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**LEGAL REASONING****LAW OF TORTS (Negligence)****Passage 1**

The tort of Negligence makes sure that in case a person fails to exercise the due reasonable care that a reasonable person should have exercised, then he will be punished for it. Such failure must cause injury to a person to make the negligence punishable.

Before the tort of Negligence is established, the court needs to determine whether the accused owed a duty of care towards the affected party or not.

Duty of care as per a dictionary definition means, “a moral or legal obligation to ensure the safety or well-being of others.”

This duty of care need not be necessarily a legal duty. Rather it could be reasonable care that a person was expected to take in such circumstances.

The duty breached must be by the absence of the exercise of reasonable care by the accused. Also, the injury caused due to such breach should also be foreseeable. An injury must be caused to the plaintiff because of the breach of duty. A ‘but for’ test is conducted for this i.e. ‘but for’ the breach of duty, such injury would have not been caused to the plaintiff.

1. Raju had always been a mischievous kid who frequently landed into troubles and injured himself. Once, he was running at a sidewalk trying to balance in his newly bought roller skates. The municipality was undertaking some construction activities but had forgotten to place the warnings/ roadblocks. Raju saw the pothole open in front at the very last moment and unable to balance himself fell into it thereby fracturing his bones. Can the municipality be made liable for negligence?
  - (a) No, there is contributory negligence on the part of Raju also as he was unable to balance himself in the roller skates and used them in the public road.
  - (b) Yes, there was a breach of duty on the part of the municipality which resulted in the injury to Raju and therefore they would be liable for negligence.
  - (c) No, the injury to Raju was not foreseeable by any reasonable person and therefore no liability can be attributed to the Municipality for negligence.
  - (d) Yes, municipality would, however, be partly responsible and not entirely as this is a case of contributory negligence.
  
2. All Cure Hospital (ACH) has been a renowned hospital in Delhi. Due to the pandemic, it designated its Wing B for the treatment of Covid patients and those coming to get inoculated. Avanti, a college student, went to get the second dosage of the vaccine, Covishield. Dr. Samadhaan was to administer her the vaccine. However, due to the busy schedule of the doctor and lack of manpower, he gave the second dosage of Covaxin to Avanti. On realizing this Avanti brought a claim against the hospital for negligence, it is shown in studies and governmental notifications permitting the switching of the vaccines (both the dosages were not required to be of same vaccine and would not have any side-effects). Will Avanti’s claim for negligence succeed?
  - (a) Yes, the hospital authorities will be vicariously liable for Dr. Samadhan’s negligence and Avanti will be entitled to damages.
  - (b) Yes, since the vaccine not intended has been administered to Avanti it indicates a breach of legal duty on the part of Dr. Samadhan and therefore he would be liable for negligence.

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- (c) No, there appears to be no apparent injury by the act of Dr. Samadhan and hence Avanti's claim for negligence will fail.
- (d) No, since Dr. Samadhan exercised all reasonable care and caution while administering the vaccine and it not due to any personal breach of duty but lack of manpower which resulted in switching of the vaccines.
3. When Avanti got to know that a 'wrong' vaccine has been administered to her, she fainted out of panic and tension and claims that this under the damages for negligence. Is her claim likely to succeed?
- (a) No, the injury caused to Avanti is not foreseeable and therefore no damages can be claimed for administering the 'wrong' vaccine.
- (b) No, since the vaccine being administered was not a wrong vaccine perse as was confirmed by the government and studies undertaken therefore no liability on any resultant outcome of the vaccine too.
- (c) Yes, hospital and Dr. Samadhan will be vicariously liable for the injury and harm caused to Avanti.
- (d) Yes, because of the breach of duty of Dr. Samadhan, an injury has been caused to Avanti and therefore her claim will succeed.
4. Avanti was undertaking some renovation activities in her house and for that purpose she kept all the scraps etc. at back of the house which was not accessed by anyone. On the occasion of Sankranti, a kite landed at the posterior part of the house. A kid, Raju went to catch the kite and a nail pierced through his feet. A claim for negligence was brought against Avanti for not taking due care and caution as required. Will such a claim succeed?
- (a) No, Avanti is not liable for any injury caused to trespassers in her land and therefore the claim is likely to fail.
- (b) Yes, injury is caused by the lack of care and caution on the part of Avanti as scraps which could cause injury are required to be properly disposed off.
- (c) Yes, Avanti is required to exercise due care and caution to even the trespassers and any harm or injury caused due to lack of such exercise will make her liable for negligence.
- (d) No, Avanti had exercised all reasonable care and caution as is expected from a reasonable person and therefore would not be liable for negligence.
5. When the grandmother of Raju heard of this unfortunate news, she got a cardiac arrest and was hospitalized. They decided to club this claim along with the claim for Raju's injury. Are both the claims likely to succeed?
- (a) No, only the claim with respect to injury to Raju will succeed and the claim as to cardiac arrest to grandmother will fail as it is not foreseeable.
- (b) Yes, applying the but-for test, Municipality could be made liable for the injury to the grandmother of Raju (cardiac arrest) as the injury would not have occurred but for the negligence of Municipality.
- (c) No, only the claim as to grandmother's injury will succeed and the claim as to Raju's injury will fail because of contributory negligence.
- (d) Yes, both the claims will succeed as they are direct impact of the negligence of municipality.

