

Policy Bases for No Duty

&

Duties of Landowners &

Occupiers

Some logistics

Makeup Class:

Tuesday, November 28 from 8:15am-9:30am in this classroom.

No office hours today

Additional office hours on Tuesdays:

Tuesday, November 14 from 12pm to 1pm

Tuesday, November 21 from 12pm to 1pm

Tuesday, November 28 from 12pm to 1pm

Strauss v. Belle Realty

Third Restatement

When determining that no legal duty exists for reasons of public policy, courts should use “categorical, bright-line rules of law applicable to a general class of cases.”

Two Closing Thoughts

1. Crushing liability has not aged well.
2. Policy justifications \neq individual autonomy concerns

Reynolds v. Hicks

Negligence Per Se

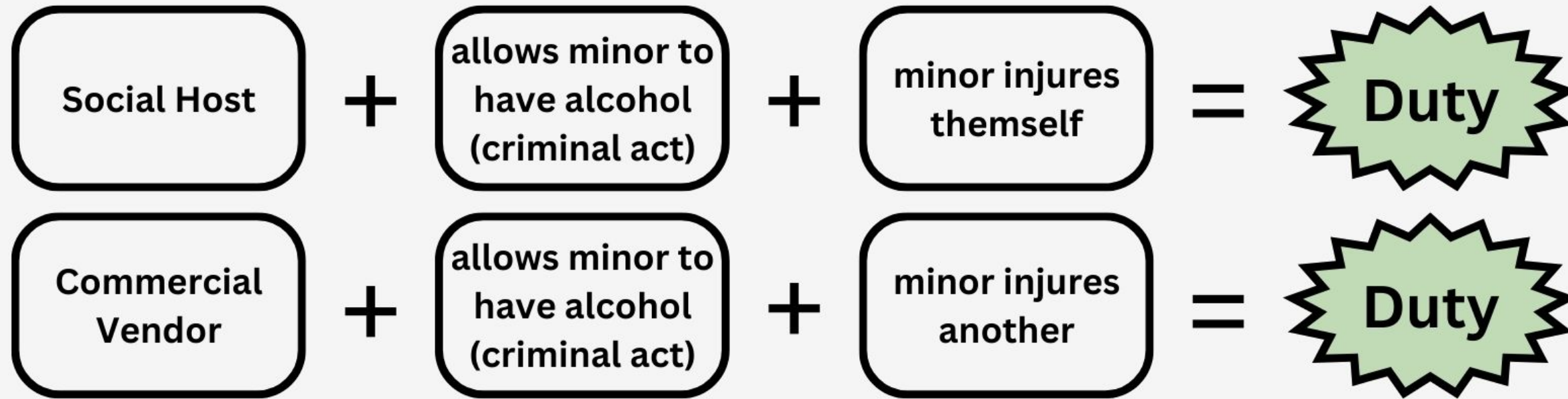
Remember *Martin v. Herzog*?

Negligence Per Se

Under RCW 66.44.270(1) it is a crime to:

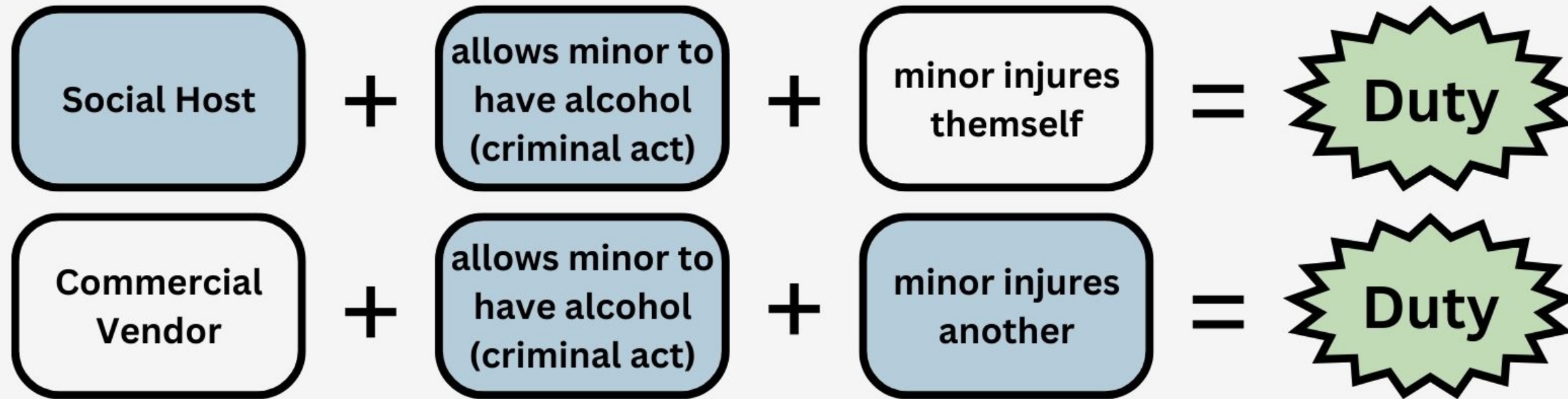
give or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.

