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## Elements of a Negligence Case

### Duty

The outcomes of some negligence cases depend on whether the defendant owed a duty to the plaintiff. Such a duty arises when the law recognizes a relationship between the defendant and the plaintiff, and due to this relationship, the defendant is obligated to act in a certain manner toward the plaintiff. A judge, rather than a jury, ordinarily determines whether a defendant owed a duty of care to a plaintiff. Where a reasonable person would find that a duty exists under a particular set of circumstances, the court will generally find that such a duty exists.

In the example involving the defendant loading bags of grain onto a truck, and striking a child with one of the bags, the first question that must be resolved is whether the defendant owed a duty to the child. In other words, a court would need to decide whether the defendant and the child had a relationship such that the defendant was required to exercise reasonable care in handling the bags of grain near the child. If the loading dock were near a public place, such a public sidewalk, and the child was merely passing by, then the court may be more likely to find that the defendant owed a duty to the child. On the other hand, if the child were trespassing on private property and the defendant did not know that the child was present at the time of the accident, then the court would be less likely to find that the defendant owed a duty.

### Breach of Duty

A defendant is liable for negligence when the defendant breaches the duty that the defendant owes to the plaintiff. A defendant breaches such a duty by failing to exercise reasonable care in fulfilling the duty. Unlike the question of whether a duty exists, the issue of whether a defendant breached a duty of care is decided by a jury as a question of fact. Thus, in the example above, a jury would decide whether the defendant exercised reasonable care in handling the bags of grain near the child.

### Cause in Fact

Under the traditional rules in negligence cases, a plaintiff must prove that the defendant's actions actually caused the plaintiff's injury. This is often referred to as "but-for" causation. In other words, but for the defendant's actions, the plaintiff's injury would not have occurred. The child injured by the defendant who tossed a bag of grain onto a truck could prove this element by showing that but for the defendant's negligent act of tossing the grain, the child would not have suffered harm.

### Proximate Cause

Proximate cause relates to the scope of a defendant's responsibility in a negligence case. A defendant in a negligence case is only responsible for those harms that the defendant could have foreseen through his or her actions. If a defendant has caused damages that are outside of the scope of the risks that the defendant could have foreseen, then the plaintiff cannot prove that the defendant's actions were the proximate cause of the plaintiff's damages.

In the example described above, the child injured by the bag of grain would prove proximate cause by showing that the defendant could have foreseen the harm that would have resulted from the bag striking the child. Conversely, if the harm is something more remote to the defendant's act, then the plaintiff will be less likely to prove this element. Assume that when the child is struck with the bag of grain, the child's bicycle on which he was riding is damaged. Three days later, the child and his father drive to a shop to have the bicycle fixed. On their way to the shop, the father and son are struck by another car. Although the harm to the child and the damage to the bicycle may be within the scope of the harm that the defendant risked by his actions, the defendant probably could not have foreseen that the father and son would be injured three days later on their way to having the bicycle repaired. Hence, the father and son could not prove proximate causation.

**Damages**

A plaintiff in a negligence case must prove a legally recognized harm, usually in the form of physical injury to a person or to property. It is not enough that the defendant failed to exercise reasonable care. The failure to exercise reasonable care must result in actual damages to a person to whom the defendant owed a duty of care.

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