

# NEGLIGENCE

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## NEGLIGENCE

**Primary Disciplinary Field(s):** Law (Tort Law), Professional Ethics, Risk Management

### 1. Core Definition

**Negligence** is fundamentally a civil legal concept, primarily situated within Tort Law, that describes a failure to exercise the care that a reasonably prudent person would exercise in similar circumstances. It is not necessarily defined by a malicious intent, but rather by an omission or action that falls below an established societal or professional standard, resulting in quantifiable harm or damage to another party. In the context of occupational performance, whether professional or contractual, negligence represents the failure to comply with or complete a goal or task to the required standard, or to what is reasonably expected by industry norms or general societal consensus. The critical factor that distinguishes negligence from mere accident or error is the resulting foreseeable injury suffered by the injured party.

The definition provided in the source content--that negligence "results in the failure of the task to a required standard"--succinctly captures the essential element of the breach of duty. However, in legal practice, the determination of actionable negligence requires several specific elements to be proven concurrently. Without these elements, an action, however careless, may not legally constitute a basis for liability. The essence of the claim rests upon the breach of a recognized duty owed by the defendant to the plaintiff, and that this breach was the direct and proximate cause of the plaintiff's measurable loss.

The concept serves as a cornerstone of civil jurisprudence, establishing accountability for unintentional but harmful conduct. It mandates that individuals and organizations operate with a baseline level of attention and diligence, ensuring their activities do not unjustly jeopardize the safety or interests of others. This underlying expectation of reasonable conduct is what enables the allocation of fault and compensation for accidental injury within the rule of law.

### 2. The Four Elements of Actionable Negligence

For a legal claim of negligence to be successful, particularly in common law jurisdictions, the plaintiff must successfully demonstrate the existence of four distinct components. These elements collectively establish the defendant's liability for the ensuing harm, moving systematically from the relationship between the parties to the resulting injury and the causation connecting the two. Failure to prove any one of these elements usually results in the dismissal of the claim, underscoring the legal complexity inherent in proving carelessness.

The precise articulation of these elements ensures that liability is not imposed too broadly, restricting compensation only to those instances where a recognizable legal wrong has occurred.

These requirements structure judicial inquiry, often relying heavily on precedent to establish what constitutes a legal obligation and acceptable conduct in a specific factual scenario. This structure allows courts to differentiate between simple misfortune and compensable legal fault.

These elements require rigorous evidentiary support and interpretation by the courts, as the application of standards like 'reasonable foreseeability' can shift dramatically based on the facts presented. The burden of proof rests entirely on the plaintiff to demonstrate that the defendant's actions initiated an unbroken chain of events leading directly to the suffered injury.

**Duty of Care:** The defendant must owe a legal obligation to the plaintiff to conform to a certain standard of conduct to protect the plaintiff against unreasonable risks. This duty arises when the law recognizes a relationship between the parties that requires the defendant to act with reasonable prudence. For example, a driver owes a duty of care to pedestrians, and manufacturers owe a duty to consumers.

**Breach of Duty:** The defendant must have failed to meet the required standard of care. This is the failure to act as a reasonably prudent person would under similar circumstances. The example cited in the source content--a surgeon removing the wrong finger--is a clear illustration of a severe breach of a specialized professional duty.

**Causation:** The breach of duty must be the actual and legal cause of the plaintiff's injuries. This element is typically split into two parts: **Causation in Fact** (the 'but-for' test, meaning the injury would not have occurred but for the defendant's actions) and **Proximate Cause** (legal causation, meaning the harm was a reasonably foreseeable result of the breach, establishing the appropriate scope of liability).

**Damages:** The plaintiff must have suffered actual, legally recognizable harm or injury, which can include physical injury, property damage, or quantifiable economic loss. Negligence law does not generally compensate for purely trivial or speculative losses; there must be concrete evidence of suffering that can be remedied by financial means.

### 3. The Standard of Reasonableness and Professional Malpractice

The concept of the "reasonable person standard" is central to determining whether a breach of duty has occurred. This standard is fundamentally objective and hypothetical; it asks what a reasonably prudent person, acting carefully, would have done in the same situation, explicitly disregarding the defendant's individual subjective weaknesses or limited intelligence. This objectivity is necessary to ensure accountability across the population, preventing defendants from excusing carelessness based on their own personal limitations.

However, the standard is modified for specific contexts, particularly when dealing with skilled activities. Professionals, such as doctors, lawyers, or engineers, are held to a higher standard--that of the reasonable person possessing the knowledge, skill, and training of that specific profession.

