

Legal Liability

Accidents happen. In our industry, we see them every single day. So when they happen, what happens? That is, how do we move forward getting drivers back on the road?

Let's say a customer calls you. He states that your insured caused an accident and, as a result, his car flipped over. He is concerned about his health as he is pretty sore and needs a way to get around. What do you do?

We start with legal liability. Legal liability is "legal responsibility for one's acts or omissions" (dictionary.com). Essentially, when a driver does something wrong or fails to do something right, they could be legally responsible for the ramifications. This wrongful act, or failure to do the right act, is called negligence.

Negligence is when a person does not treat others with reasonable care. Essentially, it is when a driver does not do what an average driver would do. This standard of average care is often called the "reasonable prudent person" doctrine. Is the wrongful act, or the failure to do the right act, what a reasonable and prudent person would do?

In order for a person to be legally liable to another, they must satisfy 4 main elements. Duty Owed, Duty Breached, Proximate Cause, and Damages. All 4 elements must be proven to establish liability; if 1 is missing, an award for damages is not likely. The elements are:

1. **Duty Owed.** This boils down to those standards of reasonable care. These are the responsibilities each driver owes the other drivers on the road. You must keep space between yourself and the car in front of you when traveling on a road. You use your turn signals when turning so other drivers know your intent. Etc.
2. **Duty Breached.** Accidents happen primarily because of this - a driver owes other drivers a responsibility and fails to keep their end of the bargain. When a driver does not act as a reasonable person, we say that they breached the duty(ies) they owed to others.
3. **Proximate Cause.** This is a tricky legal concept but essentially it is the act or omission that most directly caused the accident. Think in terms of a chain with multiple links, each representing an action leading up to the accident. If you were to remove one link, which one, more than any other, would have prevented an accident? For example, one party is backing out of a parking space and the other party is waiting for a different space, stopped in the aisle. The chain of events to the accident might be:
 - The backing party starts adjusting his radio, having trouble finding the desired tunes.
 - The backing party places car in reverse.
 - The backing party fails to look behind him.
 - The stopped party sees the backing party and honks his horn.
 - Due to his loud radio, the backing party does not hear the horn.
 - The backing party hits the stopped party.

The proximate cause in this situation, while debatable, is probably that the backing party fails to look behind him. In this case, the stopped party would not have any negligence. Would that determination change if the stopped party did not see the backing party and honk? It may - we will revisit this scenario later to discuss.

4. Damages. This is often a given in auto accidents but for a party to legally collect from a negligence claim or lawsuit, he/she must have incurred some damages. If a sedan backs into a big truck and the truck has no damage, the truck will probably not prevail in a liability claim.

So there are 4 elements and they must all be present for a valid claim. Sounds cut and dry, right? Wrong. As you enter claims law, you leave behind the black-and-white world and enter into a complex world of grey. Liability is subjective; asking 10 people about an accident may result in 10 different liability decisions. Speaking in technicalities, liability cannot be cemented in stone unless and until a judge or jury issues a ruling about it. Thus, even in the course of a single claim, the decision may change several times.

Revisiting that backing example from a minute or two ago, if the stopped party does not see the backing party and honk, there may be multiple proximate causes at play. The stopped party may have some negligence, depending on where the vehicles were in relation to each other. When we determine multiple proximate causes are at-play, we weigh them against one another in terms of severity and reach a decision in percentages. One party may be 75% at fault for the accident and the other 25% at fault. Each could be 50% at fault. Or any number of combinations in between. When two parties share responsibility in some form or fashion, we call it comparative negligence and each state handles it differently.

The fact that liability adjusters need to exist is unfortunate – we investigate terrible accidents where property and people are damaged. Legal liability is a complicated yet rewarding concept. Studying law and understanding liability are not easy but they are rewarding endeavors. Once we understand how liability works, we can begin conducting our own liability investigations.

References:

Liability. (n.d.). Retrieved from <http://dictionary.law.com/Default.aspx?selected=1151>