Precedent:

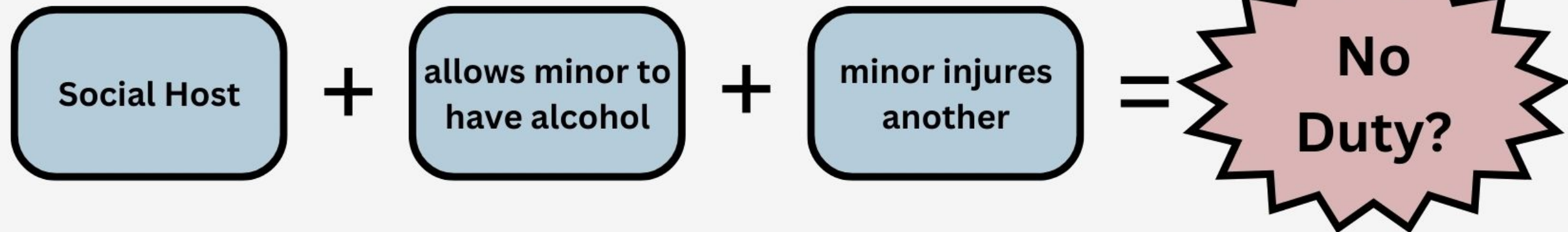


Current Case:

Precedent:



Current Case:



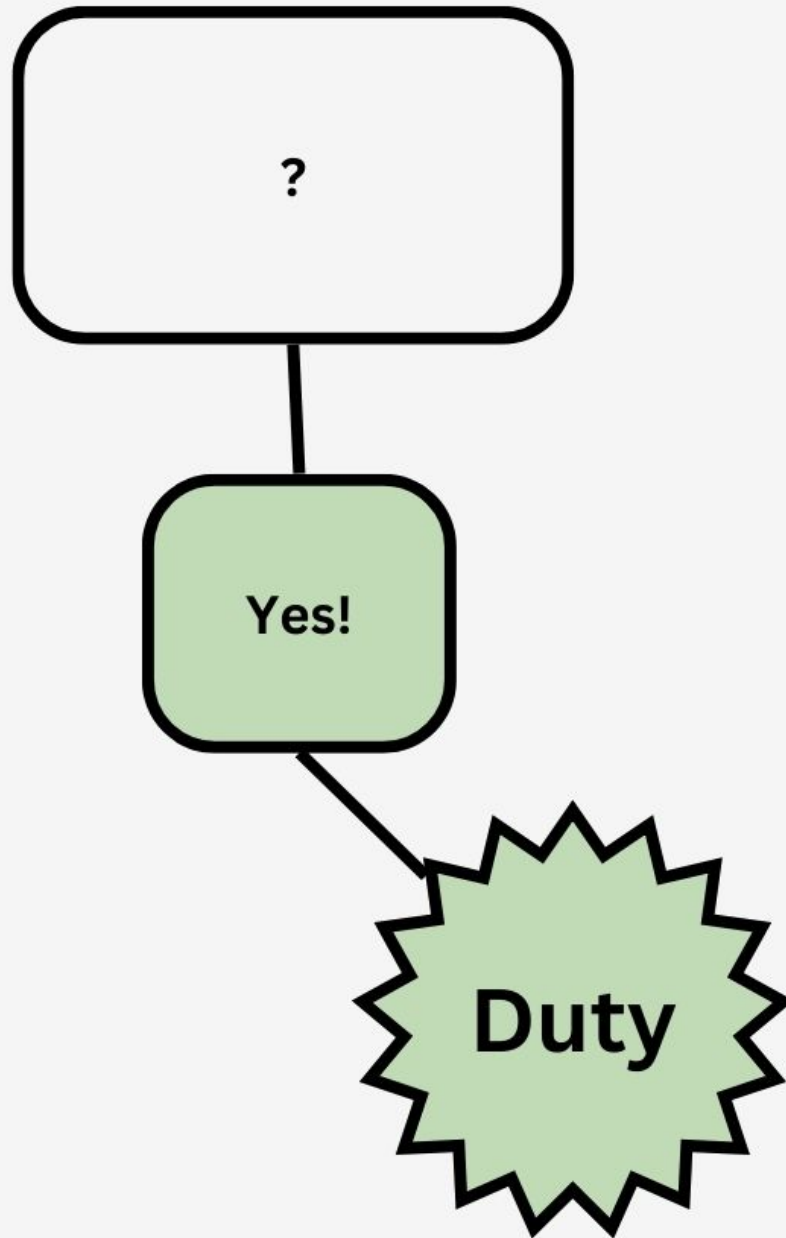
What the heck?

