

# Proving Negligence

# Study Advice

1. Study with others
2. Don't memorize. Practice.

# The Concept of Negligence

The principle behind liability/fault is \_\_\_\_\_.

## Tools for Identifying Reasonable Care

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

## Special Considerations

1. \_\_\_\_\_
2. \_\_\_\_\_
3. Uniqueness of medical malpractice

# The Concept of Negligence

The principle behind liability/fault is reasonable care.

## 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

# Rules vs. Standards

# How to operationalize?

Rule

Analysis

- Main arguments
- Counterarguments
- *Policy argument*

Conclusion

# Customs & Statutes

## Sword for proving negligence

Prove two things:

1. Custom or statute = reasonable care
  2. Defendant failed to comply with custom or statute
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## Shield for disproving negligence

Prove two things:

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

# Statutes

Courts look to the purpose of the statute.

1. Was this statute enacted to prevent harm?

2. Was this the kind of harm the statute was enacted to prevent?



# Proving Negligence

# Tort of Negligence

Plaintiff must prove:

1. Duty
2. Breach
3. Causation
4. Harm

# Concept of Negligence

To establish that the defendant's 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.

# Two Topics in Proving Negligence

1. Constructive notice
2. Res ipsa loquitur

# Constructive Notice

Negri v. Stop and Shop, Inc.

Gordon v. Museum of Natural History

# **In-Class Exercise: *Moore v. Myers***

# Keep in Mind:

## *Procedural Posture*

Procedural posture is the only way to discern the precise legal question that you need to answer.

## *Structure Matters*

Standard legal argument format:

Rule

Analysis

- Main arguments
- Counterarguments
- Policy argument

Conclusion

## *Reasoning Matters*

Tough cases require more than straightforward application of the rule.