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NEGLIGENCE: LIABILITY AT COMMON AND STATUTORY LAW

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ABSTRACT

This paper explores the doctrine of negligence as it operates within both common law and statutory frameworks, analyzing its historical development, foundational principles, and contemporary applications. At common law, negligence liability arises when a duty of care is breached, resulting in damage that is foreseeable and causally linked to the defendant's actions. This doctrine is underpinned by key precedents such as *Donoghue v. Stevenson* and refined by later judgments that articulate the scope in duty, standard in care, and remoteness of damage. Statutory negligence, on the other hand, evolves through legislative enactments that impose specific duties, either codifying or supplementing common law standards. The research contrasts the interpretive latitude of judges in common law with the prescriptive clarity of statutes, examining how statutory duties can create civil liability or provide a basis for negligence per se. Case law and legislative examples from jurisdictions such as the UK,the US, and Australia illustrate how courts navigate the intersection of these two frameworks. The paper argues that while common law provides flexible principles adaptable to novel circumstances, statutory law offers necessary precision and modernization, particularly in areas like workplace safety, product liability, and public welfare. The dynamic interaction between these sources of law shapes the evolving landscape of negligence, balancing individual accountability with societal protection.

INTRODUCTION

Negligence is a cornerstone of tort law, serving as a mechanism to ensure accountability for conduct that falls short of legally accepted standards of care. Rooted in the principle that individuals must exercise reasonable care to avoid causing harm to others, negligence liability has evolved through both judicial precedent (common law) and legislative enactments (statutory law). The common law tradition, developed through centuries of case law, has established key doctrines such as duty of care, breach, causation, and damage, most notably shaped by landmark cases like *Donoghue v. Stevenson* and

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Caparo Industries plc v. Dickman. These cases have provided courts with a flexible yet structured framework to adjudicate claims of negligence in a wide array of contexts.

In parallel, statutory law has increasingly played a critical role in defining and expanding the scope of negligence liability. Legislatures have introduced specific duties and safety standards across various sectors—ranging from consumer protection and health and safety regulations to professional liability and environmental safeguards. These statutory obligations often operate alongside or supersede common law duties, and in many cases, a breach of a statutory provision constitutes prima facie evidence of negligence or gives rise to strict liability.

This paper examines the dual sources of negligence liability—common law and statutory law—highlighting their foundational principles, interplay, and contemporary relevance. By analyzing doctrinal developments, landmark judgments, and legislative interventions, the research seeks to illuminate the strengths and limitations of each legal source in addressing negligence claims. Ultimately, it aims to demonstrate how the synthesis of judicial and legislative approaches fosters a more coherent and responsive legal system capable of protecting individual rights and promoting public welfare in an increasingly complex society..

CHAPTER 1: MEANING AND DEFINITION

Negligence refers to a legal wrong that arises from a person's failure to exercise reasonable care, resulting in harm to another. It is not rooted in intentional wrongdoing but in carelessness, inattention, or omission of a duty owed to another. The law of negligence has evolved under two major legal frameworks: common law and statutory law.

NEGLIGENCE AT COMMON LAW

At common law, negligence is a tort—a civil wrong for which the injured party may seek compensation. Liability for negligence arises when the following four elements are satisfied:

1. Duty of Care: The defendant must owe a legal duty to the claimant.
2. Breach of Duty: The defendant must have failed to meet the standard of care expected in the circumstances.
3. Causation: The harm must be caused to the victim because of the act of the wrong doer.
4. Damage: The claimant must have suffered actual harm or loss as a result.

NEGLIGENCE UNDER STATUTORY LAW

Statutory negligence arises when a person breaches a duty specifically imposed by a statute or regulation. In such cases, the statute itself defines the expected standard of care, and its violation may automatically imply negligence—often referred to as *negligence per se*.

There are two ways statutory law influences negligence:

1. Statutes Creating Civil Liability: Certain statutes explicitly create civil liability for harm caused by a breach (e.g., consumer protection laws, workplace safety laws).
2. Statutes Used to Establish Duty: Even where a statute does not create a cause of action, its breach can be used as evidence of negligence in a common law claim. For example, failure to follow traffic rules under a motor vehicle statute can establish fault in a negligence case.

Example

- In the UK, the Occupiers' Liability Act 1957 and 1984 impose duties on those who control premises.
- In India, the Consumer Protection Act and Factories Act serve similar purposes.[2]

CHAPTER 2: ESSENTIAL INGREDIENTS- DUTY TO TAKE CARE, BREACH OF DUTY, CONSEQUENT DAMAGE

Negligence is basically about carelessness that causes harm to others. It's not about intentional wrongdoing but about someone not paying enough attention which causes hurt to someone else because of the mistakes of the others.

Before blaming someone legally for being careless, the first question is whether the person has a responsibility to remain careful in that situation? In other words it asks the question whether the party owed "duty of care" to the victim. It simply means a person is expected to take reasonable care so that his act could not harm the other person.

This idea came from a famous British case — *Donoghue v. Stevenson* (1932), where a woman found a snail in her ginger beer. The court said we all owe a duty of care to our "neighbors" — not just people next door, but anyone who might reasonably be affected by what we do.

