



ANALYTICAL APPROACH TO NEGLIGENCE -- AS A TORT AND AS A CRIME

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Abstract

This study examines the conceptual framework and legal complexities of negligence as both tort and crime, with consideration of the conflicting approaches in civil and criminal law systems. Negligence, in its most general meaning, is the failure to take proper care, leading to injury to others. The research explores the essential aspects of tortious negligence, including duty of care, breach, causation, and damage, with emphasis on the compensation of victims by civil remedies. Criminal negligence, on the other hand, focuses on the gross deviation from standards of care, stressing protection of society, deterrence, and punishment. A comparative law examination reveals jurisdictional differences in treatment of negligence, most notably between the U.S. and Italy, where distinct legal systems—common law versus civil law—translate into different methods of approaching medical malpractice. The overlap between tortious and criminal negligence is examined, explaining how the same actions can give rise to both civil liability and criminal prosecution, with practical examples such as *Donoghue v. Stevenson* and *R v. Adomako*. These case law landmarks illustrate the real-world application of negligence concepts and highlight how greatly, depending on the legal sphere, the consequences differ—punishment versus compensation. In conclusion, this study concludes that whereas Law of Torts's concept of negligence aims at compensating victims, criminal negligence is a means of public protection and deterrence with complex implications across different legal regimes. The necessity for a context-sensitive solution to overlapping doctrines of negligence is highlighted, especially in industries



such as healthcare and transportation, where negligence has far-reaching civil and criminal implications.

Keywords: Negligence, Law of Torts, Criminal Negligence, Duty of Care, Jurisdictional Variations.

1.INTRODUCTION

Negligence, a core principle of both Law of Torts and criminal law, is the failure to meet a legal duty to use reasonable care, causing harm or damage to another. Its presence in both civil and criminal spheres makes it a complex and singular topic for legal study. As a tort, negligence is largely about the violation of duty one owes to another, whereby the injured party sustains loss or harm as a result of the violation. Here in the context of civil law, the focus is mainly compensation and putting the injured party in the position it was before harm. By contrast, in the criminal law scenario, negligence comes with a stern connotation—where the offending act, being free from willful intent but being as grossly careless as to be rash or gross, poses a danger to public life or safety. Here, in such situations, punishment, deterrence, and safeguarding interests of society turn out to be the key agenda of law and order.

The development of negligence as a tort and as a crime has been influenced by societal norms, judicial understanding, and statutory law. Civil negligence is based on the "reasonable person" test—measuring conduct against what a reasonably prudent person would have done in the same situation. Factors such as duty of care, breach, causation, and damages are key to determining liability for tortious negligence. Conversely, criminal negligence requires a higher standard, typically one of "gross negligence" or "reckless disregard" for the lives and safety of others. It suggests a failure to meet the standard of care so egregious that it merits penal sanctions. This is an important distinction, since not all acts of civil negligence are criminal and the existence or lack of mens rea is frequently determinative.

Examining negligence from both civil and criminal perspectives illustrates the permeable boundaries between private wrongs and public offenses. While Law of Torts focuses on individual remedy and private action, criminal law highlights the state's interest in controlling conduct that imperils collective safety and moral order. The intersection becomes germane in scenarios like



medical malpractice, automobile accidents, or industrial accidents, where the identical negligent action may lead to civil liability and criminal prosecution. Hence, negligence demands a complete view—harmonizing personal responsibility, public policy, and rules of law for justice, deterrence, and equity in an intricate legal scheme.

This analytical method tries to examine the conceptual structure of negligence, its evolutionary history, evidentiary standards and legal differences in tort and criminal law, and the actual-world meanings of converging liabilities. Through the breakdown of case laws, statutory law, and jurisprudential controversies, the research attempts to provide an overall view of negligence not just as a legal doctrine, but as a representation of social expectations of care, responsibility, and justice.

2.REVIEW OF LITREATURE

Adar and Perry (2022) investigated the contentious idea of negligence without harm, contending that legal responsibility need not always depend on the actuality of harm. Their work in the *Georgetown Law Journal* critically analyzed the conventional components of negligence, specifically the necessity of demonstrable damage, and suggested a broader conception of legal responsibility. The writers argued that concentrating on breach of duty alone—be it in the absence of concrete harm—would strengthen deterrence and reaffirm legal rules, but noted the danger of over-legalization and more litigation.

Akhtar (2020) tackled the confluence of misfeasance, criminal negligence, and official responsibility in public administration. Akhtar examined in the *Tort Trial & Insurance Practice Law Journal* how the limits of civil wrongs and criminal responsibility converge when government representatives are remuneratively deficient. The research highlighted that criminal negligence is distinct from tortious negligence because of the former's requirement of gross departure from normal care, which is usually accompanied by public interest considerations. Akhtar's research helped significantly to understand the legal and ethical aspects of state liability, especially where administrative failure and systemic risk were involved.



