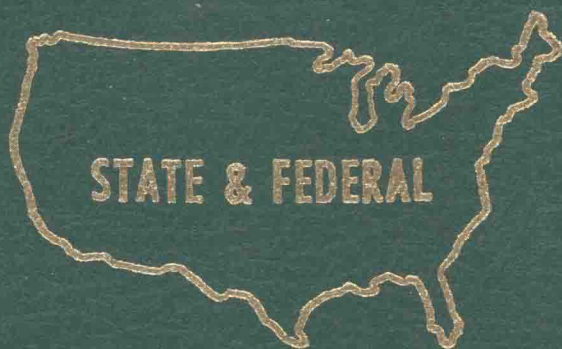


AMERICAN JURISPRUDENCE 2d



NEGLIGENCE §§ 1-1127

AMERICAN JURISPRUDENCE

SECOND EDITION

A MODERN COMPREHENSIVE TEXT STATEMENT
OF AMERICAN LAW

STATE AND FEDERAL

COMPLETELY REVISED AND REWRITTEN
IN THE LIGHT OF MODERN AUTHORITIES AND DEVELOPMENTS
BY THE EDITORIAL STAFF OF THE PUBLISHERS

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FOREWORD

In the less than two decades that have passed since the article **Negligence** was published in Am Jur 2d, the doctrine of comparative negligence or fault has largely replaced many of the principles concerning contributory negligence, assumption of risk, and last clear chance. Whether by legislative adoption or by judicial decision, all but a small handful of jurisdictions now embrace this more “enlightened” approach of proportionate recovery, which is designed to change the harsh “all or nothing” effect of the old rule, under which a plaintiff who was negligent even in the slightest degree recovered nothing. Nevertheless, while the advent of comparative negligence may have set aside the doctrines of contributory negligence and last clear chance, it has uniformly been recognized that the components of these doctrines remain proper factors for the jury to consider in apportioning fault.

However, there are various approaches to the comparative negligence doctrine, and some states have adopted what is referred to as the “pure” comparative negligence system, while others have preferred a “modified” system, and a few have followed still other versions or variations. In addition to disagreeing on the applicable theory of comparative liability, states differ on such issues as the effect of comparative fault on product liability actions, settlements, contribution and indemnity among tortfeasors, and the liability of an employer that has also paid workers’ compensation. The new **Negligence** article contains a state-by-state analysis of these issues.

Also receiving expanded coverage in the new article is the doctrine of *res ipsa loquitur*, which means that the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference, of negligence on the part of the defendant. The doctrine is accepted and established by decisional law in all but a few jurisdictions in the United States. The new text examines the basis and nature of the doctrine, the prerequisites for its application, its operation and effect, and matters relating to pleading, proof, and trial. This coverage is then “localized” by a review of the status, application, and effect of the doctrine in each jurisdiction.

Other general principles of the law of negligence, such as the standard of care, the degrees of negligence, the effect of violation of a statute or regulation, and the doctrine of imputed negligence and vicarious liability, have been rewritten and expanded in the light of modern case law, and the entire article has been enhanced by the inclusion of *Observations*, *Cautions*, *Practice guides*, and *Form drafting guides* providing detailed advice and procedures for evaluating and litigating a claim, as well as *Research References* to such practice works as Am Jur Proof of Facts, Am Jur Legal Forms 2d, Am Jur Pleading and Practice Forms (Rev), and Am Jur Trials.

A *Table of Statutes and Rules Cited* and an *Index* covering the entire topic will be found in volume 57B. A *Table of Parallel References* will be found at the front of both volumes 57A and 57B.

THE PUBLISHERS

TABLE OF PARALLEL REFERENCES

Use the following tables to find where the subject matter of the various sections of Am Jur 1st ed and 2d are treated in the Am Jur 2d Revised volumes.

When a particular subject matter is treated in another topic, the title of the other topic is noted. If a section of the earlier article has become obsolete, the table will show that it has been deleted.

Also consult the index in volume 57B for detail and for matters not appearing in the earlier edition.

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AMERICAN JURISPRUDENCE

SECOND EDITION

Volume 57A

NEGLIGENCE

By

Colleen Courtade, J.D.; Jack Levin, J.D.; Leonard I. Reiser, J.D.; Todd Smyth, J.D.; Mitchell Waldman, J.D.