Two Reasons

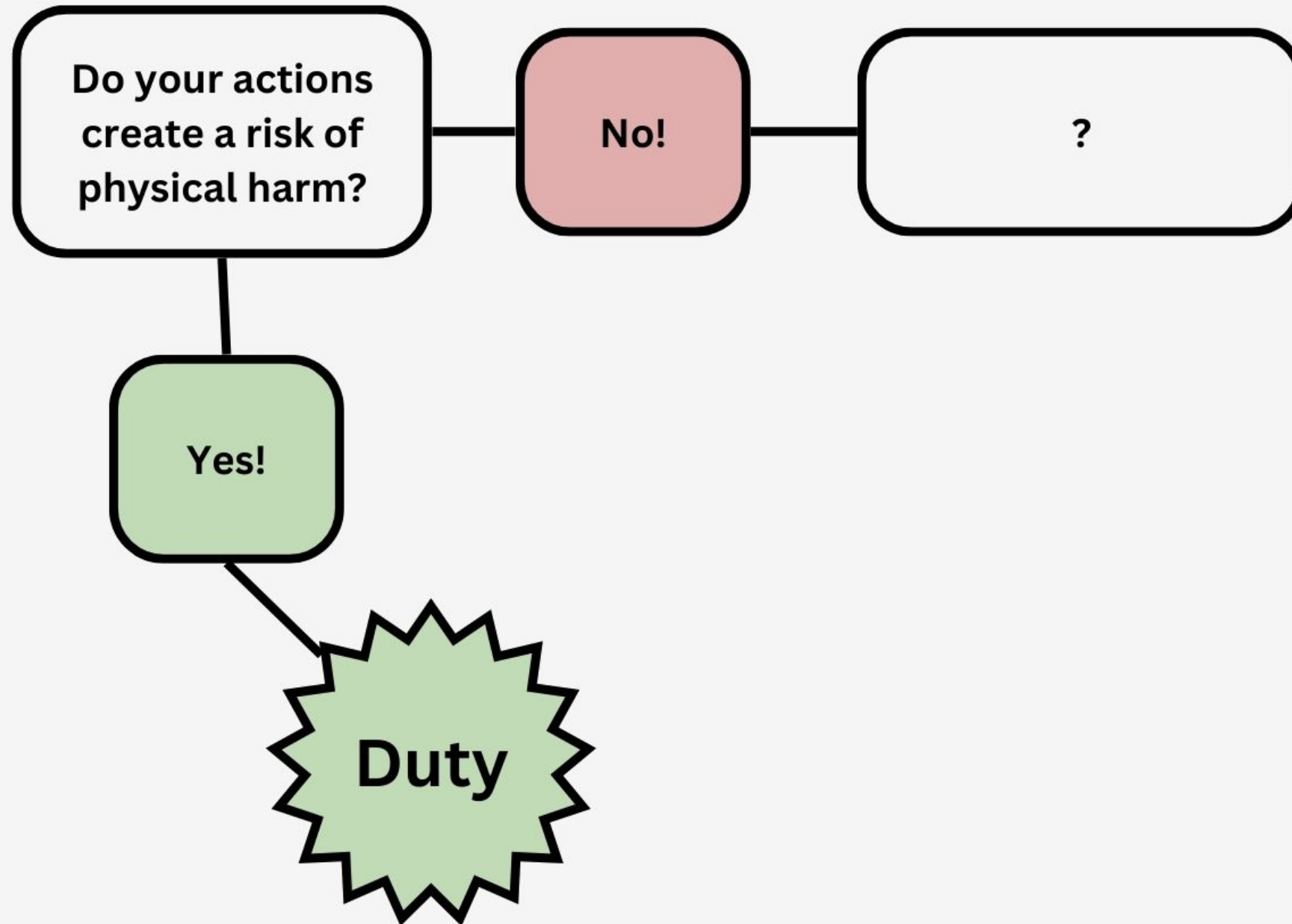
1. Legal

2. Policy

