



## NEGLIGENCE ACTIONS IN CALIFORNIA



### Basic Elements of a Negligence Action

Negligence is either the failure to do something that an ordinarily prudent person would do under given circumstances or the doing of something that an ordinarily prudent person would not do under those circumstances. Any action based on negligence involves a violation of a legal duty, imposed by statute, contract, or otherwise, owed by the defendant to the person injured. Thus, to support a finding of negligence by the court, a plaintiff must show that the defendant owed a duty to the plaintiff to use care, that he or she breached that duty, and that the breach was the actual cause of the resulting injury.

Duty: There are two general types of duty imposed by law. First, everyone has a duty to use ordinary care in conducting activities from which harm might reasonably be anticipated. California Civ. Code §1714(a), which provides that everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the other person has, willfully or by want of ordinary care, brought the injury upon himself or herself. Liability for negligent conduct is, therefore, the rule, to which no exception is made unless clearly supported by public policy considerations.

In addition to the general duty to use ordinary care, a person may have a duty to act affirmatively to warn or protect others or to control the conduct of others, if a special relationship exists between the actor and either the person to be controlled or the person who needs protection.

To determine in a given case whether the defendant owes a duty of care to the plaintiff, the court must consider several factors, including the foreseeability of harm to the injured party, the degree of certainty that the injured party suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty on the defendant to exercise care with its resulting liability for breach, and the availability, cost, and custom of obtaining insurance for the risk involved.

The most important of these considerations in establishing duty is foreseeability. As a general principle, a defendant owes a duty of care to all persons who are foreseeably endangered by his or her conduct, with respect to all risks which make that conduct unreasonably dangerous.

Breach of Duty: After establishing the existence of a duty of care owed by the defendant, a plaintiff, to support a claim of negligence, must show that the defendant breached that duty. The breach of the general duty to act reasonably consists of conduct falling below the standard of ordinary care or skill in the management of person or property. [Civ. Code §1714(a)]

Ordinary care is that degree of care which people of ordinarily prudent behavior can be reasonably expected to exercise under the circumstances of a given case. In other words, the care required must be in proportion to the danger to be avoided and the consequences that might reasonably be anticipated.

The duty to act reasonably varies with changing circumstances. In general, the standard of care is measured objectively.

Causation: For an act or omission to be the legal cause of an injury, it first must be the cause in fact of the injury. Finding cause in fact, or actual cause, requires a common sense determination as to whether the defendant's conduct brought about or contributed in some way to the plaintiff's injury. The "but for" rule of causation, which defines actual cause, implies that the defendant's conduct is the cause of an event if "but for" the defendant's conduct, the event would not have occurred. Stated another way, if the plaintiff would have sustained the injury anyway, regardless of whether the defendant was negligent, then the defendant's negligence was not an actual cause of the plaintiff's injury.

The "but for" rule of causation is adequate for most situations, but it fails where liability would be avoided because a defendant's act or omission concurred with another cause and either cause alone would have been sufficient to bring about the injurious event. However, in those situations involving concurrent causes, one cannot escape responsibility for his or her negligence on the ground that identical harm would have occurred without it. The proper rule for those situations is that the defendant's conduct is a cause of the event because it is a material element and a "substantial factor" in bringing it about.

The doctrine of "proximate cause" provides a limitation on liability. Even where a defendant's conduct is an actual cause of a plaintiff's injury, the defendant may be held not liable because of the manner in which the injury occurred. The most common circumstance in which a defendant may escape liability because of a lack of proximate causation is when, after the defendant's act, an independent intervening act that is not reasonably foreseeable occurs. In that event, even though the defendant's act started the chain of causation toward the plaintiff's injury, the intervening act may be considered a superseding cause of the injury. Thus, where, because of an unforeseeable intervening act, a court concludes that it would be unjust to hold the defendant legally responsible, the court relieves the defendant of liability by holding that there is no "proximate cause" between the defendant's act or omission and the plaintiff's injury.

Defense - Comparative Negligence: Contributory negligence is conduct on the part of the plaintiff which falls below the standard to which he or she should conform for his or her own protection, and which is a legally contributing cause concurring with the negligence of the defendant in bringing about the plaintiff's harm.

Before 1975, the plaintiff's contributory negligence was a complete bar to recovery against a defendant whose negligent conduct would have otherwise made him or

her liable to the plaintiff for the harm the plaintiff sustained. However, the California Supreme Court has replaced this all-or-nothing rule of contributory negligence with a rule that assesses liability in proportion to fault. In all actions for negligence resulting in injury to person or property, the contributory negligence of the person injured no longer bars recovery, but the damages awarded must be diminished in proportion to the amount of negligence attributable to the person recovering.

## **General Procedural Outline:**

No two cases are alike and procedures vary with the nature and complexity of the legal and evidentiary issues involved. The following is a very general outline of the stages of a civil action.

### Complaint Filing

Every case begins with the filing and service of a Summons and Complaint. The Complaint will contain one or more "causes of action" such as "Breach of Contract" or "Fraud".

### Service Of Complaint

After the Summons and Complaint have been filed with the court, they must be properly served on the defendant(s). If the defendant(s) will accept service, he/she may sign an Acknowledgment of Service." Otherwise the documents will have to be formally served.

### Response To Complaint

The Defendant(s) have 30 days from the date of service of the Summons and Complaint to serve on the Plaintiff(s) either an Answer to the Complaint or a pleading challenging the sufficiency of the the Complaint. Responses challenging the sufficiency of the Complaint include a motion called a "Demurrer" and a "Motion To Strike"

### Hearing Of Challenges To Sufficiency Of Complaint (If Applicable)

If the defendant(s) decide to file a demurrer or motion to strike, these motions must be heard and ruled upon before the matter may proceed. This can take up to 2 months. If such motion is sustained and the court grants leave to amend the Complaint, a new complaint must be drafted and served and the process starts over. Sometimes a second demurrer or motion will be filed causing more delays.

### Discovery

Once the Complaint and Answer have been filed both parties commence "discovery" procedures by which the evidence necessary to prosecute both sides of the case. Depending on the nature and complexity of the case, one or more of the following discovery devices may be used by the parties:

- Interrogatories: Written questions which must be answered under oath.
- Request For Production Of Documents: Demands for production of documents by the parties involved.
- Requests For Admission: Requiring the parties to say which allegations they affirm and which they deny.

- Deposition: The parties may be required to appear in the opposing attorney's office to answer questions under oath in front of a court reporter. Depositions can also be taken from 3rd parties.
- Subpoena Documents From Third Party: Documents may be subpoenaed from 3rd parties such as banks and employers.

Discovery Motions (If Applicable)

If a party fails or refuses to comply with discovery requests, it may be necessary for the party propounding the discovery to make a motion in court to compel responses. If the court grants the motion, further responses will be made. If those responses are still inadequate, another motion may be made and the court can sanction (fine) the resisting party. In extreme cases the court can even terminate the action in favor of the moving party.

Trial Setting:

Throughout the case the court will set a series of Case Management Conferences to be attended by attorneys for all parties. These hearings are designed to determine whether the case is ready for trial. When the court feels that a case is ready for trial, it will set the date for trial and make orders concerning completion of discovery and final preparation for trial.

Settlement Negotiations:

Settlement negotiations may proceed throughout the trial. Often the court will require the parties to try a mediation of the issues or will set a "Mandatory Settlement Conference" (MSC) before the trial date. Settlement negotiations generally become more intense as the trial date approaches.

Trial:

The vast majority of cases settle before trial. However if the parties cannot settle the case, the only way to resolve the issues is by way of trial.

- Gene Kinsey

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