



PROFESSIONAL NEGLIGENCE UNCOVERED: WHERE RESPONSIBILITY MEETS LIABILITY

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INTRODUCTION

Torts are civil wrongs or violations of legal obligations against individuals or property that give rise to civil rights of action for remedies that are not limited to any one field of law, such as breach of contract or breach of trust, or statutory duties, but give rise to a claim for unliquidated damages that are uncodified in nature. Historically, tort law has sought to balance societal interests in personal safety, economic activity, and professional accountability while protecting individuals from undue harm caused by the wrongful acts or omissions of others.

The legal field branch related to torts is growing as more and more legal issues are coming into prominence. Negligence is one such tort. 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". Negligence is particularly significant in professional contexts because the decisions and actions of professionals can have profound consequences on clients, patients, or consumers. Professional negligence ensures that individuals or entities in positions of trust maintain a reasonable standard of competence and care. This general proposition applies with particular force to professionals, who are entrusted with matters of specialised skill and judgment.

ESSENTIAL ELEMENTS OF NEGLIGENCE

For an actionable claim of negligence to arise, certain foundational elements must be established. These are generally recognised as -

Duty to take care: The existence of a duty of care owed by the defendant to the plaintiff. It arises when the law recognises a relationship between the plaintiff and the defendant such that

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the defendant's conduct must conform to a standard of reasonable care. And there is a restriction on the defendant's freedom to behave reasonably to that of a reasonable and prudent person in a particular situation.

The doctrine of neighbourhood, as given by Lord Atkin, helps to decide if, in a particular case, a duty of care exists. It means that one must take reasonable care to avoid acts or omissions that one can reasonably foresee would likely injure their neighbours, understood as those persons who are closely and directly affected by their actions.

Duty Should be Towards the Plaintiff: There must be a breach of duty by the defendant towards the plaintiff. The duty arises when there is a reasonably foreseeable risk of harm to an identifiable class of persons, and when there is a reasonable probability of danger from the conduct of the defendant. This principle was elaborated in *Caparo Industries plc v Dickman*, where the court stated that the imposition of a duty requires foreseeability of damage, a sufficiently proximate relationship, and that it is fair, just, and reasonable to impose liability.

Breach of Duty to Take: A breach occurs when the defendant fails to meet the standard of care expected in the circumstances. As observed by Lord Dunedin, the breach of duty means that the thing that the defendant did not do was a thing which a reasonable person commonly did in light circumstances. Courts consider factors such as the probability of harm, the seriousness of potential injury, and the burden of taking precautions. In professional negligence, the standard is measured against the ordinary competent professional practising in that field, rather than against perfection.

Causation: Damages suffered as a direct and proximate result of the breach. Plaintiffs must show that the acted-on negligence was the proximate cause of their loss. The "but for" test is applied: But for the defendant's breach, the plaintiff would not have suffered the loss.

PROFESSIONAL NEGLIGENCE

Negligence, in simple terms, connotes carelessness. The common professions that face this type of negligence: Manufacturers, Repairers and Builders, Bankers, Solicitors, Surgeons and Doctors, Attorneys, Company Directors, Carriers, Innkeepers, and Hoteliers. Negligence committed by these professionals is known as 'Professional Negligence'. It describes the carelessness displayed by these professionals. It is a particularly complex field of law in tort law, which happens when a professional fails to perform their responsibilities to a required

standard. It is a failure by a professional to exercise reasonable care and competence, resulting in harm. Professional negligence encompasses both errors of judgment and failures to adhere to established standards. The courts recognise that professionals are not infallible; however, they must exercise competence, diligence, and care consistent with their specialised training and experience. The doctrine recognises that the standards in, for example, medicine or law, may change over time or vary between schools of thought; however, fundamentally, the professional must act as a reasonably skilled person would under similar circumstances. The point that is to be taken into consideration is that there should be an ordinary competent professional standard, not perfection.

LEGAL TESTS AND STANDARDS

The Bolam Test: The classic test for determining professional negligence is the Bolam Test, established in *Bolam v Friern Hospital Management Committee* (1957). The basic tenet of this rule is: “A professional is not guilty of negligence if they have acted in accordance with a practice accepted as proper by a responsible body of professionals skilled in that particular art.” Indian courts enthusiastically adopted the Bolam Test, most notably in *Jacob Mathew v. State of Punjab*, AIR 2005 SC 3180.

Application in India: The Supreme Court of India in *Jacob Mathew v. State of Punjab* conclusively held that:

1. Mere error of judgment or an accident does not amount to negligence.
2. It must be shown that the conduct of the professional fell below the standards of their profession as established by their peers.

This test is, however, not conclusive. Courts exercise oversight and will reject professional opinions that are not logical or reasonable.

NEGLIGENCE BY MEDICAL PROFESSIONALS

Negligence by surgeons or physicians is known as Medical Negligence. The medical practitioner must bring a reasonable degree of skill and knowledge to their task and exercise a competent, fair, and reasonable degree of care towards the patients. The duty owed by medical practitioners is substantial because patients rely on their expertise for critical health decisions.

In the case of Dr. N. Ummer VS K.M. Hameed, a biopsy was conducted on the patient, and the illness was wrongly diagnosed as Tuberculosis, while the patient had cancer, as a result of which the patient died. The Kerala High Court held that it was a clear case of medical negligence and stated that it was the duty of the skilled medical practitioner, who had the competence and reasonable ability to diagnose the illness and administer medications, to provide proper treatment as follows. This case illustrates that medical professionals are expected to diagnose and treat patients with reasonable care and skill, though perfection is not required.