Scope of Topic: This article, in discussing generally the law of negligence, considers negligence as a predicate for liability for injuries to person or property, and treats the various elements of actionable negligence; the standards of care employed to determine liability; the degrees of negligence; dangerous agencies or instrumentalities; the concept of proximate cause; the effect on liability of violations of pertinent statutes, ordinances, or regulations; the conduct of the injured party that may defeat recovery for an injury caused by negligence, such as assumption of risk or contributory negligence; imputed negligence; and the essential elements as well as the operation and effect of the doctrine of *res ipsa loquitur*, plus an analysis of the status, application, and effect of the doctrine in each jurisdiction.

With respect to the modern concept of comparative negligence or fault, the article covers the development of the doctrine, the trends with respect to adoption or rejection of the doctrine, the various types of statutory provisions and rules in effect in various jurisdictions, and the modes of adoption thereof. It includes a discussion of the choice-of-law problems in the application of comparative negligence rules, the validity of statutes adopting comparative negligence, and the retrospective application of such statutes. It considers the effect of comparative negligence rules upon other doctrines and principles, particular problems with respect to the application of comparative negligence rules to multiple-party situations, and the practice and procedure in actions involving the application of comparative negligence rules. There is also a state-by-state review of the current status of the doctrine.

Treated elsewhere:

Practice and procedure in negligence actions (see, for example, 29 and 30 Am Jur 2d, EVIDENCE; 31 Am Jur 2d, EXPERT AND OPINION EVIDENCE; 59 Am Jur 2d, PARTIES; 61A Am Jur 2d, PLEADING; 75 and 76 Am Jur 2d, TRIAL)

Limitation of actions for negligence (see 51 Am Jur 2d, LIMITATION OF ACTIONS)

Damages recoverable for negligent conduct (see 22 Am Jur 2d, DAMAGES)

Operational negligence (see, for example, 7A and 8 Am Jur 2d, AUTOMOBILES AND HIGHWAY TRAFFIC §§ 397 et seq.; 8 Am Jur 2d, AVIATION §§ 76 et seq.; 12 Am Jur 2d, BOATS AND BOATING §§ 32 et seq.; 14 Am Jur 2d, CARRIERS §§ 893 et seq.; 65

Am Jur 2d, RAILROADS §§ 386 et seq.; 70 Am Jur 2d, SHIPPING §§ 435 et seq., 613 et seq., 674 et seq., 799 et seq.)

Professional negligence (see, for example, 5 Am Jur 2d, ARCHITECTS §§ 23 et seq.; 7 Am Jur 2d, ATTORNEYS AT LAW §§ 197 et seq.; 61 Am Jur 2d, PHYSICIANS, SURGEONS, AND OTHER HEALERS §§ 200 et seq.)

Negligence by certain particular institutions or businesses providing various public services (see, for example, 4 Am Jur 2d AMUSEMENTS AND EXHIBITIONS §§ 51 et seq.; 40 Am Jur 2d, HOSPITALS AND ASYLUMS §§ 14 et seq.; 40 Am Jur 2d, HOTELS, MOTELS, AND RESTAURANTS §§ 81 et seq.)

Negligence in the use of particular substances or forces, such as electricity or gas (see 26 Am Jur 2d, ELECTRICITY, GAS, AND STEAM) or explosives (see 31 Am Jur 2d, EXPLOSIONS AND EXPLOSIVES)

Imposition of liability for negligently inflicted injuries upon governmental officers (see 63A Am Jur 2d, PUBLIC OFFICERS AND EMPLOYEES §§ 358 et seq.; 70 Am Jur 2d, SHERIFFS, POLICE, AND CONSTABLES §§ 90 et seq.) or upon governmental entities (see 57 Am Jur 2d, MUNICIPAL, SCHOOL, AND STATE TORT LIABILITY)

Effect of introduction of evidence showing that the defendant in a personal injury or death action carries liability insurance (see 29 Am Jur 2d, EVIDENCE §§ 404-407)

Liability for injuries that may arise out of some particular relationship, such as that of master and servant (see 53 Am Jur 2d, MASTER AND SERVANT §§ 139 et seq.) or principal and agent (see 3 Am Jur 2d, AGENCY §§ 280, 298-301, 309, 315)

Premises liability, including the attractive nuisance doctrine (see 62 Am Jur 2d, PREMISES LIABILITY)

Products liability (see 63 and 63A Am Jur 2d, PRODUCTS LIABILITY)

Criminal aspects of negligence, and negligence as an element of a criminal offense (see, for example, 21 Am Jur 2d, CRIMINAL LAW §§ 3, 132, 141, 187)

Homicide resulting from negligent or reckless acts (See 40 Am Jur 2d, HOMICIDE §§ 91 et seq.)

