

Restatement (3d) on Torts: Liability for Physical Harm (Apr. 6, 2005)

§ 14. Statutory Violations as Negligence Per Se

An actor is negligent if, without excuse, the actor violates a statute that is designed to protect against the type of accident the actor's conduct causes, and if the accident victim is within the class of persons the statute is designed to protect.

§ 15. Excused Violations

An actor's violation of a statute is excused and not negligence if:

- (a) the violation is reasonable in light of the actor's childhood, physical disability, or physical incapacitation;
- (b) the actor exercises reasonable care in attempting to comply with the statute;
- (c) the actor neither knows nor should know of the factual circumstances that render the statute applicable;
- (d) the actor's violation of the statute is due to the confusing way in which the requirements of the statute are presented to the public; or
- (e) the actor's compliance with the statute would involve a greater risk of physical harm to the actor or to others than noncompliance.

California Evidence Code

§ 669. Due Care; Failure to Exercise

- (a) The failure of a person to exercise due care is presumed if:
 - (1) He violated a statute, ordinance, or regulation of a public entity;
 - (2) The violation proximately caused death or injury to person or property;
 - (3) The death or injury resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent; and
 - (4) The person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted.

- (b) This presumption may be rebutted by proof that:
 - (1) The person violating the statute, ordinance, or regulation did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law; or
 - (2) The person violating the statute, ordinance, or regulation was a child and exercised the degree of care ordinarily exercised by persons of his maturity, intelligence, and capacity under similar circumstances, but the presumption may not be rebutted by such proof if the violation occurred in the course of an activity normally engaged in only by adults and requiring adult qualifications.

Plaintiffs were practicing lowering a life boat from an oil rig to the ocean. One lever on the boat rig would lower the boat at a reduced, controlled speed. But a second lever would drop it like a brick. The second lever had a warning label describing what it did placed **next** to the lever but not **on** the lever itself.

During the practice, plaintiffs were sitting in the boat when someone pulled the wrong lever and the boat dropped like a brick 60 feet into the water, causing severe injuries. Plaintiffs sued the life boat manufacturer for negligence, alleging negligent failure to warn. (For purposes of this exercise, ignore the fact there might be a claim against the guy who pulled the lever).

Plaintiffs sought a negligence per se instruction because there was a Coast Guard regulation which mandated that the warning label appear on the lever. The defendant argued excuse because there was another, less-specific regulation which said that the warning could appear next to the lever.

The Coast Guard regulation did not provide for a private, civil cause of action.