

## The Prima-Facie Case for Negligence

(NB!: This is the basic framework; you will need to populate it with more rules)

### I. Duty:

Duty issues are legal determinations for the judge only:

- [1].  $\partial$  owes a legal duty to  $\pi$ ;
  - [a]. Always yes, unless a special no-duty rule says otherwise.
- [2]. to comport with the standard of care prescribed by law
  - [a]. To act as a reasonable and prudent person would under the same or similar circumstances to avoid or minimize a risk of harm;
    - [i]. Sometimes this standard is modified—more or less.
    - [ii]. Other times the standard is not modified but the evidence which may be admitted to satisfy the standard is broadened.
  - [b]. Sometimes the standard is prescribed by statute or regulation, i.e., negligence per se.

### II. Breach:

Breach issues are for the jury, unless there is no triable issue of fact [e.g., think of summary judgment]. Once the judge decides on the proper “standard of care” for the case, *see supra*, the jury must determine whether the  $\partial$  has failed to conform to the applicable standard of care. Stated another way, the jury must decide whether the  $\partial$  has breached his or her “duty of care” or was actually “negligent.” For example:

- [1].  $\partial$  has created an unreasonable risk of harm in light of the applicable standard; or
  - [a]. Various tools can be used to help the jury evaluate whether this is the case.
- [2]. In a negligence per se case,  $\partial$  has violated the applicable statute or regulation [without a legally recognized excuse].<sup>1</sup>

---

<sup>1</sup>  $\partial$  bears the burden to prove that any violation was excused.

### III. Legally Cognizable Harm:

Harm is a mixed question of fact and law. Whether the  $\pi$  has actually suffered any “harm” is an issue for the jury, unless there is no triable issue of fact. But whether the “harm” suffered is legally cognizable—that is to say one the law will recognize—is an issue for the judge only.

- [1]. Traditionally, the  $\pi$  must suffer actual injury, harm, or damage to self or property.
- [2]. Some exceptions exist where the rule is relaxed a bit and other harms become cognizable.

### IV. Cause in Fact:

Actual-cause issues are for the jury, unless there is no triable issue of fact.

- [1]. In the vast majority of cases, the  $\pi$  must show that but for  $\partial$ 's breach [i.e., negligence]  $\pi$  would not have been harmed in the manner complained of by  $\pi$ .
- [2]. In some limited circumstances or jurisdictions, the  $\pi$  may instead show that  $\partial$ 's breach [i.e., negligence] was a substantial factor in causing  $\pi$ 's harm.

### V. Proximate Cause (Scope of Risk):

Scope-of-risk issues are for the jury, unless there is no triable issue of fact.

- [1]. Type of harm suffered by  $\pi$  falls within the scope of the risk the  $\partial$  negligently created—i.e., a reasonable person would have foreseen harm of the same general type; and

Special Rules:

- [a]. An intervening act or force (even an intentionally tortious or criminal one) can fall within the scope of the risk the  $\partial$  negligently created so long as the intervening act or force, or one of the same general type, is foreseeable.
  - [b]. The precise manner in which the harm occurs need not be foreseeable.
  - [c]. The extent of the harm suffered by  $\pi$  need not be foreseeable.
- [2].  $\pi$  falls within the class of persons risked by  $\partial$ 's negligence—i.e., a reasonable person would have foreseen harm of the same general type to a class of persons to which  $\pi$  belongs.