

The Law of Negligence (in 25 words or less)

I have often been asked to explain the law of negligence in 25 words or less. As you might imagine (or as you would know if you had sat next to me for an entire year in that class in law school), it is not an easy task. However, I will give it a go since it is a very common question.

The most famous statement posing the question was made by one of the Law Lords of England when considering a case in the 1930's that involved a dead mouse (I believe) in a bottle of ginger beer. He asked his fellow lords "Who in law is my neighbor?". The answer was the beginning of the modern day law of negligence.

Negligence refers to certain conduct that falls below the standard required by society. In order to establish negligence, several elements must be present. The plaintiff must prove on a balance of probabilities that the defendant owed him a duty of care, that there was a breach of that duty and that the plaintiff's damages resulted (or flowed) from that breach.

In addition, the damage caused cannot be too remote from the defendant's conduct and the conduct of the plaintiff should not be such as to bar recovery, as is the case with such defenses as consent, contributory negligence or voluntary assumption of risk. If all of the essential elements are satisfied, the plaintiff will be entitled to judgment in his favor.

Consider the simple example of one driver rear-ending another. Let's assume that the victim was wearing a seat belt and did not come to a sudden stop for no reason. In that situation, the legal analysis is that the defendant owed the plaintiff (and all other drivers on the road at the time) a duty of care to control his vehicle and not to drive his vehicle into them, he breached that duty by smashing into the plaintiff's car instead of stopping and the plaintiff's injuries resulted (or flowed directly) from the collision that the defendant's negligence caused. The damage was reasonably foreseeable and the plaintiff did not cause the collision or contribute to his own injuries.

Generally, conduct is considered negligent if it creates an unreasonable risk of harm. Driving through a red light without stopping, rear-ending another vehicle, driving on the wrong side of the road and similar actions are fairly easy but, as with all things legal, no two fact situations are ever completely the same.

Even the simple cases can get confusing. What if, in our rear-ender example, the reason the guy rear-ended you was because his doctor gave him a strong sedative and didn't tell him what it was, what if he tried to stop but his brakes failed because his mechanic forgot to put brake fluid back in, what if he was swerving to miss a horse that escaped through a hole in the fence, etc.? Whose fault is it then? As you can see, it can get a bit confusing.

Generally speaking, if a reasonable person (such as a judge or the average person on a jury) was told the facts of your case and then was asked "Did the other guy screw up?" and they answered in the affirmative, you may well have a good case in negligence.