

defendant has caused the negligence. To prove the act as negligent, the evidence provided by the plaintiff against the tort-feasor(s) should be of cogent and not vague⁸.

10.1 TO COMMIT THE TORT OF NEGLIGENCE, THERE ARE PRIMARILY THREE MAIN ESSENTIALS

- ◆ Existing duty of care,
- ◆ Breach of that duty and
- ◆ The causation of the damage.

An act will be categorised as negligence if all the three conditions are satisfied.

ILLUSTRATION :

'X' while shifting to his new house hired 'ABC' movers and clearly told them that a container containing glassware is to be handled with extra care. The glass ware was found broken when unpacked. 'ABC' movers responsible for negligence. But why? Because;

- ◆ 'ABC' had duty to take care of the glassware as they were hired to shift the household goods safely.
- ◆ 'ABC' breached the duty by not taking the due care.
- ◆ 'X's' glassware broke causing him loss.

All the three essentials of negligence are present so, 'ABC' is liable for negligence.

Thus, all the conditions were satisfied and thus it can be taken as the case of negligence. Further, no act can be done if any of the above element is missing.

CASE LAW: **Nazir Abbas v. Raja Ajamshah**⁹

Facts: That suit was filed against the Kamdar who was responsible for making the realisations, and also the Manager, Court of Wards, whose principal duty was to supervise the work of the Kamdars. The receipts passed by the Kamdar were filed in the suit, and his signature thereon was proved. A wrong realisation allegedly caused plaintiff a huge loss.

Held: Their Lordships did not hold the receipts as sufficient to prove the loss as against the Manager, Court of Wards. The Court laid down the principles governing the suit based on negligence. It was held that the plaintiff, in order to succeed in his suit for damages for negligence, must establish, firstly a duty to take care, secondly a breach of the duty and thirdly that such breach was the proximate cause of the loss or injury sustained by him.

8. *National Insurance Company Ltd. v. Sintha* [2012] 2 SCC 356.

9. ILR 1947 Nag 955.

CASE LAW: K. Nagi Reddi v. Government of Andhra Pradesh¹⁰

Facts: The Appeal arises out of a suit brought to recover Rupees 60,000 by Nagi Reddy for damage sustained by him as a result of percolation of water in branch canal ten under Nagarajunsagar project. The state Government denied liability and contended, the tenth canal was constructed as per specifications prescribed for irrigation canals. There was no negligence in laying of the tenth canal. Any loss occasioned to the landholder, was not due to any defect in laying the canal.

Held: The court said, “In the instant case, it is not shown that the Government is required to cement the floor and it is also not proved that there is any negligence on the part of the State Government in laying of the tenth canal under Nagarjunasagar project. The State, therefore, in law, is not required to reimburse ₹ 60,000 of the loss which was sustained by the landholder.”

10.1.1 Existing duty of care

It is one of the essentials which is required to make the person liable. It means, that a person should owe a duty of care to another *i.e.* no person can be held liable for a careless act if he doesn't owe a duty of care to another. However, the duty of care should be legal in nature and not of the nature of moral, ethical, religious etc. By legal duty it means that it should be lawful and not unlawful or illegal. However, what duty falls under the negligence is an issue. As a person owes a duty of care in every act.

Michael A. Jones¹¹ states under the heading “Negligence: duty of care”, that as a tort, negligence consists of a legal duty to take care and breach of that duty by the defendant causing damage to the plaintiff. Duty determines whether the type of loss suffered by the plaintiff in the particular way in which it occurred can ever be actionable. Breach of duty is concerned with the standard of care that ought to have been adopted in the circumstances, and whether the defendant's conduct fell below that standard, *i.e.*, whether he was careless. The division of negligence into duty, breach and consequent damage is convenient for the purpose of exposition but it can be confusing because the issues will often overlap. Normally the question of existence of a duty situation in a given case is decided on the basis of existing facts and circumstances but proximity and foreseeability are the factors to be considered.

CASE LAW: Nichols v. Marsland¹²

Facts: The ornamental pools were constructed and large quantities of water was stored. Due to an unprecedented rainfall, the water overflowed.

10. AIR 1982 A.P 119.

11. Michael A. Jones on Torts [Fourth Edition] 1995 [Lawman (India) Private Limited] in Chapter II.

12. 1875 LR 10 Ex 255, (1876) 2 Ex D1.

Held: The rainfall was of such a magnitude, it was held that it could not have been reasonably anticipated. The pools busted and water inundated the adjoining lands. The decision in the case shows there was no negligence in construction or maintenance as, the rain was of such magnitude that it could not be anticipated.

CASE LAW: **Sankaravaidivelu Pillai v. Secretary of State for India in Council**¹³

Facts: A Caligula structure was constructed by the Government in 1892 and due to abnormal floods in 1895, the land of a Ryot was inundated.

Held: It was held that it was no part of the Government's liability to have anticipated such heavy rains.

CASE LAW: **Box v. Jubb**¹⁴

Facts: Water of a reservoir through the sudden emptying of another reservoir, overflowed and damage was done to the lands of the neighbour.

Held: The case for the overflow was considered and it was held that the owner of the reservoir could not have anticipated and it was laid down that the law did not require to construct a reservoir leading to meet any amount of pressure which the wrongful act of a third person may impose.

