

# Economic Theory of Negligence

# Exercise

You are a Supreme Court Justice in the State of Loyola Supreme Court, hearing a case on appeal. Your small group represents the entire Loyola Supreme Court.

How do you rule? You are welcome to have majority opinions, concurring opinions, and dissenting opinions.

# 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.

# 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
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## Shield for disproving negligence

Prove two things:

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

# 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.

# United States v. Carroll Towing Co.

A workable formula for reasonable care?

# BPL

B = Burden of precautionary measures

P = Probability of loss/harm

L = Magnitude of loss/harm

IF  $B < PL$

AND defendant did not take on B

THEN defendant was negligent

IF  $B > PL$

AND defendant did not take on B

THEN defendant was NOT negligent

# BPL Example

Railroad company with a 50% chance of causing \$200k in damage to a farm beside the railroad tracks. ( $P * L = \$100k$ ). Solar panels are available as a possible precaution. Would reduce 100% of the harm to the plaintiff at cost of \$200k to railroad company. Railroad company takes no precautions. Was the railroad company negligent?

Possible Precautions for Defendant to Take	Cost of precautionary measure	Expected cost to plaintiff	Total cost to society
No Precaution	\$0	\$100k	\$100k
Solar Panels	\$200k	\$0	\$200k



# BPL Example

Same facts as before. But now spark arresters are also available as a possible precaution. Would reduce 50% of the harm to plaintiff at cost of \$30k to railroad company. Railroad company takes no precautions. Was the railroad company negligent?

Possible Precautions for Defendant to Take	Cost of precautionary measure	Expected cost to plaintiff	Total cost to society
No Precaution	\$0	\$100k	\$100k
Solar Panels	\$200k	\$0	\$200k
Spark Arresters	\$30k	\$50k	\$80k

# Economic Theory of Negligence

- Fault = economic inefficiency
- Embodies a trust in private ordering and economic incentives
- Driven by a goal of maximizing overall economic welfare

# Critiques of Economic Theory

- Incommensurability of harms
- Uncertainty of cost calculations

# What we've learned...

**Ways to determine reasonable care under the circumstances include:**

- Foreseeability
- The Reasonable Person
- Custom
- Statute
- Cost-Benefit Analysis (Hand Formula:  $B < P * L$ )

## **Special Considerations**

- Judge and jury relationship