Anglo-American Contract and Torts

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6. Statutory Duty and Negligence Per Se

1) Duty/Injury
2) Breach
3) Factual cause
4) Legal cause/
   scope of liability
5) Damages

Under US law this issue is decided by the jury, if reasonable people could disagree about the answer under the relevant rule or standard.

Effect of health and safety statutes on negligence liability

Violation of statute may be negligence per se

Statute may establish a duty that is a basis for a negligence action (private right of action]

Negligence per se

In most states,* driving in excess of the posted speed limit is negligence per se, meaning it is unreasonable as a matter of law.

D drives 30 mph in 25 mph zone, as do most drivers. He runs into a small child who darts into his path from between cars.

In most states the issue of breach is not put to the jury.

Physical causation remains to be decided by the jury.

* California is an exception. The speed limit is only a factor to consider.

D is driving 40 mph in 65 mph zone on a very foggy day.
He runs into P, who is stopped at a traffic jam.

Compliance with the statutory speed limit is not a defense.

Reasonable care is a standard.

Speed limit is a rule.

Rule—a legal precept that does not require and evaluative or normative judgment at the point of application.

Standard—a legal precept that does require and evaluative or normative judgment at the point of application.

Unexcused violation of statute is negligence per se only if party claiming negligence is in the class of persons meant to be protected by the statute and the harm is among the harms the statute is meant to guard against.

Did the violation increase the risk of the harm that occurred?

Did the legislature intend to protect this class of persons against this class of harm?

Does applying the statute to the conduct advance the statute's purposes?

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P parks near a fire hydrant, violating a parking ordinance. D runs into P's car after losing control of his car.

Gorris v. Scott, Text 39. Sheep are lost overboard from vessel in storm. Had they been kept in pens, as required by Contagious Disease Act, they would have been spared.

A worker unloading bananas is bitten by a poisonous spider. The presence of the spider in the bananas violates food purity laws.

A statute may expand or narrow the scope of negligence liability.

Cal. Civil Code § 1714 narrowed the scope of negligence liability for providing alcohol to another and eliminated “social host” liability. Text 33-34.

Occupier’s Liability Act of 1984 expanded the scope of a land occupier to a non-invitee such as a trespasser. Text 34.