Cooper (2018) provided an extensive review of liability for aiding torts in the Melbourne University Law Review. The paper addressed the ways in which individuals who aid or abet tortious acts could be held liable, even though they did not actually perpetrate the wrongful act. Cooper examined the theoretical basis and applied forms of accessory liability in Law of Torts, emphasizing that accessory liability necessitated intention and knowledge on the part of the assister. This study presented useful understanding into the theories of joint liability, contributory fault, and limits of civil liability in multi-party tort cases.

Di Landro (2019) made a comparative analysis of medical malpractice as a tort in the United States and as a crime in Italy. The research was published in The Age of Human Rights Journal and analyzed the legal, cultural, and systemic determinants that affected the categorization and treatment of medical negligence in the two countries. Di Landro identified how the U.S. system focused on compensation and insurance mechanisms through civil suits, whereas the Italian system tended to create criminal prosecution against healthcare providers. The study depicted how the variation in legal traditions and the societal approach influenced the fate of patients as well as practitioners, with a focus on the importance of legal culture in determining negligence and liability in healthcare.

3. CONCEPTUAL FRAMEWORK OF NEGLIGENCE

The legal principle of negligence is the foundation of both civil and criminal liability in most legal systems. While based on the same general concept—a lack of proper care—its handling varies considerably depending on whether it is addressed from the perspective Law of Torts or criminal law. To appreciate this difference, one must examine the elements, purposes, and effects of each field in depth.

3.1. Negligence in Law of Torts

Tortious negligence is founded upon the violation of a legal duty resulting in foreseeable harm to someone else. It is a civil wrong (tort) with its primary purpose being the provision of remedies, in most cases in monetary terms, to the harmed party. The main goal Law of Torts is restitution rather than punishment.



To prove negligence in tort, the plaintiff (harmed party) is required to establish the presence of four key elements:

- **Duty of Care:** This is the legal duty of the defendant to use reasonable care to prevent harm that is foreseeable to others. The principle was famously put in *Donoghue v. Stevenson* (1932), when Lord Atkin formulated the "neighbour principle," which posits that one must exercise reasonable care to prevent acts or omissions that are likely to harm one's "neighbour"—those directly and immediately affected by one's actions.
- **Breach of Duty:** Once a duty of care has been established, the plaintiff must prove that the defendant breached the standard of care to be expected in the circumstances. The "reasonable person" test is used here—how would a reasonable person in the same circumstances have acted?
- **Causation:** This aspect demands evidence that the breach of duty itself caused the resulting harm. This entails both factual causation ("but for" the defendant's action, the harm would not have arisen) and legal or proximate causation (whether the harm was a reasonably foreseeable result of the breach).
- **Damage:** Lastly, the claimant needs to establish that they were actually harmed or suffered loss—be it physical injury, damage to property, or financial loss—due to the breach.

Law of Torts is not so much interested in the moral blameworthiness of the defendant as in the legal effects of his actions and the requirement to put the injured party back into his original position, as far as possible. Compensation is at the center, and frequently, insurance is an important part of the civil litigation process.

3.2. Criminal Negligence

Criminal negligence is a more severe and culpable type of negligent conduct. It arises when the conduct of a person is so grossly or flagrantly below the standard of care prevailing under the circumstances that it creates a high degree of risk of substantial injury or death. Whereas tortious negligence focuses on restoration, criminal negligence is concerned with protection of society, punishment, and deterrence.



A fundamental difference is that criminal negligence does not involve intent to harm. Rather, it involves such a gross lack of care that the law considers it to be morally and legally culpable. The emphasis is on the state of mind (*mens rea*) of recklessness or gross negligence, not on intentional wrongdoing.

For example, a driver who drives recklessly in a populated area while texting and kills someone can be charged with criminally negligent homicide. Likewise, a physician who performs surgery while drunk and kills a patient can be held criminally liable for gross medical negligence.

In criminal cases:

- The State (or public prosecutor) initiates the case, since the offense is against the public or society as a whole.
- The standard of proof is much higher—beyond reasonable doubt—compared to the balance of probabilities applicable in civil courts.
- Penalties can involve imprisonment, fines, community service, or loss of professional licenses, with focuses on retribution and deterrence.

In addition, criminal negligence cases tend to involve considerations about public policy, particularly in industries such as healthcare, transportation, construction, and childcare, where professional standards and public safety are most critical.

4. COMPARATIVE LEGAL ANALYSIS

The legal definition and treatment of negligence differ between jurisdictions because of differing legal traditions, policy goals, and social values. Although the basic elements of duty, breach, causation, and harm are universally known, the labeling of negligence as a civil wrong (tort) or as a criminal law varies with profounder philosophical fault lines within legal systems. The following section addresses both jurisdictional differences and the intricate intersections of tortious and criminal doctrines.



