

Statutes

Proving Negligence

Where are we?

I. Introduction

II. Remedies

III. Negligence

IV. Strict Liability

V. Intentional Torts

VI. Alternatives to Tort

III. Negligence

A. Introduction to the Concept

B. Duty / Breach

C. Causation

D. Defenses

A. Introduction to the Concept of Negligence

Reasonable care is the principle behind liability/fault

Tools for Identifying Reasonable Care

1. Foreseeability
2. Hand Formula ($B < P * L$)
3. The Reasonable Person
4. Custom
5. *Statute*

Special Considerations

1. Judge and jury relationship
2. *Challenges with proving negligence*
3. Uniqueness of medical malpractice

Judges & Juries

Rules vs. Standards

Rules are rigid, bright-line tests that are easily applied to facts

Standards offer guidance for decisions but allow discretion

Tradeoffs

Rules

Promote predictability, certainty, consistency

Helpful for guiding future behavior

Standards

Promote fairness, flexibility, sensitivity to circumstances

Helpful for individualized judging of past behavior

How to operationalize?

Rule

Analysis

- Main arguments
- Counterarguments
- *Policy argument*

Conclusion

Custom

Sword for proving negligence

Prove two things:

1. Custom = reasonable care
 2. Defendant failed to comply with custom
-

Shield for disproving negligence

Prove two things:

1. Custom = reasonable care
2. Defendant complied with custom

Statutes

Sword for proving negligence

Prove two things:

1. Statute = reasonable care
 2. Defendant failed to comply with statute
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Shield for disproving negligence

Prove two things:

1. Statute = reasonable care
2. Defendant complied with statute

Statutes

Martin v. Herzog

Tedla v. Ellman

Proving Negligence

To establish that conduct fell below standard of reasonable care, plaintiff needs to prove:

1. What defendant did or did not do.
2. What defendant should have done.