

Recklessness vs. Negligence, Part 1: Recklessness

When a person's conduct becomes so reckless it warrants a lawsuit, he or she become what's known as "liable" for injuries caused by that recklessness. Under the law there are four basic principles of liability, and depending on the type of lawsuit, can leave the reckless party liable for any pain and suffering caused by their actions.

This article will delve into the four basic theories of liability and the basis for which a civil case involving recklessness is grounded in. The most important thing to understand are the four theories of liability, because if they are not met, the case will be dismissed by the judge.

The four theories of liability at a glance:

- **Intent:** this can also be referred to as "willfulness" and is defined as the person being accused intentional causing harm to another human being
- **Recklessness:** the basis for this article and, implies the person knew (or at the very least should have been aware of) that his or her actions were likely to cause harm to another
- **Negligence:** as discussed in previous articles, it's important to reiterate that this is defined as a person or persons acting in a way that is a violation of their duty to another, and with the breach of said duty they've caused harm, injury, or death
- **Strict liability:** this, under the law, is reserved for cases where a defendant can be held liable for injury or accident caused regardless of their mental state

Recklessness vs. negligence

Recklessness itself involves a lack of conduct to such a level that is short of actual intent to cause harm but exceeds negligence. When it comes to negligence, it's defined under the law as occurring when a person *unknowingly takes a risk*. Recklessness is the opposite: the party or parties were aware of the risk being taken and acted anyway.

What falls under recklessness? Important points to be made

When it comes to proving recklessness, it's determined both subjectively and objectively. This is something that doesn't differ under the law. Recklessness is always due to a person or persons taking a known risk regardless of the outcome it could have on another human being. The definition doesn't change even when the circumstances differ. Remember, every personal injury case is unique, and the circumstances are never the same twice. However, recklessness holds the same definition under the law.

Let's review the steps that are used to prove recklessness:

1. Looking at what the defendant knew or is believed to have known when the injurious act initially occurred. This is considered subjective.

2. Considering what a reasonable person in that same such scenario would have been thinking if he or she were in the same situation as the defendant was. This is considered objective.
3. Both subjective and objective tests rely on a line of thinking known as “conscious awareness”; this means *whether the defendant knew or should have known his or her actions may be the cause of injury to another person.*

Recklessness, an example scenario

In this example we'll consider a defendant being accused of reckless driving:

Driver A sees the posted speed limit as they approach a residential neighborhood but is in a hurry to get to work. Driver A knowingly exceeds the speed limit by more than 25mph knowing they could cause a traffic accident.

They read the posted signs and are aware of the rules of the road within a residential neighborhood as they drive through this area on a daily basis. Today they are late and ignore the rules of the road, sideswiping Person B who was going the posted speed limit.

Driver B suffers a concussion as well as broken bones and has to take excessive time off work to recover from the accident. Driver A would now be said to have committed an act of **recklessness**, as they knew the consequences of speeding and were also cognizant of the speed limit but chose to ignore it in favor of getting to their destination more quickly.

Driver B now has the legal right to sue Driver A by hiring a personal injury attorney and seeking damages for their totaled vehicle and their pain and suffering.

Other real-world examples of knowingly risky behaviors

Let's list a few more examples of behaviors that could be considered risky or reckless:

- Drinking and driving, texting and driving
- Use of illicit substances in public
- A concealed weapon
- The storage of a firearm, unlocked in a home where children live or are present often

What constitutes recklessness by law?

This is a question that should be answered thoroughly. There are several instances in which it becomes clear the defendant was acting in such a way that their behavior is considered not negligent, but **reckless**:

- The defendant committed the act—speeding for example— knowing it may cause a traffic accident

- The risk is deemed unreasonable (i.e. answering a text message while driving instead of waiting until the car is parked in a parking lot)
- The risk can be considered excessively greater than an act that would be considered negligent
- The defendant knew or had reason to believe that other human beings present could be harmed if they acted, but chose to act anyway

In part 2 of this article, we look at **negligence** and how such acts differ from acts of recklessness under the law in regard to personal injury.

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