DOWNLOAD PDF THREE CONTRIBUTORY ELEMENTS

Chapter 1 : Contributory negligence - Wikipedia

includes documentation of one to three elements of the HPI, as well as a review of systems directly related to the chief complaint. extended HPI history of present illness consisting of at least four elements or status of at least three chronic or inactive conditions.

Negligence refers to a cause of action where a plaintiff may assert a civil tort case against a defendant. In order to meet a prima facie on its face case for negligence a plaintiff must definitively prove the following four elements: It is an objective view. The standard of care, for negligence actions, is not concerned with mental deficiencies. According to tort law incompetence is not an excuse. An individual with an IQ well below average is held to the standard of the reasonably prudent person for a normal IQ. Physical deficiencies take on a different standard though. Physical attributes and deficiencies are measured by the reasonably prudent person with that condition. Someone who is blind will be measured against the reasonably prudent blind person. A person who is a master rifleman will be measured against the reasonably prudent person with the same skills, eyesight, etc. There are supplemental standards of care that are frequently used in negligence actions. These include children, common carriers innkeepers, airlines, etc. In a negligence action the plaintiff should find that finding 1 duty; 2 breach of duty; and 3 damages are straightforward. The question that remains is: In a negligence action suit, the plaintiff must definitively prove that the defendant was both the proximate and actual cause of the injury. The definition of actual cause is that "if not for the action by defendant the injury would not have occurred. Not only does the negligent actions by the defendant need to meet the "but for" test for actual cause but it must also be the proximate cause, also known as legal causation. Courts are reluctant to find a defendant guilty of negligence when his actions, even though they were the actual cause, were interrupted by superseding, unforeseeable actions. For example, if Dana did not properly inspect her vehicle on a timely basis and failed to notice the brakes were worn she would be negligent if she hit another vehicle because of the faulty brakes. This is because, even though, she was negligent in maintaining the brakes the lightning bolt was an unforeseeable intervening cause. If a Plaintiff has met the aforementioned elements of a prima facie case then a suit in negligence may be successful.

Chapter 2 : Center for Problem-Oriented Policing | Problem Guides | Domestic Violence

Contributory negligence in common law jurisdictions is generally a defense to a claim based on negligence, an action in tort. This principle is relevant to the determination of liability and is applicable when plaintiffs / claimants have, through their own negligence, contributed to the harm they suffered. [1].

These are what are called the "elements" of negligence. Most jurisdictions say that there are four elements to a negligence action: Some jurisdictions narrow the definition down to three elements: Duty of care[edit] Main article: The first step in determining the existence of a legally recognised responsibility is the concept of an obligation or duty. In the tort of negligence the term used is duty of care [7] The case of Donoghue v Stevenson [8] [] established the modern law of negligence, laying the foundations of the duty of care and the fault principle which, through the Privy Council , have been adopted throughout the Commonwealth. The friend bought Mrs Donoghue a ginger beer float. She drank some of the beer and later poured the remainder over her ice-cream and was horrified to see the decomposed remains of a snail exit the bottle. Donoghue suffered nervous shock and gastro-enteritis, but did not sue the cafe owner, instead suing the manufacturer, Stevenson. As Mrs Donoghue had not herself bought the ginger beer, the doctrine of privity precluded a contractual action against Stevenson. The Scottish judge, Lord MacMillan, considered the case to fall within a new category of delict the Scots law nearest equivalent of tort. However, these act as guidelines for the courts in establishing a duty of care; much of the principle is still at the discretion of judges. The test is both subjective and objective. There is a reduced threshold for the standard of care owed by children. In the Australian case of McHale v Watson, [17] McHale, a 9-year-old girl was blinded in one eye after being hit by the ricochet of a sharp metal rod thrown by a year-old boy, Watson. The defendant child was held not to have the level of care to the standard of an adult, but of a year-old child with similar experience and intelligence. Certain jurisdictions, also provide for breaches where professionals, such as doctors, fail to warn of risks associated with medical treatments or procedures. Doctors owe both objective and subjective duties to warn; and breach of either is sufficient to satisfy this element in a court of law. For example, the Civil Liability Act in Queensland outlines a statutory test incorporating both objective and subjective elements. In Donoghue v Stevenson, Lord Atkin declared that "the categories of negligence are never closed"; and in Dorset Yacht v Home Office it was held that the government had no immunity from suit when they negligently failed to prevent the escape of juvenile offenders who subsequently vandalise a boatyard. In other words, all members of society have a duty to exercise reasonable care toward others and their property. Stone , [19] the House of Lords held that a defendant was not negligent if the damage to the plaintiff were not a reasonably foreseeable consequence of his conduct. In the case, a Miss Stone was struck on the head by a cricket ball while standing outside a cricket ground. Finding that no batsman would normally be able hit a cricket ball far enough to reach a person standing as far away as was Miss Stone, the court held her claim would fail because the danger was not reasonably or sufficiently foreseeable. Causation law In order for liability to result from a negligent act or omission, it is necessary to prove not only that the injury was caused by that negligence, but also that there is a legally sufficient connection between the act and the negligence. Factual causation actual cause [edit] See also: Causation in English law and Breaking the chain For a defendant to be held liable , it must be shown that the particular acts or omissions were the cause of the loss or damage sustained. Asbestos litigations which have been ongoing for decades revolve around the issue of causation. Interwoven with the simple idea of a party causing harm to another are issues on insurance bills and compensations, which sometimes drove compensating companies out of business. Legal causation proximate cause [edit] Negligence can lead to this sort of collision: The idea of legal causation is that if no one can foresee something bad happening, and therefore take care to avoid it, how could anyone be responsible? For instance, in Palsgraf v. Long Island Rail Road Co. The plaintiff, Palsgraf, was hit by coin-operated scale which toppled because of fireworks explosion that fell on her as she waited on a train platform. A train conductor had run to help a man into a departing train. The man was carrying a package as he jogged to jump in the train door. The package had fireworks in it. The conductor mishandled the passenger or his package, causing the package to fall. The fireworks slipped

