

The Negligence Cause of Action			
Element	Court	Jury	Court
Duty	No duty as a matter of law	Usually duty is a question of law; there may be some factual questions for jury on issue of whether a duty exists	Duty as a matter of law
Negligence	No negligence as a matter of law	Reasonable people could differ on negligence	Negligence as a matter of law
Cause in Fact	No cause in fact as a matter of law	Reasonable people could differ on causation	Cause in fact as a matter of law
Proximate Cause	No proximate cause as a matter of law	Reasonable people could differ on proximate cause	Proximate cause as a matter of law
Damages	No damages as a matter of law for some or all components of damages; or, damages excessive as a matter of law	Usually damages are a question of fact for the jury	Rare to compel a damage award, but can happen (court can say evidence compels some award of damages)

Remember how trial procedure decides these questions. A defendant can move to dismiss the complaint because it doesn't state a cause of action (motion to dismiss or demurrer), that is, even if the facts alleged are true, there is no legally recognizable claim. That's a question of law for the court. A summary judgment motion can be made if there are no material facts in dispute, and the only question is one of law (for example, whether people who suffer an unexpected heart attack while driving are negligent--California law clearly says no). A motion for directed verdict can be made based on the weight of the evidence--either party can be granted such a verdict by the judge if the evidence is such that reasonable people could not disagree on the existence of an element. If for example, the evidence overwhelmingly shows that the defendant was negligent, the plaintiff can get a directed verdict, or if it overwhelmingly shows the defendant was not negligent, or his negligence did not cause the harm, the defendant can get a defense verdict, but the evidence must be so one-sided that reasonable people could not disagree on the outcome. A judgment notwithstanding the verdict (JNOV) is like a directed verdict after the jury reaches a decision--the standard is the same. Finally, a court can award a new trial in its discretion, even if reasonable people could have disagreed, if the court overall feels that somehow the jury must have done something wrong in its decisionmaking.