

Negligence and other Torts!

Tort law involves many aspects of your personal daily life. For example, tort law applies to property, pets, sports, personal freedom, and reputation, to just name a few. Remember in Lesson 1 that a **tort** was defined as "a wrong" which can either be intentional or unintentional. For example, whether Susan was struck by a driver because of intent (malice) or accident (recklessness) does not change the fact that a wrong has been inflicted upon her and she has suffered damages.

Negligence occurs when someone acts carelessly, or fails to act at all, resulting in injury or loss to another person. Negligence has three characteristics:

the action is unintentional

it is unplanned

an injury results

ACTIVITY ONE: FILL IN THE CHART- USE THE 'PET' EXAMPLE TO GUIDE YOU.

	Intentional	Negligence
Pet	The grouchy neighbour sets poisoned meat out and successfully kills your dog.	The kennel owner leaves the kennel gate open, allowing your champion show dog to escape and get lost.
Property		
Sports		
Reputation		

Depending on their relationship, people have a legal **duty of care** to

others to act in a certain way or to not act carelessly.

Some examples of duty of care include:

the duty that motorists owe to other motorists and pedestrians

the care that doctors must give to their patients

the supervision that teachers must give to their students

the care that home owners must give to their visitors

In society we teach people to be careful, to behave appropriately and responsibly under the law. It is expected that people will use the skills and abilities that **a reasonable person** in their particular situation would use. Duty of care is breached when a person's actions do not include the meeting of reasonable expectations.

	Activity #2
	<p>In which of the following situations was a duty of care breached?</p> <p>Situation 1: A teacher is supervising a volleyball game in which one of the students suffers a serious knee injury.</p> <p>Situation 2: A teacher plans a science lab in which students are exposed to a poisonous chemical and become ill.</p>

A check on this breach is to determine if the action was **foreseeable**. In other words would a reasonable person in similar circumstances be able to foresee the injury or action? If the answer is "yes" that a reasonable **standard of care** should have, but was not met, then there was a breach of duty of care.

	Activity #3
	<p>In which of the following situations was the action foreseeable?</p> <p>Situation 1: A student suffers from hypothermia on a winter outdoor education trip.</p> <p>Situation 2: Students are injured when a driver strikes the bus while they are travelling to the Science Centre.</p>

Standard of care differs according to the relationship of the parties. For example, someone with the duty of care for a child, such as a coach, has a higher standard of care than an individual coaching another adult. Recently tort law has been updated to better reflect people's expectations of professionals. Professionals include architects, doctors, dentists, engineers, lawyer, and accountants for example. People in these positions have specialized knowledge and skills and with that they must exercise a certain standard of care. The more specialized one is, the higher the standard of care that they must show.

Reflection	
	<p>Patients who are to undergo treatment have the right to know the truth about their medical condition, treatment, and risks involved. Is the doctor's ignorance of a specific risk a successful defence?</p>

Once it is established that a breach to the duty of care has occurred, a direct link needs to be established between the defendant's actions and damage that occurred. That is, did the negligent behaviour cause the injury, or was the injury a result of other factors? If the negligence caused the damage, this would make a case.

	Activity #4
	<p data-bbox="846 317 1130 352">Who is negligent?</p> <p data-bbox="824 386 1349 737">A shop teacher in Winnipeg is working away in the Industrial Arts area . An English teacher walks by and says that he wants to work on a bat house that night. The shop teacher say ok. While in the IA area the English teacher slices off the ends of his fingers.</p> <p data-bbox="824 770 1287 884">Who is liable? In your explanation, use the terms if possible:</p> <ul data-bbox="846 917 1135 1150" style="list-style-type: none"><li data-bbox="846 917 1036 953">duty of care<li data-bbox="846 982 1135 1018">reasonable person<li data-bbox="846 1047 1114 1083">forseeable action<li data-bbox="846 1113 1102 1148">standard of care

Negligence Case Studies:

ACTIVITY #5

Robertson v. Butler Case Study

The Facts

Derrick Robertson, Matthew Butler and several other friends were riding motorized trail bikes. The back brake of Matthew's trail bike was not working. During the afternoon the front brake lever dislodged. One of the boys wedged it back in place, but the rider still had to hold it in place. All the boys were aware of this.

Derrick borrowed Matthew's bike and began riding it down a hill. The brakes failed; he hit a rock and broke his arm and leg. He and his parents sued Matthew's parents for damages.

Questions to Consider:

What standard of care would you expect a 14-year-old to use when operating a motorized trail bike? On rocky terrain?

Would that standard of care change if the trail bike drivers were only ten years old?

Would that standard of care change if the young people involved were riding go-carts? Skateboards? Bicycles?

Were Matthew's parents liable for not ensuring that the bike was used safely?

How would you decide this case and why?

More Questions to Consider

In this case Derrick recovered only 25% of his damages from Matthew's parents. Damages were assessed at about \$16,000; therefore, Derrick recovered only \$4,000. Was it a good idea to sue in this case?

What other options could Derrick and his family have considered?



ACTIVITY #6

McErlean v. Sarel Case Study

The Facts

McErlean, age 14, was riding a trail bike in an abandoned gravel pit owned by the City of Brampton. The gravel pit was a place that was popular among local trail bike riders. As McErlean raced down a smooth gravel road, he and another boy, Sarel, collided at a sharp, blind curve in the road. McErlean had been riding at speeds from 55 to 80 kilometres an hour. Sarel had difficulty controlling his bike and was driving on the wrong side of the road. McErlean suffered brain damage that left him paralyzed and unable to speak.

McErlean sued Sarel for negligence, and the City of Brampton for negligence as owners of the property.

Questions on Consider

What standard of care applied to the boys while riding their trail bikes?

Was McErlean negligent in racing his trail bike on the road at the gravel pit? Was Sarel negligent?

Was the City of Brampton, the owner of the land, responsible because it allowed an unusual danger (the gravel road with the curve in it) to exist?

How would you decide this case and why?