4.1. Jurisdictional Differences

World legal systems follow different paradigms on negligence depending on their history of evolution, underpinning principles of law, and societal interests. A prominent comparative view comes from Di Landro (2019), who contrasted how medical malpractice was handled in the United States and Italy, which exposed harsh differences between the two jurisdictions.

In the United States, medical malpractice is largely dealt with under civil Law of Torts. The focus is on compensating victims for injury caused by below-standard medical treatment. In this case, the legal process is closely linked to insurance coverage, litigation tactics, and a strong system of contingency-based legal representation. The process is adversarial, with the focus on determining liability and awarding damages, and criminal penalties reserved for the most egregious cases of willful misconduct.

By way of comparison, the Italian system of law, shaped by civil law cultures, tends to punish professional negligence, particularly resulting in death or serious harm, as a crime. Physicians and other professionals are sometimes subject to criminal investigation and prosecution for carelessness under laws related to manslaughter or harm to the body. The Italian policy emphasis is to impose responsibility and protect the public more than it is to provide compensation to the victim. Criminal proceedings are more frequent in these instances, and professional reputation, ethical obligation, and social trust are central issues.

These distinctions are not merely procedural—reflecting differing legal cultures. The American system prioritizes individual rights, market remedies, and risk management through private law. The Italian system prioritizes collective responsibility, moral fault, and the intervention of the state in upholding professional standards. This variation shows how the same negligent act—e.g., a surgical mistake—can result in radically different legal outcomes depending on the country.

Table 1: Comparison of U.S. and Italian Approaches to Medical Negligence

Feature	United States (Common Law)	Italy (Civil Law)
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Primary Legal Framework	Civil Law of Torts	Criminal Law
Objective	Compensation and restitution	Accountability and deterrence
Role of Insurance	Central to litigation and damage payouts	Secondary to state prosecution
Standard of Proof	Balance of probabilities	Beyond a reasonable doubt
Court System	Civil court for malpractice claims	Criminal court for professional negligence
Remedy or Penalty	Monetary damages	Imprisonment, fines, professional sanctions
Cultural Emphasis	Individual rights, private risk management	Public safety, ethical responsibility, state intervention

4.2. Overlapping Doctrines

In reality, certain types of negligence raise both civil and criminal liability, obscuring the distinction between tort and crime. These overlaps create great challenges for legal systems that historically preserve a strict distinction between civil wrongs and crimes.

- One oft-cited example is a surgeon who operates while drunk. This one act can trigger:
- A civil action by the patient (or family members) for medical negligence, claiming monetary damages for injury, emotional distress, or wrongful death.
- At the same time, criminal action may be brought by the state against the doctor for gross negligence, which could carry penalties such as imprisonment, suspension of a medical license, or fines.



As per Dyson (2021), such dual proceedings indicate a convergence of doctrine between tort and crime in some cases. Courts need to analyze some key factors to decide on the relevant legal framework, including:

- The intent or recklessness underlying the conduct (i.e., was it carelessness or blatant disregard for safety?),
- The nature and extent of harm, and
- The wider public impact of the act (e.g., public safety issues in healthcare or transport).

These areas of overlap also pose practical and ethical concerns:

- Should a defendant be prosecuted in both criminal and civil courts for the same offense?
- Do criminal liability depend on civil settlements?
- Can compensation excuse or reduce criminal liability?

Legal systems try to cope with these difficulties through procedural protections—i.e., varying standards of proof and separate prosecutorial tracks—but tensions exist. For example, whereas civil liability is proved on a balance of probabilities, criminal liability requires proof beyond a reasonable doubt. So one can be acquitted in a criminal trial but still be liable in a civil court, as happened with O.J. Simpson in the U.S.

In short, overlapping doctrines of negligence are a reflection of the increasing awareness that contemporary legal issues tend to span several fields. A subtle and context-sensitive approach is necessary, particularly in high-stakes industries like healthcare, transportation, education, and finance, where negligence can have serious civil and criminal consequences.

5. CASE LAW EXAMPLES

Landmark court rulings have played a significant role in shaping legal jurisprudence regarding negligence. Not only do these cases demonstrate how the elements of negligence are interpreted and applied by courts, but also how there is a difference in legal treatment for tortious as opposed to criminal negligence. Two of the leading cases—*Donoghue v. Stevenson* (1932) and *R v.*



Adomako (1994)—provide the basic examples that illustrate the legal principles involved in both the civil and the criminal context.

