

TITLE : " LAW OF NEGLIGENCE WITH REGARD  
TO THE ACTION OF PROFESSIONAL MAN "

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THIS PAPER IS WRITTEN IN THE PARTIAL COMPLETION  
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Law of Negligence with regard  
to the action of professional man.

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Introduction.Law of Negligence

"Negligence" may signify full direct intention to one's conduct and its consequences <sup>1</sup>, in which case it is a form of the recklessness described above. More usually, however, it signifies direct intention by the defendant a simple example being the motorist who falls asleep at the wheel. It may be that the word should be used only in the latter sense <sup>2</sup> but a defendant clearly cannot escape liability because he adverted to the risk if the case is one where even inadvertence would saddle him with liability.

An illustration of full intention is VAUGHAN V MENLOVE <sup>3</sup> where the defendant had been warned that his haystack was likely to overheat and to take fire, which might spread to the land of his neighbour. He said he would chance it <sup>4</sup>, and he was held liable for the damage which occurred when the stack actually took fire.

Action of Professional Men

A man who practises a profession is bound to exercise the skill and competence of an ordinarily competent practitioner in that profession.

"Every person who enters into a learned profession undertakes to bring to the exercises of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure; nor does he undertake to use the

1 W.V.H Rogers in Winfield & Jolowics on tort

2 See comments of Lord Reid in ICI v Mottwell (1965) A.C. 656,672 (1937) 3 Bring N.C. 468

4 He was insured

highest possible degree of skill. There may be persons who have higher education and greater advantages than he has, but he undertakes to bring a fair, reasonable and competent degree of skill".<sup>5</sup>

The same rule applies to any man exercising a skilled trade or business. "If a Smith prick my horse with a nail, etc, I shall have my action upon the case against him, without any warranty by the smith to do it well... for it is the duty of every artificer to exercise his art rightly and truly as he ought"<sup>6</sup>.

It follows that an action for negligence will be lie for damage caused by the failure to exercise due care and skill by proving either that the defendent did not possess the register skill or by showing that, although he possess it, he did not exercise it in the particular case.

As the standard of care and skill is that possessed by a man of ordinary competente exercising the same calling, it follows that the opinions of persons exercising that calling as to the conduct of a reasonably skillfulman under the particular circumstances are admissible in evidence. In an action againts an insurance, Tindal CJ said: "The point, therefore, to be determined is, not whether the defendent arrived at a correct conclusion upon reading the letter but whether, upon the occasion in question, he did or did not exercise a reasonable and proper care, skill and judgement. This is a question of fact, the decision of which appears to us to rest upon this further inquiry, via, whether other persons exercising the same profession or calling, and being men of experience and skill

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5 lanphier V Rhipos (1838) 8 c. & p. 475, per Tindal C.J.

6. F.N.B. 94 D