


GEORGIA STATE UNIVERSITY **LAW**

Negligence: The Standard of Care



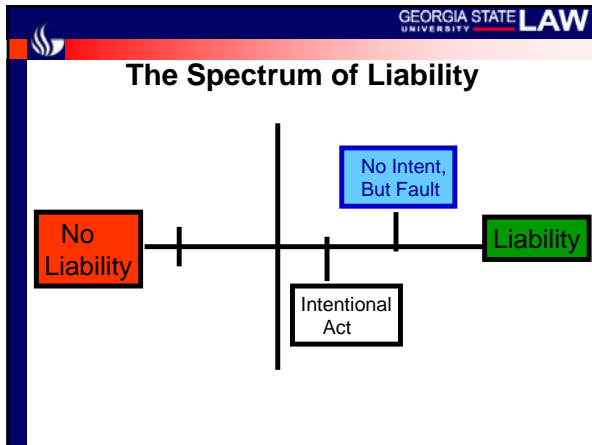
Torts I
Professor Hensel
9/22/09

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Barbie & Ken Hypo



1. Ken v. Clerk #1: Assault
2. Clerk #1 v. Barbie: Battery / FI / Assault
3. Clerk #1 v. Barbie: Assault
4. Barbie v. Clerk: Battery
5. Ken & Barbie v. Clerk #2: TC
6. Clerk #2 v. Ken & Barbie: Battery

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Negligence



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NEGLIGENCE

“Conduct that falls below the standard of care established by law for the protection of others against the unreasonable risk of harm”


Elements:

1. Duty
2. Breach of Duty
3. Causation
4. Damage

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A Negligence Formula


Lubitz v. Wells



- * Definition of Negligence
- * Standards vs. Rules
- * The Sliding Scale of Liability

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A Negligence Formula



Blyth v. Birmingham Waterworks, Co.


- * Definition of Negligence
- * Role of Probability in Evaluating Negligence

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A Negligence Formula

Gulf Refining Co. v. Williams

- * When Probability = Liability
- * Factors Considered




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A Negligence Formula


Chicago, B. & Q.R. Co. v. Kravenbuhl

- * Desirability of "Absolute Safety"
- * Balancing Potential Harms vs. Benefits
- * Factors Weighed in the Balance




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**Negligence:
"Reasonable" Behavior**



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Professor Hensel
9/24/09

Negligence Formula



Davison v. Snohomish County

- * Conflicting Value Judgments
- * Evolving Variables
- * The Cost/Benefits of Flexible Standards

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A Negligence Formula



United States v. Carroll Towing

- * The Hand Formula



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Hand's Negligence Formula

Negligence will be found where:

$$B < PL$$

B = burden of taking precautions
 P = probability of injury/harm
 L = magnitude of injury

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A Negligence Formula 

United States v. Carroll Towing

- * The Hand Formula
- * The “Burden” of Taking Precautions
- * Estimating the Variables

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Law & Economics Movement

Richard Posner

Cost of Accident x probability it will occur (PL) = “measure of the economic benefit to be anticipated From incurring costs necessary to prevent the accident”

If costs of safety/curtailment are greater than the benefits of accident avoidance (B > PL), **society is better off, in economic terms, to forgo accident prevention.** Imposing liability will not change behavior.

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Restatement

An act is not reasonable where

Risk > Utility of Act / Manner Accomplished

Magnitude of Risk: social value of imperiled acts; probability; extent of harm; # people at risk

Utility: social value of interest advanced or protected; chance that interest will be advanced, extent that interest can be advanced by less dangerous conduct.

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The “Reasonable Person” Standard

Vaughn v. Menlove

- * Subjective vs. Objective Standards
- * The Identity of the “Reasonable Man”
- * Level of Caution Required
- * Policy Implications



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Implied Knowledge 

Delair v. McAdoo

- * The Significance of Actual Knowledge in Determining “Reasonable” Behavior
- * Policy Rationales for Imputing Knowledge
- * The Significance of Time and Place