and exploded on the ground causing shockwaves to travel through the platform. On appeal, the majority of the court agreed, with four judges adopting the reasons, written by Judge Cardozo, that the defendant owed no duty of care to the plaintiff, because a duty was owed only to foreseeable plaintiffs. Three judges dissented, arguing, as written by Judge Andrews, that the defendant owed a duty to the plaintiff, regardless of foreseeability, because all men owe one another a duty not to act negligently. Such disparity of views on the element of remoteness continues to trouble the judiciary. If the court can find that, as a matter of law, the defendant owed no duty of care to the plaintiff, the plaintiff will lose his case for negligence before having a chance to present to the jury. However, some courts follow the position put forth by Judge Andrews. In jurisdictions following the minority rule, defendants must phrase their remoteness arguments in terms of proximate cause if they wish the court to take the case away from the jury. Remoteness takes another form, seen in The Wagon Mound No. The ship leaked oil creating a slick in part of the harbour. The wharf owner asked the ship owner about the danger and was told he could continue his work because the slick would not burn. The wharf owner allowed work to continue on the wharf, which sent sparks onto a rag in the water which ignited and created a fire which burnt down the wharf. In Australia the concept of remoteness, or proximity, was tested with the case of Jaensch v Coffey. The court upheld that, in addition to it being reasonably foreseeable that his wife might suffer such an injury, it required that there be sufficient proximity between the plaintiff and the defendant who caused the collision. Here there was sufficient causal proximity. This should not be mistaken with the requirements that a plaintiff prove harm to recover. As a general rule, a plaintiff can only rely on a legal remedy to the point that he proves that he suffered a loss; it was reasonably foreseeable. When damages are not a necessary element, a plaintiff can win his case without showing that he suffered any loss; he would be entitled to nominal damages and any other damages according to proof. Negligence is different in that the plaintiff must prove his loss, and a particular kind of loss, to recover. In some cases, a defendant may not dispute the loss, but the requirement is significant in cases where a defendant cannot deny his negligence, but the plaintiff suffered no pecuniary loss as a result even though he had suffered emotional injury or damage but he cannot be compensated for these kind of losses. The plaintiff can be compensated for emotional or non-pecuniary losses on the condition that If the plaintiff can prove pecuniary loss, then he can also obtain damages for non-pecuniary injuries, such as emotional distress. The requirement of pecuniary loss can be shown in a number of ways. A plaintiff who is physically injured by allegedly negligent conduct may show that he had to pay a medical bill. If his property is damaged, he could show the income lost because he could not use it, the cost to repair it, although he could only recover for one of these things. The damage may be physical, purely economic, both physical and economic loss of earnings following a personal injury, [34] or reputational in a defamation case. Emotional distress has been recognized as an actionable tort. Generally, emotional distress damages had to be parasitic. That is, the plaintiff could recover for emotional distress caused by injury, but only if it accompanied a physical or pecuniary injury. A claimant who has suffered only emotional distress and no pecuniary loss would not recover for negligence. However, courts have recently allowed recovery for a plaintiff to recover for purely emotional distress under certain circumstances. The eggshell skull rule was recently maintained in Australia in the case of Kavanagh v Akhtar. Damages Damages place a monetary value on the harm done, following the principle of restitutio in integrum Latin for "restoration to the original condition". Thus, for most purposes connected with the quantification of damages, the degree of culpability in the breach of the duty of care is irrelevant. Once the breach of the duty is established, the only requirement is to compensate the victim. One of the main tests that is posed when deliberating whether a claimant is entitled to compensation for a tort, is the " reasonable person ". Simple as the "reasonable person" test sounds, it is very complicated. It is a risky test because it involves the opinion of either the judge or the jury that can be based on limited facts. However, as vague as the "reasonable person" test seems, it is extremely important in deciding whether or not a plaintiff is entitled to compensation for a negligence tort. Damages are compensatory in nature. Anything more would unlawfully permit a plaintiff to profit from the tort. There are also two other general principles relating to damages. Firstly, the award of damages should take place in the form of a single lump sum payment. Therefore, a defendant should not be required to make periodic payments however some statutes give exceptions for this. Secondly, the Court is not

