

LAW 122: Business Law

TRAIN TO LEARN EFFECTIVELY: TIP SHEETS

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NEGLIGENCE

Overview

- **Negligence** means a careless act causing injury or damage to another.
- The largest number of tort cases are negligence.

Essential Elements

- For a suitable claim of negligence, all of the following must be proven:
 1. **Duty of Care**: The alleged tortfeasor owed a duty of care to the affected party;
 2. **Breach**: The alleged tortfeasor breached the reasonable standard of care owed to the affected party;
 3. **Loss**: As a consequence of the breach of the standard of care, the affected party suffered a reasonably foreseeable loss, damage, or injury.
- The party responsible for negligence may avoid complete or partial liability if:
 1. The injured party voluntarily accepted or consented to the risk of injury; or
 2. The injured party was harmed while engaging in an illegal activity; or
 3. The injured party contributed in some manner (**contributory negligence**); or
 4. The injury or loss was not reasonably foreseeable (**remoteness**).

Duty of Care

- A **duty of care** is not a single, objective, or definable standard; the standard to be met depends on the particular circumstances (e.g., for a surgeon undertaking a delicate operation will not be the same as for workers doing road maintenance).
- The critical questions to ask for determining a duty of care include:
 1. **Reasonable Foreseeability**: Was the loss, damage, or injury reasonably foreseeable?
 2. **Sufficient Proximity**: Did the parties have a relationship of sufficient proximity?
- If the answers to the above questions are satisfied, the duty of care exists; unless denied for policy reasons.

Breached Standard of Care

- Having established an owed duty of care, the injured party must prove that the applicable standard of care was not met.
- The standard of care is founded on the **reasonable person test**.
- The factors for determining a breached standard of care include:

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1. The reasonable person test is objective; it does not account for any personal characteristics;
2. A reasonable person takes precautions against reasonably foreseeable risks, not against every conceivable danger;
3. A reasonable person is influenced by the likelihood of harm and the potential severity of harm;
4. A reasonable person is likely to adopt affordable precautions;
5. A reasonable person may act in a way that has greater social utility even though it creates risks.

- A special standard of care exists for professionals; a professional who follows an approved or generally accepted practice will often not be found negligent.

Product Liability

- As with negligence, the injured party must prove that the injury or damage arose from the manufacturer's carelessness.
- The question of liability generally focuses on the standard of care; asking if the product breached the standard of care in:
 1. **Manufacture:** There is liability if the product is carelessly manufactured.
 2. **Design:** The challenge is greater to prove a design defect (e.g., Ford Pinto).
 3. **Failure to Warn:** Certain products are inherently dangerous or used in a manner that may be dangerous; a duty to warn may be imposed (e.g., cigarettes).

Defences

- There are three defences against the tort of negligence:
 1. **Contributory Negligence:** Defence where the loss is caused by the affected party's own carelessness; it is not a complete defence;
 2. **Voluntary Assumption of Risk (Volenti):** Defence where the affected party voluntarily accepts the physical and legal risks of loss, damage, or injury; it is a complete defence.
 3. **Illegality:** Is a defence where the affected party suffered a loss while engaged in an illegal activity; it is a complete defence but narrowly interpreted by the courts.