

Tennessee Practice Series Tennessee Pattern Jury Instructions - Civil  
Current through the Tenth Edition

The Committee on Pattern Jury Instructions (Civil) of the Tennessee Judicial Conference

Chapter  
3. Negligence, Fault and Causation  
C. Standard of Care

**T.P.I.—CIVIL 3.05 Definition of Negligence**

Negligence is the failure to use ordinary or reasonable care. It is either doing something that a reasonably careful person would not do, or the failure to do something that a reasonably careful person would do, under all of the circumstances in this case. The mere happening of an injury or accident does not, in and of itself, prove negligence.

A person may assume that every other person will use reasonable care, unless a reasonably careful person has cause for thinking otherwise.

**COMMENT**

Duty is the legal obligation owed by defendant to plaintiff to conform to a reasonable person standard of care for the protection against unreasonable risks of harm. [McCall v. Wilder](#), 913 S.W.2d 150 (Tenn. 1995). The existence or nonexistence of a duty owed to plaintiff is entirely a question of law for the Court. [Carson v. Headrick](#), 900 S.W.2d 685 (Tenn. 1995). Also see [McClung v. Delta Square Ltd. Partnership](#), 937 S.W.2d 891, 901 (Tenn. 1996); [Coln v. City of Savannah](#), 966 S.W.2d 34 (Tenn. 1998).

Under an exception to the policemen and firemen's rule, a citizen has a duty to refrain from, either by action or inaction, intentionally, maliciously, or recklessly causing injury to police officers responding to a citizen's call for assistance. Recognition of moral fault as a component of public policy is a common principle of tort law. [Carson v. Headrick](#), 900 S.W.2d 685 (Tenn. 1995).

**PUBLIC DUTY DOCTRINE**

The public duty doctrine shields a public employee from suits for injuries that are caused by the public employee's breach of a duty owed to the public at large. Private citizens cannot maintain an action complaining of the wrongful acts of public officials unless such private citizens aver special interest or a special injury not common to the public generally. An exception exists where a special relationship exists between the plaintiff and the public employee which gives rise to a "special duty" that is more particular than the duty owed by the employee to the public at large.

A special duty of care exists when (1) officials, by their actions, affirmatively undertake to protect the plaintiff and the plaintiff relies upon the undertaking; (2) a statute specifically provides for a cause of action against an official or municipality for injuries resulting to a particular class of individuals, of which the plaintiff is a member, for failure to enforce certain laws; or (3) the action involves intent, malice, or reckless misconduct. [Ezell v. Cockrell](#), 902 S.W.2d 394 (Tenn. 1995). But see [Bridges v. City of Memphis](#), 952 S.W.2d 841 (Tenn. App. 1997) as to suits against the governmental agency.

Foreseeability is the test for negligence, and the inquiry is whether defendant's conduct created an unreasonable

risk of harm to plaintiff. [Spivey v. St. Thomas Hosp.](#), 31 Tenn. App. 12, 211 S.W.2d 450 (1947); [Lancaster v. Montesi](#), 216 Tenn. 50, 390 S.W.2d 217 (1965).

The term “reasonable care” must be given meaning in relation to the circumstances. Ordinary, or reasonable, care is to be estimated by the risk entailed through probable dangers attending the particular situation and is to be commensurate with the risk of injury. The risk involved is that which is foreseeable; that is, if a reasonable person could foresee the probability of its occurrence or if the person was on notice that the likelihood of danger to the party to whom is owed a duty is probable. [Doe v. Linder Constr. Co.](#), 845 S.W.2d 173 (Tenn. 1992).

The risk involved is that which is foreseeable; a risk is foreseeable if a reasonable person could foresee the probability of its occurrence or if the person was on notice that the likelihood of danger to the party to whom is owed a duty is probable. Foreseeability is the test of negligence. [Eaton v. McLain](#), 891 S.W.2d 587 (Tenn. 1994).

