

## **CIVIL CASES – GENERAL STATEMENTS OF THE LAW**

### **Expert Witnesses**

The law allows experts to express an opinion on subjects involving their special knowledge, training and skill, experience, or research. While their opinions are allowed to be given, it is entirely within the province of the jury to determine what weight shall be given to their testimony. A jury is not bound by the testimony of experts; their testimony is to be weighed as that of any other witness.

### **Direct and Circumstantial Evidence**

The law recognizes two kinds of evidence: direct and circumstantial. Direct evidence proves a fact directly; that is, the evidence by itself, if true, establishes the fact. Circumstantial evidence is the proof of facts or circumstances that give rise to a reasonable inference of other facts; that is, circumstantial evidence proves a fact indirectly in that it follows from other facts or circumstances according to common experience and observations in life. An eyewitness is a common example of direct evidence, while human footprints are circumstantial evidence that a person was present.

The law makes no distinction between direct and circumstantial evidence as to the degree or amount of proof required, and each should be considered accordingly to whatever weight or value it may have. All of the evidence should be considered and evaluated by the jury.

### **Burden of Proof**

A plaintiff has the burden of proving each of the following propositions by a preponderance of the credible evidence.

First, that the defendant acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting, or failing to act, the defendant was negligent.

Second, that the negligence of the defendant was a proximate cause of plaintiff's damages. "Proximate cause" means an act or omission that, in a natural and continuous sequence, produces an event that would not have occurred without the act or omission. In addition, in order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably be produced thereby.

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To establish the affirmative defense of contributory negligence, the defendant has the burden of proof by a preponderance of the evidence:

Any findings of fact must be based on probabilities, not possibilities, speculation or conjecture.

### **Negligence**

“Negligence” is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or failure to do something that a reasonably careful person would have done under the same or similar circumstances.

“Ordinary care” means the care a reasonably careful person would exercise under the same or similar circumstances.

### **Contributory Negligence**

Contributory negligence is negligence, as defined above, on the part of a plaintiff or third person that is a proximate cause of the injury complained of. If you find contributory negligence, you must determine the degree of negligence, expressed as a percentage, that is attributable to plaintiff.

### **General Duty of Care**

Every person has a duty to see the risks of harm to others that could result from their actions or failure to act that would be seen by a person exercising ordinary care.

It is the duty of every person using a public street or highway to exercise ordinary care to avoid placing himself or herself or others in danger and to exercise ordinary care to avoid a collision.