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Negligence is Never Simply Just Negligence in a Personal Injury Claim:

No two accidents are alike; hence no two personal injury claims will follow the same path. But there are some general procedural steps that most personal injury cases share. Personal injury is the legal definition for an injury caused to the body, as opposed to an injury or damage caused to property. Personal injury can also include an emotional and /or mental injury. The term is often used in conjunction with a lawsuit claiming that the plaintiff's injury was caused as a result of another person's negligence. It is imperative to understand the legal definitions of negligence as they will play a big part in your case.

Contributory Negligence

The concept of contributory negligence is used to characterize action that creates an unreasonable risk to another person. The idea is that an individual has a duty to act as a reasonable person. When a person does not act this way and injury or damages occurs, that person may be held entirely or partially responsible for the resulting injury or damage, even though another party was involved in the accident.

After an injured person files a negligence claim, the defendant (the person alleged to have caused the injury or damage) may then assert a contributory negligence claim against the plaintiff (the person injured or damaged who initiated the lawsuit), effectively stating that the injury or damage occurred at least partially as a result of the plaintiff's own actions. This would be a contributory negligence counterclaim.

If the defendant is able to prove the contributory negligence claim, the plaintiff may be totally barred from recovering damages or their damages may be reduced to reflect their role in the resulting injury or damage. For example, a pedestrian could be considered at least partially at fault (and therefore liable for contributory negligence) for carelessly crossing the street.

Comparative Negligence

Most states have now adopted a comparative negligence approach to contributory negligence, wherein each party's negligence for a given injury or damage is weighed when determining damages.

Traditionally, the courts viewed contributory negligence as a total bar to the recovery of any injuries or damages. Under the traditional view, if a person had contributed to the accident in any way, the person was not entitled to compensation for their injuries or damages. In an attempt to reduce the harsh, oftentimes unfair outcomes resulting from this approach, most states have now adopted a comparative negligence approach.

There are two approaches to comparative negligence:

Pure Comparative Negligence: A plaintiff's injuries or damages are totaled and then reduced to reflect their contribution to the injury or damages. For example, if a plaintiff was awarded \$10,000 and the judge or jury determined that the plaintiff was 25% responsible for her injury, she would be awarded \$7,500.

Modified Comparative Negligence: This is the most common approach. A plaintiff will not recover if they are found to be either equally responsible or more responsible for the resulting injury or damage. In other words, in order to recover damages, the plaintiff must not be more than 50% at fault for the resulting injury or damage.

Massachusetts - "The Law" of Negligence

The law of negligence is a complex, ever-changing code of conduct that our society expects individuals and business entities to conform their actions and behavior to. That standard is one of reasonableness. We expect safe and reasonable actions and behaviors in our interactions with other people and businesses. Unreasonable behavior that causes injury is not tolerated in our society and can subject one to civil liability for the injuries and damages caused by that action or behavior. There are very few bright lines that clearly divide what is reasonable from what is not. Each case is highly fact dependent on the particular circumstances involved. The law of negligence in Massachusetts has evolved over centuries into its present state and – as a reflection of our society's changing expectations of public conduct – the law continues to evolve.

There are two general sources for the law of negligence: "common law" and "statutory law". The common law is judge-made law that comes from the Massachusetts appellate courts, which now include the Appeals Court and the Supreme Judicial Court. These are the courts that review lower court rulings and sometimes write decisions that have binding or precedential effects on future cases with similar circumstances. Our modern day common law principles originated from Great Britain and crossed the Atlantic along with the first English settlers of the Massachusetts Colony. Beginning with the first judicial session in the Western hemisphere, the Supreme Judicial Court's predecessor court heard cases and recorded its decisions as far back as 1693.

Since then, our appellate courts have recognized and adapted the English common law through their own written decisions and precedents as applied to life in the New World and, through the centuries, to our modern post-industrial age.

The common law of negligence, as developed over time, establishes a general code of conduct for individuals and businesses in Massachusetts. The common law of negligence is in fact nothing more than the aggregate of all judicial decisions pertaining to negligence. Those decisions are organized and published by official court reporters in case books.

The statutory law of negligence is what we more traditionally think of as "the law" because these are the rules and regulations debated, drafted and enacted by our Legislature in the form of statutes. Through the years, the Legislature has also saw fit to alter, supplement and clarify the

common law of negligence. By statute, the Legislature has also authorized various governmental agencies such as the Office of the Attorney General and the Department of Public Health to enact administrative safety regulations that also help define the law of negligence.

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