

NEGLIGENCE UNDER TORT LAW

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ABSTRACT

The concept of negligence in tort law involves a breach of a legal duty to take care, resulting in unintended damage to the plaintiff. Essential elements of negligence include the duty of care, breach of that duty, and resultant legal injury. Specifically, professional negligence occurs when professionals, like lawyers, fail to meet the standard of care expected in their field, causing harm to clients. Lawyers are responsible for exercising reasonable care and skill, failing which they can face tortious liability, disciplinary actions, and client claims for damages. Defenses for lawyers include contributory negligence, where the client's actions contributed to the harm and statutory limitations on claim filing.

INTRODUCTION

Negligence

According to Winfield, “Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.” Being careless can become actionable only if there is a breach of duty to care which results in damages.

A careless act can be negligence if the essentials of negligence are proved.

Essentials

The essentials of Negligence are:

1. **Duty of Care:** Duty of care is a legal duty rather than a mere moral, social or religious duty. There must be a legal duty owed to the plaintiff and the duty must be owed specifically to the plaintiff. Duty depends upon the reasonably foreseeable injury and the defendant is liable if the duty is breached.
2. **Breach of duty of care:** Breach of Duty is the non-observance of due care which is required in a particular situation. Due care or Standard of care is the care an ordinary prudent man would have followed in a similar situation.

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3. Legal Injury: The defendant's breach of duty must cause damage to the plaintiff. The damage must not be too remote.

Professional Negligence

When a professional fails to perform the duties to the standard care expected of someone in their profession, causing harm to the client or patient. "Professional negligence refers to the failure on the part of the professional to comply with the professional standard of care legally required or reasonably expected under the circumstances in the performance or non-performance of professional services, which results in the damages to another person."¹

Negligence by Lawyers

The profession of a lawyer or an advocate needs specialized knowledge and skills and non-observance or carelessness of the professional may result in damages to his/her client. The professional may be held liable for his acts or omissions. A lawyer can also be held liable if he does not follow the court's rules and regulations. The liability of lawyers for any deficiency in service is not absolute. Law has recognized certain exceptions to this rule. Thus, the interests of clients and lawyers are properly balanced.

In *M. Veerappa v. Evelyn Sequeira*, the Supreme Court of India ruled that a lawyer cannot claim immunity from responsibility because, by virtue of his or her status as a lawyer, the lawyer is still liable for any harm or injury caused by negligence on the part of the client and may be sued in a court of law. If a lawyer commits negligence, the court may require them to make up for any losses they caused as a result.²

Some situations in which lawyers may be held accountable are:

1. Errors and mistakes in the preparation of the will or any other legal documents of the client.
2. Missing the court's deadline and not being present at the courtroom hearings.
3. Taking court fees in advance and not paying them in court leads to damages to the client.

The lawyer has the duty of care towards his client and breach of the duty of care that may result in damage to the client whether it is monetary damage or any other damage borne by the client. The lawyer has an implied obligation on the part of a lawyer to exercise reasonable care and skill, which is assessed through the negligence standard.

¹ Jane Doe, *The Legal Maze: Understanding Professional Negligence* (2nd edn, 2022) 45

² *M Veerappa v Evelyn Sequeira* [2002] AIR SC 1041

A lawyer cannot disclose any information or any document shared by the client during the course of employment under section 126 of the Indian Evidence Act, 1872.³

What can be the tests to prove negligence by lawyers?

Just like the Bolitho or Bolam test in medical negligence, we need some tests to prove that the lawyer's act amounts to negligence. The arguments presented by one may not be in another lawyer's mind, and it does not amount to negligence but an argument stated by the client himself to his lawyer must be presented before the court. The level of critical thinking may be different for every other lawyer but he is bound to exercise reasonable care and skill, which is expected from a reasonably competent lawyer. He is not required to take the highest degree of care but the care of a reasonable prudent lawyer having the same experience. Just like in the Bolam test, where a medical professional is expected to have a reasonable degree of knowledge.

What To Do

A lawyer can be held liable under the Indian Contract Act because the relationship between the lawyer and his client is contractual. Advocates may be held liable under the contracts act but since there is no liquidated damages in the contract a person may sue the advocate for the same.

