

# California Personal Injury Law: Contributory Negligence

## Introduction

Accidents take place every day, people are injured and property is damaged. When accidents happen, one of the first questions people typically ask is "Who was at *fault* in the accident?" Contributory negligence law addresses this question and provides a way to allocate fault between parties when the answer to this question is not entirely clear. For example, Dave, a motorist, strikes Sally, a pedestrian who was crossing the street without carefully checking traffic or heeding the warning of the do-not-cross sign of the nearby streetlight. Who is at fault in this situation? This complex situation begins when the injured party asserts a negligence claim against the wrongdoer. The defendant (the person sued) may then assert a contributory negligence claim against the plaintiff (the person bringing the lawsuit), in effect stating that the injury occurred, entirely or in part, as a result of the plaintiff's own actions. If the defendant is able to prove the contributory negligence claim, the plaintiff may be totally barred from recovering damages or her damages may be reduced to reflect her role in the resulting injury. As one might imagine, claims addressing this "fault" issue can become very complex. An attorney, experienced in dealing with negligence and contributory negligence, can help sort through the problem and will work for a fair settlement that reflects both parties' responsibility for the injury.

Many injured parties fail to bring an action to recover damages for their injuries, because of the mistaken belief that if they were partially at fault they cannot recover. However over the past twenty-three years, I have successfully represented many individuals who were partially at fault for their injuries.

## Negligence

Negligence is a term used to characterize conduct that creates an unreasonable risk of harm to others. In order to prevail on a negligence claim, the party will have to prove several things. First, the person claiming injuries will have to show that the defendant had a duty to act in a certain manner towards the injured person. The general rule is that an individual has a duty towards all persons, at all times, to exercise reasonable care for the person's physical safety and property. For example, Dave has a duty to Sally to operate his car in a

reasonable manner and to be mindful of her safety, even though there is no special relationship between Dave and Sally.

Next, a successful plaintiff must prove that the defendant failed to act in a reasonable manner. Using the previous example, if Dave operates his car in an unreasonable manner, it is said that he has "breached" his duty of care toward Sally. Thus, Dave has been negligent. The determining factor as to whether conduct is reasonable is based on whether a prudent person could foresee that certain conduct would pose a risk to others. For example, a prudent person could foresee that driving 90 miles per hour in a 30 mile per hour zone would pose a risk to others and would easily be characterized as unreasonable behavior.

Lastly, the plaintiff must show that he or she suffered actual damages or loss as a result of the unreasonable behavior. If Dave drives 90 miles per hour down the street he may be in violation of speeding laws but Sally does not have a claim against Dave until she is injured as a result of Dave's unreasonable driving. However, in the opening example, Sally carelessly walked out into the street before Dave struck her. In this case, Dave is likely to assert contributory negligence as a defense against his liability for Sally's injuries.

### **Contributory Negligence**

Contributory Negligence is used to characterize conduct that creates an unreasonable risk to one's self. The idea is that an individual has a duty to act as a reasonable prudent person. When a person does not act this way and injury occurs, that person may be held entirely or partially responsible for the resulting injury, even though another party was involved in the accident. In the previous example, Sally carelessly walked into the street, potentially making her partially responsible for the accident. Contributory negligence is a defense to a negligence action. Procedurally, negligence must be asserted and proved by the plaintiff before the defendant will be allowed to introduce evidence of contributory negligence. Contributory negligence is then proved in the same manner that the initial negligence claim was established.

Most states have now adopted a comparative negligence approach to contributory negligence, whereas traditionally, the courts viewed contributory negligence as a total bar to the recovery of any damages.

Under the traditional view, if a person had contributed to the accident in any way, the person was not entitled to compensation for his or her injuries. 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 contributory negligence. "Pure" contributory negligence as in California the most flexible approach used to allocate fault. Under pure comparative negligence, a plaintiff's damages would be totaled and then reduced to reflect her contribution to the injury. 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. Even if the plaintiff was 90% responsible for the injury, she would be entitled to recover 10% of the total damages. Most states, however, have adopted a "modified" contributory negligence scheme. Under this approach, a plaintiff will not recover if he or she is found to be either equally responsible or more responsible for the resulting injury. In other words, in order to recover damages, the plaintiff must not be more than 50% at fault for the resulting injury. States differ regarding whether to preclude damages when the plaintiff is found to be 50% (equally responsible) or 51 % (more responsible) for the injury.

## **Conclusion**

Contributory negligence is an important legal doctrine for both plaintiffs and defendants. An individual who has been injured by negligent conduct may be reluctant to bring a negligence claim given the fact that they were partly at fault for their injury. On the other side of that coin, when the victim has been partly responsible for his or her own injuries, a defendant may not be required to fully compensate that person for all of his or her injuries. At the law office of Ronald Pullen I have been handling these types of cases for twenty-three years. Call me at (619) 425-0810 or [E-mail me](#).