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**Passage 2**

Negligence is a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct). Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm. Four elements are required to establish a prima facie case of negligence:

1. The existence of a legal duty that the defendant owed to the plaintiff
2. Defendant's breach of that duty
3. Plaintiff's sufferance of an injury
4. Proof that defendant's breach caused the injury (typically defined through proximate cause)

Typically, if the defendant had a duty to act, did not act (resulting in a breach), and that breach caused an injury, then the defendant's actions will be classified as misfeasance. There are several ways to determine whether the defendant had a duty to act (note: this is NOT an exhaustive list):

1. The defendant engaged in the creation of the risk which resulted in the plaintiff's harm
2. Voluntary undertaking: The defendant volunteered to protect the plaintiff from harm
3. Knowledge: The defendant knows/should know that his conduct will harm the plaintiff
4. Business/voluntary relationships: ex: business owner and customer; innkeeper and guest; land possessor who opens her land to the public; person who voluntarily takes custody of another person.

Contributory negligence is the plaintiff's failure to exercise reasonable care for their safety. In such a case there will be no liability on the defendant.

6. Kavya, parked her car on the side of a busy street, took her iPod and whilst being completely engrossed in the iPod, trying to choose the right song she started crossing the road on foot. There were no traffic lights in the vicinity which were to be followed. A car, being driven by Aman, hit Kavya and Kavya got injured. Kavya sued Aman for compensation. Decide Aman's liability.
  - (a) Aman is liable to pay the compensation as he drove negligently and hit Kavya.
  - (b) Aman is liable to pay the compensation as he did not fulfil his responsibility to drive carefully.
  - (c) Aman is not liable because Kavya's negligence contributed to the injuries.
  - (d) Aman is not liable because he was not responsible to look out for Kavya in a place where there was no path for crossing for pedestrians.
7. A pedestrian, Slimey, wrongly parked his car on the side of a busy street, and started crossing the road on foot when the pedestrian light was green. A car, being driven by Andre, hit Slimey and Slimey got injured. Slimey sued Andre for compensation. Decide his liability.
  - (a) Andre is liable to pay the compensation as he did not fulfil his responsibility of driving carefully and hit Z.
  - (b) Andre is liable to pay the compensation as he was aware that his actions could cause such injuries but still went ahead and hit Slimey intentionally.
  - (c) Andre is not liable because Slimey's negligence contributed to the injuries.
  - (d) Andre is not liable as Slimey should have waited for him to go.

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8. B, while riding his cycle on the road, met with an accident, when A, accidentally opened his car door to exit the vehicle without ensuring no one is around, hitting the cycle in the process. B sued A for compensation. Decide.
- (a) A is liable to pay the compensation as his negligence caused the accident. He was not careful enough to check before opening the door.
  - (b) A is not liable to pay the compensation as he was in a hurry.
  - (c) A is not liable because Z's negligence contributed to the accident.
  - (d) A is liable as he should have known that opening the car door without checking first, can injure someone.
9. An inebriated man, Coco, was walking on the train tracks, when a train arrived on the tracks, causing Coco's death. A guard, appointed by the railway authorities, was on duty at the time of the incident, but failed to notice A walking on the tracks and was therefore unable to save him. Coco's family sued the railway authorities. Decide.
- (a) The railway authorities are liable to pay the compensation because it was the guard's negligence which caused the accident.
  - (b) The railway authorities are liable to pay the compensation because the guard did not fulfil his duties.
  - (c) The railway authorities are not liable to pay the compensation because Coco also acted negligently.
  - (d) Coco cannot claim compensation in this situation as this is a case of Volenti Non Fit Injuria.
10. The term rule of the last opportunity means the last opportunity to avoid an accident. If in a situation both the plaintiff and the defendant are negligent on their part and whosoever has the last opportunity of avoiding such consequences fails to do so will be held responsible for such accident solely. Z, while visiting a friend, callously parked his bike outside the friend's house, which was on a busy main street. A while driving his car on the said road at a high speed, hit Z's bike. Z sued A for compensation equivalent to the damages caused to his vehicle. Decide.
- (a) A is liable to pay the compensation as he was riding at a high speed on the main street carelessly.
  - (b) A is liable to pay the compensation as there was contributory negligence.
  - (c) A is not liable as Z should not have parked the vehicle on the road.
  - (d) A is not liable as he couldn't see Z's bike.