



Negligence and Gross Negligence

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Outline

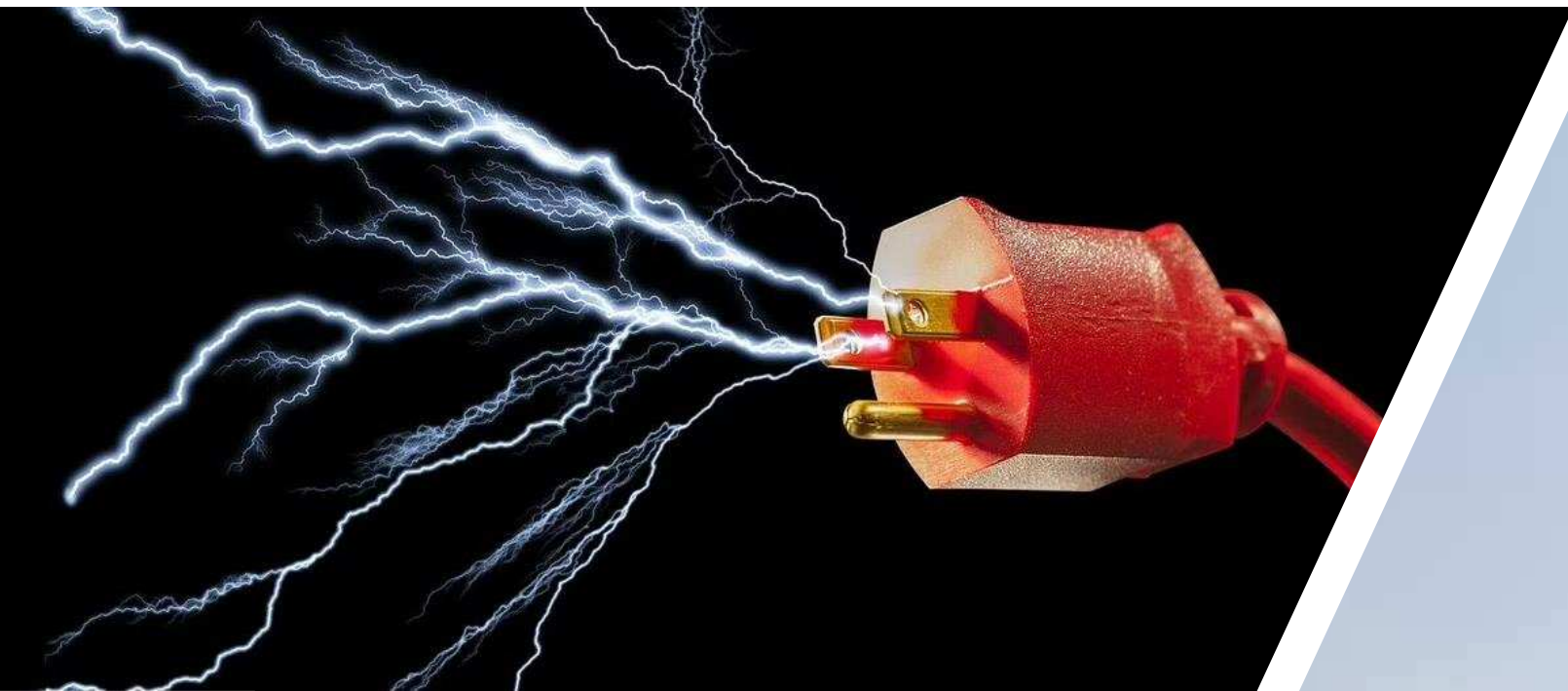
- Negligence: Meaning and development
- Negligence: Elements
 - Duty to care: Neighborhood principle, Caparo
 - Breach of Duty: Elements and standard of care
 - Causation
- Defenses
- Gross Negligence

Negligence: Black's Law Dictionary

"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"

Meaning

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



Elements of Negligence

The plaintiff needs to prove four elements:

- 1) **Duty of Care**
- 2) **Breach of Duty**
- 3) **Causation**
- 4) **Damages**



(a) Duty of Care:

*Donoghue v
Stevenson
[1932] UKHL 100*

"You must take reasonable care to avoid acts



The Neighbour Principle: Context

Lord Atkin: "The liability for negligence, whether you style it such or treat it as in other systems as a species of "culpa," is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot, in a practical world, be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. **The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply.**



Lord Macmillan

"In the daily contacts of social and business life, human beings are thrown into, or place themselves in, an infinite variety of relations with their fellows; and the law can refer only to the standards of the reasonable man in order to determine whether any particular relation gives rise to a duty to take care, as between those who stand in that relation to each other. The grounds of action may be as various and manifold as human errancy; and the conception of legal responsibility may develop in adaptation to altering social conditions and standards. **The criterion of judgement must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed.**"

The neighbour principle

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

The Current position:

Caparo Industries plc v Dickman (1990)

Lord Bridge:

- Was the damage caused reasonably foreseeable?
- Was there a relationship of proximity between claimant and defendant?
- Is it fair, just, and reasonable to impose a duty of care?

