

# TORTS OUTLINE

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## Breach

Once we have found that the defendant had a duty to the plaintiff, we need to determine whether the defendant breached that duty. Breach is a failure to conform to a particular standard of care. To determine whether the defendant breached the duty, we must determine what the standard of care was, and whether the defendant conformed to that standard of care. The primary measures of standard of care are: the reasonable person, the Learned Hand formula (B < PL), customs, and statutes.

## The Standard of Care

### I. Learned Hand Formula (B < PL)

- A. According to the Learned Hand Formula, liability for negligence due to failure to take safety precautions exists if the burden of taking such precautions is less than the probability of injury multiplied by the gravity of any resulting injury.
  - 1.  $Burden < Probability * Loss$
- B. Used in *economic* situations
- C. Policy considerations; lack of deterrence and ignores morality. Just focuses on money and juries don't like that. Doesn't take into consideration emotional costs.

### II. The Reasonable Person

- A. The reasonable person test considers what a *reasonable person* of ordinary prudence would have done *under the same circumstances*.
  - 1. The reasonable person is an *objective* standard – the reasonable person usually does not change according to the attributes or state of mind of the defendant unless one of the exceptions apply. Absent one of the exceptions, the reasonable person is a sane person of average intelligence.
  - 2. In cases of *emergency*, the reasonable person has less time to deliberate, and therefore has a little more leeway, unless of course, the emergency was *caused* by the defendant.
  - 3. The standard of care is a question for the *jury*. *Pohora*.
    - a. When the plaintiff makes a sufficient case that the defendant could have violated the SOC, then summary judgment is inappropriate, and the case is best left for the jury to determine whether the defendant conformed to the SOC. *Andrews*.
- B. **Precautionary Measures:** reasonable care does not require an abundance of caution.
  - 1. A person who takes *reasonable* precautions against *foreseeable* dangers may not be held liable in negligence for injuries caused by *extraordinary* circumstances. *Adams*.

# Torts Outline 2005

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**Torts Outline 2005:**

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