

**Your topic:** Essay: In dealing with cases of negligence, the courts strive to strike a balance between promoting corrective justice and remedying wrongs on the one hand, and on the other hand, not contributing to the creation of an overly litigious society that believes there must be a remedy for every misfortune. Produce an essay in which you address the above statement by discussing whether the law on the tort of negligence satisfactorily strikes 'the balance' mentioned above. It must explain: 1- the main elements required in the tort of negligence (duty of care, breach, causation and damage) 2- the role of 'policy' in the tort of negligence ( eg. Floodgates arguments, insurance/welfare argument, deep pockets argument. 3- how 1 and 2 above are applied in specific situations eg. Psychiatric injury, vicarious liability 4- the defenses available to the tort of negligence (eg. Voluntary assumption of risk, consent) 5- 1,2,3 and 4 above by reference to relevant case law

**Your topic's description:** Analyse the three elements required in the tort of negligence using a wide range of relevant case law. Analyse the defenses available to the tort of negligence. Analyse the law relating to vicarious liability using case law.

**Your desired style of citation:** Harvard Referencing

**Your educational level:** Guaranteed 2:1 Standard

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# **Tort and Negligence**

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## **Introduction**

Negligence basically alludes to inability to utilise sensible consideration. Moreover, it can be said that in common law, negligence is clarified as the move made that negates with what a standard sensible part from a given group would act in that same group. It is accomplishing something that an equitable individual will not prepare. In addition, it is the legitimate reason for damage in the event that it straightforwardly, normally and ceaselessly subsidises in bringing on that harm.

## **Key Elements Required in the Tort of Negligence**

### **Duty of Care**

The results of certain negligence cases rely on upon whether the respondent owed a duty to the offended party. This duty emerges when the law perceives a relationship between the litigant and the offended party, and for the reason of this relationship, the respondent is committed to act in a sure way toward the offended party (Cardi, 2014). Furthermore, a judge, instead of a jury, commonly figures out if a respondent owed a duty of consideration to an offended party. In addition, where a sensible individual would find that a duty be present under a specific arrangement of circumstances, the court will by and large find that such a duty subsists.

In the illustration including the litigant stacking packs of grain onto a truck, and hitting a tyke with one of the sacks, the first question that must determine is whether the respondent owed a duty to the kid (Nakar & Weinberger, 2015). As it were, a court would need to choose whether the litigant and the kid had a link such that the respondent was required to practice sensible consideration in taking care of the packs of grain close to the kid.

## **Breach of Duty**

A respondent is obligated for negligence when the litigant breaches the duty that the respondent owes to the offended party. A litigant breaches such a duty by neglecting to practice sensible consideration in satisfying the duty. Not at all like the topic of whether a duty exists, is the issue of whether a litigant breached a duty of consideration chosen by a jury as an issue of actuality. It can be said that along these lines, in the illustration over, a jury would choose whether the litigant practiced sensible consideration in taking care of the sacks of grain close to the adolescent (Burkett, 2013).

## **Causation**

Under the customary standards in negligence cases, an offended party must demonstrate that the litigant's activities really brought about the offended party's damage. In addition, this is regularly alluded to as "yet for" causation. Besides, as it were, yet for the respondent's activities, the offended party's damage would not have happened. It can likewise be said that the kid harmed by the litigant who hurled a sack of grain onto a truck could demonstrate this component by demonstrating that yet for the respondent's careless demonstration of hurling the grain; the kid would not have endured damage (Hylton & Lin, 2013).

## **Damage**

An offended party in a negligence case should demonstrate a lawfully perceived mischief, more often than not as physical damage to a man or to property. It is insufficient that the respondent neglected to practice sensible consideration. The inability to practice sensible consideration must result in genuine damages to a man to whom the respondent owed a duty of consideration (Antieau, 2014).

## **The Role of 'Policy' in the Tort of Negligence**

### **Floodgates Arguments**

The floodgates guideline, or the floodgates argument, is a lawful rule which is infrequently connected by judges to confine or restrict the privilege to make claims for damages in light of a worry that allowing an inquirer to recuperate in such circumstances may open the allegorical floodgates to substantial quantities of cases and proceedings. On account of Victorian Railways the courts were worried that instances of anxious stun would offer ascent to a surge of comparable cases; in addition, this case is the inception of the Floodgates Argument, that later courts have utilise to keep down generally stable cases, by applying policy choices (Stern, 2003).

### **Deep Pockets Argument**

It alludes to the thought that the danger of an action ought to be borne by a man who is in a moderately decent position to handle it. This can be accomplished by either spreading the danger over countless bearers as a rule by method for protection, or by forcing it on a man who is moderately hazard impartial (Smith, 2014). The last is frequently thought to be the situation for rich people or extensive enterprises, which are alluded to as having "deep pockets", following their riches won't be influenced emphatically if the danger emerges.

### **How 1 and 2 are applied in Specific Situations**

#### **Psychiatric Injury**

Prior in Tort law remuneration was granted for affliction from some physical harm just. In addition, it was viewed as that psychological anxiety and harm are less commendable of being named wrongs under tort law and henceforth was not perceived. Be that as it may, after various years, there was a noteworthy advancement in these laws. Besides, now all together for an

inquirer to get damages from nervous shock because of the negligence of the respondent, they should demonstrate every one of the components of the tort of negligence. What's more, the improvement of law inside of the pay of psychiatric damage has been to a great extent affected by policy contemplations and endeavours to confine the quantity of potential inquirers (Lim, 2014). It has been watched that in conclusion, it manages the floodgates argument and tries to suspect that if these changes are placed set up then it will prompt a surge of cases. Keeping in mind the end goal to keep this, the courts would need to allude back to policy contemplations to chop down cases from significant occasions like Hillsborough and the new cases which would emerge from partitioned occasions.

## **The Defences Available To the Tort of Negligence**

### **Voluntary Assumption of Risk**

This risk is a kind of barrier accessible for most individual damage and negligence lawsuits. Presumption of danger emerges when an offended party purposely and wilfully expect a danger of mischief joined with the negligence of the litigant. On the off chance that the offended party has expected such a danger, they can't recoup damages for any mischief coming about because of the respondent's behaviour, regardless of the fact that the litigant was careless or neglectful (Hudson, 2011).

The end goal to demonstrate the safeguard of suspicion of danger, the respondent must demonstrate that: It can be said that the offended party had real learning of the danger included in the behaviour or movement. In addition, the offended party intentional acknowledged the danger, either explicitly through assention or suggested by their words and lead for instance they cannot be compelled to perform the action. Likewise, it is typically important to demonstrate that

the peril was self-evident, or that the way of the behaviour was inalienably perilous. Moreover, this risk is a common barrier to negligence, alongside contributory negligence and similar negligence.

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