

GEORGIA STATE UNIVERSITY LAW

Negligence: The Standard of Care



Torts I
Professor Hensel
9/29/09

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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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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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Custom / Industry Practice




Trimarco v. Klein

- * Relationship Between Custom & "Reasonable" Behavior
- * Effect of Established Custom
- * Custom in Violation of a Statute

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Emergency


Cordas v. Peerless Transp. Co.



- * Elements Needed to Invoke Emergency Doctrine
- * Effect of Emergency on Standard of Care
- * "Foreseeable" Emergencies

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Physical Disability



Roberts v. State of Louisiana

- * Standard of Care for People with Physical Disabilities
- * Policy Rationales
- * Relaxed vs. Heightened Std. of Care
- * The Effect of Intoxication

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Children

Robinson v. Lindsay

- * Factors Considered in Std. of Care
- * Policy Rationales
- * "Adult" or "Dangerous" Activities
- * Application to the Elderly




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Mental Disability

Breunig v. American Family Ins. Co.

- * Effect of Mental Illness on the Std. of Care
- * Limited Exceptions
- * Policy Concerns
- * Plaintiff's Conduct v. Defendant's Conduct



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Negligence Inquiry... so far.....



1. What duty is owed to the plaintiff?

Emergency?.....RP acting in an emergency

Physical Disability?...RP with disability

Child?
Adult Activity.....RP
 ...R child of like age, intell. & exp.

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Negligence Inquiry... so far.....

2. Has the defendant breached that duty??

B < PL
Custom

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Professionals

Heath v. Swift Wings, Inc.


- * Standard of Care Applied to Professionals
- * Subjective vs. Objective Standards
- * Tort vs. Contractual Causes of Action



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Attorneys

Hodges v. Carter




- * Potential Areas of Malpractice Liability
- * Proving Causation
- * Free Advice or Representation

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Evidence of Malpractice

Boyce v. Brown

- * The Effect of Custom in Malpractice Cases
- * Policy Rationales
- * Testimony Required in Malpractice Cases
- * Specialists




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Geographic Relevance


Morrison v. MacNamara

- * Defining the Relevant "Community" Standards
 - * "Same" Community
 - * "Similar" Community
 - * National
- * Policy Concerns



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Negligence Inquiry... so far.....



1. What duty is owed to the plaintiff?

Professional?
...to use the skills, knowledge & training of an ordinary professional in good standing in the relevant community
2. Has the defendant breached that duty?

Violate prof. custom = automatic breach