

# YOUR TENNESSEE PERSONAL INJURY LAWSUIT UNDERSTANDING NEGLIGENCE

*As the Victim of a Tennessee Personal Injury Accident Case You Should Have a Basic Understanding of the Concept of Negligence Because Proving the Defendant's Negligence Will Be Necessary to Win Your Case*



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When someone is injured in a motor vehicle collision we commonly say they were injured in a car “accident”. Likewise, if a victim is hurt after slipping on a wet floor at the supermarket we say the injuries occurred in a slip and fall “accident”. Although we refer to these scenarios as “accidents”, the truth is that more often than not the victim is injured as a result of someone else’s negligence.

The law typically, but not always, uses a negligence standard when determining liability in an “accident” case. As the victim of a Tennessee personal injury accident case you should have a basic understanding of the concept of negligence because proving the defendant’s negligence will be necessary to win your case.

## Intentional, Strict Liability and Negligent Torts

A defendant could be held liable for injuries based on one of three types of torts – intentional, strict liability, or negligent. “Torts” is the legal name for the area of the law that addresses injuries to your person or property. An example of an intentional tort is assault. The defendant could be arrested for criminal assault but the victim could also file a civil lawsuit for damages based on the intentional harm caused by the defendant. Strict liability makes the defendant liable not matter what the defendant did, or didn’t do, to prevent harm. State dog bit laws, including Tennessee’s, often have a strict liability component that makes the dog owner liable whenever the dog bites someone. Liability is not based on the dog’s prior behavior or on anything the owner did, or didn’t do. Finally, negligent torts make up the vast majority of torts in the United States.

## Elements of Negligence

Most definitions of negligence include four elements. As a victim of a Tennessee personal injury “accident” you will need to prove all four elements to win the case. Those elements include:

**Duty of Care** – the duty of element means that the defendant must have been legally required to take all reasonable steps possible to prevent harm from befalling the victim. Of course it can be argued that we all have a moral duty to protect others from harm but for purposes of a personal injury lawsuit what is important is if the defendant had a legal duty of care. A shop owner, for example, has a legal duty of care to protect patrons who enter the business from harm.

**Breach of the duty of Care** –if a duty of care existed, the next question is whether or not that duty of care was breached. Here the law asks whether the defendant *knowingly* placed the victim at risk or harm or whether the defendant *should have known* that his conduct would place the victim at risk for harm. In the shop owner example, imagine that the shop owner is

aware that a bottle of cleaning liquid was spilled in an aisle and fails to do anything about it and that a customer then slips on the liquid and suffers a severe head injury in the fall. The law would likely find that the shop owner *should have known* that failing to clean up the spill would place customers at risk for harm. Therefore, the defendant breached the duty of care owed to the customer.

**Causation** – the causation elements requires the victim to show that the defendant’s actions, or failure to act, caused the victim’s injuries. Often this is clear, but not always. The law asks “But for the defendant’s action would the victim have been injured?” Sometimes, however, the injuries to the victim are so far out of the realm of probability that the law does not hold the defendant liable even if the “But for” question answered correctly.

**Damages** –“Damages” is the legal term used when referring to the injuries a victim suffers. In most personal injury lawsuits a victim is potentially entitled to both economic and non-economic damages. Economic damages are usually out of pocket expenses that are easily quantifiable such as medical bills, repairs to property, or lost earnings. Non-economic damages are what people commonly refer to as “pain and suffering” damages. In rare cases a victim may also be entitled to punitive damages. Both economic and non-economic damages are intended to



compensate a victim for actual injuries whereas punitive damages are intended to punish the defendant for wrongdoing.

## Comparative Negligence

Tennessee is a comparative negligence state, meaning that a victim can share some of the fault for the accident and still be entitled to recover damages for injuries. In contrast, the few states where contributory negligence is used require a defendant to be 100 percent at fault for a victim to recover anything. In other words, if a victim contributed as little as one percent of the fault the victim is entitled to nothing. Fortunately, Tennessee is not a contributory negligence state. Under the comparative negligence doctrine fault is apportioned according to the degree of fault each party shares. For example, if you suffered \$10,000 in damages but were found to be 10 percent at fault you would only be entitled to \$9,000 in damages. Not surprisingly, defendants in a Tennessee personal injury accident lawsuit often claim that the victim shared some of the fault in the accident in an attempt to limit the defendant's liability.

Proving all of the elements of a personal injury claim based on negligence requires the assistance of an experienced Tennessee personal injury attorney. Negligence lawsuits are very fact specific, meaning that the unique facts and circumstances of the "accident" will determine if all the elements have been met.

Findlaw, [Elements of a Negligence Case](#)

## About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

When you need legal help, you should be confident that the lawyer you choose will provide you with exceptional and trustworthy services. Our experienced, dedicated, and compassionate lawyers and legal staff are committed to always protecting clients' rights and relentlessly fighting for their best interests. Enlist the unyielding advocacy at Bennett & Michael, and you can trust that you and your family will get the results, service, and respect that you deserve. You won't be disappointed.

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