



Negligence

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DEFINITION OF NEGLIGENCE



The author of the Canterbury Tales, Geoffrey Chaucer brought the word “negligence” into the English language from a Latin word meaning carelessness. In the law, negligence is defined as carelessness which causes damage to a person or property. Negligence may arise either from acting carelessly, or from failing to act when legally obligated to do so.



Negligence is one of many torts. Torts are not criminal. A tort is a civil wrong. In the American civil justice system, tort claims are filed in court to redress civil wrongs against people and property. In this educational segment, the presenters will focus on the tort of negligence and its specific relevance to landscape architecture and arboriculture.

4 Legal Elements of Negligence

Under the law a litigant in court must prove four legal elements to prevail on the claim of negligence in court.

1. Duty
2. Breach
3. Causation
4. Damages



The First Legal Element of Negligence is Duty

A **duty**, or obligation, recognized by the law, requiring the defendant to conform to a certain standard of conduct for the protection of others against unreasonable risks.



The Florida Supreme Court Explains:

LEGAL DUTY

Where a person's conduct creates a foreseeable zone of risk, the law will place a duty on that person either to lessen that risk, or to take steps to lessen any harm posed by that risk. The requirement of reasonable, general foresight is the core of the duty element.

**McCain v. Florida
Power Corp.**



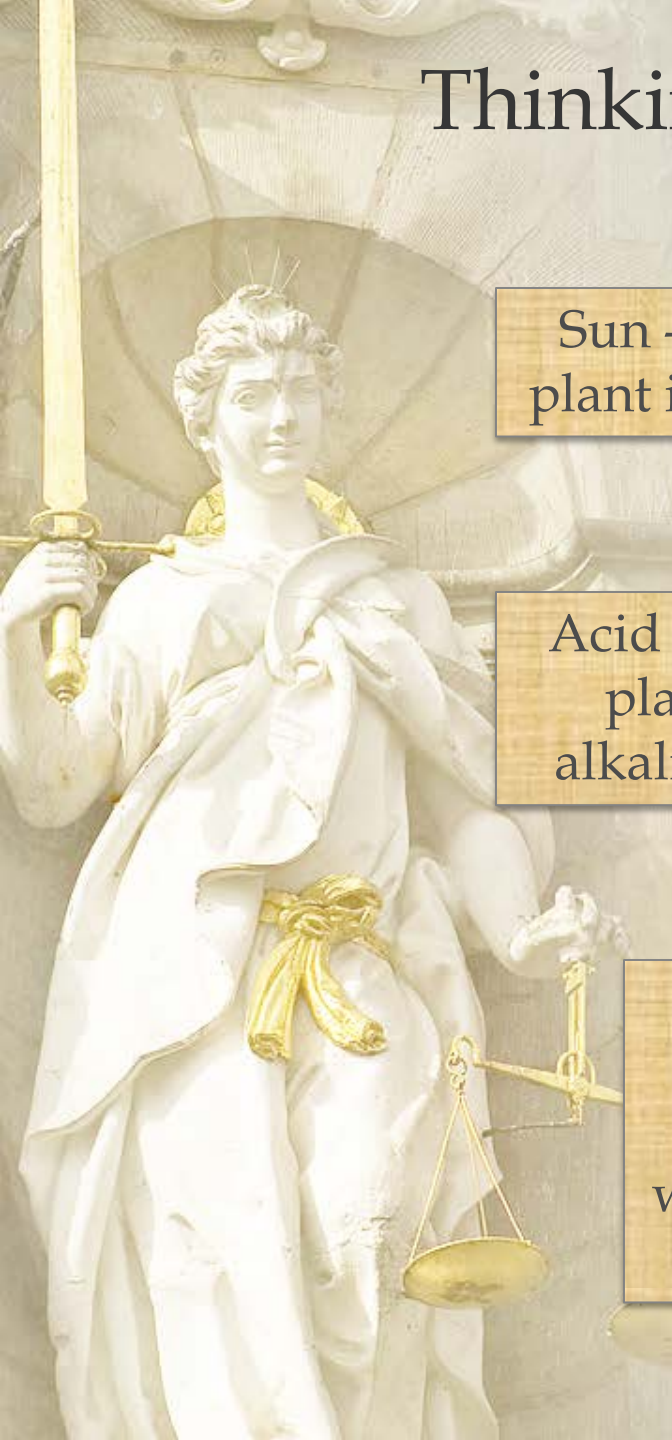
A classical statue of Lady Justice, the personification of the goddess of justice. She is depicted as a woman with curly hair, wearing a white robe with a gold sash. She holds a golden sword upright in her right hand and a pair of golden scales in her left hand. The statue is set against a stone archway.