Factors to be considered in determining whether a risk is an unreasonable one include: the foreseeable probability of the harm or injury occurring; the possible magnitude of the harm or injury; the importance or social value of the activity; the usefulness of the conduct to the defendant; the feasibility of alternative, safer conduct and the relative costs and burdens associated with that conduct; the relative usefulness of the safer conduct; and the relative safety of alternative conduct. [McCall v. Wilder](#), 913 S.W.2d 150 (Tenn. 1995).

Where the intentional actor and the negligent actor are both named defendants and each are found to be responsible for the plaintiff's injuries, then each defendant will be jointly and severally liable for the plaintiff's total damages. In the context of a negligent defendant failing to prevent foreseeable intentional conduct, the joint liability is a very reasonable and just rule of law which compels each to assume and bear the responsibility of the misconduct of all. [Limbaugh v. Coffee Medical Center](#), 59 S.W.3d 73 (Tenn. 2001).

Supreme Court held physician owed a duty to plaintiff to warn physician's patient of the risks of driving under the influence of two prescribed drugs, but physician did not owe duty to plaintiff in deciding whether or not to prescribe the medications to the patient. [Burroughs v. Magee](#), 118 S.W.3d 323 (Tenn. 2003).

An unavoidable accident in its truest form is nothing more than a lack of negligence on the part of any party. An adequate instruction on negligence alone is sufficient and an unavoidable accident charge is unnecessary except in, perhaps, the most unusual of circumstances. [Ricketts v. Robinson et al.](#), 169 S.W.3d 642 (Tenn. Ct. App. 2004).

## West's Key Number Digest

West's Key Number Digest, [Negligence](#)  1  
West's Key Number Digest, Negligence 139(1)

## Legal Encyclopedias

[C.J.S., Negligence §§ 1 et seq.](#)

[C.J.S., Negligence §§ 18 et seq.](#)

[C.J.S., Negligence § 286](#)

[C.J.S., Negligence § 287](#)

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**T.P.I.—CIVIL 3.20 Causation**

A negligence claim requires proof of two types of causation: Cause in fact and legal cause. Cause in fact and legal cause are distinct elements of a negligence claim and both must be proven by the plaintiff by a preponderance of the evidence.

**COMMENT**

“Cause in fact and proximate cause are ‘ordinarily jury questions, unless the uncontroverted facts and inferences to be drawn from them make it so clear that all reasonable persons must agree on the proper outcome.’”

[Hale v. Ostrow](#), 166 S.W.3d 713, 718-719 (Tenn. 2005) (citing [Haynes v. Hamilton County](#), 883 S.W.2d 606, 612 (Tenn. 1994) quoting [McClenahan v. Cooley](#), 806 S.W.2d 767, 775 (Tenn. 1991)).

**West's Key Number Digest**

West's Key Number Digest, [Negligence](#)  140

**Legal Encyclopedias**

[C.J.S., Negligence § 31](#)

[C.J.S., Negligence § 290](#)

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**T.P.I.—CIVIL 3.21 Cause in Fact**

The defendant's negligent conduct is a cause in fact of the plaintiff's injury if, as a factual matter, it directly contributed to the plaintiff's injury and without it plaintiff's injury would not have occurred. It is not necessary that a defendant's act be the sole cause of plaintiff's injury, only that it be a cause.

**USE NOTE**

This instruction should not be given if T.P.I.—Civil 3.50 is given to the jury.

**COMMENT**

[Hale v. Ostrow, 166 S.W.3d 713, 718-719 \(Tenn. 2005\).](#)

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**T.P.I.—CIVIL 3.22 Legal Cause**

Once you have determined that a defendant's negligence is a cause in fact of the plaintiff's injury, you must decide whether the defendant's negligence was also a legal cause of the plaintiff's injury.

The law in Tennessee sets out two requirements to determine whether an act or omission was a legal cause of the injury or damage.

