

Duty to Act

exercise reasonable care

A duty to exercise reasonable care

Elements of a Tort Claim

1. _____

2. _____

3. _____

4. _____

Elements of a Tort Claim

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

General Rule for Duty:

IF your actions create a risk of physical harm

THEN you have a duty to exercise reasonable care

General Rule for Affirmative Duty:

IF your actions do not create a risk of physical harm

THEN you have no duty to protect or to rescue

With some exceptions:

Special relationship

Undertakings

Non-negligent injury

Non-negligent creation of risk

Statutes



Utilitarian

In Between?

Libertarian

Harper v. Herman

Exceptions to No Affirmative Duty

Special relationship

Undertakings

Non-negligent injury

Non-negligent creation of risk

Statutes

Sidenote: Don't write like this

On Sunday, August 9, 1986, Jeffrey Harper (“Harper”) was one of four guests on Theodor Herman’s (“Herman”) 26-foot boat...

Because good writers don't write like that.

Call me Ishmael (“Ishmael”).

It is a truth universally acknowledged, that a single man (“man”) in possession of a good fortune (“fortune”), must be in want of a wife (“wife”).

As Gregor Samsa (“Samsa”) awoke one morning on Sunday, August 9, 1986 from uneasy dreams he found himself transformed in his bed into a gigantic insect (“cockroach”).

And why don't good writers write like that?

**Because they treat
the reader like a
big, golden baby.**



Farwell v. Keaton

Exceptions to No Affirmative Duty

Special relationship

Undertakings

Non-negligent injury

Non-negligent creation of risk

Statutes

**Randi W. v. Muroc Joint Unified
School District**

&

**Tarasoff v. Regents of the
University of California**

Rowland Factors

- foreseeability of harm
- certainty of plaintiff's injury
- connection between defendant's conduct and plaintiff's injury
- moral blame
- policy of preventing harm
- burden to defendant
- consequences to community
- availability of insurance