More recently the court said:

A legal duty to act may arise from a statute, from an administrative regulation, from a tree or landscape ordinance, from case law regarding landscape architecture or arboriculture, from a landscape contract, or from the general facts of a case where a foreseeable zone of risk is present.

Clay Electric Cooperative, Inc.
v. Johnson

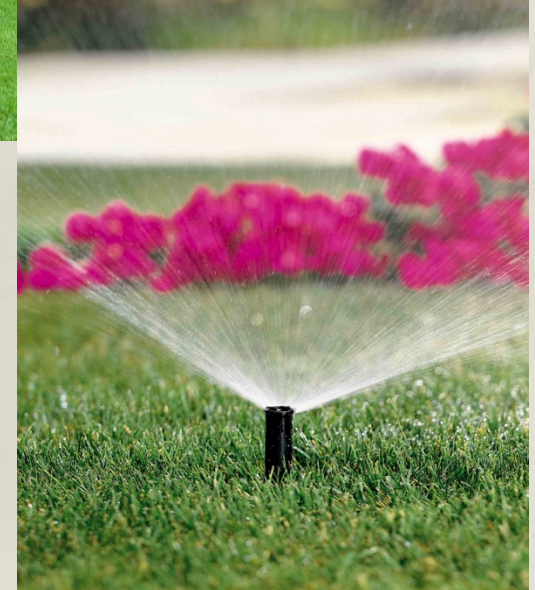
Thinking About Duty in Our World



Sun-loving
plant in shade

Acid-loving
plant in
alkaline soil

Zeroscopic
plant bundle
with high
water demand
plants



First Example of Duty

Incorrect
Fertilizer
Recommendations

Does not specify
rate of
application



The 4 R's



1
The RIGHT
material

Apply a 10-3-15 analysis fertilizer with 70% water insoluble organic nitrogen, and 50% poly coated potassium.

2
In the RIGHT
manner

Application equipment should be cyclone-type spreader.

3
Applied at the
RIGHT time

Apply when root systems are actively growing.

4
At the RIGHT
rate

Apply at the rate of 20 pounds of fertilizer per 1000 ft.²

Second Example of Duty



Specifying right
plant in wrong place
(e.g. clear sight-lines
at access areas)



Third Example of Duty

A tree ordinance or other tree pruning specifications may state all trees must be pruned according to ANSI A300 Part 1 Pruning

Tree pruning specifications which do not comply with recognized standard

Terminology inconsistent with ANSI A300 Part 1 Pruning



A classical statue of Lady Justice, the personification of the goddess Iustitia. She is depicted as a woman with curly hair, wearing a white robe with a gold sash. She holds a golden sword upright in her right hand and a pair of golden scales of justice in her left hand. The statue is set against a stone wall with an arched niche behind her.

Ultra Hazardous Duty

Bowling v. Gilman

Some duties cannot be delegated to someone else. A non-delegable duty usually arises when people engage in ultra-hazardous activities; however, this can apply to landscape architects or arborists delegating duties adherent to their profession to others such as landscape installers, or landscape maintenance firms.

Tree Trimming May Be Ultra Hazardous



Pruning a 70 - 75
foot tree with a
chainsaw and
improper safety
equipment

The Second Element of Negligence is Breach

After providing a legal duty, it must be proved that there was a **breach** of that duty. Whether someone breached a legal duty will depend on the nature of that particular duty.



A vertical image on the left side of the slide showing a statue of Lady Justice. The statue is a woman with curly hair, wearing a white robe with a gold sash. She holds a sword in her right hand and a set of scales in her left. The background is a stone archway.

Breaching Duties in Statutes, Regulations, and/or Ordinances

Proving the violation of a statute, regulation, tree or landscape ordinance will satisfy the legal element of breach. For example, a plaintiff can use the violation of a tree ordinance that prohibits an improper pruning to prove the legal element of breach.

