

Tort Law

Negligence

Civil Actions

- What is a civil action?
- Can you think of any examples?
- Definition of a civil action: “An action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation”
- Compare to the definition for a criminal action: “An action instituted by the government to punish offenses against the public”

Civil Actions are Different

■ Criminal Actions

- Brought by the government
- Government is known as the prosecution
- Prosecution has the burden of proof – beyond a reasonable doubt
- Defendant loses if found guilty
- Usual penalty is a prison sentence



■ Civil Actions

- Brought by private citizens
- Person bringing action is known as the plaintiff
- Plaintiff has the burden of proof – preponderance of the evidence
- Defendant loses if found liable
- Usual penalty is money damages



Focus for Today: Negligence

- Negligence is a type of tort
- So what is a tort? “A civil wrong . . . for which a remedy may be obtained, usually in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another”

Negligence Defined

- Defined: “The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights”
- Important characteristic of negligence – the defendant does not intend for the bad consequences to result

How to Prove Negligence

- The plaintiff needs to prove four elements by a preponderance of the evidence
 - Duty
 - Breach of Duty
 - Causation (two parts)
 - Damages



Duty

- Defined: “A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right”
- Example: If you drive a car, you have a duty to obey the rules of the road



The Duty of Care

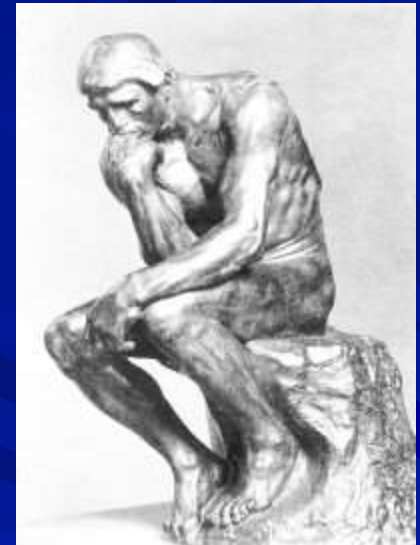
- Generally speaking, a person owes a “duty of care” to those around him or her (i.e. a duty to act reasonably)
- How is this duty of care determined?
 - By an objective standard
- When evaluating a person’s conduct, tort law asks – would a reasonable person of ordinary prudence in the defendant’s position act as the defendant did?

The Duty of Care: Example

- Would a reasonable person drive down the street with a paper grocery bag over her head?



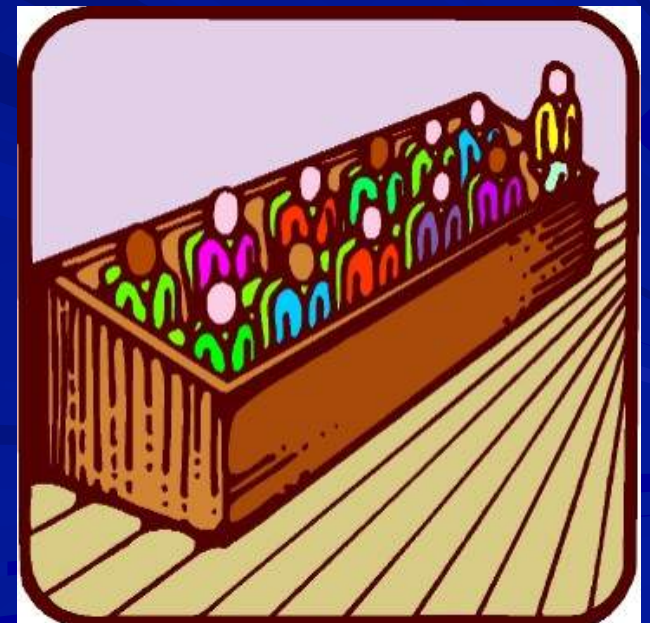
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- The reasonable person would not do this
- Thus, part of the duty of care when driving is to not obstruct your vision

Who is the Reasonable Person?

- The reasonable person is a legal fiction
- Typically, the jury is asked whether a reasonable person of ordinary prudence in the defendant's position would act as the defendant acted
- The reasonable person considers: how likely a certain harm is to occur, how serious the harm would be if it did occur, and the burden involved in avoiding the harm



Circumstances Matter

- Circumstances matter when evaluating a defendant's actions and the law typically says that a defendant's physical characteristics are part of the circumstances
- What characteristics of the defendant become “a part of” the reasonable person?
 - Physical disabilities
 - If defendant is a child, the child's age (unless doing an “adult activity” such as driving a car)
 - Defendant acted during an emergency

Circumstances Matter (cont'd)

- What characteristics of the defendant do not become “a part of” the reasonable person?
 - Mental characteristics (e.g. if defendant is of below average intelligence, he can't defend his actions based on this)
 - Intoxication
- These lists are not comprehensive, but they cover some of the common categories

Breach of Duty

- Defined: “The violation of a legal or moral obligation; the failure to act as the law obligates one to act”
- What do you think constitutes a breach of duty?
- Once the duty is established, it is a simple matter to determine whether the defendant's actions met this standard of care or not

Problem #1: Duty and Breach

- Itchy comes to an uncontrolled intersection (i.e. no traffic lights or signs) on foot. He stops at the intersection, looks to the left and to the right and then crosses the street



- How would a “reasonable person” act?
- Did Itchy breach the standard of care?

