

## Negligence

In tort law negligence may be defined as the failure to act reasonably, i.e., as a reasonable man would act. The reasonable man exercises care not to injure others. To the reasonable man some truths are self-evident. The reasonable man knows the difference between direct facts and imagined conjectures. The reasonable man cares for his neighbor's welfare. He does not steal. He does not lie. He acts responsibly to others and to himself. He follows the Golden Rule. He is not required to throw his life away attempting to rescue the widow's parakeet from a marauding cat. He is allowed to exercise self-interest. He is not required to give his money to the poor. He is required, however, to act in a way that will not adversely affect the welfare of others or the welfare of society as a whole. The reasonable man exercises due diligence<sup>1</sup> to ensure that his acts (including his words both spoken and written) do not injure others. The reasonable man sets the stage for civilized governments to establish a system of justice and fair play.

Whatever is good for the reasonable man is good for us all.

Negligence may also be established in our courts when one party breaches his duty to another. Duty is the obligation that gives courts the right to order that one person pay for the damages he causes to another. (Similarly, it gives courts power to enforce contracts, where one party breaches the duty created by promise.)

Duty gives rise to all causes of action<sup>2</sup>, for every lawsuit arises from the breach of a duty of one form or another. In our society, everyone owes a duty not to cause injury to others, either negligently or with intent. If one breaches his duty to another, he *may* be liable in either a civil court or, if the duty is serious enough, in criminal court. Not all duties, however, give rise to a cause of action. For example, if Billy promises Sue they will marry on June 4th and gets cold feet at the last moment, our courts will not enforce the obligation he took upon himself by making the promise, for such are "contracts in contemplation of marriage" and no longer enforceable under the laws of any state in the nation. If Billy promised Sue he'd take her to the movies if she baked him a cake, however, and she bakes the cake but he backs out, she would have a cause of action to at least recover the price of her ticket (though, of course, it would cost more to bring her lawsuit than the ticket would be worth). The point is that duty gives rise to obligation, and enforcement of obligation is what courts are all about.

For a court to enforce a duty, therefore, the duty must be reasonable.

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<sup>1</sup> Due diligence is a term of art seldom understood but frequently seen in the papers of civil lawsuits. In its plain meaning due diligence is the diligence due to a particular matter (hence the term), the diligence a reasonable man would deem to be due considering the circumstances. Due diligence is a duty imputed to us all, a duty our courts have power to enforce. For example, if Green hires White to supervise Black, and White takes naps in the afternoon while Black leans on the broom handle, White failed to exercise due diligence. If a guardian undertakes the care of his ward then permits the ward to die of malnutrition at the nursing home, the guardian failed to exercise due diligence, since the guardian acted unreasonably.

<sup>2</sup> At least one cause of action is essential to every civil lawsuit. It is the basis for complaint. Usually the plaintiff asserts separate counts in his complaint, one for each cause of action. To adequately allege a cause of action he must state all facts required to win on each cause of action. These are called elements of the cause of action. If the plaintiff alleges a cause of action for breach of contract, for example, and proves each of the essential elements of that cause of action (i.e., if he can prove there was a contract, the contract was breached, and he suffered damages as a result) he wins. It's that simple.

Responsibility is the consequence of duty. Each of us, in exchange for the benefits of living in community with others, owes a duty to all. That duty creates a responsibility in us and gives our courts power to require us to answer for the damages people say we caused them by breaching our duty.

They must prove breach of duty, and they must prove injury, however if they prove both we can be made to meet our responsibility by paying them for their damages.

We are all responsible to each other.

It is the purpose of government to enforce our responsibilities to each other.

Negligence, then, is the lack of care or concern for responsibility. No intent to injure is required. Since everyone has a duty to care for others and protect them from injury by using common sense and caution, careless acts that damage others (even when no injury was intended) may give rise to a cause of action. A lawsuit may arise from intentional acts (e.g., when one slanders another) or negligent acts (as when one rear-ends another on the highway).

Both acts are breaches of duty and both give rise to causes of action.