concerned with how the plaintiff uses the award of damages. General damages - these are damages that are not quantified in monetary terms e. A general damage example is an amount for the pain and suffering one experiences from a car collision. Lastly, where the plaintiff proves only minimal loss or damage, or the court or jury is unable to quantify the losses, the court or jury may award nominal damages. Punitive damages - Punitive damages are to punish a defendant, rather than to compensate plaintiffs, in negligence cases. For example, the manner of this wrongful act increased the injury by subjecting the plaintiff to humiliation, insult. This can be by way of a demurrer , motion to dismiss, or motion for summary judgment. Whether the case is resolved with or without trial again depends heavily on the particular facts of the case, and the ability of the parties to frame the issues to the court. The duty and causation elements in particular give the court the greatest opportunity to take the case from the jury, because they directly involve questions of policy. On an appeal from a dismissal or judgment against the plaintiff without trial, the court will review de novo whether the court below properly found that the plaintiff could not prove any or all of his or her case.

Chapter 3 : U.S. Copyright Office: The Intentional Inducement of Copyright Infringements Act

The elements of a cause of action for negligence are 1) a legal duty to use due care, 2) a breach of that duty, 3) a reasonably close causal connection between that breach and the plaintiff's resulting injury, and 4) actual loss or damage to the plaintiff.

Chairman, Senator Leahy, Members of the Committee, good afternoon. Thank you for giving me the opportunity to testify about S. I believe this bill addresses the most important issue facing our copyright system today: There should be no question that such services should be liable for the copyright infringement they encourage and from which they profit. The Copyright Office supports S. This area of the law is essential for effective copyright protection, but it has become confused as courts have struggled to apply the existing common-law doctrines to the new peer-to-peer services, with conflicting results. This bill recognizes liability for the "intentional inducement" of copyright, which will allow courts to examine fully the circumstances behind infringing activity to find those truly responsible, such as the operators of the current peer-to-peer networks who depend upon infringement for their commercial viability. Contributory Infringement and Vicarious Liability S. For decades, courts have recognized that those who assist and facilitate copyright infringement are liable just as those who actually commit the acts of infringement. When the right and ability to supervise coalesce with an obvious and direct financial interest in the exploitation of copyrighted materials. Thus, vicarious liability requires two elements: It is closely related to the doctrines of enterprise liability and respondeat superior in tort law. There is another form of secondary liability in copyright law, "contributory infringement," which stretches back to Note that the common formulation of contributory infringement includes a reference to those who "induce" another to commit infringement, which is similar to the language of the proposed bill. In theory, the existing contributory infringement doctrine may be flexible enough to cover situations where a defendant induces another to commit infringement. When actually applying this standard, however, courts have not focused on the inducement aspect of contributory infringement, and thus, as I will explain, legislation is needed to address these circumstances directly to remove any doubt about liability for inducement. These doctrines were developed by case law under the Copyright Act, which did not contain any express provision on secondary liability. In the Act, Congress recognized secondary liability in the grant of rights under copyright, providing authors and copyright owners with the "exclusive right to do and to authorize" the enumerated rights. From a policy perspective, the secondary liability doctrines are critical to the effective functioning of our copyright system, and even more so in the new digital environment. They allow copyright owners to focus their enforcement and licensing efforts on those entities that foster infringing activity and have the resources and wherewithal to either pay licensing fees or satisfy an infringement judgment, without bringing costly, time-consuming and usually futile actions against multiple, mostly judgment-proof individual defendants. As another court explained, in finding a supplier of "time-loaded" cassettes liable for infringement facilitated by those cassettes: Regrettably, in copyright litigation, enforcement efforts seem ineffective. Misappropriation may often needlessly succeed. Thus, liability for contributory infringement is particularly appropriate here. Given the apparent division of labor in the counterfeit recording industry, the actions of contributory infringers make possible the wide dissemination of the infringing works. Secondary liability is appropriate in these situations, but there is confusion in the courts as to whether current law reaches that result. I will next describe the state of the law and how it has been applied to these new services. Universal City Studios, Inc. The Court recognized that secondary liability was established in copyright law: Applying this concept to the copyright context, the Court explained that: The sale of copying equipment, like the sale of other articles of commerce, does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable purposes. Indeed, it need merely be capable of substantial noninfringing uses. The question is thus whether the Betamax is capable of commercially significant noninfringing uses. The Court noted, however, that judgments in this area were primarily the responsibility of Congress rather than the Courts, and that it might be appropriate for Congress to take a "fresh look" at these issues in new copyright legislation. Secondary Liability and Peer-to-Peer Services The Sony

