

# Duty to Act

exercise reasonable care

*A duty to exercise reasonable care*

# Elements of a Tort Claim

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

# Elements of a Tort Claim

1. Duty

2. Breach

3. Causation

4. Harm

# General Rule for Duty:

IF your actions create a risk of physical harm

THEN you have a duty to exercise reasonable care

# General Rule for Affirmative Duty:

IF your actions do not create a risk of physical harm

THEN you have no duty to protect or to rescue

With some exceptions:

Special relationship

Undertakings

Non-negligent injury

Non-negligent creation of risk

Statutes



# Harper v. Herman

# Exceptions to No Affirmative Duty

Special relationship

Undertakings

Non-negligent injury

Non-negligent creation of risk

Statutes

# Sidenote: Don't write like this

On Sunday, August 9, 1986, Jeffrey Harper (“Harper”) was one of four guests on Theodor Herman’s (“Herman”) 26-foot boat...

# Because good writers don't write like that.

Call me Ishmael (“Ishmael”).

It is a truth universally acknowledged, that a single man (“man”) in possession of a good fortune (“fortune”), must be in want of a wife (“wife”).

As Gregor Samsa (“Samsa”) awoke one morning on Sunday, August 9, 1986 from uneasy dreams he found himself transformed in his bed into a gigantic insect (“cockroach”).

## And why don't good writers write like that?

Because they treat  
the reader like a  
big, golden baby.



# Farwell v. Keaton

# Exceptions to No Affirmative Duty

Special relationship

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Non-negligent creation of risk

Statutes

Randi W. v. Muroc Joint Unified  
School District

&

Tarasoff v. Regents of the  
University of California

# Rowland Factors

- foreseeability of harm
- certainty of plaintiff's injury
- connection between defendant's conduct and plaintiff's injury
- moral blame
- policy of preventing harm
- burden to defendant
- consequences to community
- availability of insurance