

## DUTY AND BREACH

In this case, the plaintiff claims that the defendant operated a motor vehicle negligently and that, as a result of that negligence, (he / she / they / it) was injured. The plaintiff is asking to be compensated for those injuries. In order for the plaintiff to succeed, the plaintiff has the burden of proving the following four elements by a preponderance of the evidence:

***First:*** that the defendant owed (him / her / them / it) a duty of care;

***Second:*** that the defendant breached or violated that duty of care, or in other words, was negligent;

***Third:*** that (he / she / they / it) suffered injury or harm; and

***Fourth:*** that the defendant's breach of duty was a cause of the plaintiff's injury or harm.

The trial judge is required to refer generally to the attendant circumstances in explaining negligence to the jury. *O'Leary v. Jacob Miller Co.*, 19 Mass. App. Ct. 947, 948 (1985) (rescript).

The question of negligence is ordinarily one of fact for the jury to decide. The issue may only be taken from the jury when no rational view of the evidence could warrant a finding that the defendant was negligent. See *Picard v. Thomas*, 60 Mass. App. Ct. 362, 364 (2004), citing *Mullins v. Pine Manor College*, 389 Mass. 47, 56 (1983).

**As to the elements of duty and breach of duty, the mere happening of an accident does not automatically mean there has**

**been negligence. First, the law in Massachusetts requires motorists using the roads of the Commonwealth to use reasonable care for their own safety and for the safety of (passengers) (other motorists) (pedestrians). An operator of a motor vehicle must exercise reasonable care under the circumstances.**

**Reasonable care is that amount of care an ordinary and prudent person would exercise under the circumstances. It is the degree of care “commensurate with the probable harmful consequence that might reasonably be expected to result from the lack of such care.” In other words, the amount of care required by the law increases in proportion to the likely harm that may result from lack of care.**

**Under Massachusetts law, an operator of a motor vehicle using a public way owes a duty of reasonable care at all times to avoid placing (himself / herself / themselves) or others in danger and to exercise reasonable care at all times to avoid a collision. In addition, the operator owes a duty to keep a proper lookout and make reasonable observations as to traffic and other conditions.**

*Spano v. Wilson Tisdale Co.*, 361 Mass. 209, 212 (1972) (mere happening of an accident is not sufficient to prove negligence by operator of vehicle); *Buckman v. McCarthy Freight Sys., Inc.*, 320 Mass. 551, 554 (1947) (pedestrian has right to expect that vehicle operator would exercise a reasonable degree of care for pedestrian’s safety); *Nolan v. Shea*, 312 Mass. 631, 634 (1942) (same); *McGaffee v. P.B. Mutrie Motor Trans., Inc.*, 311 Mass. 730,

736 (1942) (right of trucking company to operate is subject to limitation that the right be exercised with due regard to rights and safety of other travelers on highway).

**Second, the plaintiff must establish by a preponderance of the evidence that the defendant, in operating a motor vehicle, failed to exercise reasonable care. That is, the defendant was careless.**

**Whether negligence exists is for you, the jury, to decide.**

“[T]he existence of a duty is question of law, and is thus an appropriate subject of summary judgment.” *R.L. Currie Corp. v. E. Coast Sand & Gravel, Inc.*, 93 Mass. App. Ct. 782, 784 (2018), quoting *Jupin v. Kask*, 447 Mass. 141, 146 (2006). “Whether a party owes a duty of care to another is a legal question, determined by reference to existing social values and customs and appropriate social policy.” *Williams v. Steward Health Care System, LLC.*, 480 Mass. 286, 290 (2018), quoting *Jupin v. Kask*, 447 Mass. at 143 and *Cremins v. Clancy*, 415 Mass. 289, 292 (1993). Massachusetts courts have found that duty exists as a matter of law in various factual situations. A duty to exercise due care exists as a matter of law in the following situations:

- A motorist owes a duty of reasonable care to passengers. G.L. c. 231, § 85L.
- An operator of a motor vehicle using a public highway owes a duty of ordinary care at all times to avoid placing the operator or others in danger and to exercise ordinary care at all times to avoid a collision. In addition, the operator owes a duty to keep a proper lookout and make reasonable observations as to traffic and other conditions. See *Buckman v. McCarthy Freight Sys., Inc.*, 320 Mass. 551, 554 (1947). See also G.L. c. 231, §§ 85A, 85B.