Problem #2: Duty and Breach

- Scratchy comes to an uncontrolled intersection (i.e. no traffic lights or signs) on foot at night. He is wearing black pants, a black sweatshirt, black shoes, black gloves and a black ski mask. Scratchy puts his iPod headphones on and begins blasting music at full volume. Without looking, Scratchy crosses the street



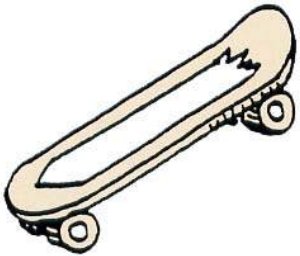
- How would a “reasonable person” act?
- Did Scratchy breach the standard of care?

Causation

- There are two aspects of causation that must be considered: cause in fact and proximate cause
- Cause in fact defined: “The cause without which the event could not have occurred”
- Proximate cause defined: “A cause that is legally sufficient to result in liability; an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor”
 - Also known as legal cause

Cause in Fact: The “But For” Test

- How does the law determine what is a cause in fact?
- The “but for” test: If the defendant had not acted negligently (by breaching the standard of care), the plaintiff would not have been injured



Proximate Cause: Foreseeability

- How does the law determine what is a proximate cause?
- Foreseeability: Most courts say that a defendant is liable only for consequences of his negligence that were reasonably foreseeable when he acted
 - Seeks to limit the defendant's liability to those results that are of the same general sort that made the conduct negligent in the first place

Problem #3: Causation

- Mr. Burns races down the street in his car with a paper grocery bag over his head. Hans Moleman begins to cross the street and is hit by Mr. Burns.



- Was Mr. Burns' behavior the cause in fact of Hans' injuries?
- Was it the proximate cause of Hans' injuries?

Problem #4: Causation

- Captain McAllister's boat spills oil into Springfield Harbor. Some of the oil sticks to docks owned by Fat Tony. One of Fat Tony's workers is welding on the dock and some molten metal ignites the oil, which in turn ignites the entire dock



- Was Capt. McAllister's spilled oil a cause in fact of the dock fire?
- Was it the proximate cause of the dock fire?

Damages

- There are two aspects of damages that must be considered: actual, physical harm and the monetary values ascribed to those harms
- The first aspect is straightforward – show that you suffered actual injury (e.g. broken arm, burned down house, etc.)
- Once you prove the actual, physical harm, the second aspect of damages comes into play:
“Money claimed by, or ordered to be paid to, a person as compensation for loss or injury”
 - The law tries to restore the plaintiff to her pre-injury condition using money

What Can Plaintiffs Recover?

- What do you think a plaintiff could recover if he or she proves the defendant acted negligently and caused his or her harm?
- Categories:
 - Direct loss – value of the loss of certain bodily functions (e.g. loss of a leg)
 - Economic loss – out-of-pocket costs resulting from the injury (e.g. medical bills, lost wages, reduced earnings capacity, property damage)
 - Pain and suffering – value of the mental anguish plaintiff has suffered and will continue to suffer
 - There are others, but these are the main categories

Defenses to Negligence Suits

- As you know, it is rare that an accident is caused solely because of one person's actions
- If the plaintiff is partly at fault for his or her injuries, what can the defendant do to reduce his or her liability?
 - Contributory negligence defense: If the plaintiff's own negligence contributed to the harm suffered, the plaintiff cannot collect anything from the defendant
 - This defense is only used in a few states and is not the law in Washington
 - Comparative negligence defense: Plaintiff's recovery from the defendant is reduced by the percentage that the plaintiff's own negligence contributed to the injury

Comparative Negligence in WA

- Washington is known as a pure comparative negligence jurisdiction
- What does this mean?
 - Basically, even if the plaintiff was 90% responsible for her own injuries, she may still recover 10% of her damages from the defendant
 - Example: Scratchy sues Itchy for \$100,000 for running him over as he crossed the street. The jury determines that Scratchy was 30% responsible for his own injuries because he was wearing all black and listening to loud music. Scratchy will recover \$70,000 from Itchy
- Some states (not WA) would bar Scratchy from recovering if he was more than 50% responsible

Summary

- The information covered today is just the tip of the iceberg
- There is much more to learn:
 - More defenses
 - How to prove the monetary value of a claim to the jury
 - Multiple causes of an injury
 - Complex scenarios involving multiple plaintiffs and multiple defendants
- This lesson provides a good foundation so that you can evaluate your conduct in society and the conduct of others