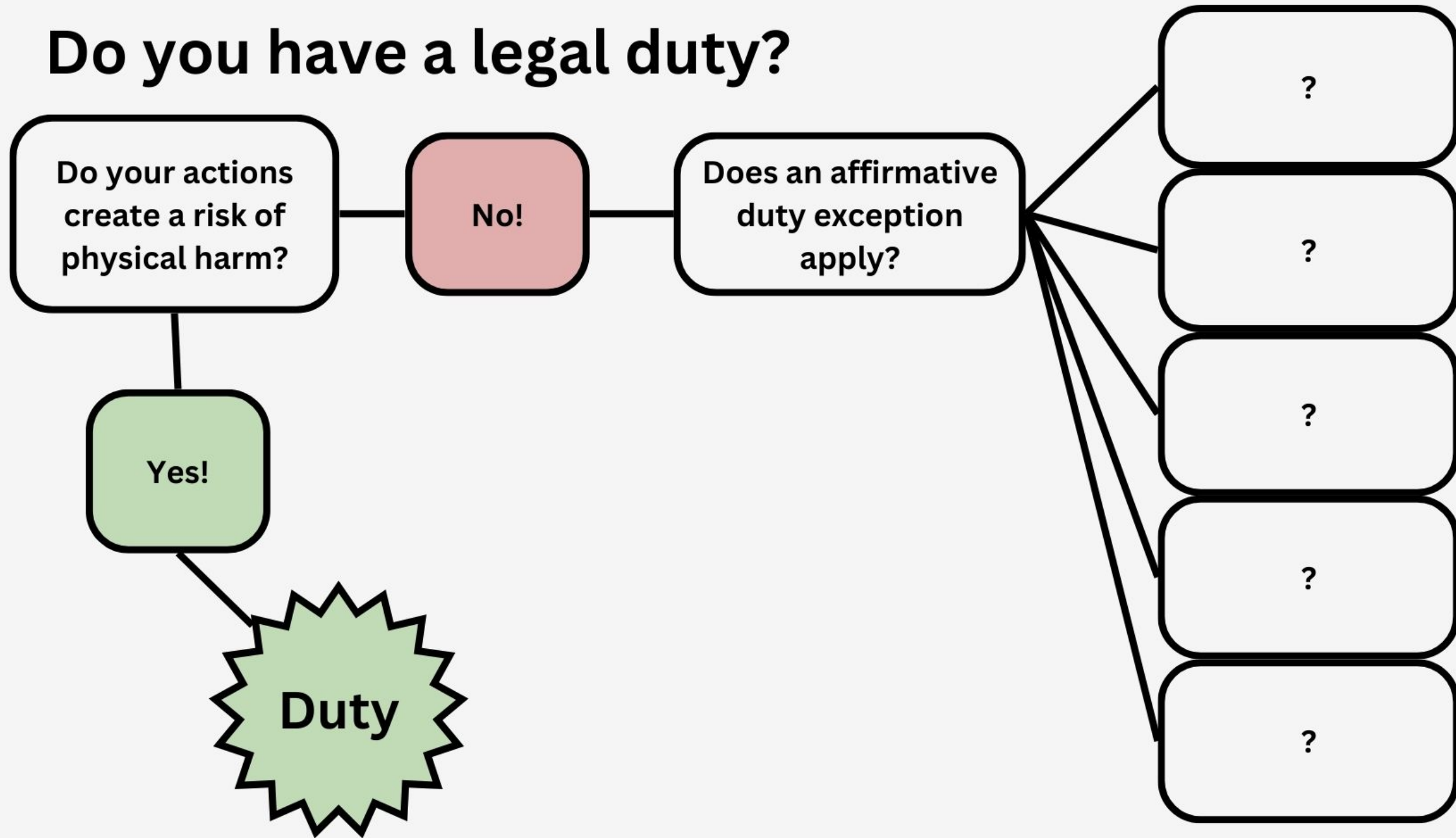
Do you have a legal duty?