decision has played a substantial role in the legal dispute over "peer-to-peer" services like Napster and its progeny, such as Aimster, Grokster, Morpheus and Kazaa. As I explained in my testimony before this committee last Fall, the courts have struggled to apply Sony to resolve the question of whether companies who operate peer-to-peer networks are liable for the massive amounts of infringement that take place on them. In the case of Napster and Aimster, the courts have held the operators of those services liable under theories of secondary liability. In the case of Grokster and Morpheus, a district court found that secondary liability did not apply to those peer-to-peer services, in large part because of the Sony decision. To understand how secondary liability and Sony have operated in this context, I will go into these cases in some more detail. Napster The first peer-to-peer service to prompt copyright infringement litigation was Napster. When he started the software, it would send information to the Napster servers about the MP3 files the user had stored in the "shared folder" of his hard drive. The file names that were sent to the Napster servers were included in an index of all of the files being made available by users of the Napster network. When the user searched for an artist or title of a song, the Music Share software used the index on the Napster server to locate another user with that MP3 file. If he chose to download the file, the software then connected the two users together and a transmission proceeded directly between them, rather than go through any Napster server. The major record companies and musical work copyright owners brought suit against Napster in for contributory infringement and vicarious liability. The district court issued a preliminary injunction against Napster in July , and the Ninth Circuit affirmed that decision in part in February , finding that the plaintiff copyright owners had shown a likelihood of success on the merits to support a preliminary injunction. The panel found that Napster met the requirements for both contributory infringement and vicarious liability. As to contributory infringement, the Ninth Circuit found that Napster had actual knowledge of infringing activity being made possible by its software, and that the software and services Napster provided were its "material contribution" to the infringement. It held that Sony was "of limited assistance to Napster" because Napster had "actual, specific knowledge of direct infringement" occurring on its network. Where such knowledge was actually present, the Ninth Circuit held the Sony test does not apply. It noted that the mere existence of the network on which files could be distributed was not enough to render Napster liable, citing Sony. Unable to find a way to continue operating in light of the injunction, it shut down in In re Aimster The Seventh Circuit was the next appellate court to consider the liability of a peer-to-peer service in the case of In re Aimster. When users were online using an IM program to chat, they could also trade music files through the Aimster P2P software. The transmissions between users were encrypted such that the proprietor of the Aimster service argued that he could not know whether the files being transmitted were copyrighted or not. The district court issued a preliminary injunction against Aimster, and the Seventh Circuit affirmed that decision in an opinion written by Judge Richard Posner. Grokster, the District Court for the Central District of California ruled that the peer-to-peer services Morpheus operated by Streamcast and Grokster were not liable for the copyright infringement of their users. Based on this fact, the court concluded that Grokster and Streamcast could not limit the infringement occurring on their networks, because there was no centralized index through which they could control infringing uses of their software. On these grounds the court denied contributory infringement. On vicarious liability, the court found that defendants gained a direct financial benefit from the infringement that takes place on their service. As the court explained: Here, it is clear that Defendants derive a financial benefit from the infringing conduct. As a result, Defendants have a user base in the tens of millions. Grokster also derives substantial revenue from advertising. The more individuals who download the software, the more advertising revenue Defendants collect. Defendants thus derive a financial benefit from the infringement. In the end, the court acknowledged that its result might not be the right one from a policy standpoint. It noted the "possibility that Defendants may have intentionally structured their businesses to avoid secondary liability for copyright infringement, while benefiting financially from the illicit draw of their wares. The case is currently on appeal to the Ninth Circuit, where oral argument was held this past February, but no decision has been issued to date. It also misapplied the Sony decision to an inaccurate characterization of the defendants as mere providers of software, comparing them to maker of a VCR, when their services were functionally the equivalent of Napster and Aimster. On the one hand, the Napster and Aimster services were found to be liable

by the Ninth Circuit and Seventh Circuit, while, on the other hand, Grokster and Streamcast were not found liable by the Central District of California. But there is one constant in all of these cases. All of the services at issue facilitate massive copyright infringement involving literally billions of copies of copyrighted works. It is also undisputed that the defendants who operate these services rely on the copyright infringement as a draw to attract users, thereby attracting advertisers. These facts make the comparison to Sony remarkably inapt. In my view, if the VCR had been designed in such a way that when a consumer merely turned it on, copies of all of the programs he recorded with it were immediately made available to every other VCR in the world, there is no doubt the Sony decision would have gone the opposite way. It would seem, in these circumstances, that sensible application of secondary liability doctrines would result in liability against these companies, even accounting for the concerns expressed by the Supreme Court in the Sony decision. As I noted above, the doctrine of contributory infringement, which includes notions of inducement, is likely broad enough to find liability in these circumstances. Yet, as the Grokster case shows, it appears that defendants are able to evade copyright liability successfully while still profiting from massive copyright infringement which they enable and encourage. As I testified last year, I believe that legislative action in this area is warranted if courts interpret current law to exonerate proprietors of P2P services like Grokster, Morpheus and Kazaa. In my view, S. I will now turn to the provisions of the bill. The bill defines "intentionally induces" as meaning: Paragraph 3 of the new subsection makes clear that the new form of inducement liability is in addition to existing common-law secondary liability doctrines, and does not modify them in any way. It also provides that nothing in the bill "require[s] any court to unjustly withhold or impose any secondary liability for copyright infringement. Chairman, this provision draws from patent law and federal criminal law. Section b of the Patent Act provides that "[w]hoever actively induces infringement of a patent shall be liable as an infringer. This is especially true in the context of peer-to-peer services, which have created vast networks of copyright infringement by relying on clever technology and inducing others to join the network and infringe copyright. As I testified last year, we are seeing the natural consequences of what happens when secondary liability doctrines are not applied in this context: As you pointed out in your floor statement, Mr. Chairman, this result makes no sense, and is a departure from traditions of copyright, which has regulated the relationship between copyright owners and intermediaries like dance halls and swap meets for the ultimate benefit of consumers. Decisions like Grokster scramble this venerable structure, forcing copyright law to administer the relationship between copyright owners and consumers, to the undeserved benefit of intermediaries like Kazaa and Grokster. It would allow courts to examine all of the circumstances of a particular case to determine whether the defendant had intentionally constructed its business to profit from infringement of others that it induced. The central definition, however, requires that the defendant "intentionally aids, abets, induces or procures" infringement, which is a high level of mens rea that should limit application of this bill only to the most egregious actors. There is a wide array of evidence that the proprietors of those services induce users to infringe copyright: Their business is based on advertising revenue, which is based on the number of users participating on the network, which, as the Grokster court recognized is based on the free availability of copyrighted works on that network. The availability of copyrighted material on the network is assured by the software, which automatically and invisibly to the user immediately begins making their copies of works available to the millions of others on the network. Many users may not be aware that the program is running continuously in this fashion. This action merely hides the Kazaa program from the screen while the program continues to run the program in the background.

