle was opaque so that the noxious substance could not have been seen and was not discovered until the lady was refilling her glass. The consumer sued the manufacturer in negligence. It was held by House of Lords, that manufacturer was liable to the consumer.

- It was also held that, the consumer had no cause of action in contract against either retailer or manufacturer because it was she and not her friend who bought the bottle. Her claim arose in tort e.g. Negligence and the breach of a duty of care owed to herself as a consumer.
- Out of it has come the following broad definition of the duty of care. .
- You must take care reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour,
- My neighbours are the persons who are closely and directly affected by my act that I ought reasonably to have them in contemplations which are called in question.



- The rule enunciated has been applied to a manufacturer of food stuffs, clothing, hair dyes, and similar matters.
- The recognised duties in law are...
- Highway
- Employer's liability
- Professional persons like, doctors, surgeons, solicitors, engineers etc
- Bailees of goods
- Carriers

# Degree of care

- Duty to take care arises as soon as there is a reasonable probability of danger from the conduct of the defendant.
- Not definition of carelessness or negligence is possible; it can only be evaluated in the light of some norm or standard, which the person making evaluation has in mind.
- The required standard of care is not the highest possible standard but the standard of the ordinary average reasonable man if he were placed in the defendant's circumstances.

- The degree of care which a man is required to use in a particular situation varies with the obviousness of the risk. If the possible danger is great; great care is required. If possible danger is slight; slight degree of care is required. The care that will be required of them will be the care that an ordinary prudent man is bound to exercise. The prudent man is the man who has acquired the skill to do the act which he undertakes. A person who profess to have special skill or who have voluntarily undertaken a higher degree of duty are bound to exercise more care than an ordinary prudent man.

## 2. Duty must be owed to the plaintiff

- Mere carelessness on the part of defendant is not enough unless it is shown that, such duty owed to the plaintiff. If defendant owe no duty to the plaintiff; he cannot sue even though he sustained injury.

# 3. Breach of duty of care

- Breach of duty means non observance of due care which is required in particular situation. What standard of care is required? It is that of a reasonable man or an ordinary prudent man. For this following things are considered
  1. Importance of the object to be attained,
  2. The magnitude of the risk,
  3. The amount of consideration for which services etc are offered.

# 4. Damage

- It is necessary that defendant's act has caused actual damage to plaintiff. And plaintiff has to prove that damage to him is immediate result of defendant's act and it is not remote.

# Res Ipsa Loquitur

- In a suit for negligence, plaintiff has to prove following facts so as to get remedy...
- 1. The defendant was under a duty of care to the plaintiff.
- 2. The duty was towards plaintiff
- 3. There had been a breach of that duty
- 4. As a result the plaintiff has suffered damage.

- Plaintiff has to show proof of negligence of defendant. And if he proves then defendant can disprove it. If plaintiff fails to prove negligence of defendant; he will not get remedy and defendant is under no liability to disprove.
- In some cases plaintiff may be in hardship to show negligence of defendant because, the true cause of the accident, lies, solely within the knowledge of the defendant who caused. In such case plaintiff has to only accident (damage) and nothing more. Because there is presumption of negligence according to maxim, “*res ipsa loquitur*”.



# Conditions for Res Ipsa Loquitur

- Following Conditions are required for application of Res Ipsa Loquitur
  1. The accident must be such kind which does not ordinarily occur in the absence of some one's negligence.
  2. It must be caused by an agency or instrumentality within the exclusive control of the defendants.
  3. The mere occurrence of the event must raise of itself a reasonable inference that the defendant or his servant or agent have been negligent.
  4. Absence of any explanation how the accident occurred by the defendants.
  5. It must not have been due to any voluntary action or contribution on the part of the plaintiff.

## When Res Ipsa Loquitur is not applicable

- Res ipsa Loquitur is not applicable when...
  1. it is not applicable to all accidents; but only where cause is within knowledge and control of defendant.
  2. Rule does not create a legal presumption of negligence and it is rebuttable presumption.
  3. Burden of proof to negligence is on plaintiff but some times it is less than other cases.
  4. It does not absolve plaintiff from burden of proof.
  5. Defendant can show way in which the accident may have reasonably occurred without negligence on his part.

# Defences

1. No duty.
2. No damage.
3. Consent of plaintiff
4. Damage not caused due to negligence
5. Contributory negligence

Thank you.