NEGLIGENCE

Ch 5: Duty

Fault Basis of Liability

1. An element of Negligence (the tort) is negligence
	1. Under Negligence, you’re only responsible when you impose an unacceptable degree of risk on other people
	2. General formula for Negligence, plaintiff must prove the following:
		1. The D owed the P a legal duty
		2. The D, by behaving negligently, breached that duty
		3. The P suffered actual damages
		4. The D’s negligence was an actual cause of this damage
		5. The D’s negligence was a ‘proximate cause’ of this damage
	3. P required to sustain the burden of proving each of the above 5 elements; if P fails to meet the burden of proving any one of the elements, he can’t recover
	4. The duty owed by all people generally – the standard of care they owe – is to exercise the care that would be exercised by a reasonable and prudent person under the same or similar circumstances to avoid risk or minimize harm to others.
	5. 5 Elements of Negligence
		1. Duty🡪D owes P a duty and it is \_\_\_\_?\_\_\_\_
		2. Breach of the Duty🡪i.e. failure to take adequate precautions, carelessness or negligence
		3. Factual Causation
		4. Legal Causation – Scope of Responsibility (late babysitter and child burned example)
		5. Damages🡪Must be some kind of actual injury
	6. The policy limit under liability insurance is likely going to be too low for serious injuries
	7. The uniform standard of reasonable care allocates more power to the jury to decide whether it was met or not; means similar cases could come out differently
2. FROM CLASS
	1. Negligence- Conduct that creates an unreasonable risk of harm
	2. Reasonably prudent person under similar circumstances
	3. Contrast Negligence versus Intentional Torts
		1. Intentional -> INTENT
		2. Negligent -> Not intentional, driven by conduct
3. Institutions and Elements of Negligence
	1. Some Institutions
	2. Legal Elements
4. FROM CLASS:
	* 1. Elements of Negligence
			1. Duty
			2. Breach of Duty
			3. Actual Damage
			4. Cause of Damage
			5. Proximate Cause of Damage
5. General Duty of Care: Prudent Person Standard
	1. FROM CLASS
		1. **General Duty of Care**
			1. Reasonable Person
			2. Under the circumstances
			3. Single OBJECTIVE STANDARD. The flexible and subjective side is the circumstance.
		2. Negligence
			1. General Standard of Care varies by the circumstances
			2. 1 yard stick measures different circumstances
		3. Characteristics of a Reasonable Person
			1. Physical Traits
			2. Average Mental Abilities
			3. Same knowledge as average member of the community
	2. **CASE: Stewart v. Motts**
		1. ***Purpose: Illustrate prudent person doctrine.***
		2. FACTS: gasoline poured in carburetor by plaintiff. Defendant started car.
		3. ISSUE: Does there exist a higher standard of “extraordinary care” for the use of dangerous instrumentalities over and above the usual standard of “reasonable care” to be applied in negligence actions?
		4. RULE: The standard of reasonable care applies to all negligence actions, i.e., the reasonable person must exercise care in proportion to the danger involved in his act, and that he or she must exercise such care not only for his own safety and the protection of his property but also to avoid serious injury to others.
	3. **CASE: Posas v. Horton**
		1. ***Purpose: illustrate the sudden emergency doctrine***
		2. FACTS: lady driving car, baby stroller, stopped suddenly. Was rear-ended by Horton.
		3. ISSUE: Does the emergency peril issue arise when one’s own negligence has created peril?
		4. RULE: the doctrine provides that a person confronted with a “sudden emergency” which he didn’t cause and who acts with his best judgment is not guilty of negligence, even if his decision wasn’t the best one, provided he acted like a reasonably prudent person would act when confronted with the same situation.
	4. **CASE: Shepard v. Gardner Wholesale**
		1. ***Purpose: illustrate duty of care for a physically impaired person***
		2. FACTS: visually impaired woman tripped on sidewalk in front of merchant’s store
		3. ISSUE: Is there a different standard of care for a person with a physical disability?
		4. RULE: The conduct of an actor with a physical disability is negligent if it does not conform to that of a reasonably careful person with the same disability.
		5. Conclusion: Yes – the physical impairment influences the duty of care.
	5. Physical Impairments
		1. Physical blindness – same standard for any other blind person.
		2. Effect they have on Defendant
		3. Old Age
		4. Exceptional Ability
		5. Intoxication – Reasonable person under the circumstances, not drunk conduct
		6. Sudden Incapacitation – courts have ruled where there is negligence due to incapacitation that is not foreseeable there should be no liability
	6. FROM CLASS
		1. Standard for Person with Physical Disability
			1. Reasonable person with such a physical disability in same or similar circumstances
		2. Standard for Person with Mental Disability
			1. Reasonable person in same or similar circumstances
	7. **CASE: Creasy v. Rusk**
		1. ***Purpose: illustrate mental impairment and negligence***
		2. FACTS: Rusk confined to a hospital for care, kicked nurse.
		3. RULE: In general, the standard of care for adults with mental disabilities is the same standard of reasonable care that governs adults without mental disabilities, with no allowance for their capacity to control or understand the consequences of their actions.
	8. Public Policy Reasons for holding mentally ill person to same standard
		1. Allocate losses between two parties to the party who caused the loss
		2. Provides incentives to those responsible for those with disabilities
		3. Removes inducements to fake disabilities