10.1.1.1 Test of Foreseeability and Proximity - In layman's language foreseeability means to know beforehand and in the cases of negligence it means knowing beforehand, whether the commission or omission of an act will likely cause any damage or injury to another. Whether an act is foreseeable or not is determined from the perspective of a reasonable man. Also, foreseeability is a matter of knowledge and inference. As, no matter how likely it is that something will occur, it is foreseeable by a person only if that person knows or ought to know that it might occur. On the other hand, an event that is of a very low probability may be foreseeable by a person if, the person knows or ought to know it has occurred in the past.

CASE LAW: **Donoghue v. Stevenson**¹⁵

Lord Atkin laid down the general principle of foreseeability and proximity applicable in solving cases presenting the existence or otherwise of a new duty situation in the following words:

"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 are so closely

13. [1905] ILR 28 Mad. 72.

14. [1879] 4 Ex D 76.

15. 1932 AC 562 (HL).

and directly affected by my act that I ought reasonably to have them in contemplations as being so affected when I am directing my mind to the acts or omissions which are called in question.”

Michael A. Jones¹⁶ has elaborated the general principles, a new approach represents a shift of emphasis rather than a new substantive test for the existence of a duty of care. The duty of care can be summarised as;

“a *prima facie* assumption that where a defendant’s carelessness causes foreseeable damage, a duty of care exists, subject to policy considerations which may negate such a duty.”

The courts will determine the duty issues on a case by case basis, looking in particular at the nature of the relationship between parties to determine whether it is sufficiently proximate. The following requirements must be satisfied before a duty of care is held to exist:

The following requirements must be satisfied before a duty of care is held to exist:

- (i) foreseeability of the damage;
- (ii) a sufficiently proximate relationship between the parties; and
- (iii) even where (i) and (ii) are satisfied it must be just and reasonable to impose such a duty.

Michael A. Jones¹⁷ has stated relationship of “Foreseeability and proximity” thus:

“The concept of foreseeability, *i.e.*, what a hypothetical reasonable man would have foreseen in the circumstances, is ubiquitous in the tort of negligence. It is the foundation of the neighbour principle, but it is also used as a test of breach of duty and remoteness of damage. The fact that particular consequences were unforeseeable may lead to the conclusion that the defendant’s behaviour was not careless and even where negligence is patent, damage of an unforeseeable kind will be regarded as too remote and therefore not actionable. This is partly related to the notion of fault liability. It can hardly be said that someone is blameworthy if harm to others could not reasonably have been anticipated.”

CASE LAW: **Latimer v. A.E.C. Ltd.**¹⁸

Facts: Latimer was employed by A.E.C. On the afternoon of the day of the accident, an exceptionally heavy rainstorm had flooded the whole of A.E.C.’s premises. Oil, which normally ran in covered channels in the floor of the building, rose to the surface and when the water drained away, left an oily film on the floor. A.E.C. took measures to clean away the oil, using all the sawdust available to them. Latimer came on duty with the night shift, unaware of the condition of the floor. While endeavouring to place a heavy barrel on a trolley, his foot slipped on the still oily surface, he fell on his back, and the barrel crushed his left ankle.

16. Michael A. Jones on Torts [Fourth Edition] 1995 [Lawman (India) Private Limited] in Chapter II at page 27.

17. *Id.* p.30.

18. [1953] A.C 643.

Held: The trial judge found a breach of common law duty which was reversed by the Court of Appeal. The court held, “There was no breach of duty. There was no duty to close the factory. The defendant only had to take reasonable precautions to minimise the risk which they had done. There was no need to go to great expense to eliminate any possible risk and thus no obligation to close the factory.”

CASE LAW: Vaughan v. Menlove¹⁹

Facts: Defendant paced a stack of hay near cottages owned by Plaintiff. Defendant was warned that there was a substantial possibility that the hay would ignite, and Defendant replied that he would “chance it”. The hay eventually did ignite and burn Plaintiff’s cottages, and Plaintiff sued to recover for their value.

Held: The standard for negligence is an objective one. One has behaved negligently if he has acted in a way contrary to how a reasonably prudent person would have acted under similar circumstances.

10.1.1.2 Foreseeability standards - It is important to realise, however, that a foreseeability is a very flexible concept. One man’s reasonable foresight is another man’s flight of fancy, and so the bounds of what is foreseeable can be stretched or narrowed as the case may be. The likelihood that a particular event may occur in a given set of circumstances may range from almost certainty to a vague possibility. The degree of foreseeability may be varying and so does the extent of the damage, and the nature of the relationship between the parties. The ‘reasonably foreseeable’, has a range which mean that it must be foreseeable as a possibility or probable or more probable than not or likely or very likely. This scope for ambiguity allows the concept of foreseeability to be used as to admit or deny recovery of damages in certain types of cases.

ILLUSTRATION :

‘A’ went to a café with his friend ‘B’. ‘A’ asked ‘B’ to park his car while ‘A’ went inside to find a table for themselves. ‘B’ parked ‘A’s’ car;

- (a) At spot W, where construction work for a road was on progress and tunnelling was going on. The road, proximately behind the car went downhill causing the car fell in the pit and sustain damages.
- (b) At spot X, which was an old bridge with expressed warning on it ‘it is not fit for heavy vehicles’. The bridge collapsed and so did the car.
- (c) At spot Y, which is under a big tree. A branch of the tree dropped causing damage to the car.
- (d) At spot Z, outside a stadium, where a ball from the stadium came flying and hit its screen.

19. [1837] 3 Bing N.C. 468.