Medical negligence law recognises that complex medical cases may involve difficult judgments. Courts often apply the Bolam test, derived from *Bolam v Friern Hospital Management Committee*, which holds that a professional is not negligent if they act in accordance with a practice accepted as proper by a responsible body of medical professionals, even if others disagree.

NEGLIGENCE BY MANUFACTURERS

Manufacturers of food products, medicines, and other goods have a legal duty to their ultimate consumers to keep them free from defects that would likely cause harm to their health or any harm in general. This principle underpins product liability law and is critical for consumer protection.

In the landmark case of *Donoghue VS Stevenson (Snail in ginger beer)*, the plaintiff drank a bottle of ginger beer that contained a decaying snail, which resulted in a severe infection. And since the bottle was opaque, the manufacturers of the product were held liable because they owed a duty towards the plaintiff to see that no poisonous substances were found in the bottle; they violated their duty, and were held liable for damages.

Manufacturers must take reasonable steps to prevent foreseeable harm arising from their products, including rigorous quality control and adherence to safety standards.

Product liability cases often extend beyond food and beverage to medicines, consumer goods, and industrial equipment, reflecting the broad scope of professional obligations in manufacturing.

NEGLIGENCE BY COMPANY DIRECTORS

Under the Companies Act, 2013, directors are codified to act in good faith, exercise due and reasonable care, skill, and diligence, and avoid conflict of interest; breach of these statutory duties comprises professional negligence

In *Re City Equitable Fire Insurance Co. Ltd* Ch 407, the liquidator sued the directors for negligence and breach of fiduciary duty. The court held that directors of a company must exercise a standard of care based on what is reasonable for someone in their position, applying a subjective standard of care that considered the director's knowledge and experience at the time. The court put focus on the directors' duties to act with due diligence and good faith, but clarified that they were not expected to have extraordinary skills or to be insurers of business outcomes that are not under their control, provided they took reasonable actions as is expected of them.

NEGLIGENCE BY LEGAL PRACTITIONERS

Negligence among lawyers commonly involves missing deadlines, misapplication of the law, conflict of interest, or breach of confidentiality. However, mere loss of a case is not enough; the plaintiff must prove that the lawyer's conduct fell below the standard of a reasonably competent advocate in similar circumstances.

As is seen in the case of *D.K. Gandhi v. M. Mathais*, where a legal professional was held liable under the Consumer Protection Act for a deficiency in service to a client.

Indian courts have established that an advocate may be held responsible for negligence if there is misconduct, breach of duty, or failure to exercise a higher duty of care, resulting in loss to the client.

NEGLIGENCE BY ACCOUNTANTS, ARCHITECTS, AND ENGINEERS

Professional negligence for these groups usually arises from advice or actions that cause financial loss, structural failure, or compromise on safety standards. For instance, in multiple cases in Mumbai, architects were reprimanded by the Council of Architecture for negligence, such as certifying the wrong land area without a proper survey or misreporting building conditions for court cases. The disciplinary committee found that the architects failed to exercise due care and acted irresponsibly, resulting in professional misconduct charges.

CONSEQUENCES

The primary consequence is liability to pay damages to the injured party. Damages may cover: Special Damages or General Damages, or Consequential Loss.

In the case of White and Jones, a solicitor's negligence in drafting a will made him liable to compensate disappointed beneficiaries.

There could also be Disciplinary/ Professional Consequences which could result in suspension, cancellation of license, or professional censure. Apart from monetary liability, negligence often causes loss of goodwill, client trust, and professional standing.

And in the cases of gross negligence, where it leads to death or serious harm, there could be a possibility of criminal liability. Section 304A IPC (now replaced and modified by Bharatiya Nyaya Sanhita, Section 106) penalises causing death by a rash or negligent act.

The recent BNS 2023 introduction caps criminal liability for medical professionals at up to two years imprisonment and/or fine, when death is caused while performing lawful procedures.

DOCTRINES AND DEFENSES IN PROFESSIONAL NEGLIGENCE

Res Ipsa Loquitur: This Latin maxim, meaning “the thing speaks for itself,” can shift the burden of proof to the defendant where the harm suffered would not ordinarily occur in where absence of negligence and the professional had exclusive control.

Contributory and Composite Negligence: Where a client or third party also contributes to the damage, their claim may be diminished proportionately. If several defendants are involved, courts apportion liability according to their degree of fault.

Vicarious Liability: Employers may be held responsible for negligent acts committed by employees in the course of their employment—applicable in hospitals, law firms, or engineering companies.

REMEDIES AVAILABLE FOR PROFESSIONAL NEGLIGENCE

1. **Claim for Damages:** Compensatory damages, both pecuniary (economic) and non-pecuniary (pain, suffering, loss of amenity), are the principal remedy.

2. **Injunctions:** In certain cases, courts may order professionals to refrain from certain conduct.
3. **Restitution:** Directing restoration or undoing an act where feasible.

CONCLUSION

Professionals occupy a position of trust in society, and negligence on their part has serious repercussions for those who rely on their expertise. The jurisprudential framework is robust, adapting to incorporate expert opinion, evolving standards in fields as diverse as medicine, engineering, and law, and the legitimate expectations of clients and users.

While the law does not demand perfection, it requires a reasonable degree of competence and diligence. They cannot guarantee the success of a particular task, but they can at least work on the smooth functioning of the same. Professional negligence ensures accountability, protects public trust, and maintains the integrity of professions. By upholding these standards, tort law serves as a safeguard against the careless exercise of professional duties.

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