

## Recklessness vs. Negligence, Part 2: Negligence

One of the more well-known areas of personal injury law is **negligence**. However, just because this is an area of the law commonly dealt with by top personal injury attorneys, it doesn't mean it's an easy one to navigate.

Quite the contrary: Only an experienced board certified civil trial attorney is qualified to take on a case involving negligence resulting in injury or the loss of a loved one.

In the second and final part of our two-part [Recklessness vs. Negligence](#) articles, we approach the area of personal injury law known as **negligence**.

### The definition of negligence: a simple definition for a complex area of the law

Let's begin by defining the term **negligence** under the law:

*"Failure to exercise the care toward others which a reasonable or prudent person would do in the circumstances."*

Negligence is not always able to be defined in a manner that can be considered as straightforward as we would like. This is because it involves an intensive legal analysis of the actual elements of negligence as they relate to particular case's facts.

### No two cases are alike: words worth repeating

As has been mentioned in several other articles: each personal injury case is unique, and it bears repeating because situations such as negligence do arise, and it comes directly into play in this instance.

### Standard of conduct

When it comes to the laws surrounding **negligence** it's important to note that a key requirement is one conducting themselves in a way that is considered conforming to the standard of conduct.

If a person (in a lawsuit known as the "defendant") doesn't conform to the set standard, that person—or defendant—can be deemed liable for any injurious behavior he or she inflicts on another person or their property.

In certain situations, the standard requires a person to have acted, which makes it possible for the actual omission of such an act to clear the way for a negligence claim to be brought against them.

### Elements of negligence: puzzle pieces in a larger picture

To be able to prove in a court of law that a defendant did act in a negligent manner that caused accident, injury, or death, the person bringing the lawsuit (the "plaintiff") must be able to prove what's known as *the elements of negligence*.

The elements of negligence are:

1. Duty
2. Breach
3. Causation
4. Damages

Even a step-by-step overview isn't as simple as it looks. It's a lengthy legal process that requires an experienced attorney with a great deal of in-depth understanding of the laws that surround negligence cases.

Next, we'll go step-by-step, this time to look at the four elements of negligence as they apply to personal injury.

## **Step 1: Duty**

The first step in the four-part process is "duty". "Duty" in a negligence case requires the plaintiff and their legal counsel to determine whether the defendant owed them a "duty". Under normal circumstances, determining this will depend on the circumstances of the injurious behavior that occurred.

Whether the defendant had a duty is something that is, in most cases, determined by a judge.

## **Step 2: Breach**

The second step in the four-part process involves breach of duty. Simply put, a defendant would be considered to have breached his or her duty by not acting in a reasonable manner in accordance with fulfilling their duty.

As an example, when one is driving, they owe a duty to obey the rules of the road. This includes but is not limited to: going the speed limit, stopping at stop signs and red lights, and signaling before making a turn. That would mean a driver who runs a red light has breached their duty to drive reasonably.

In the example we used, it would mean he or she did not drive in a manner considered reasonable. This also goes back to "standard of conduct" in the same manner.

Whether the defendant breached their duty is a question whose answer lay with the jury.

## **Step 3: Causation**

This is probably the most complicated step in the legal process surrounding a negligence claim. This third step—causation—is sometimes split into two parts for a better understanding of the law and to simply its complexities in the most time saving manner.

- **Causation in fact**
- **Proximate causation**

These elements are split in two because even if the attorney leaves them as a single step, both will always need to be addressed.

Cause in fact is the simpler of the two elements that make up step three. It's the "but for" in the case. For example: "but for" the actions of the defendant, injury to the plaintiff would not have happened.

Now we have to look at proximate cause, because as stated previously, you cannot only use one of the elements within step three!

Proximate cause relates to the scope of the defendant's responsibility. This element depends on if the injury to the plaintiff was foreseeable by the defendant.

If the accident could have been prevented (and thusly the injury) had the defendant not taken certain actions that they were aware they were taking (running a red light, for example, is entirely avoidable and reasonable drivers do not do this), then the liability falls upon the defendant who will then owe the plaintiff damages for their pain and suffering.

#### **Step 4: Damages**

The last and final element in a negligence case is **damages**. For a personal injury attorney to win the case on behalf of the plaintiff, there must be legally recognized injury caused. This is normally physical injury to the plaintiff (broken bones from a car accident) or property damage (a totaled car).

It must be proven that because of the defendant's negligence, damage was caused to property and/or injury was caused to another human being.

**Contact us to schedule a complimentary consultation. There's no obligation. Take the first step and call today: (877). 529-0080**

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