Negligence – Prima Facie Case

• D owed P a Legal Duty
• Breach of Duty
• Actual Damages
• Factual Cause
• Proximate Cause
Determining Breach of Duty

1) Would reasonable person have foreseen a risk of harm?
   - If no, then not negligent
   - If yes, move on to #2

2) Would reasonable person have taken steps to avoid or minimize the risk?
   - If no, then not negligent
   - If yes, then negligent
Learned Hand Formula

Negligent if $B < P \times L$

$B =$ burdens to actor of taking steps to avoid or minimize risk

$P =$ probability harm

$L =$ magnitude of harm
If no bargee, each year 50% chance barge will be hit, causing average damages of $40,000. Annual salary for full-time bargee is $30,000.

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Negligent if \( B < P \times L \)

\( B = \) burden taking steps to avoid or minimize risk

\( P = \) probability harm

\( L = \) magnitude of harm
Learned Hand Formula – Reduced Risk

Negligent if

B = burdens to actor of taking steps to avoid or minimize risk
P = probability harm
L = magnitude of harm
If no bargee, anticipate barge hit once/yr, with average damages of $50,000. Full-time bargee reduces risk by 50%. Annual salary for full-time bargee is $30,000.

* * *

Negligent if \( B < (P_{\text{do nothing}} \times L) - (P_{\text{take precautions}} \times L) \)

\( B \) = burdens to actor of taking steps to avoid or minimize risk
\( P \) = probability harm
\( L \) = magnitude of harm
Mathews Revisted

P alleged that D should have pushed flaming mower out of garage in an effort to save the garage.

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Negligent if $B < P \times L$

$B = \text{burdens to actor of taking steps to avoid or minimize risk}$

$P = \text{probability harm}$

$L = \text{magnitude of harm}$
Learned Hand Formula -- Refined

Negligent if $B < (P_{\text{do nothing}} \cdot L) - (P_{\text{take precautions}} \cdot L)$

$B =$ burdens to actor of taking steps to avoid or minimize risk
  - Includes direct costs + potential risk
  - Potential risk = $(P_{\text{new risk}} \cdot L_{\text{new risk}})$
    - New risk = risk associated with precaution that avoids or minimizes original risk

$P =$ probability harm

$L =$ magnitude of harm
Allocation of Responsibility

Scenario: Both Defendant (D) and Plaintiff (P) were negligent

- **Comparative Fault**: Damages reduced in proportion to P’s fault
  
  *Example
  
  - P’s damages = $100,000
  - D 70% at-fault, P 30% at-fault
  - D liable for 70% of damages, or $70,000

- **Traditional rule**: P recovers nothing
Allocation of Responsibility (continue)

Scenario: Two or more Ds were negligent

• *Several Liability*: P collects separately from each D in proportion to fault
  
  *Example:*
  
  – P’s damages = $100,000
  – D1 70% at-fault; D2 30% at-fault
  – P collects $70,000 from D1 and $30,000 from D2

• *Joint and Several Liability*: P can collect in full from any D; paying D seeks contribution from other D(s)
  
  *Example:*
  
  – P’s damages = $100,000
  – D1 70% at-fault; D2 30% at-fault
  – P collects $100,000 from D1; D1 seeks $30,000 from D2
Types of Evidence

1) Direct Evidence: Evidence that if believed clearly establishes a fact

2) Circumstantial Evidence: Evidence of one fact that permits an inference of another fact

3) Eye witnesses: Testimony from those with first hand knowledge

4) Expert witness: Testimony from those with expertise in a field
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<th><strong>Slip and Fall</strong></th>
<th><strong>Ordinary Care</strong></th>
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<tbody>
<tr>
<td>1) Did D create dangerous condition, have actual or constructive knowledge of dangerous condition, or operate in manner with foreseeable risk others create dangerous condition? and</td>
<td>1) Would reasonable person have foreseen a risk of harm? and</td>
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<tr>
<td>2) Did D fail to take reasonable actions to minimize/eliminate condition?</td>
<td>2) Would reasonable person have taken steps to avoid or minimize the risk?</td>
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Slip and Fall Timeline

D’s negligent conduct contributes to creation of hazard?

D fails to address hazard

P slips and falls
Effect of Statutory Requirements

Statutory requirement

Ordinary Care

Negligence

Negligence Per Se

What RPP would do
After hearing that his wife Susan had been in a car accident and taken to the hospital, Roger rushes to the hospital to be by her side. When Roger arrives at the hospital, he slips and falls on the freshly mopped lobby floor, breaking his ankle. Although the hospital’s internal policies state that the hospital’s floors should be mopped only between the hours of 10 p.m. and 5 a.m., the floor had been mopped 15 minutes prior to Roger’s fall at 3 p.m. The hospital’s janitor had placed on the floor an orange cone and sign warning people that the floor is wet. Roger is the fifth person this month to have slipped on the lobby floor.

**Question:** Roger wishes to sue the hospital for negligence and has retained you as his attorney. What arguments could you make on Roger’s behalf, and how likely are you to prevail on these arguments?
Summary - *Res Ipsa Loquitur*

**Context:** Do not know what defendant specifically did

**Key Issues:**
- Whether accident ordinarily would not occur in the absence of negligence
- Whether *defendant’s* negligence is the most probable cause

**Factors:**
- Evidence eliminating non-negligent causes
- Failure by plaintiff/defendant to present available evidence
- Control condition
- Evidence eliminating other actors as tortfeasors

**2+ Potential Defendants:** If cannot determine which D was negligent, no RIL unless shared responsibility
**Res Ipsa Loquitur – Procedural Effect**

When applicable –

**Majority approach:**
- P gets to jury.
- Jury may infer that D was negligent
  - *Not required to do so*

**Minority approaches:** Presumption of negligence
- D has burden of proving not negligent, or
- D presumed negligent, but if D presents evidence of non-negligence revert to majority rule
Paul, an experienced pilot, always inspects his private airplane prior to each flight. After finding nothing wrong with the plane, Paul took-off from Houston to San Antonio. Mid-route the plane crashes. Paul survives but is badly injured. Most of the plane’s engine components were destroyed by the post-crash fire, while the remaining components were never located. The day before the accident Dobbs, a mechanic, had performed some repairs on the plane’s engine. Paul believes Dobbs may have been negligent in doing the repairs.

Paul approaches you about suing Dobbs for negligence. You conclude that because there is no physical evidence suggesting that Dobbs’s repair job was negligent, Paul’s only chance of winning his case is if the court invokes the doctrine of *res ipsa loquitur* against Dobbs. Should you take Paul’s case?