Chapter 4 : Elements of Negligence | James Education Center

Understanding the 4 Elements of Negligence The basis of both personal injury insurance claims and personal injury lawsuits is a legal concept known as negligence.

The extent and type of duty varies according to the relationship of the parties and other circumstances. It is a relatively broad standard requiring only that the contribution of the individual cause be more than negligible or theoretical. App 4th To establish negligence per se, a plaintiff must prove: The element of breach of duty is a question of fact for the fact-finder to decide. Legal Process and Courier Serv. Conformity with the general practice or custom in the business or trade will not excuse conduct which is not consistent with due care. Department of Food and Agric. The owners and operators of a dance hall breached their duty to a dancer when they increased the risk of falling by adding a slippery substance to the dance floor. Parents Without Partners, 17 Cal. A carrier who breached a shipping contract by contaminating the shipped product was liable in tort for negligently performing the contract. North American Chemical Co. Superior Court, 59 Cal. But a very minor force that does cause harm is a substantial factor. Ordinarily, plaintiffs bear the burden of proving causation. Lone Palm Hotel, 3 Cal. An intoxicated driver, at the time that his negligence caused a collision, could not reasonably have anticipated that a second intoxicated driver would run into his vehicle which caused injury to an investigating highway patrolman. The action of the second motorist was a superseding cause and the first motorist was not liable to the patrolman. The motorist was liable for the replacement cost of the motor and for the wages paid to the idled employees since those damages were reasonably foreseeable. Each company was liable. San Francisco, Cal. In a case against a landlord by a tenant who was raped on the premises, speculation as to whether the rapist entered through a broken security gate was insufficient to establish proximate cause. Generally, a fire is the proximate cause of all injuries and damage it may produce, whether it spreads to one abutting property or for several miles. The mere breach of a â€¦ duty, causing only nominal damages, speculative harm, or the threat of future harm â€” not yet realized â€” does not suffice to create a cause of action for negligence. Negligence causing only monetary harm does not give rise to emotional distress damages. Even then, with rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests. Prior law allowed homeowners who sued a contractor for construction defects in their custom-built home to recover damages for emotional distress resulting from the negligence because structural defects could cause the house, or parts of it, to collapse and, thus, created a threat of physical injury. Emotional Distress Erlich v. Limit of Liability Cal. Citrus Community College Dist. Both are now subsumed under comparative fault. Assumption of Risk Knight v. Primary Assumption of Risk. Secondary Assumption of Risk. Superior Court, 55 Cal. The release did not violate any public policy but actually benefited the public at large by enabling the YMCA to provide low-cost recreational activities to seniors. However, the role of the defendant is an important component in the legal analysis relating to duty. A business, participant or manufacturer may have different duties and therefore may not avail themselves of the Assumption of the Risk Doctrine. For instance, a swimming pool operator cannot violate a safety statute relating to pool maintenance and claim assumption of the risk for a slip and fall. Similarly, a co-participant negligently operating an All Terrain Vehicle in violation of the California Vehicle Code is unable to invoke the doctrine. Finally, a manufacturer may not insulate itself from supplying defective equipment by use of the doctrine. See generally Appendix A.

Chapter 5 : Contributory negligence

Patent: Liability for contributory infringement of a patent is defined by 35 U.S.C. Â§ (c): "Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or an apparatus for use in practicing a patented process.