This specialized form of negligence is known as malpractice. In the medical context, for instance, a surgeon is expected to meet the specialized standard of care accepted by the medical community, including adherence to established protocols and practices, which amplifies the severity of the negligence demonstrated in the source example of operating on the wrong digit.

The standard also considers the surrounding circumstances. For example, the actions deemed reasonable during an emergency rescue operation, where resources are limited and time is critical, may be different from those expected during routine, planned activity. Furthermore, the standard required of a child is typically that of a reasonably prudent child of similar age, intelligence, and experience, rather than the adult standard, reflecting the law's attempt to incorporate developmental realities while still requiring minimum caution.

#### 4. Historical and Disciplinary Context

While historical legal systems, including those in Roman law and early English common law, recognized rudimentary concepts of responsibility for accidental harm, negligence as a distinct, independent tort developed primarily in the 19th century. Prior to this period, accidental injury was often awkwardly subsumed under existing torts like trespass, which focused more on the directness of the harm rather than the careless state of mind of the defendant.

The industrial revolution, characterized by unprecedented complexity in machinery and rapidly increasing traffic and construction, necessitated a more flexible and principled way of assigning fault for unintended harm caused by increased human activity. This societal shift required a legal framework that could address injuries arising from omissions and indirect carelessness, not just direct physical force.

A pivotal moment in the development of modern negligence law was the 1932 British House of Lords case, *Donoghue v Stevenson*. This landmark case established the foundational "neighbour principle," articulated by Lord Atkin, which defined who owed a duty of care: "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour." This ruling profoundly broadened the applicability of negligence beyond established contractual relationships, establishing the basis for modern tort law by centering the analysis on the foreseeability of harm.

#### 5. Significance and Societal Impact

The tort of negligence is arguably the most significant area of modern civil litigation, providing the mechanism by which millions of accident victims seek compensation annually, ranging from victims of traffic collisions to patients harmed by medical error, and consumers injured by faulty products. Its primary significance lies in its role as a mechanism of corrective justice, aiming to restore the injured party to the financial position they would have been in had the negligent act not occurred,

primarily through the award of monetary damages.

Beyond compensation, negligence law serves a crucial deterrent function. By holding individuals and corporations financially accountable for careless behavior, the law actively encourages better safety protocols, rigorous standards of training, and improved risk management across all sectors of society. The threat of liability drives immense investment in preventive measures, ensuring that public safety considerations are factored into everything from product design to operational procedures.

Furthermore, negligence is vital in defining boundaries of acceptable professional conduct. By establishing a clear, legally enforceable minimum standard of care, it provides a crucial benchmark for ethical and professional accountability. When professionals fail to meet this standard, the resulting legal consequences reinforce the gravity of their duties, maintaining public trust in specialized services.

## 6. Defenses Against Negligence Claims

Even if a plaintiff successfully proves the four required elements of negligence, the defendant may still avoid or mitigate liability by successfully asserting specific legal defenses. These defenses recognize that fault is not always unilateral or that the plaintiff may have voluntarily assumed the risk of injury, thereby negating or reducing the defendant's responsibility for the full extent of the harm.

The two most common defenses center on the plaintiff's own conduct and acknowledge the principle that if the injured party also contributed to their own misfortune, the responsibility for the outcome should be shared or nullified entirely. The specific rules governing these defenses vary significantly between jurisdictions, with some employing strict rules and others adopting more equitable sharing of liability.

**Contributory Negligence:** In a few strict jurisdictions, if the plaintiff is found to have contributed in any way, even minimally, to their own injury through their own lack of reasonable care, they may be completely barred from recovering damages. This historical defense is viewed as harsh and has been largely replaced by comparative negligence statutes.

**Comparative Negligence:** This defense, utilized in most modern jurisdictions, assesses the relative fault of both the plaintiff and the defendant and allocates damages accordingly. If the plaintiff is found 30% responsible for their injuries and the defendant is 70% responsible, the plaintiff's damage award is reduced by 30%. Jurisdictions employ either pure comparative negligence (recovery allowed regardless of plaintiff's fault level) or modified comparative negligence (recovery barred if plaintiff's fault exceeds a specific threshold, usually 50%).

**Assumption of Risk:** If the plaintiff voluntarily and knowingly accepted a clear and obvious risk of harm caused by the defendant's conduct, the defendant may not be held liable. This is often

applied in cases involving inherent risks associated with dangerous sports or recreational activities where the participant accepts the risks as an inherent part of the experience.

### Further Reading

[Cornell Law School Legal Information Institute \(LII\) - Negligence](#)

[Britannica - Negligence \(Law\)](#)

[Investopedia - Negligence Definition and Legal Requirements](#)

[Donoghue v Stevenson AC 562](#)

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