

Torts I O/L

Negligence: Elements

Duty

Standard of Care

Breach of Standard of Care

Cause in Fact

Proximate Cause

Damages

Defenses

I. DUTY

What opens the door for a negligence claim?

-Determine that there was a duty

-Open the duty door

-Look to negligence

- A. Identify “risky affirmative act” on the part of D
 - a. Ask who could be injured by this act?
 - i. Palsgraf – person who was pushed or bystanders
- B. Zone of danger - caused by risky affirmative act
 - a. Look to who is within the zone of danger
 - b. Foreseeable P – was injury to P foreseeable
 - c. You have to fill in the zone of danger (give reasons)
 - d. Argue cause and effect (both ways)
 - e. Palsgraf – risky act could be not securing the scales
 - f. **Policy** Zone of Danger– Limit’s individuals ability to sue
- C. Duty of Reasonable Care Owed
 - a. Only owe if performed Risky Affirmative Act which placed person in danger OR
 - b. Increased danger (post RAA)
- D. Duty to Render Aid
 - a. Special relationships
 - i. Parents
 - ii. Fiduciary

II. STANDARD OF CARE

1. Reasonable Person Under Circumstances

- i. Advantages outweigh disadvantage at the time = Act reasonable

- ii.** Disadvantages outweigh advantages at the time = unreasonable act