A classical statue of Lady Justice, the personification of the goddess of justice. She is depicted as a woman with curly hair, wearing a white robe with a gold sash. She holds a golden sword upright in her right hand and a pair of golden scales in her left hand. The statue is set against a stone wall with an arched niche.

Breaching Duties in Contracts

Navajo Circle, Inc. v. Development Concepts Corp.

If someone carelessly performs or fails to perform a written contract, then the contract and the careless conduct combine to satisfy the legal element of breach. For example, a condominium association can use the written promises in a contract between an architect and a roof contractor to prove that the architect negligently supervised the construction of a roof.

Breaching Duties Through General Inaction or Misconduct

Whitt v. Silverman

If someone creates a hazardous situation through his own action or inaction and can reasonably foresee a later injury, a breach may be proven from the circumstances without resorting to a statute or contract.



Thinking About Breach in Our World

Failure to follow through on specific client requests without giving notice.



Client insists that staking be removed prematurely from landscape trees

An Example of Breach

Failure to notice
highly visible patent
defect in a tree.



The Third Element of Negligence is Causation

A reasonably close causal connection between the conduct and the resulting injury. This is commonly known as the "**legal cause**" or the "**proximate cause**" of the injury.



Understanding Legal Causation

There must be such a natural, direct, and continuous sequence between the negligent act or failure to act and the plaintiff's injury that one may reasonably say: "but for the negligence, the injury would not have occurred."



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Miranda v. Home Depot, Inc.

The negligent act or failure to act must be a probable cause, not merely a possible cause, of the injury.

First Example of Causation

Failing to follow the 4 R's may legally cause damages to people or property.



Second Example of Causation

For example, a county caused a bicyclist to be hit by a car, where the county permitted tree roots to grow on its bike path. The tree roots on the bike path forced the bicyclist to ride on a nearby road instead of the bike path. The fact that the county's failure to maintain the bike path was only one reason why the bicyclist used the road did not affect the analysis, because the county's failure to maintain the bike path was a foreseeable and substantial factor which led to the collision.

Stahl v. Metropolitan Dade
County



The Fourth Element of Negligence is Damages

A person injured by the negligence of another must have fair and just compensation commensurate with the loss sustained. The objective of compensatory damages is to make the injured party whole to the extent that it is possible to measure his injury in terms of money.

Hanna v. Martin



Damages to Property

Where the negligence causes damage to property, Florida courts instruct juries to consider the following damages:

1. if the property needs to be replaced: the difference between the value of the property immediately before the negligent event and its value immediately after the negligent event.;
2. if the property needs to be repaired: the reasonable cost of repair, if it was practicable to repair the property, with due allowance for any difference between its value immediately before the negligent event and its value after repair.;
3. loss of the use of the property while it is being replaced or repaired; and
4. hauling, towing, storage and related charges while the property is being replaced or repaired.

Meakin v. Dreier





Example of Damage to Property

Tree Damage Assessment Report

Cost of Repair

This approach is applied when there is a reasonable expectation that a repaired plant may return to nearly former condition if the repair cost is less than the value of the plant.

Cost of Cure

This approach is applied in an attempt to return the property or plant's function to a reasonable approximation of its pre-casualty condition.



Damages for Injuring People

Where the negligence causes personal injuries, a plaintiff may seek damages from the wrongdoer for:

1. past and future medical expenses.;
2. past and future lost wages;
3. pain and suffering;
4. mental anguish;
5. inconvenience;
6. the loss of the capacity for the enjoyment of life;
7. the aggravation of any pre-existing medical condition; and
8. the loss of a spouse's or a child's consortium.

Damages for Death

Where the negligence causes death, then the law may set forth a different set of damages which the deceased's estate may generally recover from the wrongdoer.



