

Business Law 210: Chapter 7: Negligence and Strict Liability

[Instructor]: This is Chapter 7: Negligence and Strict Liability. What is negligence? Negligence is when someone suffers and injury because of another's failure to live up to a required duty of care. At least, that's the theoretical approach. We'll get into the specifics of what is required and what the elements of negligence are. The news media has made a big deal of negligence cases because there are some cases that seemingly don't make sense. At least, the jury verdicts don't make sense. So, I think I'll start with that.

First of all, many of you may have heard of the McDonald's case. Quite a few years ago, Stella Liebeck was injured when she had bought a cup of coffee at McDonald's, she had put it in her lap, and it spilled. She ended up with third degree burns over her body, over 17% of her body, she had scarring, she was disabled for over two years, she was eight days in the hospital just from a cup of coffee. She had contacted McDonald's and tried to get them to at least help cover some of her medical expenses, but no deal.

So, ultimately she ended up suing McDonald's and this is where it gets interesting because at trial McDonald's admitted that it sold its coffee at a temperature between 180 and 190 degrees and acknowledged that would cause third degree burns to most anyone within two to seven seconds as well that it had been warned that the regulations required that it should not be sold for any more than 130 degrees. Not only that, from the period between 1982 and 1992, over 700 people had reported severe burns from the coffee and that was just the reported cases. Did it warn its customers? No, it didn't warn the customers that the coffee was hot; that the coffee was very hot. McDonald's knew what its customers wanted and they wanted hot coffee and so that's what McDonald's gave them. Well, this is some of the evidence that was presented to the jury in the case against McDonald's by Stella Liebeck.

In the end, the jury found against McDonald's that they had breached their duty of care; that they should have known better than to sell the coffee to customers at 180 to 190 degrees. They were on notice that it was causing injury to people and that they should have taken steps before this point. The jury awarded Liebeck \$200,000 in compensatory damages which was reduced to \$160,000 because she was partially at fault and \$2.7 million because McDonald's callous conduct (that's basically two days worth of coffee sales for McDonald's; they make \$1.3 million a day in coffee sales). Now, the trial judge reduced that punitive damages down to \$480,000. Why did the jury award so much? Because of the arrogance, and I think the stupidity, of the McDonald's attorneys that represented McDonald's in the case. So, I'm not saying their verdict is right or wrong; I'm just saying that gives a little perspective to understand why a jury did what it did. When you find something in the news that doesn't make sense, there's usually a reason. The news, or news organizations, tend to put things in an inflammatory way, tend to do things in an entertaining way. Why? Because that's how they sell papers, that's how they make money. For example, there is something out there called the Stella Awards; it comes back every so often and these are awards that are given for ridiculous cases, ridiculous tort cases. For example, they lost

ten different awards. I'll start with third place. Third place, it says Amber Carson of Lancaster, Pennsylvania because a jury ordered a Pennsylvania restaurant to pay her \$113,000 after she slipped on a spilled soft drink and broke her tailbone. The reason the soft drink was on the floor- Ms. Carson had thrown it at her boyfriend 30 seconds earlier during an argument. The second place award was given to Carol Walton of Claymont, Delaware who sued the owner of a nightclub in a nearby city because she fell from the bathroom window to the floor knocking out her two front teeth even though Ms. Walton was trying to sneak through the ladies room window to avoid paying the \$3.50 cover charge. The jury said the nightclub had to pay her \$12,000. And, of course, first place, the very best one! The first place award goes to Mrs. Merv Grazinski who purchased a brand new, 32 foot Winnebago motor home. On her first trip home from a football game, having driven on the freeway she set the cruise control at 70 mph and calmly left the driver's seat to go to the back of the Winnebago to make herself a sandwich. Not surprisingly, the motor home left the freeway, crashed, and overturned. Also, not surprisingly, she sued Winnebago for not putting in the owner's manual that she could not actually leave the driver's seat while in cruise control. A jury awarded her \$1.75 million and Winnebago actually changed their manuals as a result of this lawsuit. So, if you've ever heard of any of these cases, realize they're all fakes; they never really happened. These cases are simply meant for entertainment. Don't believe everything that you read about tort cases.

But, back to reality and back to what exactly is a negligence case? The elements of negligence, something you need to know for this class. First of all, a duty, there has to be some sort of duty recognized by law that the defendant owes to a plaintiff; a duty of care and that duty must be breached. The defendant must breach that duty in order for there to be negligence. Next, we have causation or approximate cause. Defendant's breach must have caused injury and we'll go into that much more later. Damages, the plaintiff must have suffered a legal damage as a result of that breach; not just that they were injured, but they were injured because of that breach. Causation, there's two different aspects of causation. Was the defendant's actions the cause in fact, and was the defendant's actions approximate cause? Both things must be in place before you have causation.

