

Negligence

Negligence can arise in the employment context when an act or omission of the employer causes loss or damage to the employee. It may be that the negligent act or omission was caused by one or more of the employer's employees; if so, the employer may be vicariously liable for one or more of its employees' acts or omissions.

The definition of negligence is that it may occur as a result of either an act or omission where:

- there is reasonable foreseeability of loss or damage to a party caused by the act or omission of another;
- there is a close and direct relationship between the parties (thereby establishing legal proximity); and
- it is fair, just and reasonable to impose a duty of care (the public policy criterion) upon the party that has caused reasonably foreseeable loss or damage to the other party.

See the judgment of the House of Lords: *Marc Rich & Co AG and others v Bishop Rock Marine Co Ltd and others (The Nicholas H)* (1995), *The Times Law reports*, 07 July 1995.

Two examples where the Courts have held that an employer was liable for the tort of negligence:

- (i) **the tort of negligence arose in the employment context when an employer made a voluntary assumption of responsibility towards an employee (albeit an office-holder being a police officer) but then failed to safeguard the police officer's interests when he transferred from one police service to another and, as a result, he lost his housing allowance because of wrong advice given by another of the employer's employees that caused a break in the continuity of his police service: *Lennon v Commissioner of Police of the Metropolis* (2004) IRLR 385, Court of Appeal;**
- (ii) **another case in which the tort of negligence was made out was where an employee was injured at work and needed to establish against whom to make a claim as at the time of the incident it appeared that he had two employers. The reason for this was that his employer had assigned him temporarily to work for another employer. When the case reached the House of Lords, their Lordships held that the employee's 'general employer,' instead of the hirer for whom he was working at the time of the incident, was the employer for vicarious liability purposes: *Mersey Docks and Harbour Board v Coggins and Griffith (Liverpool) Ltd* (1947) AC 1, HL.**

In 2005, the Court of Appeal overturned the long-standing assumption that liability for an employee's negligence can arise only against one employer whereas it is legally permissible that liability can arise against two employers: *Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd and others* (2005) EWCA Civ 1151.

Liability for negligence may arise when an employer gives a reference about an employee to a prospective employer. Thus, an employer owes an ex-employee a duty to take care when writing such a reference. This is so even when the employer adds a disclaimer to the job reference purporting to exclude liability for negligence. This is because the reference is subject to the provisions of the Unfair Contract Terms Act 1977, being s.11 that states 'the test of reasonableness,' in that contract terms and conditions as well as disclaimers cannot be used to exclude or restrict liability for negligence – '... except insofar as the term or notice satisfies the requirement of reasonableness:' s.2(2), Unfair Contract Terms Act 1977.

Where an employee suffers an injury that can be said to have been reasonably foreseeable by her or his employer, the employer will be liable in the tort of negligence: *Hone v Six Continents Retail Ltd* (2005) EWCA Civ 922, CA.

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