What are the major factors of poverty? Poverty as a Social Problem: We have all felt a shortage of cash at times. That is an individual experience. It is not the same as the social problem of poverty. While money is a measure of wealth, lack of cash can be a measure of lack of wealth, but it is not the social problem of poverty. It includes sustained low levels of income for members of a community. It includes a lack of access to services like education, markets, health care, lack of decision making ability, and lack of communal facilities like water, sanitation, roads, transportation, and communications. Furthermore, it is a "poverty of spirit," that allows members of that community to believe in and share despair, hopelessness, apathy, and timidity. Poverty, especially the factors that contribute to it, is a social problem, and its solution is social. We learn in these training web pages that we can not fight poverty by alleviating its symptoms, but only by attacking the factors of poverty. This handout lists and describes the "Big Five" factors that contribute to the social problem of poverty. The simple transfer of funds, even if it is to the victims of poverty, will not eradicate or reduce poverty. It will merely alleviate the symptoms of poverty in the short run. It is not a durable solution. Poverty as a social problem calls for a social solution. That solution is the clear, conscious and deliberate removal of the big five factors of poverty. Factors, Causes and History: A "factor" and a "cause" are not quite the same thing. A "cause" can be seen as something that contributes to the origin of a problem like poverty, while a "factor" can be seen as something that contributes to its continuation after it already exists. Poverty on a world scale has many historical causes: There is an important difference between those causes and what we call factors that maintain conditions of poverty. The difference is in terms of what we, today, can do about them. We can not go back into history and change the past. What we potentially can do something about are the factors that perpetuate poverty. It is well known that many nations of Europe, faced by devastating wars, such as World Wars I and II, were reduced to bare poverty, where people were reduced to living on handouts and charity, barely surviving. Within decades they had brought themselves up in terms of real domestic income, to become thriving and influential modern nations of prosperous people. We know also that many other nations have remained among the least developed of the planet, even though billions of dollars of so-called "aid" money was spent on them. Because the factors of poverty were not attacked, only the symptoms. At the macro or national level, a low GDP gross domestic product is not the poverty itself; it is the symptom of poverty, as a social problem. The factors of poverty as a social problem that are listed here, ignorance , disease , apathy , dishonesty and dependency , are to be seen simply as conditions. No moral judgement is intended. They are not good or bad, they just are. The big five, in turn, contribute to secondary factors such as lack of markets, poor infrastructure, poor leadership, bad governance, under-employment, lack of skills, absenteeism, lack of capital, and others. Each of these are social problems, each of them are caused by one or more of the big five, and each of them contribute to the perpetuation of poverty, and their eradication is necessary for the removal of poverty. Let us look briefly at each of the big five in turn. Ignorance means having a lack of information, or lack of knowledge. It is different from stupidity which is lack of intelligence, and different from foolishness which is lack of wisdom. The three are often mixed up and assumed to be the same by some people. Unfortunately, some people, knowing this, try to keep knowledge to themselves as a strategy of obtaining an unfair advantage , and hinder others from obtaining knowledge. Do not expect that if you train someone in a particular skill, or provide some information, that the information or skill will naturally trickle or leak into the rest of a community. It is important to determine what the information is that is missing. Many planners and good minded persons who want to help a community become stronger, think that the solution is education. But education means many things. Some information is not important to the situation. The training in this series of community empowerment documents includes among other things the transfer of information. Unlike a general education, which has its own history of causes for the selection of what is included, the information

included here is aimed at strengthening capacity, not for general enlightenment. When a community has a high disease rate, absenteeism is high, productivity is low, and less wealth is created. Apart from the misery, discomfort and death that results from disease, it is also a major factor in poverty in a community. Being well well-being not only helps the individuals who are healthy, it contributes to the eradication of poverty in the community. Here, as elsewhere, prevention is better than cure. It is one of the basic tenets of PHC primary health care. The economy is much healthier if the population is always healthy; more so than if people get sick and have to be treated. Remember, we are concerned with factors, not causes. It does not matter if tuberculosis was introduced by foreigners who first came to trade, or if it were autochthonic. Those are possible causes. Knowing the causes will not remove disease. Knowing the factors can lead to better hygiene and preventive behaviour, for their ultimate eradication. Many people see access to health care as a question of human rights, the reduction of pain and misery and the quality of life of the people. These are all valid reasons to contribute to a healthy population. What is argued here, further than those reasons, is that a healthy population contributes to the eradication of poverty, and it is also argued that poverty is not only measured by high rates of morbidity and mortality, but also that disease contributes to other forms and aspects of poverty. Apathy is when people do not care, or when they feel so powerless that they do not try to change things, to right a wrong, to fix a mistake, or to improve conditions. Sometimes, some people feel so unable to achieve something, they are jealous of their family relatives or fellow members of their community who attempt to do so. Then they seek to bring the attempting achiever down to their own level of poverty. Sometimes apathy is justified by religious precepts, "Accept what exists because God has decided your fate. It is OK to believe God decides our fate, if we accept that God may decide that we should be motivated to improve ourselves. We were created with many abilities: That is as bad as a curse upon God. We must praise God and use our God-given talents. When resources that are intended to be used for community services or facilities, are diverted into the private pockets of someone in a position of power, there is more than morality at stake here. In this training series, we are not making a value judgement that it is good or bad. We are pointing out, however, that it is a major cause of poverty. Dishonesty among persons of trust and power. The amount stolen from the public, that is received and enjoyed by the individual, is far less than the decrease in wealth that was intended for the public. The amount of money that is extorted or embezzled is not the amount of lowering of wealth to the community. Economists tell of the "multiplier effect. When investment money is taken out of circulation, the amount of wealth by which the community is deprived is greater than the amount gained by the embezzler. When a Government official takes a dollar bribe, social investment is decreased by as much as a dollar decrease in the wealth of the society. We respect the second thief for her or his apparent wealth, and praise that person for helping all her or his relatives and neighbours. In contrast, we need the police to protect the first thief from being beaten by people on the street. The second thief is a major cause of poverty, while the first thief may very well be a victim of poverty that is caused by the second. Our attitude, as described in the above paragraph, is more than ironic; it is a factor that perpetuates poverty. If we reward the one who causes the major damage, and punish only the ones who are really victims, then our misplaced attitudes also contribute to poverty. When embezzled money is then taken out of the country and put in a foreign eg Swiss bank, then it does not contribute anything to the national economy; it only helps the country of the offshore or foreign bank. Dependency results from being on the receiving end of charity. In the short run, as after a disaster, that charity may be essential for survival. In the long run, that charity can contribute to the possible demise of the recipient, and certainly to ongoing poverty. The attitude, and shared belief is the biggest self justifying factor in perpetuating the condition where the self or group must depend on outside help. There are several other documents on this web site which refer to dependency. Dependency , and Revealing Hidden Resources. When showing how to use the telling of stories to communicate essential principles of development, the story of Mohammed and the Rope is used as a key illustration of the principle that assistance should not be the kind of charity that weakens by encouraging dependency, it should empower. The community empowerment methodology is an alternative to giving charity which weakens , but provides assistance, capital and training aimed at low income communities identifying their own resources and taking control of their own development â€”becoming empowered. All too often, when a project is aimed at

