

# Customs & Statutes

# Negligence as a Cause of Action

Plaintiff must prove four elements:

1. Duty
2. Breach
3. Causation
4. Harm

# Proving Negligence

To establish that the defendant's 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.

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

- Foreseeability
- The Reasonable Person
- Custom
- Statute

## Special Considerations

- Judge and jury relationship

# Judges & Juries

## Rules vs. Standards

Rules are rigid, bright-line tests that are easily applied to facts

Standards offer guidance for decisions but allow discretion

# Tradeoffs

## Rules

Promote predictability, certainty, consistency

Helpful for guiding future behavior

## Standards

Promote fairness, flexibility, sensitivity to circumstances

Helpful for individualized judging of past behavior

# The T.J. Hooper

“Tugboats and Radios”

# Martin v. Herzog

“The Buggy Without Lights”



# Legal jargon

Prima facie case of negligence

Negligence per se

# 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.

# Tedla v. Ellman

“Walking on the Side of the Highway”

# 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

# Outlining example

Under the topic of using statutes to establish reasonable care:

- Did the defendant violate a statute?
- Was statute intended to prevent this kind of harm?
- To this class of people?
- BUT consider:
  - Absurd results?
  - Really about safety?
  - Exceptions or unusual circumstances?

# Short exercise

Write the dissent in *Tedla v. Ellman*.

Explain why *Martin v. Herzog* controls and therefore plaintiffs were negligent as a matter of law.