

Introduction

negligence is as a basis of legal liability negligence like intention is another significant form of mens rea it is also important part of a crime.

Meaning

- Negligence means to neglect the Duty or Carelessness.
- A legal duty to take care.
- Breach of that duty; and.
- Consequential damage to the plaintiff.

Definition

- Salmond: - Negligence is culpable carelessness.
- Winfield :- “the breach of a legal duty to take care which results in damage undesired by the defendant to the plaintiff”.
- Justice willes: - it is the absence of such care as it was the duty of the defendant to use.
- Puolus: - Magna negligentia culpaest, magna culpa dolus est.
- Pollock:- Negligence is not actionable unless the duty to be careful exists.
- Katillwail Watson :- Froud imports design and purpose , negligence that you are acting carelessly and without that design.

Essential element of negligence

1. Duty - The defendant owed a legal duty to the plaintiff under the circumstances;
2. Breach - The defendant breached that legal duty by acting or failing to act in a certain way;
3. Causation - It was the defendant's actions (or inaction) that actually caused the plaintiff's injury;
4. Damages - The plaintiff was harmed or injured as a result of the defendant's actions.

Theories of negligence

1. **Subjective theory of negligence** -the theory so propounded by Salmond means that negligence is culpable carelessness. Though it is not equivalent to thoughtfulness or inadvertence, nonetheless it is an attitude of indifference. Accordingly, “negligence essentially consists in the mental attitude of undue indifference with respect to one’s conduct and its consequences”. A man may be held liable on the basis of negligence if he sufficiently does not desire to avoid a particular consequence. Professor Winfield who strongly supported Salmond view, also stated that negligence its other signification is merely a state of mind, inadvertence to some duty.
2. **Objective theory of negligence**- According to this theory advocated by sir Frederick Pollock “negligence is the contrary of diligence and no one describes it as the state of mind”. this theory postulates that negligence is an objective fact .it is not an attitude of mind or a form of mens rea at all, but to

particular standard of conduct. It is breach of duty of not taking care , and to take care means to take precautions against the harmful results of one's action and to refrain from unreasonably dangerous kinds of act.

Defences

- Act of god.
- Inevitable accident.
- Contributory negligence

Cases

- Lord Atkin in *Donoghue v. Stevenson*⁵, put it thus:

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be persons who're closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I'm directing my mind to the acts or omissions which are called in question.”

- *Whitt v. Silverman* If someone creates a hazardous situation through his own action or inaction and can reasonably foresee a later injury, a breach may be proven from the circumstances without resorting to a statute or contract.

Damages for Injuring People

Where the negligence causes personal injuries, a plaintiff may seek damages from the wrongdoer for:

1. past and future medical expenses.;
2. past and future lost wages;
3. pain and suffering;
4. mental anguish;
5. Inconvenience;
6. the loss of the capacity for the enjoyment of life;

For further clarification you may reach us via
E-mail- sudeshcm@gmail.com
Mob- 7409496868
Smt. Sudeshna
Assistant Professor
I.L.S. , CCSU Meerut