promoting self reliance, the recipients, until their awareness is raised, expect, assume and hope that the project is coming just to provide resources for installing a facility or service in the community. Among the five major factors of poverty, the dependency syndrome is the one closest to the concerns of the community mobilizer. These five factors are not independent of one another. Disease contributes to ignorance and apathy. Dishonesty contributes to disease and dependency. They each contribute to each other. In any social change process, we are encouraged to "think globally, act locally.

Chapter 6 : Factors of Poverty; The Big five

Contributory Negligence The concept of 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 person.

He was the first to publish a periodic table similar to the one we use today and is credited for discovering the Periodic law. More importantly, he put the elements in their right places in his periodic table correctly pointing out that their atomic weights had been measured incorrectly; and brilliantly predicted the existence and properties of yet undiscovered elements. Know more about the work of Dmitri Mendeleev through his 10 major contributions. In , to address the issue, he published a textbook named Organic Chemistry which won him the prestigious Domidov Prize and put him at the forefront of Russian chemical education. Mendeleev was one of the founders, in , of the Russian Chemical Society. His renowned work Osnovy khimii The Principles of Chemistry, â€”71 was published in two volumes. The Principles of Chemistry became the definitive textbook on the subject at the time, ran through many editions and was widely translated. Mendeleev later rated it as one of his four major contributions to science; the others being the periodic table, the elasticity of gases, and understanding of solutions as associations. However, as he used geological terms and as his chart included ions and compounds, his publication was ignored by chemists. Many other chemists made significant progress in the formulation of a periodic table, most notably John Newlands. However, it was Dmitri Mendeleyev who first published a periodic table similar to the modern one we use today, in German chemist Julius Lothar Meyer independently arrived at a periodic table similar to Mendeleev but he published it a year later. In his presentation, which was entitled The Dependence between the Properties of the Atomic Weights of the Elements, he described chemical elements according to both atomic weight and valency. He stated several important points during the presentation including the Periodic law, which states that when elements are ordered according to their atomic weights, certain properties of elements repeat periodically. Though other scientists, like Newlands, also noted periodicity of elements, the credit of the discovery is given to Mendeleev and Meyer. Mendeleev arrived at the law independently from investigations of other scientists. At the time, atomic weights were determined by multiplying equivalent weight with valency. Sometimes these were incorrect due to wrong valency assigned to an element. Like beryllium was given a valency of 3 due to which its atomic weight came out to be However Mendeleev said that the valency was 2 to fit it into the space between Li and B. Similarly, Mendeleev proposed that atomic weights of some elements had been measured incorrectly and his predictions soon turned out to be true! Gaps left by Dmitri Mendeleev in his Periodic Table 5 Mendeleev correctly predicted the existence, and properties, of yet undiscovered elements The most spectacular accomplishments of Mendeleev was that he not only left gaps in his periodic table for elements which were not yet discovered but more importantly predicted the properties of some of these elements and their compounds. Three of these elements were discovered within 15 years while Mendeleev was alive. Comparison of the predicted properties by Mendeleev for germanium and its actual values 6 Dmitri Mendeleev is considered the Father of the Periodic Table Though many other scientists made important contributions in the development of the Periodic Table, Dmitri Mendeleev was the first chemist to use the trends in his periodic table to correctly predict the properties of missing elements, such as gallium and germanium; and to ignore the order suggested by the atomic weights of the time, to better classify the elements into chemical families. Also, as his predictions started to come true, more and more people took notice of his work helping in establishing the importance of the Periodic Table. He considered solutions as liquid systems in a state of dissociation. According to him, these systems consist of molecules of the solvent and solute and of products of their interaction. His views on the nature of solutions and vast experimental data concerning the same were presented in his monograph Study of Aqueous Solutions From Their Specific Gravity. In the monograph, he anticipates the theory of hydration of ions. His ideas regarding the chemical interaction among the components of a solution contributed significantly to the development of the modern theory of solutions. Dmitri Mendeleev in 8 He worked on the expansion of liquids and defined critical temperature of gases In the field of physical chemistry, Dmitri Mendeleev investigated the expansion of

