RUNNING HEAD: BUSINESS LAW

Negligence

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Negligence

# Consider the elements of the tort of negligence with references to cases

Negligence is supposed to have been occurred when a person holds a duty of care towards some other party and owing to the failure to perform those duties, commits a breach of duty. This fallouts in legal damage triggered to the complainant. One can also say that negligence occurs when a person is harmed caused by the carelessness of another. The damage produced should be an instant cause of the act of negligence instead of a remote cause.

There are four essential elements required to fulfill the condition of negligence:

* That there must be a duty in the situation to take reasonable duty of care
* That the inaction of the offender in the case has not met the reasonable standard of care that a sensible person would have done otherwise, referred to as breach of duty
* That the applicant has suffered from a harm or a loss that the other person could have been anticipated to predict, called as damage
* And the last one is that the damage was produced by the breach of duty, referred to as causation.

These elements must be present. The defendant must have a duty or obligation to the plaintiff. The defendant fails to execute the duty or obligation or does so in a manner inconsistent with accepted standards, and as a result, the plaintiff suffers damages.

The Civil Liability Act 1936 (SA) is used to assess negligence of people in South Australia and the liability people may have to face resulting from the negligent acts on their part (Price, n.d.). When a person sues others in case of negligence, he/she is seeking some form of financial compensation against the damages caused to one party. Common examples and cases of negligence are personal injuries, professional negligence, and accidents on public and private land.

Under the Civil Liability Act 1936, the duty of care holds some qualifications such as 'good Samaritans' and food donors. The case, *Donoghue v Stevenson,* holds a high significance in the progress of negligence law in Australia and is also referred to as ‘snail in the bottle case’. This case took place in 1928, in Paisley Scotland. The outcome of this law was several legal principles such as negligence is a tort and in case of negligence results in the loss to the plaintiff, the plaintiff can take a civil action (“Donoghue v Stevenson [1932] AC 562,” n.d.). In addition, this case proved that manufacturers also hold a duty of care to the end-user of the product. With regard to the consumer and negligence law, *Grant v Australian Knitting Mills* is another landmark case in which Supreme Court held the manufacturer and retailer responsible for not providing the necessary care to the end-user of underwear and declared them liable to the plaintiff.

After the declaration that the defendant held a duty to the plaintiff, the second component is a breach of duty. In the famous case of *Donoghue v Stevenson* Lord Macmillan stated that "the categories of negligence are never closed". In addition, another Australian case, *McHale v Watson*, the offender kid was not held responsible as they cannot have the level of care and the perceptions of risks of an adult. This is an instance of the case where there is no breach of duty. In the example of *Bolton v Stone*, the complainant charged the cricket club for the injury caused by the ball that came from neighbouring cricket ground (“Bolton v Stone 1951,” n.d.). However, in this case, the defendant did not owe a duty of care that was breached. In this case, the House of Lords held that the cricket club was not in the breach of their duty and the probability of damage was very little.

Damages and injury are often the outcomes of the breach of duty. The plaintiff has to demonstrate that the offender’s breach of duty has resulted in some damages or harm. The plaintiff may not be able to recover unless proving that the breach produced a pecuniary injury. In case *Donoghue v. Stevenson*, Donoghue’s lawyers claimed that owing to the breach of duty of care by Stevenson, the plaintiff suffered from an injury diagnosed as gastroenteritis (“Donoghue v Stevenson [1932] AC 562,” n.d.). Damages in the form of the monetary value of the harm done to the plaintiff. Damages are compensatory in nature and address the loss caused to the plaintiff by the breach of duty. In case *Donoghue v. Stevenson,* Donoghue was granted the damages from his estate.

It is also essential to prove that the damages are caused as a result of a breach of duty, referred to as causation. Besides, a sufficient legal connection between the negligence and act must be found. Causation can be of two types, factual causation and legal causation (proximate cause). Legal causation emphasizes that if something bad cannot be foreseen, one must take care to avoid it. The case of *Palsgraf v. Long Island Rail Road Co* declared that the train company must not be held liable for the damage caused to the plaintiff, because the negligence of conductor was too distant from the plaintiff's harm.

# Consider and discuss how you believe principles of negligence will be important for you

Based on the discussion above, it can be understood that the negligence is based on the idea that a person must take reasonable care to avoid hurting others. One holds a duty of care towards other person and beach of that duty of care can result in the injury or legal damage. A negligence claim has to prove the four elements of duty of care, breach of that duty, causation and damages. Negligence can take many forms such as ordinary negligence, gross negligence and professional negligence as well. A professional is a person who markets themselves as an individual having a certain specialized skillset, the clients are eligible for a reasonable standard of care. In this way, a professional holds a duty of reasonable care to the clients and clients of professionals expect to assist them. Breaching of these duties is professional negligence.

The principles of negligence are imperative in professional life since a professional holds the responsibility of care to the clients. Clients also hold some expectations from the professionals, in case the professionals breach those expectations, that s declared as professional negligence. The breach, in this case, could be in the form of injury caused by the work done by a professional or a clerical oversight. The soundest example of the professional negligence is an error made an accountant that or an auditor that results in the lawsuit to the professional as they were obliged to provide accurate work. The case of *Boyd v Ackley* is an excellent example of professional negligence wherein the accountants were held liable by a husband and a couple who had to overpay resulting from an error made by the accountants of the company. In the case, the judge held that the plaintiffs are eligible to damages because accountants had ruptured the duty of care. The accountants had to pay the damages plus the cost of court proceedings to plaintiffs as declared by the court.

The awareness of principles of negligence is therefore pivotal for all the professionals counting doctors, accountants, managers, lawyers, teachers, engineers, psychologists, and many other professionals and experts of their fields. A number of jurisdictions also arrange for breaches where specialists were unable to perform the duty of care. For instance, a physician fails to notify of risks linked with medical treatments or processes. For instance, the Civil Liability Act in Queensland summarizes statutory test covering both the subjective and objective elements of duties of care. One more example is that if an obstetrician does not make mother aware of technical hitches arising from labour can be alleged to have broken their qualified duty of care. A number of cases have also been filed in the courts concerning the professional negligence of physicians and nurses (Bryden and Storey, 2011). One such example is the event of *Roe v Minister of Health* that holds a high significance on the common law. Though, the doctor was not found negligent in performing his professional duty of care and in adopting a different technique.

In order to avoid the lawsuit by in case of professional negligence, every professional of their field must provide specialized care to the clients as they expect from a skilled professional. In addition, it is significant to be aware of four elements of negligence and the possible causes that may hold a professional responsible for breaching the duty of care. A professional must also be aware that that any action of them does not cause any damages to their clients since it can take them to appeal to the court of law. Moreover, professionals must avoid any loss or damages that can be foreseen to avoid the professional negligence lawsuit by their clients, despite their field of expertise. Sensible measures must be adopted by the professionals to avoid causing harm to their clients. The awareness of these principles will also guide them to evaluate their own duty of care and the ways courts evaluate it to better protect themselves and their professional careers.

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