Lord Bridge

"What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing to the duty and the party to whom it is owed a relationship characterized by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other. "

Policy considerations

- Moral considerations
- Practical considerations
- Protecting professionals
- the ‘floodgates’ argument

Duty of Care

- Objective test: **Whether a reasonable person in the defendant's position would have foreseen the risk of damage**
- What must be reasonably foreseen is the possibility that if care is not taken, the injury may be caused to a certain class of persons rather than just to people in general
- It is not required that the plaintiff must be identifiable by the defendant

Duty of Care

In *Whippey v Jones* / [2009] EWCA Civ 452, where C was knocked over by a big Great Dane, the court held that D 'clearly owed a duty of care to [C] with regard to the way [D] handled Hector in the public park in Leeds that afternoon



In *Hole v Ross-Skinner* / [2003] EWCA Civ 774, where C collided with a horse let out of D's field, the court accepted that 'there was clearly a duty of care on a person who has animals on his land to ensure that the animals are kept there in reasonable safety. The land owner in such circumstances has ... a duty to take reasonable precautions in all the circumstances to ensure that the animals do not escape and foreseeably cause damage to other people



When it comes to livestock wandering from a field onto a road, then according to *Wilson v Donaldson* / [2004] EWCA Civ 972, there is a common law duty on farmers to take all reasonable precautions to prevent their escape.



(B) Breach of Duty

Claimant must prove that D's conduct in handling/supervising/owning etc, the animal, on the day of C's accident, fell below the standard to be expected of a reasonable handler/supervisor/owner of the animal

Key Points

Meaning: Standard of Care - Objective test – Reasonable Man

Factors extraneous to the defendant

- The likelihood of harm/The likely magnitude (seriousness) of harm
- The social utility of defendant's conduct
- The cost of avoiding the harm
- Common practice

Factors related to the defendant

- Special skills (Bolam v Friern Hospital Management Committee [1957])
- Age
- Illness

Who is a reasonable man?

Lord McMillan in *Glasgow Corporation v Muir* (1943):

"The standard of foresight of the reasonable man eliminates the personal equation and is independent of the idiosyncrasies of the particular person whose conduct is in question. Some persons are by nature unduly timorous and imagine every path be set with lions; others, of more robust temperament, fail to foresee or nonchalantly disregard even the most obvious dangers. The reasonable man is presumed to be free both from over-apprehension and from over-confidence, but there is a sense in which the standard of care of the reasonable man involves in its application a subjective element."

*Wilson v
Donaldson [2004] EWCA
Civ 972*

- D, was a farmer whose cattle wandered out into a road near Middlesbrough. Mr Donaldson's, C's, car collided with the cattle, causing C serious injury.
- The only way for the cattle to get to the road was by leaving D's field through its stock gate which was left open by walkers, going downhill into Home Farm, and then along an unfenced track onto the road.



Held

- D was negligent in not securing the cattle in his field better. His stock gate was the sole barrier between his cattle and the road.
- However, it was not self-closing; the public footpath was regularly used by walkers; there was no 'self-closing gate' nearby which would enable the gate to stay locked and with walkers going around it somehow; the gate had to be fastened manually; and there was no warning or 'Please Shut the Gate' reminder notice on the gate.
- D was aware that if any cattle strayed through his gate, they could get to the road

Addis & Ors v Campbell & Anor / [2011]

EWCA Civ 906

- Mr and Mrs Addis, claimants (c), took their black Labrador dog for a walk to an open space in Devon.
- There were two other dogs there, including Mr Leaman's (D's) bull mastiff, Taz. All dogs were off the lead (as was permitted) and playing in the river.
- Mr Leaman, 86, tried to cross the river across some stepping stones, slipped and fell, and was rescued. Taz, by this stage in the river too, bounded out and knocked over Mr Addis, causing him serious injury.
- **Those who knew Taz variously described him as 'very docile', obedient, and 'gentle, non-aggressive and "stupid" in a kind way'.**



- C alleged that D should have resumed control of Taz after he was rescued from the river, by putting him on a lead, and that Taz, excitable and running about, presented a danger to someone, like C, who was nearby.
- Held: D was not negligent. D could not have foreseen that Taz was a risk of injury to anyone.

(C) Causation

- In damage-by-animals cases, C must prove that, as in the usual negligence action, D's failure to supervise/handle/care for the animals caused C's injury on the balance of probabilities
- But-for test: "If the damage would not have occurred but for the defendant's breach of duty, then the breach of duty is a cause of the damage. "
- ***Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428*** (Arsenic poisoning)
- If the damage would still have occurred, even if the defendant had not broken the duty of care, then the breach did not cause the damage.
- Break in the chain of causation: Intervening events

Defences to negligence

- Contributory negligence
- *Volenti Non Fit Injuria*
- Illegal acts by plaintiff

Gross Negligence: Section 304-A IPC

- What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree.
- Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution
- The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly".

R v Adomako / [1995] 1 AC 171

- For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or recklessness". It is not merely lack of necessary care, attention and skill.
- "Thus a doctor cannot be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State."