		4. Avoids issues of courts assessing disabilities
		5. Forces persons with disabilities to pay for the damages they do if they are to “live in this world”
	9. Mentally Ill issues
		1. Defense vs. Standard of Care
		2. Mental and Psychological limitations
		3. Contributory Negligence – Common law banned plaintiff’s recovery. Today his recovery is reduced.
	10. FROM CLASS
		1. Reasonable Person
			1. Would use added experience, skill
			2. Standard includes the physical attributes (disabilities) of D
			3. Standard includes the circumstances of the accident
		2. Comments..
			1. Would use any extra physical capacity if they have it
			2. The standard only has same physical traits, average mental ability, same knowledge.
	11. **CASE: Hill v. Sparks**
		1. ***Purpose: illustrate expertise should have a higher duty of care***
		2. Facts: earth mover, runs over sister
		3. RULE: If actor has more qualities he is required to exercise superior qualities that he has in a manner reasonable under the circumstances.
	12. **CASE: Robinson v. Lindsay**
		1. ***Purpose: child negligence***
		2. ISSUE: Whether a minor operating a snowmobile should be held to the same standard of an adult
		3. INSTANT FACTS Anderson, age thirteen, had an accident while driving a snowmobile which caused Robinson (P) to lose the full use of her thumb.
		4. BLACK LETTER RULE When a child engages in an inherently dangerous activity, or an activity which is normally one for adults only, courts will hold the child to an adult standard of care.
	13. **Child Negligence**
		1. General Rule – child accused of negligence is held to the standard of a child the same age, experiences, intelligence (AEI -> Age, Experience, IQ)
		2. Adult Standard – when doing adult activities, the child is held to the standard of an adult (operating motor vehicles)
			1. FROM CLASS
				1. Adult Activity
				2. Or, Inherently dangerous activity
			2. Firearms – courts have been reluctant to hold a child to an adult standard
			3. Motor vehicles – adult standard
		3. Rule of Sevens
			1. Over 14 negligence
			2. 7-14 – Presumed incapable
			3. Under 7 – matter of law incapable
			4. Some states hold the very young cannot be liable for negligence
6. Specification of Particular Standards or Duties
	1. **CASE: Marshall v. Southern Railway**
		1. ***Purpose: Illustrates plaintiff’s contributory negligence***
		2. COURTS: Motion for non-suit held
		3. ISSUE: does the operator of a vehicle have the right to sue for his negligence?
		4. RULE: It is incumbent upon the operator of a vehicle to keep a reasonable lookout for other vehicles.
	2. **CASE: Chaffin v. Brame**
		1. ***Purpose: Contributory negligence***
		2. COURTS: Jury returned for the plaintiff
		3. Facts: Car driven at night runs into an unlit truck
		4. ISSUE: Is the plaintiff guilty of contributory negligence?
		5. RULE: Once the reasonable person standard is affirmed then the plaintiff’s role can be determined.
	3. **CASE: Martin v. Hertzog**
		1. ***Purpose: illustrate negligence per se***
		2. Facts: Vehicle runs into unlit buggy
		3. ISSUE: Was the plaintiff guilty of negligence, contributory negligence, or culpable?
		4. RULE: An act is negligent if it violates a rule or statute – “negligence per se”
	4. Negligence per se
		1. The violation of the statute – even through the statute does not say this – actually determines the actor’s negligence.
		2. The statute supplants the usual common law standard of care, and violation of the statute establishes breach.
	5. FROM CLASS:
		1. Negligence per se – when applied it supplants the common law and establishes the breach
		2. DUTY
			1. Common Law -> Reasonable Person Standard
			2. Negligence per se -> Statute
		3. Violation of Criminal Statute (or administrative code, etc)
			1. Statute protects plaintiff’s class
			2. Statute prevents plaintiff’s type of injury
	6. **CASE: O’Guin v Bingham County**
		1. ***Purpose: negligence per se***
		2. Facts: two boys killed in a landfill, is it negligence per se
		3. Rule: Negligence per se through the violation of statute is to conclusively establish the first two elements of a cause of action
			1. Takes away: “The defendant owed the plaintiff a legal duty”
			2. Takes away: “Defendants breach of that duty”
		4. Must meet these elements:
			1. Statute must define the required standards of conduct
			2. Statute must intent to prevent the type of harm the defendant’s act or omission caused
			3. Plaintiff must be a member of the class of persons the statute or regulation is designed to protect
			4. The violation must have been the proximate cause of the injury
	7. Negligence per se
		1. Arises from a tortfeasor failure to exercise due care in violation of a statute designed to protect a class of persons, of which the injured person is a member, from the type of injury sustained.
	8. **CASE: Impson v Structural Metals**
		1. ***Purpose: illustrates excuse or justification to negligence***
		2. FACTS: Defendant tried to pass a car at an intersection in violation of law but gave reasons
		3. ISSUE: What excuses or justifications are legally acceptable?
		4. RULE: Excused violation of a legislation enactment is NOT negligence if:
			1. The violation is reasonable in light of a the actor’s childhood, physical disability, or physical incapacitation
			2. The actor exercises reasonable care in attempting to comply with the statute
			3. The actor neither knows nor should know of the factual circumstances that render the statute applicable
			4. The actor’s violation is due the confusing presentation of the statute to the public
			5. The actor’s compliance with the statute would have involved greater risk of physical harm to the actor or others than noncompliance.