

# Economic Theory of Negligence

# Exercise

You are a Supreme Court Justice in the State of Loyola Supreme Court, hearing a case on appeal. Your small group represents the entire Loyola Supreme Court.

How do you rule? You are welcome to have majority opinions, concurring opinions, and dissenting opinions.

# United States v. Carroll Towing Co.

A workable formula for reasonable care?

# BPL

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

Robot food delivery company with a 50% chance of causing \$200k in damage to a pedestrian each year. ( $P * L = \$100k$ ). Reducing robots speed is available as a possible precaution. Would reduce 100% of the harm to the pedestrian at cost of \$200k to the company. The company does not reduce the speed of its robots. Was the company negligent?

Defendant's Precaution	Cost of Precaution	Expected Cost to Plaintiff	Total Cost to Society
No Precaution	\$0	\$100k	\$100k
Reduced speed	\$200k	\$0	\$200k

# BPL Example

Same facts as before. But now additional sensors for the robot is available as a possible precaution. Would reduce 50% of the harm to plaintiff at cost of \$30k to the company. The company takes no precautions. Was the company negligent?

Defendant's Precaution	Cost of Precaution	Expected Cost to Plaintiff	Total Cost to Society
No Precaution	\$0	\$100k	\$100k
Reduced speed	\$200k	\$0	\$200k
Added sensors	\$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

# 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
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## 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

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AND defendant did not take on B

THEN defendant was NOT negligent

# 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