

UNIVERSITAS KRISTEN WIRA WACANA SUMBA

WEEK 9

MORE ABOUT NEGLIGENCE

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ENGLISH FOR LAW



Review

Law of torts deal with civil wrongful conducts causing harm e.g. injury or loss, to others.

Types of torts:

- Negligence (kelalaian yang menyebabkan kerugian pada orang lain)
- Trespass to land (masuk tanah atau property orang tanpa izin)
- Trespass to the person (ancaman atau gangguan langsung terhadap kebebasan seseorang)
- Defamation (pencemaran nama baik seseorang)
- Nuisance (gangguan yang menyebabkan ketidaknyaman pada orang lain)

wrong salah	principle prinsip	slander fitnah lisan	against bertentangan
harm membahayakan	conduct bersikap/perilaku	suffer menderita	behavior bersikap/perilaku
damage kerusakan	assault ancaman penyerangan	hurt terluka	careful hati-hati
liable bertanggung jawab	battery kontak fisik kekerasan	Libel fitnah tertulis	formal word kata yang formal
compensate kompensasi	defamation pencemaran nama baik	physically secara fisik	no sign tanpa tanda

Simple past tense (waktu lampau)

The simple past tense describes events, activities, and situations that began and ended in the past e.g. yesterday, last week, last month, last year etc. Most simple past verbs are formed by added –ed e.g. *played, sued, asked* to a verb and some verbs have irregular past forms e.g. *found out, made, wrote*.

Subject + past verbs

- The police *found out* that she was not guilty.
- I *asked* for compensation for the damage in the civil court.

More about negligence

Negligence happens when someone causes harm or damage to another person because that someone is not careful enough.

- Someone needs to have a duty to be careful with his or her conduct that can cause harm or damage to another person.
- The duty of care is the duty not to cause harm or damage to another person.
- Negligence is the most common ground for an action in tort.

Key Vocabulary Before reading

prove	particular way	guilty	require
breach	receive	redress	form of damages
bring	suffer	decide	proof of damage
aim	deterrent	unfair	actionable <i>per se</i>
rules	persuade	entitled	committed

Key Vocabulary Before reading

prove membuktikan	particular way cara tertentu	guilty bersalah	require mengharuskan
breach pelanggaran	receive menerima	redress kompensasi	form of damages bentuk ganti rugi
bring membawa	suffer menderita	decide memutuskan	proof of damage bukti kerusakan
aim bertujuan	deterrent pencegah	unfair tidak adil	need butuh
rules aturan-aturan	persuade membujuk	entitled berhak atas	actionable <i>per se</i> penuntutan hukum tanpa bukti

Reading

Some of the general principles of the tort of negligence .

Most cases in tort based upon the tort of negligence. In order to bring a successful claim against someone for negligence, the claimant must prove that the defendant was in breach of his or her duty of care. The duty of care is the duty that someone's conduct does not harm anyone. The law of tort means that someone is liable for the things that she or he does and also the things that she or he does not do.

The rules in the law of tort concerning negligence aim to compensate anyone who suffers harm. However, these rules have another purpose. They aim to act as a deterrent against negligent conduct. A deterrent is something that persuades a person not to behave in a particular way. The principles of the tort negligence are designed to act as a deterrent against negligent conduct. Negligent conduct is behavior that may lead to harm or damage.

Cont....

However, when a person is guilty of negligent conduct then it may be necessary to make a claim against that person. A court will look at the evidence and decide if the claimant is entitled to redress. Redress means to correct something that is unfair. It also has similar meaning to compensation. It usually takes the form of damages. Lawyers often talk about being “entitled to redress”. This means being entitled to receive compensation or damages.

Some torts require proof of damage. In other words, the claimant must prove the the defendant’s conduct caused harm. However, some torts, such as libel, are actionable per se. If conduct is actionable per se, it means the claimant does not need to provide proof of damage. The phrase “*per se*” is latin. In English, “*per se*” means “by itself”. The fact that the defendant committed to tort is enough for the claimant to be entitled to redress.

(Catherine, Mason, 2016, pp.165 & 167)

Question

1. What does a claimant do to bring a successful claim against someone for negligence?
2. What is duty of care?
3. What is the aim of negligence?
4. What is a deterrent?
5. What is negligence conduct?
6. What does redress mean?
7. What is proof of damage?
8. What does it mean if something is actionable *per se*?

Answer

1. What does a claimant do to bring a successful claim against someone for negligence?

- A claimant must prove that the defendant is in breach of his or her duty of care.

In text

“Most cases in tort based upon the tort of negligence. In order to bring a successful claim against someone for negligence, the claimant must prove that the defendant was in breach of his or her duty of care”.

Cont....

2. What is duty of care?

- Someone makes sure that his or her conduct does not harm anyone.

In the text

“The duty of care is the duty that someone’s conduct does not harm anyone”.

Cont....

3. What is the aim of negligence?

- The main aim is to give compensation to anyone who suffers harm or damage.

In the text

“The rules in the law of tort concerning negligence aim to compensate anyone who suffers harm”.

Cont....

4. What is a deterrent?

- It is something to make people not to do a particular things or not to behave in a particular way.