So, causation in fact or the "but for" test, "but for" the actions of the defendant there would have been no injury. For example, say you loan your car to your roommate and it's almost out of gas and you forget to tell him that it's almost out of gas and the gas gauge is stuck at half full. He's driving along the road, he runs out of gas, and so he has to run to the nearest gas station, get a gas can, come back, fill up with gas, and so on. While he does so, he's blocking the road and several cars behind him is an oil truck. The valve on the back of the oil truck is leaking oil on to the road and once he gets the car going again, then everyone takes off and everyone's getting up to speed and someone driving along hits that oil slick and goes off the road. You could say "but for" your not having told your roommate about the gas gauge there would have been no accident. You could have stopped, you could have prevented that accident. Are you at fault? Or we could say your roommate, "but for" your roommate leaving the car there would have been no accident.

If your roommate would have just filled it up with gas, like a good roommate would, there would have been no accident. Or you could say, “but for” the truck driver having not closed the valve all the way and leaking oil there would have been no accident. Well, the key for causation is both the “but for” and proximate cause. The “but for” causation fits every character in the scenario I just gave you, but you have to get past the “but for” to proximate cause before you have negligence.

Proximate cause. The book states proximate cause as an act, the proximate cause of the injury when the causal connection between the act and injury is strong enough to impose liability. That is the theory; that doesn't really tell you what proximate cause is. Proximate cause can be broken down into two aspects, the actual cause and a foreseeable injury. The key to proximate cause is foreseeability, something you'll need to know for this class. Foreseeability and proximate cause. Is it foreseeable if you don't tell your roommate about the problem with the gas gauge that someone's going to run off the road? No, it's not foreseeable. Is it foreseeable to your roommate that if they have to leave the car in the road to go get gas that someone is going to hit an oil slick and go off the road? No, it's not foreseeable. Is it foreseeable for the truck driver that if they don't close the valve all the way and it's leaking oil on the road that someone might hit the oil and run off the road? Yes, it is foreseeable and thus you can have a claim against the truck driver because you have the injury, you have the breach of duty, you have the proximate cause, all of the elements of negligence come into play at that point.

The standard to determine if something is foreseeable or not, is what a reasonable person would anticipate and it's up to a jury to determine what a reasonable person is, but that is the standard that they will follow.

Now, it is required in order to have negligence there must be an injury. That injury must be one that was actually caused by the breach itself and there's different types of injury that is recognized. There's compensatory damages; they reimburse the plaintiff for his actual losses and then there's punitive damages as I mentioned earlier that are there to try and deter others from doing this again.

Now, some of the duties involved in negligence, we'll start off with the duty of a landowner, toward those that come on to his property. Well, those that come on his property come in several different ways. There's invitees, there's social invitees and business invitees, there are guests, there are tenants, there are trespassers. Depending on what status someone has the landowner has a different level of duty of care. To business invitees, the landowner has a duty to warn of any foreseeable risks. Now, the text makes an exception for obvious risks, but that's really a defense under assumption of risk. For social guests, the standard would be just a little bit lower and for trespassers even lower. The duty of care for professionals is higher than a regular person. It is the duty of care owed by a professional in that profession toward the plaintiff and so if someone were to sue me as an attorney, I would be subject to the standard of care of a

professional such as myself or another attorney. If I was a doctor and they were to sue me, I would be subject to the standard of care of other doctors in my area in a similar practice.

Now if you were at a swimming pool and you saw that someone was starting to go under, in fact, they were drowning, and you just happened to have a life preserver right next to you and you didn't want to get involved so you didn't do anything, could you get sued for letting this person drown to death because you didn't do anything? And the answer is no, there is no duty to come to someone's rescue, at least for a bystander. If you were a lifeguard, of course, you have a duty. That's what you're paid to do, but as a bystander you have no duty to come to anyone's rescue. And, you cannot be penalized for not attempting to help them. On the other hand, there is a special statute that is called the Good Samaritan statute. If you come to someone's aid and although you try to help them, it was negligence on your part they cannot sue you. Now if your actions consist of gross negligence and obvious breach of duty, then they potentially could sue you.