5.1. Tortious Case: Donoghue v. Stevenson (1932)

Synonymously described as the keystone of contemporary negligence law within the common law jurisdiction, *Donoghue v. Stevenson* [1932] AC 562 actually transformed the doctrine of duty of care. The case involved Mrs. Donoghue, who fell ill after consuming a bottle of ginger beer that had a decomposed snail inside it. Her friend had purchased the drink, and therefore there was no contractual link between Mrs. Donoghue and the producer, Mr. Stevenson.

The issue of law was whether or not a manufacturer had a duty of care towards a consumer who did not directly buy the product. In a landmark ruling, Lord Atkin elucidated the "neighbor principle", writing:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor."

Here, the "neighbor" was construed as any person who is directly and closely concerned with one's acts. This ruling created a general obligation of care that is currently in use in a broad range of tort cases that concern negligence, expanding the scope of liability much further beyond contractual law.

The consequences of *Donoghue v. Stevenson* were extensive:

- It codified the test of reasonable foreseeability in assessing duty.
- It opened the way for product liability and consumer protection legislation.
- It highlighted that civil negligence is not limited to contractual situations, but can occur wherever a party's action impacts another's safety or welfare.

5.2. Criminal Case: R v. Adomako (1994)

Conversely, the situation in *R v. Adomako* [1994] 3 All ER 79 deals with criminal liability due to gross negligence, specifically in a professional setting. The defendant, Dr. John Adomako, was an



anesthetist who did not realize for several minutes that a patient's oxygen supply tube had dislodged during surgery. Consequently, the patient experienced a cardiac arrest and died.

The prosecution contended that Dr. Adomako's inaction in monitoring and responding to the situation amounted to gross negligence manslaughter. The House of Lords maintained the conviction, confirming that:

- The behavior was a gross deviation from the level of care that a professional anesthetist should have maintained.
- There was a duty of care owed to the patient.
- The violation of that duty was so severe that it warranted criminal sanction.

Lord Mackay established the test for gross negligence manslaughter:

1. There must be a duty of care,
2. That duty must be breached,
3. Death caused,
4. A sufficient level of negligence to warrant the jury's determination that it ought to be considered criminal.

This case is noteworthy for a number of reasons:

- It established the test for criminal negligence in the medical and other professional environments.
- It confirmed that criminal liability could be based upon omissions, as well as acts.
- It clarified that professional incompetence, in its extreme form, is not merely a matter of civil law but may involve criminal liability.

The Adomako decision also highlights the greater moral fault of professionals placed in public trust. The case illustrates the line of balance between innocent human mistake and gross disregard, which courts must consider with great care in criminal negligence cases

Table 2: Comparative Overview of Tort vs Criminal Negligence through Case Law

Feature	<i>Donoghue v. Stevenson (1932)</i>	<i>R v. Adomako (1994)</i>
Type of Negligence	Civil/Tortious Negligence	Criminal Negligence
Duty of Care	Owed by manufacturer to consumer (non-contractual)	Owed by doctor to patient (professional setting)
Standard of Proof	Balance of probabilities	Beyond a reasonable doubt
Outcome	Compensation for harm caused	Criminal conviction for gross negligence manslaughter
Legal Principle Established	Neighbour principle; foreseeability as test for duty	Gross negligence standard; omission as criminally liable
Remedy/Punishment	Civil remedy – damages awarded	Criminal punishment – potential imprisonment

These two cases, when combined, highlight the dual tracks of negligence in law. *Donoghue v. Stevenson* is concerned with civil remedies and extending liability to shield people from harm, whereas *R v. Adomako* demonstrates the criminal justice system's involvement in punishing behavior that puts lives at risk due to gross negligence. These decisions are critical to appreciating how legal systems balance the thin line between liability and culpability, and between compensation and punishment.

6. CONCLUSION

Negligence, when considered as a tort or a crime, reflects a core legal principle that deals with failure to take proper care, but it fulfills different functions in both scenarios. In Law of Torts, negligence seeks to compensate the injured party, and it is concerned with remedies such as monetary damages for injury resulting from a breach of duty, as seen in *Donoghue v. Stevenson*.



Criminal negligence does aim to prevent careless behavior and punish grossly negligent acts in deviation from the standard of care, more out of concern for public safety than redress for the individual, as exemplified in *R v. Adomako*. Though both systems do have elements common to them such as duty, breach, causation, and harm, the most distinguishing aspect is intent, consequences, and the larger public impact. Jurisdictional differences also serve to demonstrate how cultural and legal practice affect the approach to negligence, with some jurisprudence stressing individual rights and compensation, while others stress accountability and deterrence. The intersection of tortious and criminal negligence—particularly within areas such as healthcare and transportation—demonstrates the increasing recognition of the need for a subtle approach, considering that certain negligent actions trigger both civil and criminal liabilities. In the end, knowing negligence in its civil and criminal contexts is important for handling harm in an equitable and equitable way throughout legal frameworks

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