In text

“They aim to act as a deterrent against negligent conduct. A deterrent is something that persuades a person not to behave in a particular way”.

Cont....

5. What is negligence conduct?

- It is careless behavior that is likely to cause harm or damage to another person.

In the text

“The principles of the tort negligence are designed to act as a deterrent against negligent conduct ... behavior that may lead to harm or damage”.

Cont....

6. What does redress mean?

- It means to correct something that is not fair and also the same meaning as compensation.

In the text

“Redress means to correct something that is unfair. It also has similar meaning to compensation. It usually takes the form of damages”.

Cont....

7. What is proof of damage?

- It is evidence that someone's conduct caused harm or damage.

In text

“In other words, the claimant must **prove the defendant's conduct caused harm**”.

Cont....

8. What does it mean if something is actionable *per se*?

- Someone can make a claim for the things he or she actually experiences without any proof of damage.

In the text

“, ...some torts, such as libel, are actionable per se. If conduct is actionable per se, it means the claimant does not need to provide proof of damage.”

Exercise

Use the correct words from the key vocabulary

1. My lawyer worked really hard to prove that my boss was in _____ of his duty of care.
2. Because of the shop owner careless, I _____ pain in my back and can't work for two weeks.
3. The judge punished the man in jail as a _____ against his negligent conduct.
4. They claimed that the compensation they got is _____.
5. You are entitled to _____ for the damages you suffered.
6. In that civil court, the judge _____ proof of damage.
7. The defendant finally _____ to compensate for breaching his duty of care.
8. The lawyer said that the case is _____ ____ _____. It doesn't need to provide proof of damage.

Answer

1. My lawyer worked really hard to prove that my boss was in **breach** of his duty of care.
2. Because of the shop owner careless, I **suffered** pain in my back and can't work for two weeks.
3. The judge punished the man in jail as a **deterrent** against his negligent conduct.
4. They claimed that the compensation they got is **unfair**.
5. You are entitled to **redress** for the damages you suffered.
6. In that civil court, the judge **required** proof of damage.
7. The defendant finally **decided** to compensate for breaching his duty of care.
8. The lawyer said that the case is **actionable perse**. It doesn't need to provide proof of damage.

Focus on form

Can, May, Must/Have to

Can expresses ability in the present or future.

- You can make a claim for the damages you suffered.
- We can persuade him to start proceedings in the civil court.
- She can ask for compensation.

May expresses possibility in the present or future.

- Your negligence behavior may lead to harm or damage
- She may pay a sum of money or court fee for the court to issue proceedings.
- They may need a good lawyer to win the case in the civil court.

Must/have to expresses necessity. They express the idea that something is necessary.

- His lawyer must prove that the shop owner was in breach of her duty of care.
- They have to pay compensation for negligence conduct.
- The defendant's lawyer must work hard to prove that his client is not guilty.

Things you need to know about can, may, must/have to

- They are not followed by *to*
Incorrect: Daniel can ~~to~~ make a claim.
- The main verb does not have a final *-s*.
Incorrect: Daniel may ~~makes~~ a claim.
- The main verb is not in a past form.
Incorrect: Daniel must ~~made~~ a claim.
- The main verb is not in its *-ing form*
Incorrect: Daniel and Sara have to ~~making~~ a claim.

Common mistakes of can, may, must/have to

1. Solicitors may represents their clients in civil court.
2. A solicitor can appeared in court.
3. A claimant must stating the amount of his or her claim.
4. You can makes a claim if you think that the doctor was negligent.
5. They have to paying for the compensation.
6. Jelita must persuading her husband to start a claim in the civil court.
7. Your careless behavior may leads to harm or damage to other people.
8. You have to proves that you are innocent.

Answer

1. Solicitors may ~~represents~~ their clients in civil court.
Solicitors may **represent** their clients in civil court.
2. A solicitor can ~~appeared~~ in court.
A solicitor can **appear** in court.
3. A claimant must ~~states~~ the amount of his or her claim.
A claimant must **state** the amount of his or her claim
4. You can ~~makes~~ a claim if you think that the doctor was negligent.
You can **make** a claim if you think that the doctor was negligent.

Cont....

5. They have to ~~paying~~ for the compensation.
They have to **pay** for the compensation.
6. Jelita must ~~persuading~~ her husband to start a claim in the civil court.
Jelita must **persuade** her husband to start a claim in the civil court.
7. Your careless behavior may ~~leads~~ to harm or damage to other people.
Your careless behavior may **lead** to harm or damage to other people.
8. You have to ~~proves~~ that you are innocent.
You have to **prove** that you are innocent.

Review

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Can, may, must/have to

1. Can expresses ability in the present or future.

- You can make a claim for the damages you suffered.

2. May expresses possibility in the present or future.

- Your negligence behavior may lead to harm or damage .

3. Must/have to expresses necessity. They express the idea that something is necessary.

- His lawyer must prove that the shop owner was in breach of her duty of care.
- They have to pay compensation for negligence conduct.

References

1. Catherine, Mason. (2016). *The Lawyer's English Language Teaching Coursebook* (2nd ed.). Global Legal English LTD.
2. Azar, S., Betty. (2003). *Fundamentals of English Grammar* (3rd ed.). Pearson Longman

Terima kasih