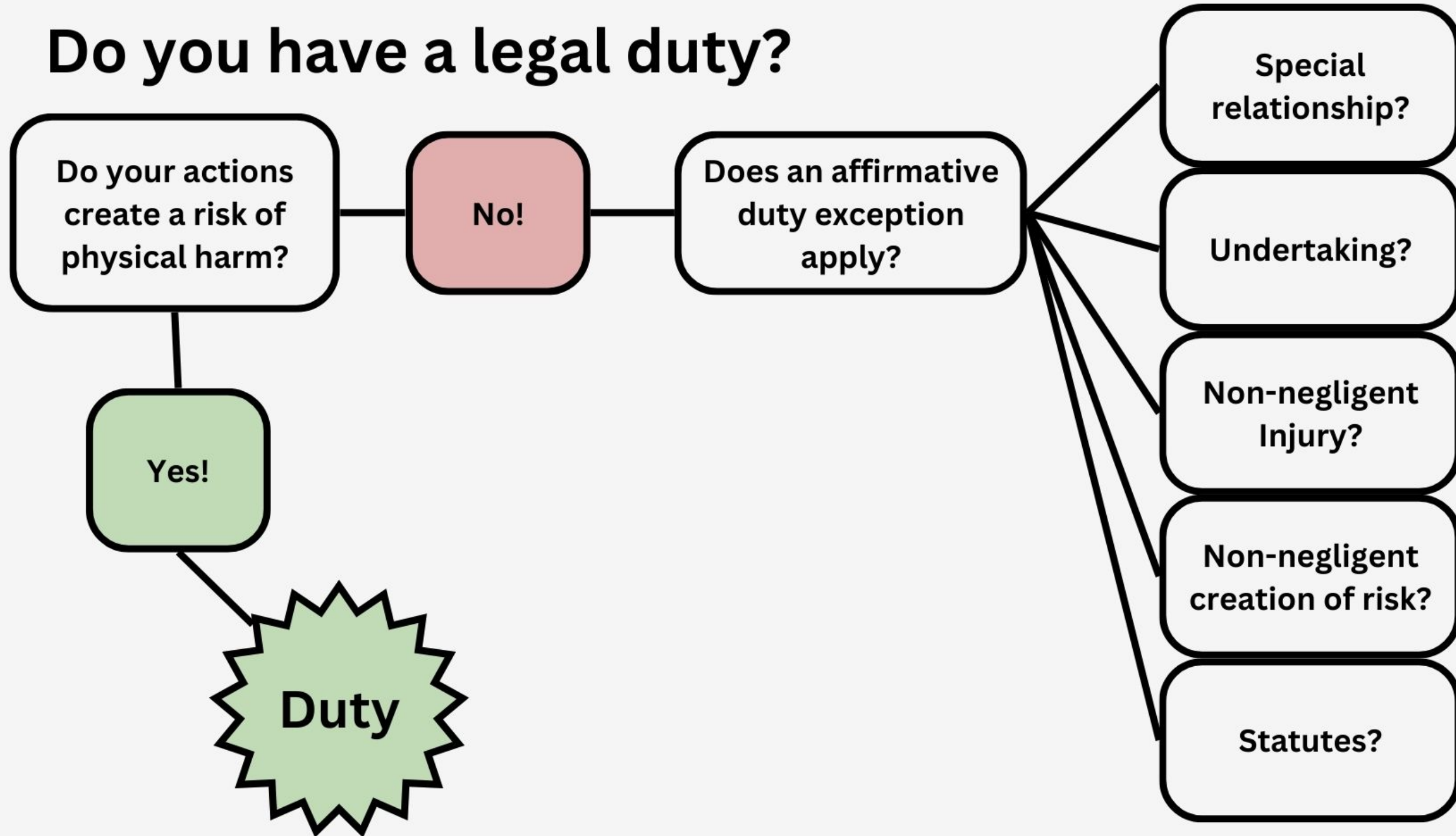
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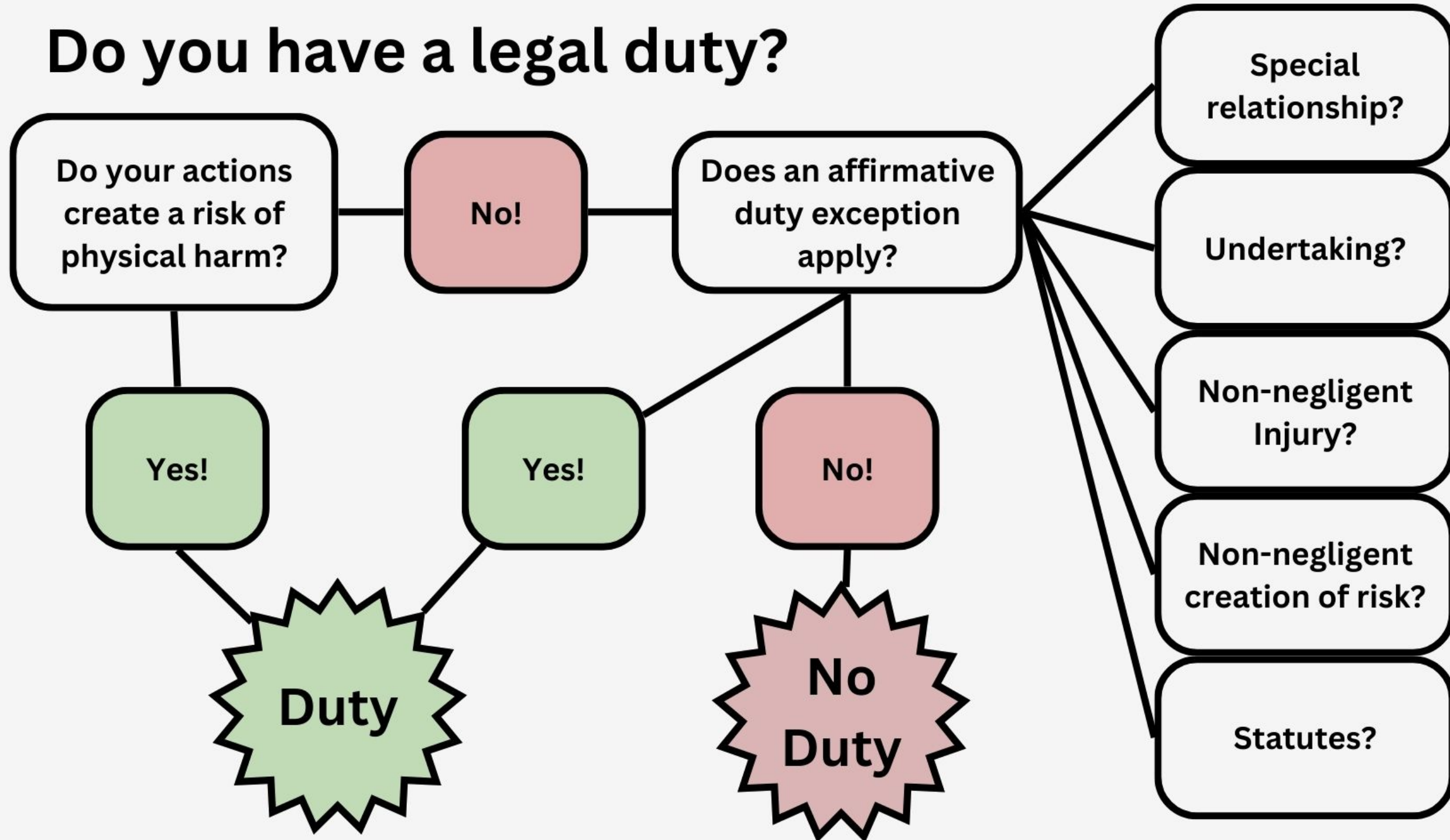
