

Medical Malpractice

Res Ipsa Recap

Res Ipsa Requirements:

1. Harm results from the kind of situation in which negligence can be inferred
2. Defendant was responsible for the instrument of harm

Differences Across Jurisdictions

Inference of negligence

or

Presumption of negligence

Why *Allow Res Ipsa Loquitur*?

1. Probabilistic rationale
2. *Asymmetry* and fairness justification

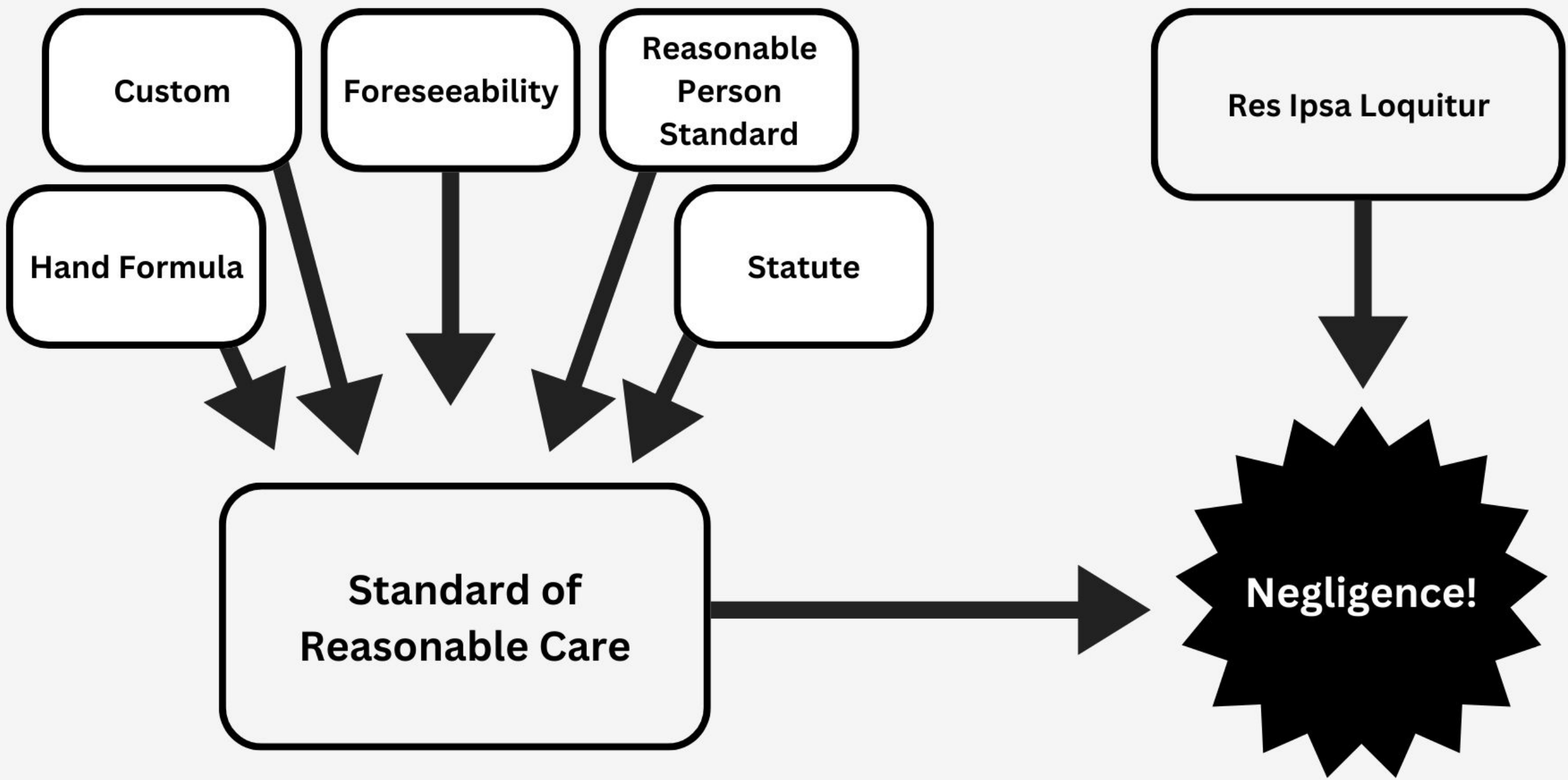
The Role of Res Ipsa

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



In-Class Exercise Wrap-Up

A dispute over the applicability of *res ipsa* is a dispute over the applicability of the two requirements:

1. Harm results from the kind of situation in which negligence can be inferred
2. Defendant was responsible for the instrument of harm

Medical Malpractice

Custom

A tension:

Doctors are held to a higher standard of care,

but

Doctors as a profession set that standard of care.

Sheeley v. Memorial Hospital

Geography

&

Experience

The ultimate question is still:

Reasonable Care