Some of the defenses to negligence: assumption of risk, superseding cause, and comparative negligence. Assumption of risk is one of the most effective ones, that is the danger was obvious. The person tripped because there was ice on the sidewalk. They could see the ice. It was obvious to everyone. They should have stepped around it. They assumed the risk of stepping on that ice when they noticed it and stepped on it anyway and that's the argument and that's the theory that goes along with assumption of risk. And, assumption of risk applies to so many different things. For example, when you go snow skiing the lift ticket you buy will specifically say you are assuming all risks inherent with skiing including running into others, others running into you, running into a tree, going off a cliff, all sorts of things. And, usually when I write up a release for an activity for a youth group or YMCA or something of that nature, I include as many specifics as I can reasonably foresee so that it's on that assumption of risk. They assume the risk of injury in this situation.

Next is the superseding cause. I kind of like this one; it's a fun one. Superseding cause, an unforeseeable, intervening act that breaks the causal link between the Defendant's act and the Plaintiff's injury. What does that mean? How does that apply? Well for example, say I get in a car accident and they take me away in an ambulance. While the ambulance is racing through the city of Pullman, someone ignores their lights and misses the red light and hits the ambulance and I'm further injured. Can I sue the original party that caused the accident for the damage he caused me in that second accident? No, that was an unforeseeable, intervening act that breaks the causal link between the Defendant's act, the original accident, and my subsequent injuries. So, that would be an example of a superseding cause.

Now an important aspect of a negligence claim is comparative negligence. For example, I represented a gal that was golfing with her friend and they decided to hit some balls at the driving range. She parks near the driving range, she gets out, walks around the back of the golf cart, and WHAM! She's hit in the eye with the golf club because her partner decided to step

behind the cart and do a couple practice swings. So, who's at fault? Is my client at fault because she got her eye in front of the golf club? Is the other gal at fault because she failed to look where she was swinging? Well, a jury would decide; they would portion out who was how much at fault. They might say that my client was 50 percent at fault and the other party was 50 percent at fault. Or anything one way or the other, but that's how comparative negligence works. And, in Washington state, if you have a party that is zero percent at fault. Say for example, I represented this gal that was a passenger in a car and there was an accident and the driver of the car was 90 percent at fault and the driver of the other car was 10 percent at fault. Well, she's a passenger; she's zero percent at fault. Because she's zero percent at fault, there's what's called joint and several liability and this is a very key and important factor when it comes both to negligence and to contracts. It means that both parties are liable to her for the full amount of the debt. That doesn't mean she can collect it twice; it just means she can collect that debt, the full amount, from either party. So, the party that's only 10 percent at fault could be required to pay 100 percent of her damages. If the car that she was riding in, if that driver didn't have any insurance or any money, than that's likely what she's going to try and do, is get all of it from the other party.

There are some special negligence statutes. The first one is *Res Ipsa Loquitur*. That's a fun one; it's just a fun one to say, you know? The facts and circumstances create a presumption of negligence. The burden of proof shifts to the defendant to prove that he was not negligent. So negligence is assumed. The classic case is where someone has been operated on and then they go through the x-ray afterwards and it appears there is scissors left inside his body where he was operated on. Negligence is assumed. The defendant had control over the situation and the burden of proof shifts to the defendant to prove that he or she was not negligent.

The next is negligence *Per Se*. This occurs when a defendant violates a statute. If there's a statute that says you have to do something and the defendant violates that statute and someone is injured, it is assumed they're negligent. For example, if the statute says for safety reasons all stairwells must have a handrail and the owner of the property that you're renting has not put in a handrail and you end up falling down the stairs because there was no handrail. You could claim injury and you could claim that he was negligent and this would come under the negligent *Per Se* statute.

There are some special doctrines. I mentioned the Good Samaritan statute, Danger Invites Rescue doctrine, the Dram Shop Acts. The Dram Shop Acts put special liability on someone that serves alcohol and this is very serious and significant because it also applies to social events. You invite some friends over to your house and serve them alcohol to a point beyond the legal limit and you let them drive home and you are potentially liable if they get in an accident. And that's what the Dram Shop Acts accomplish, not just for social events, but most notably for bars and taverns.

The last section we deal with is strict liability. Strict liability comes about when there is an action, usually abnormally dangerous, something that it's foreseeable that there is likely to be some sort of injury as a result and the courts just bypass negligence and say if you cause injury, you pay for it. Period. Examples of this would be ultra hazardous, abnormally dangerous activities. One of them would be blasting. If you're involved in blasting rock for a road or something of that nature and there is damage to a structure nearby, they would not need to prove negligence. They would just have to make a claim in strict liability. It also applies, for instance, wild animals or known dangerous, domestic animals. There is strict liability on the owner to anyone that is injured or caused harm by animals in this way.

And that concludes our section on negligence and strict liability.