Negligence Requirements and Flow Chart

Negligence requires the following elements:

Duty

General Duty of Due Care: Everyone owes everyone a general duty of due care to not subject others to unreasonable risks of harm. Note, businesses owe a higher duty of care.

Breach

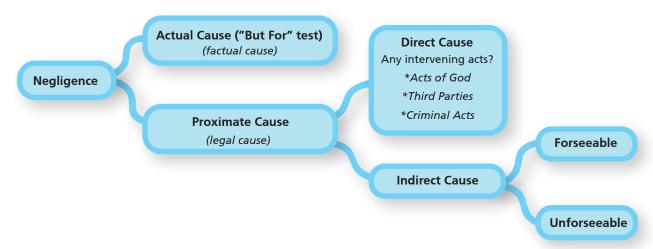
"But for" A doing X, such and such would not have happened.

Causation

Actual (the factual cause of what happened) and * Proximate (the legal cause) is needed. You must have both.

*Note under proximate cause in the chart below, the plaintiff (person bringing the cause of action for negligence) will assert that the defendant the person whom the lawsuit is being brought against is the actual cause (using the but for test) and the proximate cause of his/her injuries. When establishing proximate cause, the plaintiff will assert the chart's top lines coming off of proximate cause , hence that the defendant was the direct cause. Next, the Plaintiff will indicate that the defendant was the forseeable cause of his/her injuries.

The Defendant however will assert that despite perhaps appearing to be the actual cause of the Plaintiff's injuries, that he/she was the indirect and unforeseeable cause of the Plaintiff's injuries (the bottom lines of the chart).



Defenses: The three main defenses are:

Contributory Negligence

If in a jurisdiction that utilizes this defense, the plaintiff will be barred from recovering any damages.

Comparative Negligence (two types: Pure and 50/50)

Pure

If **Pure** is utilized by a jurisdiction, the court will take the amount the Plaintiff is negligent and subtract it from the overall award of damages.

50/50

If in a **50/50** jurisdiction, and the Plaintiff is over 50% negligent, the court will treat the Plaintiff's negligence like contributory negligence, and bar recovery.

Assumption of the Risk

If the Plaintiff knowingly and voluntarily assumed the risk of entering into an activity and became injured, he/she will be unable to recover damages.