Contribution among joint tortfeasors (see 18 Am Jur 2d, CONTRIBUTION)

Wrongful death caused by negligence (see 22A Am Jur 2d, DEATH)

Comparative negligence in employers' liability cases (see 32 Am Jur 2d, FEDERAL EMPLOYERS' LIABILITY AND COMPENSATION ACTS §§ 7, 31, 37, 76; 53 Am Jur 2d, MASTER AND SERVANT § 230) and as applied to admiralty cases (see 2 Am Jur 2d, ADMIRALTY §§ 111, 114, 128, 130, 187, 204)

Federal Aspects: The Federal Tort Claims Act (FTCA) makes the United States government liable for the negligence of its employees and agents in the same manner and to the same extent as a private individual under like circumstances (see the detailed discussion in 35 Am Jur 2d, FEDERAL TORT CLAIMS ACT). The Federal Employers' Liability Act (FELA) covers injuries to employees of interstate railroad carriers, while the Jones Act applies to merchant seamen. These statutes are discussed elsewhere, as are the Federal Employees' Compensation Act, the Longshoremen's and Harbor Workers' Compensation Act, and other federal compensation provisions (see 32 Am Jur 2d, FEDERAL EMPLOYERS' LIABILITY AND COMPENSATION ACTS). See "Federal Legislation," *infra*, for USCS citations.

Research References

Text References:

Averbach, Handling Accident Cases
 Danner, Pattern Deposition Checklists
 Schweitzer, Cyclopedia of Trial Practice
 Speiser, Krause, and Gans, American Law of Torts
 Speiser, Res Ipsa Loquitur
 Woods, Comparative Fault (2d ed)

Annotation References:

ALR Digest to 3d, 4th, and Federal: Evidence; Negligence
 Index to Annotations: Attractive Nuisance; Comparative Negligence; Contributory

Negligence or Assumption of Risk; Degree and Standard of Care; Guests, Invitees, or Licensees; Implied Negligence; Intentional, Wilful, and Wanton Acts; Last Clear Chance; Limitation of Liability; Negligence; Negligence Per Se; Negligent Entrustment; Proximate Cause; Res Ipsa Loquitur

Practice References:

- 18A Am Jur Pl & Pr Forms (Rev), Negligence
- 13 Am Jur Legal Forms 2d, Negligence
- 2 Am Jur POF 177, Assumption of Risk; 29 Am Jur POF 173, Injury to Rescuer; 2 Am Jur POF2d 651, Lack of Care in Entrusting Chattel; 13 Am Jur POF2d 709, Failure to Use Reasonable Care in Aiding Injured Person in Peril; 32 Am Jur POF2d 625, Last Clear Chance
- 2 Am Jur Trials 1, Investigating Particular Civil Actions; 21 Am Jur Trials 715, Trial of a Personal Injury Case in a Comparative Negligence Jurisdiction; 25 Am Jur Trials 1, Hidden and Multiple Defendant Tort Litigation; 27 Am Jur Trials 485, Handling a Mass Disaster as a Class Action

Federal Legislation:

- 5 USCS §§ 8181 et seq. (Federal Employees' Compensation Act)
- 28 USCS §§ 2671 et seq. (Federal Tort Claims Act)
- 45 USCS §§ 51 et seq. (Federal Employers' Liability Act)
- 46 USCS § 688 (Jones Act)

VERALEX®:

Cases and annotations referred to herein can be further researched through the **VERALEX®** electronic retrieval system's two services, **Auto-Cite®** and **SHOWME®**. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

Table of Parallel References:

To convert General Index references to section references in this volume, or to ascertain the disposition (or current equivalent) of sections of the articles in the prior edition of this publication, see the Table of Parallel References beginning at p ix.

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