

Elements of Negligence

Under the tort of negligence, there are four elements a plaintiff must establish to succeed in holding a defendant liable. The Court of Appeals of Georgia outlined the elements for a prima facie case of negligence in *Johnson v. American National Red Cross* as follows: “(1) a legal duty to conform to a standard of conduct; (2) a breach of this duty; (3) a causal connection between the conduct and the resulting injury; and (4) damage to the plaintiff.” *Johnson*, 569 S.E.2d 242, 247 (Ga. App. 2002).

Under the first element, a legal duty to a standard of due care, the plaintiff must prove the defendant had a duty to conform to a standard of conduct for protection of the plaintiff against an unreasonable risk of injury. The duty of care will be determined by the applicable standard of care and several factors can heighten the standard of care depending upon the relationship between the parties, whether the plaintiff was foreseeable, the profession of the defendant, etc. For example, the Red Cross has a duty, when supplying blood donations to hospitals, to make its best efforts to ensure blood supplied is not tainted with any transferable viruses or diseases, such as an undetectable rare strain of HIV.

A breach of the duty of care occurs when the defendant’s actions do not meet the required level of applicable standard of care due to the plaintiff. Whether a breach of the duty of the applicable standard of care occurs is a question for the trier of fact. There are several ways a plaintiff demonstrates breach of the duty of care; these include actions against the custom in an industry, violation of a statute or in some cases, *res ipsa loquitor*. *Res ipsa loquitor* permits the mere fact that damages occurred, with some additional evidence presented by plaintiff, to show therefore that a breach of the duty must have occurred.

After demonstrating there was a duty and it has been breached by defendant’s conduct, the plaintiff must prove his or her injuries were caused by such negligent conduct. To hold the defendant liable for such negligent conduct causing injuries, the plaintiff must prove actual cause and proximate cause. To show actual cause, the plaintiff must prove that but for the defendant’s negligent conduct, which could be either the defendant’s act or omission to act if the situation or relationship required action by the defendant, the injuries or damages would not have occurred. Proximate cause of the injury is the legal causation aspect of this element which follows the chain of events from the negligent conduct to the damages.

Damage is the final element that must be proven to succeed in a negligence action; damages will not be presumed in a case. If the plaintiff does not demonstrate damages were suffered as a result of the defendant’s negligence, the defendant will not be held liable for the tort of negligence. In *Johnson*, the Court of Appeals upheld the trial court’s holding in favor of the Red Cross because it was not established the late Bernice Mantooth suffered any damages as a result her receiving two units of blood that the Red Cross provided which potentially was tainted with a rare undetectable strain of HIV.

From a main office in Gwinnett County, attorney Charles Scholle serves clients from offices in **Buckhead** and the **Perimeter** and represents victims throughout Atlanta and Georgia. To set up your free consultation, you can **send the firm a message online** or call toll-free at 1-866-972-5287 or in Atlanta at 770-717-5100.