

Review of Reasonable Care

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

Prima facie case of negligence

On its face, plaintiff has met the burden of proving duty, breach, causation, and harm.

Doesn't mean plaintiff wins! Just means that a jury *could* find for the plaintiff.

Negligence as a Concept

Relates to the elements of duty and breach

The “fault” principle

Defined as a failure to exercise “reasonable care”

Ways to determine reasonable care under the circumstances include:

- ??????????
- ??????????
- ??????????
- ??????????
- ??????????

Special Considerations

- ??????????

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

Foreseeability

Foreseeability is a flexible concept.

Define any event in general enough terms and it is foreseeable.

Define any event in narrow enough terms and it is unforeseeable.

Reasonable Person Standard

An objective standard designed to clarify what reasonable care requires.

Exceptions to objective standard:

- Physical disability
- Children
- Expertise

Not exceptions to objective standard

- Mental disability
- Children engaged in adult activity
- Old age & infirmity

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

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.

Economic theory of negligence

Hand Formula

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. 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?

$$B = \$200k$$

$$P = 50\%$$

$$L = \$200k$$

$$B > P * L$$

$$\$200k > (50\% * \$200k)$$

BPL Example

Same facts as before. Railroad company with a 50% chance of causing \$200k in damage to a farm beside the railroad tracks. But now spark arresters are also available as a possible precaution. Would reduce likelihood of the harm to plaintiff by 50% at cost of \$30k to railroad company. Railroad company takes no precautions. Was the railroad company negligent?

$$B = \$30k$$

$$P = 25\%$$

$$L = \$200k$$

$$B < P * L$$

$$\$30k < (25\% * \$200k)$$

BPL Example

Possible precautions	Cost for defendant	Expected cost for 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

That's all, folks!

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Special Considerations

- Judge and jury relationship

Noriega v. Loyola State Fair

Assignment: Deliver a memo detailing potential theories of negligence that could be argued in this case. For each argument, you should include:

- what constituted reasonable care under the circumstances, and why, and how the defendant failed to exercise that duty of reasonable care
- what the defense's best counterarguments would be
- in your estimation, how strong of a theory of negligence this is