

The Tort of Negligence

A negligence case requires a Plaintiff to suffer some physical harm or property damage.

To **succeed** in an action for **Negligence**: The **Plaintiff** must prove on a *balance of probabilities*:



Step 1: *Duty of Care*

The Plaintiff must show that the Defendant owed him or her a **Duty of Care**

You have a **duty of care** to people when a legal duty has been placed upon you. Your actions must not cause harm to people or to their property.



Step 2: *Breach of Duty of Care*

The Defendant fails to meet the expected standard of care of a “**reasonable person**”

The “**reasonable person**” is an image of someone who has neither physical nor developmental disabilities and who people agree is careful, thoughtful, and considerate of others in all dealings.



Step 3: *Foreseeability*

Would a reasonable person in similar circumstances have **foreseen** the injury to the victim as a result of his or her action? (i.e. was the action/consequence reasonably expected to occur)



Step 4: *Actual Harm or Loss*

The Plaintiff must prove that real harm or loss occurred



Step 5: *Causation*

The Plaintiff must prove that the Defendant’s negligent conduct **caused** the Plaintiff’s harm or loss. **There must be a direct causal connection.**

Will an Action for Negligence Succeed?

Read the following hypothetical scenario carefully. Based on the facts as provided determine whether the plaintiff will succeed in an action for negligence.

On June 19, 1998, at around 11 p.m., the 18-year old defendant, Desiree Vetter, and about 15 other teenagers arrived at the home of her aunt and uncle, Shari and Gregory Vetter. Shari and Gregory had gone upstairs and were asleep when the group arrived, but their 17-year old son, Scott, was there with a few friends. He did not see his cousin Desiree or any of her friends bring alcohol or consume it on the premises, but Desiree admitted to drinking in the backyard. No liquor was supplied by Scott. At about 11:30 p.m., the 18-year old plaintiff, Adam Prevost, arrived with a group of intoxicated young adults. By then, there were about 30 people in the Vetter's yard.

Around 1:00 a.m., the police arrived in response to neighbours' complaints. They told Scott to quiet the group and clear everyone out. Scott woke his mother to advise her of this; she asked if he needed help in breaking up the party. He said no, and she went back to sleep. Evidence indicated that Shari and Gregory regularly permitted Scott to host such parties, and they were aware that minors sometimes brought their own liquor and drank it there. In the past, but not this evening, Shari was protective of drinking minors, offering to have them sleep over, taking away their car keys, or driving them home.

Everyone had left by about 1:30 a.m. Desiree was one of the last to leave, and the plaintiff asked her for a lift. Desiree drove with four passengers in her car. She lost control of the vehicle, and Adam was thrown through the sunroof, leaving him with a severe brain injury. Desiree underwent a breath test and registered a blood-alcohol level of 120 (well above the legal limit).

Adam and his parents brought an action for negligence against Desiree and her aunt and uncle. His action was for \$2.5 million in damages.

Based on the foregoing scenario, will Adam succeed with his claim of negligence? To properly answer this question, your answer should include an analysis of all the steps required to succeed in a negligence action.