[2] Atiyah, P. S. (2006). *Atiyah's Introduction to the Law of Tort* (6th ed.). Oxford University Press.

Examples:

- A driver must drive safely to avoid hitting others.
- A doctor must act carefully when treating a patient.
- A shopkeeper must keep the floor clean to prevent slips.

  In new or complicated situations, courts use something called the Caparo Test (from *Caparo v. Dickman*) to decide if a duty exists. In this test the court asks the person whether the harm cause by the person was predictable? Or was there a close relationship between the two parties? Or was it fair and responsible to make the person legally responsible?

Once we know someone had a duty, the next question that comes to our mind is whether the person carelessly?[3]

The law compares the action of the person my matching their actions from the point of view of the reasonable person's act in the similar situation.

For example

- A reasonable driver wouldn't speed through a school zone.
- A reasonable doctor wouldn't ignore obvious symptoms.

Professionals, like doctors or engineers, are expected to meet the standard of a reasonably skilled person in their field and they are expected not to act like an ordinary person. This is called the Bolam Test, based on a case where a patient was injured during treatment.

The law also looks at things like how the harm was caused? Or how serious the harm was? Or how the harm could be prevented? Or was their some concrete reasons for their risky(negligent) actions?

CONSEQUENT DAMAGE: WAS THERE ACTUAL HARM CAUSED BY THAT CARELESSNESS?

Even if someone had a duty and failed to live up to it, they won't be held responsible unless their carelessness actually caused harm. The harm includes physical harm, property harm or financial harm.

[3] Fleming, J. G. (2012). *The Law of Torts* (9th ed.). Thomson Reuters.

But proving harm alone isn't enough to claim compensation for the person. The law also looks on whether the carelessness of the person the reason behind the harm cause to the victim this is also called as "but for" test.The other think that the law considers before suing the person is that whether the harm foreseeable or unforeseeable?

A landmark case related to this issues is the "*The Wagon Mound case"*. In this case the court held that if the risk is unforeseeable that is would be highly unfair to claim compensation from the actor of that negligent act and if something else completely unexpected happened in between it might break the chain of responsibility.[4]

CHAPTER 3: PROOF OF NEGLIGENCE- RES IPSA LOQUITOR

Usually, when someone claims another person was negligent, they have to prove exactly how that person was careless and caused harm. But sometimes, the facts are so obvious that the injury itself shows negligence happened, even if the injured person doesn't have all the details. In this situation the latin phase "Res Ipsa Loquitur " comes into picture which stands for the things speaks for itself.
For e.g:Let us imagine that we are walking down the street and a barrel falls out of a shop window and hits us. We don't know how or why it happened, but it is known barrels generally doesn't fall on their own unless someone was careless. The law says in situations like this, it's fair to assume negligence until the other side proves otherwise.
This principle helps people who are injured by the negligence of the other party to get speedy justice and compensations for the damages causes to them by the other party's act.There are three main conditions for *res ipsa loquitur* to apply. Firstly, the accident shouldn't happen unless someone else was negligent. Secondly, the thing which causes injury to the party was under the defendant's control directly or indirectly. Lastly, the injured party should not at all be fully or partially responsible for what has happened to them.

Some of the landmark case laws related to "Res Ipsa Loquitor" is as under:-

- Byrne v. Boadle (1863) — This is the classic case where a man was hit by a falling barrel of flour outside a warehouse. The court said barrels don't just fall on their own, so the warehouse

[4] Harvard Law Review. (2006). *The Evolution of Negligence Law*. Retrieved from [URL]

owner was presumed negligent because they had control of the barrel. This case laid the foundation for *res ipsa loquitur*.

- Scott v. London & St. Katherine Docks Co. (1865) — Several heavy bags fell on the plaintiff while he was near a dock. The court applied *res ipsa loquitur* because the bags were under the defendant's control, and such accidents don't happen without negligence.
- Indian Case: *Municipal Corporation of Delhi v. Subhagwanti* (1966) — A clock tower collapsed and caused injuries. The Indian Supreme Court held that such an accident usually wouldn't happen without negligence in maintenance, applying *res ipsa loquitur*.

  When *res ipsa loquitur* is used, the burden shifts to the defendant. In other words it become the defendant's job to explain what happened and to prove that they were not negligent. However, this doesn't guarantee a win for the injured person.If the defendant fails to justify his actions then the court holds the defendant responsible. In other words it means that the judge or jury can reasonably infer negligence based on the circumstances.

EXAMPLES IN EVERYDAY LIFE

- A patient wakes up from surgery with a sponge left inside — such things usually don't happen unless the surgical team was careless.
- A pedestrian is hit by a falling signboard from a store — since the store controlled the signboard, negligence can be assumed unless proven otherwise.
- A train derails while parked in the station — accidents like this don't normally happen without carelessness by those responsible for maintenance.

Some of the draw backs of this principle is that the law of "Res Ipsa Loquitor" can't be used if the injury is not caused by the negligence of the party.Secondly, it doesn't work when the victim has partially or fully contributed to the negligence which caused him damage.Lastly, even if it is a shortcut but it still requires court's interference to lend the victim his compensation for his loss caused by the negligent party.