liquids with heat. The critical temperature of a gas is the temperature above which it cannot be liquefied by any amount of pressure. It was first discovered by French physicist Charles Cagniard de la Tour. Mendeleev was particularly interested in petroleum, coal, metallurgical and chemical industries. He investigated the composition of petroleum, put forward the hypothesis that it was formed deep within the earth and predicted that it will become a key component of the world economy. Mendeleev helped in the formation of the first oil refinery in Russia and was also the first to suggest the idea of using pipelines for transportation of fuel in He developed a precise theory of weights; designed an excellent balance arm and arresting device; and proposed highly exact methods of weighing. Mendeleev is given credit for the introduction of the metric system in Russia. At his insistence the system was made optional in , but it was only in , after his death, that it was made mandatory. On the behest of the Russian navy, Mendeleev also invented a smokeless powder named pyrocollodion, to replace gunpowder. However it was not used due to its cost of production.

Chapter 7 : Negligence - Wikipedia

In order to meet a prima facie (on its face) case for negligence a plaintiff must definitively prove the following four elements: Â· That there was a duty on the part of the defendant to conform to a certain standard of conduct.

It can be viewed by clicking HERE. Please bear in mind that there are many exceptions within each state with regard to whether the particular fault allocation scheme applied in a state is applicable to a particular cause of action. Understanding the comparative fault laws employed by the state you are subrogating in is essential to making informed decisions regarding the pursuit of subrogation claims. Comparative fault systems fall into one of three basic types: The comparative fault standards for the 51 jurisdictions break down as follows: Pure Contributory Negligence Only four states and the District of Columbia recognize the Pure Contributory Negligence Rule, which says that a damaged party cannot recover any damages if it is even 1 percent at fault. Under this rule, a plaintiff found 10 percent at fault for causing an accident will recover nothing, even though the defendant is 90 percent at fault. In certain cases, the contributory negligence defense can be overcome. Likewise, if the plaintiff can show that the defendant had the last clear chance to avoid an accident and did not do so, then the defendant can still be held accountable even if a plaintiff is found contributorily negligent. Twelve states follow the 50 percent Bar Rule, meaning a damaged party cannot recover if it is 50 percent or more at fault, but if it is 49 percent or less at fault, it can recover, although its recovery is reduced by its degree of fault. Twenty-one states follow the 51 percent Bar Rule under which a damaged party cannot recover if it is 51 percent or more at fault. However, the damaged party can recover if it is 50 percent or less at fault, but that recovery would be reduced by its degree of fault. In a pure contributory negligence jurisdiction, if the jury finds the plaintiff was the least bit negligent and contributed to the accident, then the plaintiff will recover nothing. Therefore, even if the plaintiff is only 5 percent at fault and the defendant is 95 percent at fault, the plaintiff recovers nothing. Comparative negligence jurisdictions differ among states. Some argue that comparative negligence jurisdictions are unfair because a difference of just 1 percent of fault is all it takes for a plaintiff to go from recovering half his damages to recovering nothing. Still other states draw the line at 51 percent, following the principle that a plaintiff who is MORE negligent than a defendant should not be able to recover anything. Texas, along with 32 other states, uses a Modified Comparative Fault Rule. If a person is injured in a car accident in Texas, he cannot recover damages from the other party if he is 51 percent or more at fault for the accident. The defendant argues that he was not the only one who was careless and that the plaintiff shares some of the blame for his own injuries. In pure comparative fault jurisdictions, the plaintiff can recover even if he was 80 percent at fault, but would recover only 20 percent of his damages. In cases involving comparative negligence, the jury determines the percentage of responsibility of each plaintiff, of each defendant, and of other responsible persons e. After hearing the evidence, the jury will assign a percentage of responsibility to everyone involved. If the plaintiff is found to be less than 51 percent at fault for causing the accident, his recovery will be reduced by whatever percentage of fault he is found responsible for. Tied to and somewhat complicating the concept of comparative fault is the notion of joint and several liability. Otherwise, they are only responsible for an amount equal to their percentage of fault. Each state has different comparative fault rules and different joint and several liability laws. Understanding each is critical to evaluating and pursuing subrogation cases on a national basis. He is the author of several subrogation books and legal treatises and is a national and international speaker and lecturer on subrogation and motivational topics. He can be reached at gwickert mwl-law. More from Gary Wickert Was this article valuable?

Chapter 8 : What is North Carolina's Contributory Negligence Law?

Understanding and proving exactly how the at-fault party's negligence caused your injuries is essential. Once you put together the elements of your case, you can confidently present the facts to the insurance company's claims adjuster.

Chapter 9 : Four Elements Negligence - Negligence | blog.quintoapp.com

DOWNLOAD PDF THREE CONTRIBUTORY ELEMENTS

Comparative fault systems fall into one of three basic types: pure contributory negligence, pure comparative fault, and modified comparative fault (sometimes referred to as "proportionate responsibility"). The comparative fault standards for the 51 jurisdictions break down as follows.