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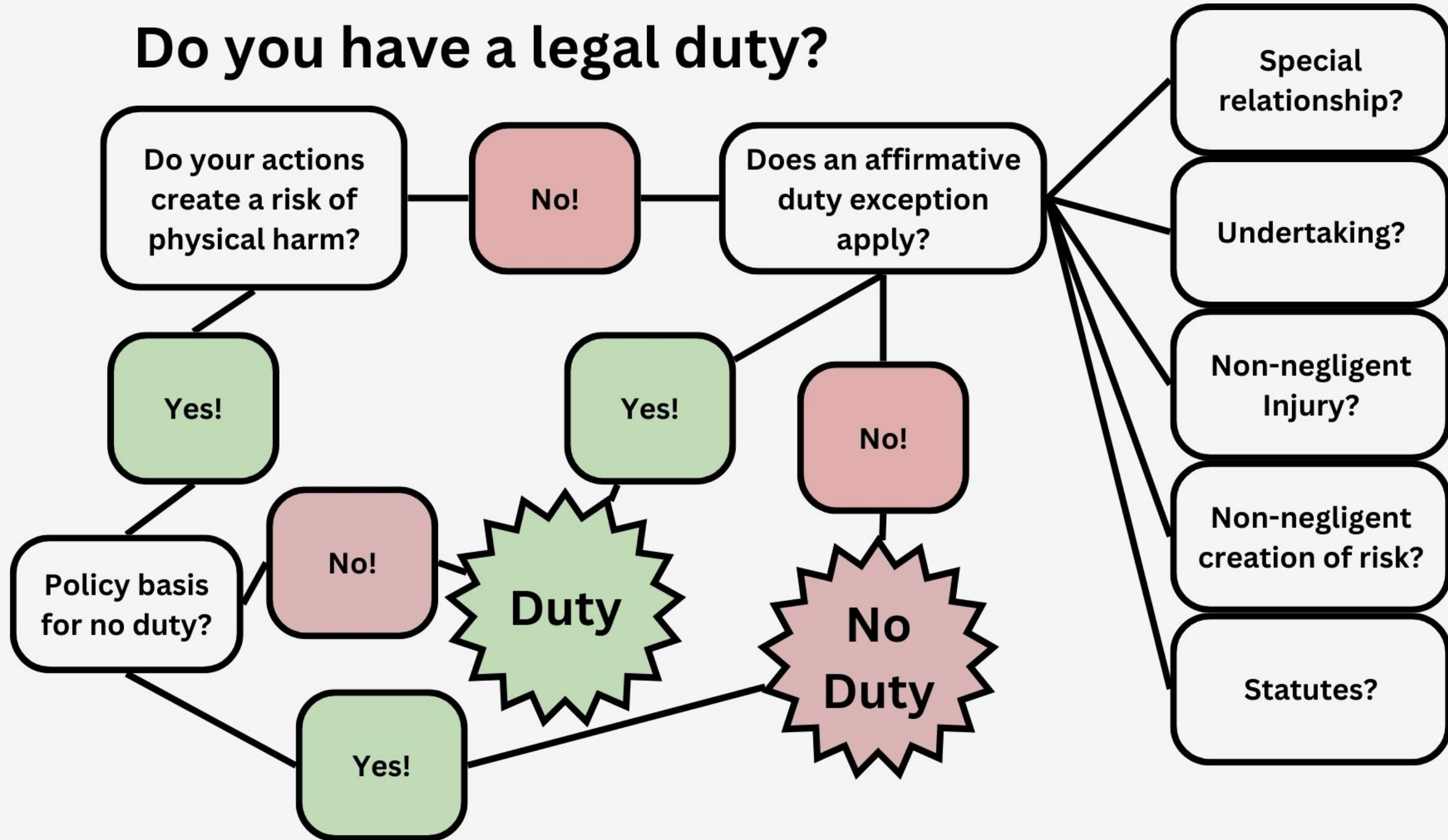
Do you have a legal duty?