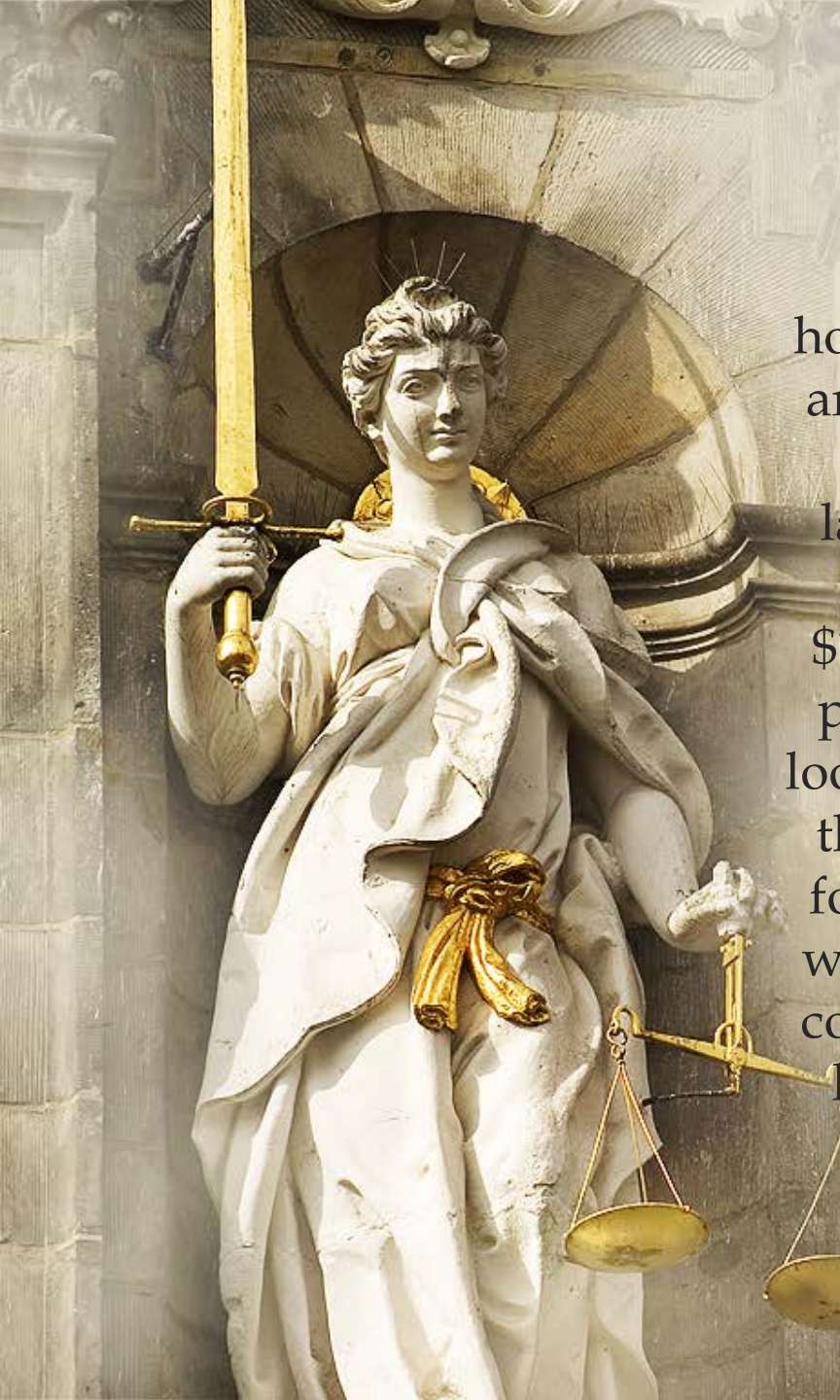


A STANDARD DEFENSE TO NEGLIGENCE

COMPARATIVE NEGLIGENCE

In answering a lawsuit for negligence, a Defendant may raise a defense called comparative negligence in some jurisdictions where the courts have adopted the defense of comparative negligence.

Under this defense, a jury must decide what percentage of the total fault was caused by the plaintiff as compared to the fault of all other persons who may be responsible.



For example, the Florida Supreme Court explains:

For example, a plaintiff steps into a hole on the lawn of a community's clubhouse and breaks her ankle. The plaintiff then sues the homeowner's association and the landscaping contractor for negligence. The case goes to trial, and the jury awards \$100,000 in damages. The jury finds that the plaintiff is 30% at fault, because she did not look where she was going. The jury finds that the homeowner's association is 40% at fault for failing to keep its lawn safe for people to walk on. The jury finds that the landscaping contractor is 30% at fault for not filling in the hole. Based on the defense of comparative negligence, the plaintiff will be awarded \$70,000 of damages.

Hoffman v. Jones

THE END