CHAPTER 4: THEORIES OF NEGLIGENCE

The theory of Negligence tells us whether the person should be held responsible or not. Several methods have been developed to explain at what a person could be held responsible. These theories help judges and lawyers decide cases fairly and consistently and also helps the victim in getting speedy justice.Some of the main theories of negligence are:-

1. THE FAULT THEORY

This theory basically tells us that if the person is found faulty or careless in executing his act properly and if that negligent act causes harm to the other person/persons then the party would be held liable for their negligent act and they would directly be ordered to compensate the victims.

Example: If you're driving too fast and crash into someone, you're at fault because you didn't drive carefully.

Also in the case of *Donoghue v. Stevenson* (1932) the manufacturer was held liable for carelessly allowing a snail in the ginger beer bottle, which caused harm to the consumer of that beer.

2. THE RISK THEORY

This theory tells us that if a person intentionally/intentionally risks the well being of the other person through his negligent act then the person would be held liable for his negligence and would also be made to pay the compensation for his negligent act.

Example: A factory owner who stores chemicals improperly creates a risk of explosion. If an explosion happens, the owner is liable because they made things dangerous.

In the case of *Rylands v. Fletcher* (1868) the defendant built a reservoir that flooded a neighbor's mine. The defendant created a dangerous situation and was held liable and was made to compensate the other party for the harm caused by him.

3. CAUSATION THEORY

This theory looks on whether the action of a person has caused harm to the other person or not. If it is proved in the court that the action of a person has caused the harm to the other than the person would directly be held liable in the court of law.

Example: If a store owner spills water and someone slips and breaks a leg, the owner caused the injury by not cleaning up.

In the case of *Palsgraf v. Long Island Railroad Co.* (1928) the court ruled the railroad wasn't liable for the damage because the harm was an unpredictable consequence of their actions.

4. DETERRENCE THEORY (PUNISH TO PREVENT FUTURE HARM)

As per this theory heavy punishments and fines are imposed on the guilty party due to which becomes an example and instills fear in the eyes of the person around against doing such acts of negligence
Example: A company improves workplace safety because lawsuits and fines are expensive.

5. LOSS DISTRIBUTION THEORY

As per this theory it is decides by the court on who should compensate the victim for the loss caused to him.This theory ensures that the victim gets proper compensation for th damage caused to him by the other party.
Example: A manufacturer may be held liable for a defective product even if they weren't careless, ensuring injured consumers are compensated.
In the case of *Greenman v. Yuba Power Products* (1963), the manufacturer was held liable for defective products even without any proof of his fault in order to prevent injustice to the victim.

6. STRICT LIABILITY

As per this theory the, people are held responsible even if they weren't careless because they were dealing with very dangerous items and their negligence caused a huge damage to the other person.

In the case of *Rylands v. Fletcher* liability arouse without proof of negligence due to inherently dangerous activities and the victim was offered compensation by the other party even though the other party was not negligent in his act as it caused harmful damages to the other party.

CHAPTER 5: MANUFACTURER'S NEGLIGENCE & MEDICAL NEGLIGENCE

Both manufacturers and medical professionals hold power over public safety and with that power comes a duty to give safe product and services to the people.

MANUFACTURER'S NEGLIGENCE: WHEN PRODUCTS LET US DOWN

Manufacturers have a responsibility over their customers to give them with safe and secure products.If they give them with defection products and services which may cause problem to the well beings of the consumers then they would be held liable for the damages caused to the consumers.So, in simple words we can conclude that the product manufacturer owes a duty of care towards his consumers.
Some of the defects which happens in the product from manufacturer's side are:-

- *Design defects:* The product's design itself is unsafe.
- *Manufacturing defects:* Errors happen during production making it dangerous.
- *Marketing defects:* Not telling users about risks or how to use it safely.

Example in real life: Imagine a toaster that catches fire because of a faulty wiring design. If someone gets hurt, the company that made it could be liable.

In the case of *Donoghue v. Stevenson* (1932) the manufacturer was held liable for carelessly allowing a snail in the ginger beer bottle, which caused harm to the consumer of that beer.

Similarly, in the case of *Greenman v. Yuba Power Products* (1963) a man got injured by using the dective product of the company. Later, the company was held liable and was made to pay the compensation to the affected party

MEDICAL NEGLIGENCE: WHEN CARE GOES WRONG

This is a type of negligence in which the medical professionals fail to act reasonably which caused damage to the patient.In this case the hospital authority is made to pay compensation to the victim for their negligent acts.In other words we can say that in this case the medical staffs fails to take the duty of care towards their patiens causing injury to them

IMPORTANT CASES

- *Bolam v. Friern Hospital Management Committee* (1957) — In this case it was held that the doctor is not responsible if he acts according to a practice accepted by a responsible body of medical professionals, even though it doesn't suits the patient and caused damage to him

- *Montgomery v. Lanarkshire Health Board* (2015) — In this case it was held that the doctors must inform patients about any risks that a reasonable person would want to know before his treatment.[5]

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