

CLASS - LL.M. IVth SEM
SUBJECT - SPECIFIC TORT
PAPER CODE - L -4006

TOPIC : NEGLIGENCE

Negligence in General

Meaning:- Negligence is the breach of duty caused by the omission to do something where a reasonable man, guided by those considerations which ordinarily regulate the conduct of human efforts would do or doing something which a prudent and reasonable man would not do.

Definition involves 3 constituents of negligence :

1. A legal duty to exercise due care on the part of the party complained of toward the party complaining the former conduct with in the scope of duty.
2. Breach of the said duty.
3. Consequential damage.

Existence of duty

- Conditions:
1. Foreseeability or proximity
 2. Just and reasonable
 3. Economic loss
 4. Physical damage
 5. Policy considerations
 6. Omissions

STRICT LIABILITY: laid down in case of Rylan v Fletcher

- Exceptions :
1. Act of god (vis major)
 2. Wrongful act of a third party.
 3. Plaintiffs on default
 4. Consent of plaintiff
 5. in discharge of public duty for public purpose.

ABASLUTE LIABILITY laid down in case of M.C. Mehta v. Union of India Supreme Court said where the enterprise are engaged in hazardous or inherently dangerous activities

and harm result to anyone on account of accident in the operation of such hazardous or inherently resulting in damage the enterprise is strictly and absolutely liable to compensate all the affected appeal.”

Person Possessing to have great skill:-

1. Directors of companies
2. Carrier of - goods
- Passengers
3. Inn keepers or Hotel keepers
4. Physician or surgeons
5. Solicitors
6. Counsels
7. Bankers
8. Manufacturers, repairers and builders

Keeper of dangerous animals

1. Animals of ferae naturae
2. Animals of Mansuetae Naturae

Dangerous goods

1. Fire
2. Fire arms
3. Fire works
4. Poisonous drugs

Contributory Negligence

Where negligence of both the parties cause death or injury

It is a settle law that contributory negligence is pleaded by defendant and if he is able to prove it then courts are free to reduce to damages by an account “ just and Reasonable.”

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