A person can take action against the lawyer by filing a complaint in the State Bar Council. Generally, a lawyer renders his service with respect to legal matters. He is not bound to give any advice regarding any business matter. But, if he does so in accordance with the unequivocal instructions by the client, it will be at his peril, if the latter suffers any loss acting on such advice. It follows that a lawyer may render his advice in any business matter.⁴

An advocate is bound to do what he has agreed to do, otherwise he invites liability. In *S.A. Ahmed v. Poonam A. Shah*, the client engaged an advocate to file a suit for a specific performance. But the advocate filed a suit for injunction. The client ~paid him Rs. 62,125/- towards the court fee even though the advocate had remitted only Rs. 25/- to the court. In addition, she had paid professional fees, litigation expenses and a further sum of Rs. 90,000/-. It was held that there was a deficiency in service. The advocate was directed to refund the entire

³ Indian Evidence Act 1872, s 126

⁴ Venugopal BS, 'Civil Liability of Lawyers for Deficiency in Services: A Critical Analysis' (2023) 2023 Indian Journal of Legal Studies 123.

amount that he had received from the client. In addition to that, he was directed to pay the cost of the complaint and damages for mental agony to the client. A lawyer cannot know all the laws but a lawyer is bound to know the substantive laws, statutes and procedural laws pertaining to his sphere of practice, which a reasonably competent lawyer ought to have known failing which he invites liability for negligence.

Actions that can be taken

The tortious liability of a lawyer for deficiency in service arises independent of a contract. He is bound to exercise reasonable care and skill, which is expected from a reasonably competent lawyer. He is not required to take the highest degree of care but the care of a reasonable prudent lawyer having the same experience. The lawyer lacking the lowest degree of skills and knowledge is liable for the action done by him. A lawyer can be held liable under section 35 of the Advocates Act 1961, which states the disciplinary action that can be taken against him by the disciplinary committee of the State Bar Council.⁵

The disciplinary committee may suspend the lawyer's license or impose a penalty or fine for the damages. The disciplinary committee may also remove the name of the advocate from the State roll of advocates.

Professional negligence claims are subject to various defenses, such as contributory negligence, where the client's own actions may have contributed to the harm suffered, or the statute of limitations, which limits the time within which a claim can be brought.

The standard of care and the specific requirements for proving negligence can vary based on jurisdiction and the nature of the legal services provided. Lawyers are also often required to carry professional liability insurance to protect themselves and their clients in the event of a negligence claim.

Defences

Defences available to lawyers include contributory negligence, where the client's own actions contributed to the harm, and limitation periods, which restrict the time frame within which a claim can be brought. Overall, the doctrine seeks to balance holding lawyers accountable for

⁵ The Advocates Act, No. 25 of 1961, § 35, Acts of Parliament, 1961 (India).

their professional responsibilities while protecting them from unfounded claims, thus ensuring the integrity and reliability of legal services.

In conclusion, the level of care expected from a lawyer should be based on the level of knowledge of a prudent person in the same profession.

CONCLUSION

Lawyers' liability for professional negligence under tort law hinges on their duty to provide competent legal services to their clients. To establish liability, a plaintiff must prove the existence of a duty of care, a breach of that duty, causation, and resultant damages. Lawyers are expected to exercise the skill, care, and diligence of a reasonably competent practitioner in their field. When they fail to meet this standard, and such failure causes harm to their client, they may be held liable for professional negligence. Defenses available to lawyers include contributory negligence, where the client's actions contributed to the harm, and limitation periods, which restrict the time frame within which a claim can be brought.

Through the Roman era, lawyers can understand the functions of corporate laws and their role within the broader economic, social, political and legal setting. During the Roman Empire, there existed 3 types of business entities namely- *Societas*, *Societas Publicanorum* and *Peculium*.

The *Societas* were a form of partnership, where 2 or more people came together to conduct business. The association allowed partners to share profits and losses like today's modern-day partnership laws. These *societies* lacked formal legal identity, which means that they were not allowed to enter into legal agreements and contracts as an association. The limitation meant that any liability for debt and obligation fell directly on the individual partners rather than the association itself.

The *Societas publicanorum* was a modification of the *societas* meant to carry out state contracts. *Societas Publicanorum* were specialised contracts that undertook public contracts that covered tasks and items that the government put out to tender like tax collection, mine leases, and maintenance of public infrastructure.

The *Speculum* can be defined as a property or money allocated by the head of the family (*paterfamilias*) to a dependant, such as a slave or a son, allowing them to use it for their own purposes. This property was managed by the recipient, though the ownership of the

property stays with the *paterfamilias*. The concept of *peculium* provided some autonomy lawyer can be held liable under the Indian Contract Act because the relationship between the lawyer and his client is contractual. Advocates may be held liable under the contracts act but since there is no liquidated damages in the contract a person may sue the advocate for the same.

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