

Customs & Statutes

Negligence as a Cause of Action

Plaintiff must prove four elements:

1. ???????????

2. ???????????

3. ???????????

4. ???????????

Negligence as a Cause of Action

Plaintiff must prove four elements:

1. Duty

2. Breach

3. Causation

4. Harm

Proving 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.

Ways to determine reasonable care under the circumstances include:

- Foreseeability
- The Reasonable Person
- Custom
- Statute

Special Considerations

- Judge and jury relationship

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

The T.J. Hooper

“Tugboats and Radios”

Martin v. Herzog

“The Buggy Without Lights”

Legal jargon

Prima facie case of negligence

Negligence per se

Negligence per se

- Actor violates a statute that is designed to protect against this type of accident and harm

AND

- the accident victim is within the class of persons the statute is designed to protect.

Tedla v. Ellman

“Walking on the Side of the Highway”

How to use customs and statutes

Sword for proving negligence

Prove two things:

- Custom or statute = reasonable care
 - Defendant failed to comply with custom or statute
-

Shield for disproving negligence

Prove two things:

- Custom or statute = reasonable care
- Defendant complied with custom or statute

Short exercise

Write the dissent in *Tedla v. Ellman*.

Explain why *Martin v. Herzog* controls and therefore plaintiffs were negligent as a matter of law.