

NEGLIGENCE AND DAMAGES CAUSED BY NEGLIGENCE

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The failure to use reasonable care to avoid a foreseeable harm to a person or his property is negligence. In order to prove someone was negligent, you must prove the following:

- You must prove there was a duty owed from one person to another. Depending on the relationship of the parties, that duty may change. Normally, someone owes a duty of “ordinary care” to others. A child, depending on the age of the child, is held to a lower standard of care than an adult. The standard is based on what another child, of the same or similar age, would do under the circumstances as opposed to what an adult would do. Tradesman and professionals are generally held to a higher standard of care.
- You must show that there was a breach of that duty or standard of care. In other words, you must prove that someone failed to do what he should have done under the circumstances in light of the duty owed from him to you.
- You must show that the breach of that duty or standard of care was the actual and proximate (legal) cause of the injury. In other words, the injury was the foreseeable consequence of the breach of care or duty.
- You must show the damages that resulted from the negligence.

The law also provides a means of seeking compensation, or damages, for the injuries and detrimental effects when someone is injured by another. In a personal injury case, the judge or jury may find the defendant liable for different types of damages and for varying amounts of money. Lost earnings, property damage, and medical bills are normally included in the damages. Sometimes the plaintiff may experience continuous and ongoing pain and suffering due to his or her injuries. The judge or jury may award a reasonable sum for the pain and suffering resulting from the injury. The damages for pain and suffering are in addition to damages for lost earnings, property damage, and medical bills. All of these factors are considered when compensating for the personal injury. Damages for lost wages, property damage, medical bills, and pain and suffering

are called “compensatory damages.” Personal injury law seeks to compensate the victim for his or her injuries and to return the victim to the standard of living he or she enjoyed before the injury.

In order for the victim to have a strong claim for damages in most personal injury cases, the victim must have suffered mental, physical, or financial harm. In some intentional tort cases, for example an assault and battery case, you may only have to prove the misconduct of the defendant for damages to be awarded to the plaintiff. Compensatory, punitive, or nominal damages can be awarded to the plaintiff depending on the merits of the case. Every case is unique. The damages are awarded based on the financial losses suffered along with a reasonable sum to compensate the injured person for his pain and suffering, including the emotional turmoil and mental suffering resulting from the negligence.