

# Negligence

# 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

# Negligence as a Concept

Relates to the elements of duty and breach

The “fault” principle

Defined as a failure to exercise “reasonable care”

# Exercise: Opposite holdings

Develop arguments for the opposite holdings from the holdings you just read in *Adams v. Bullock* and *Braun v. Buffalo*.

For *Adams*, develop the strongest argument that the jury verdict should be upheld because the defendant did not exercise reasonable care.

For *Braun*, develop the strongest argument that the defendant was not negligent as a matter of law because the defendant did exercise reasonable care.

# How do we understand risk?

1. Magnitude of harm
2. Likelihood of harm
3. Cost of precautions

# The Reasonable Person Standard

An objective standard\* designed to clarify what reasonable care requires

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\*with some exceptions

# Justifications for an objective standard

1. Administrative feasibility
2. Consistent enforcement of community norms
3. Equality & fairness



# Exceptions to objective standard

1. Physical disability
2. Children
3. Expertise

# Not exceptions to objective standard

1. Mental disability
2. Children engaged in adult activity
3. Old age & infirmity

# Bethel v. New York City Transit Authority

The standard of *the highest degree of care*

versus

the standard of *reasonable care*

# Readings

Sex and Gender: The Reasonable Woman?

The Right to Live in the World: The Disabled in the Law of Torts