1. The conduct must have been a substantial factor in bringing about the harm being complained of; and,
2. The harm giving rise to the action could have been reasonably foreseen or anticipated by a person of ordinary intelligence and care.

To be a legal cause of an injury there is no requirement that the cause be the only cause, the last act, or the one the nearest to the injury, so long as it is a substantial factor in producing the injury or damage.

The foreseeability requirement does not require the person guilty of negligence to foresee the exact manner in which the injury takes place or the exact person who would be injured. It is enough that the person guilty of negligence could foresee, or through the use of reasonable care, should have foreseen the general manner in which the injury or damage occurred.

**USE NOTE**

This instruction should not be given if T.P.I.—Civil 3.50 is given to the jury.

**COMMENT**

There is a third requirement that the Court must determine “that there is no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in harm.” [McClenahan v. Cooley, 806 S.W.2d 767, 775 \(Tenn. 1991\)](#). See also [Hames v. State, 808 S.W.2d 41 \(Tenn. 1991\)](#).

The actor's conduct must be judged in the light of possibilities apparent to him at the time, and not by looking backward “with the wisdom born of the event.” The standard is one of conduct, rather than consequences. It is not enough that everyone can see now that the risk was great, if it was not apparent when the conduct occurred. [Friedenstab v. Short, 174 S.W.3d 217, 219 \(Tenn. Ct. App. 2004\)](#) *perm. app. denied*.

STUDENT MISCONDUCT: Tennessee follows the more conservative foreseeability approach that student misconduct is not to be anticipated absent proof of prior misconduct. [Mason v. Metropolitan, 189 S.W.3d 217 \(Tenn. Ct. App. 2006\)](#).

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**T.P.I.—CIVIL 3.30 Willful or Wanton Misconduct**

Willful or wanton misconduct is intentional wrongful conduct, done either with knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results. It does not require an intent to injure or harm the plaintiff individually. It may be considered by you in determining the amount of fault you will assign to a party.

**USE NOTE**

Willful misconduct is a variant of negligence and the principles of comparative negligence are applicable. For punitive damages, see T.P.I.—Civil 14.55.

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**T.P.I.—CIVIL 3.31 Gross Negligence**

Gross negligence is a negligent act done with utter lack of concern for the safety of others, or an act done with such reckless disregard for the rights of others that a conscious indifference to the consequences can be implied.

**USE NOTE**

The legal significance of gross negligence remains uncertain after the adoption of comparative fault and the restriction of punitive damages to cases where the defendant's conduct was willful or reckless.

**COMMENT**

If one knowingly and consciously violates a duty imposed upon him to protect lives or safety of others, he is guilty of more than mere negligence. It is not necessary that he intended to do a specific injury. [\*Inter-City Trucking Co. v. Daniels\*, 181 Tenn. 126, 178 S.W.2d 756 \(1944\)](#).

Gross negligence is not characterized by inadvertence. It is a negligent act done with utter lack of concern for the safety of others, or one done with such a reckless disregard for the rights of others that a conscious indifference to consequences can be implied. [\*Ruff v. Memphis Light Gas & Water Div.\*, 619 S.W.2d 526 \(Tenn. App. 1981\)](#) citing [\*Odum v. Haynes\*, 494 S.W.2d 795 \(Tenn. App. 1972\)](#). See [\*Hodges v. S.C. Toof & Co.\*, 833 S.W.2d 896 \(Tenn. 1992\)](#).

The decision in [\*Eaton v. McLain\*, 891 S.W.2d 587 \(Tenn. 1994\)](#), suggests that, other things being equal, a party that is grossly negligent may be assigned more fault than one who is simply negligent. [\*Id.\* at 590](#). However, the opinion does not expressly use the words “gross negligence.” The unreported decision in [\*Sanford v. Metropolitan\*](#)

[Gov't of Nashville, 1997 WL 24863](#), No. 01-A-01-9606-CV00251 (Tenn. App. 1997) holds that the degree of negligence impacts the allocation of fault.