

An adult gave a pack of cigarettes to a minor whom the adult incorrectly believed to be an adult. The minor took the cigarettes to a nearby property where he climbed on top of a stack of fence posts, lit a cigarette, and began smoking it. Shortly thereafter, the minor unintentionally dropped the lit cigarette into the stack of fence posts. The minor tried to retrieve the cigarette so that he could extinguish it, but he was unable to do so. Then the minor wandered away. The lit cigarette subsequently set fire to the fence posts, resulting in the destruction of the posts as well as an adjacent garage and its contents.

The jurisdiction has a strict liability statute that makes it a misdemeanor to provide a minor with cigarettes. Violation of the statute is punishable by a \$200 fine.

The owner of the destroyed property initiated a negligence lawsuit against the adult.

Which of the following is the adult's WEAKEST defense to this action?

- A. The adult did not know that the minor was underage when he gave the cigarettes to him.
- B. The destruction of the property is not a type of harm against which the statute was intended to protect.
- C. The destruction of the property was not proximately caused by the adult's violation of the statute.
- D. The property owner is not in the class of people intended to be protected by the statute.

Explanation:

Negligence requires proof of the following elements: duty, breach, causation, and damages. **Duty and breach** are **presumed** under the **doctrine of negligence per se** when the following facts are proved:

The defendant **violated a statute or ordinance**.

The plaintiff suffered a **type of harm** that the statute or ordinance was **intended to protect against**.

The plaintiff was in the **class of persons intended to be protected** by the statute or ordinance.

Here, the jurisdiction's statute makes it a strict liability offense to provide a minor with cigarettes. This means that liability can be imposed without proof of **fault**. Therefore, the fact that the adult did not know that the minor was underage when he gave the cigarettes to him is no defense to the adult's violation of the statute—or to this negligence per se action.

However, the adult may be able to successfully defend this action on one or more of the following grounds:

The harm that the statute was intended to protect against is harm to minors from smoking—not property destruction caused by cigarettes **(Choice B)**.

The class of persons that the statute was intended to protect is minors—not property owners who suffer property destruction caused by cigarettes **(Choice D)**.

While the adult's violation of the statute was the actual ("but-for") cause of the property destruction, this violation was not a proximate (legal) cause of the property destruction since this type of harm was not a risk that made the adult's conduct tortious **(Choice C)**.

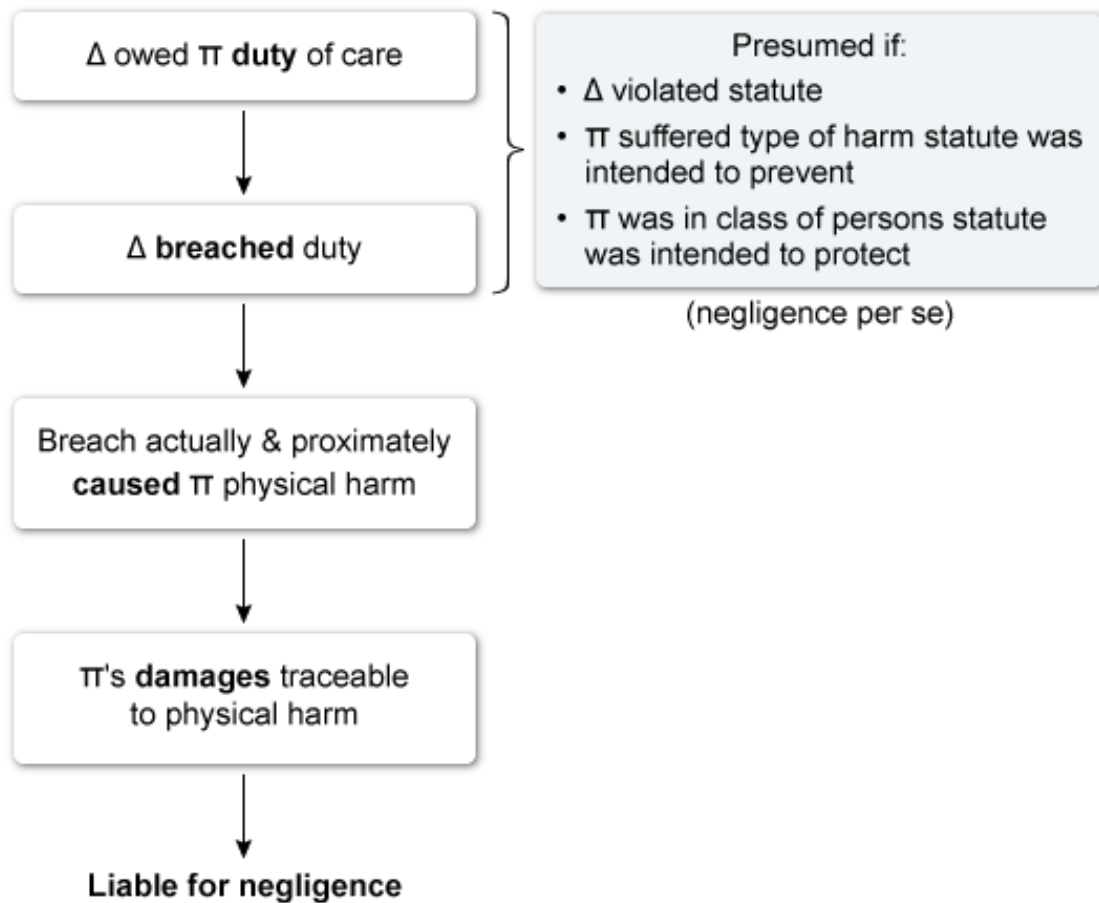
Educational objective:

Duty and breach are presumed under the doctrine of negligence per se when (1) the defendant violated a statute or ordinance, (2) the plaintiff suffered a type of harm that the statute or ordinance was intended to protect against, and (3) the plaintiff was in the class of persons intended to be protected by the statute or ordinance.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 14 (Am. Law Inst. 2010) (negligence per se).

Negligence liability



Δ = defendant; Π = plaintiff.