Do you have a legal duty?



Do you have a legal duty?





Landowners & Occupiers

Carter v. Kinney

Traditional View

Type of Visitor

Definition

???

???

???

???

???

???

Traditional View

Type of Visitor

Definition

Trespasser

???

Licensee

???

Invitee

???

Traditional View

Type of Visitor

Definition

Trespasser

Intruder

Licensee

Social guest

Invitee

Business guest or general public
(if land opened to public)

Duties Owed — Traditional View

Trespasser

- duty not to intentionally or wantonly cause injury
- *no duty* of reasonable care (with handful of exceptions)

Licensee

- *no duty* to inspect or discover dangerous conditions
- duty to warn or make known conditions safe

Invitee

- duty to inspect and discover dangerous conditions
- duty to warn or make conditions safe

Heins v. Webster County

Modern View

Type of Visitor

Definition

???

???

???

???

Modern View

Type of Visitor

Definition

Trespasser

Intruder

Everybody else

Not a trespasser

Duties Owed — Modern View

Trespasser¹

- duty not to intentionally or wantonly cause injury
- *no duty* of reasonable care (with handful of exceptions)

Everybody Else

- duty of reasonable care

¹ Or in California and the Third Restatement, a “flagrant” trespasser rather than just a plain old trespasser

Traditional View

vs.

Modern View

Two exercises for Tuesday

Both on Scratchpad on course website

Both really fun puzzles