Res Ipsa Loquitur

Past midterms are now available on the course website.

Office hours this week will be on Friday at 1pm.

Economic theory of negligence

Hand Formula

B = ???

P = ???

L = ???

Economic theory of negligence

Hand Formula

B = Burden of precautionary measures

P = Probability of loss/harm

L = Magnitude of loss/harm

??? < ??? = Negligent

??? > ??? = NOT negligent

Economic theory of negligence

Hand Formula

B = Burden of precautionary measures
P = Probability of loss/harm
L = Magnitude of loss/harm

IF B < PL
AND defendant did not take on B
THEN defendant was negligent

IF B > PL
AND defendant did not take on B
THEN defendant was NOT negligent

Structuring Arguments

Syllogism for proving duty and breach

D was legally obligated to do X.

D failed to do X.

Therefore, D breached their legal duty.

Syllogism for proving duty and breach

D had a duty (to the plaintiff) to exercise reasonable care when [doing this thing].

Reasonable care under the circumstances was [this thing D should have done], because:
- foreseeability,
- reasonable person standard,
- custom,
- statute,
- or hand formula.

D failed to do [this thing they should have done], therefore D acted negligently / breached their legal duty to plaintiff.

Reasonable Care Arguments

Conclusion - Say what constituted reasonable care under the circumstances

Rule - Explain how this method or methods can be used to show what constituted reasonable care

Application/Analysis - Show how this method or methods leads to your conclusion. When helpful, develop analogical arguments.

Byrne v. Boadle

"The Falling Flour Barrel"

Res Ipsa Loquitur

Two requirements:

1. Harm results from the kind of situation in which negligence can be inferred

2. Defendant was responsible for the instrument of harm

Larson v. St. Francis

“The Falling Armchair”

Connolly v. Nicollet Hotel

"The Chaotic Convention"

Why Allow Res Ipsa Loquitur?

1. Probabilistic rationale

2. Asymmetry and fairness justification