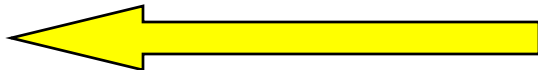


Chapter III Duty

A. Introduction

The prima facie case in negligence:

Duty 

Breach

Causation

Damages

Chapter III Duty

B. Obligations to others

DUTY:

Is there an obligation to use reasonable care?

Question of law, judge decides based on precedent.

General – apply to categories of cases

BREACH:

Under the circumstances, did the actor behave reasonably?

Question of fact, jury decides

Fact - Specific

Chapter III Duty

B. Obligations to others

Harper v. Herman:

Did the owner of the boat behave reasonably?

Does it matter?

Chapter III Duty

B. Obligations to others

Harper v. Herman:

“The fact that an actor realizes or should realize that action on his part is necessary for another’s aid or protection does not of itself impose upon him a duty to take such action . . . unless a special relationship exists.”

Duty

Restatement (Third) of Torts Proposed Final Draft No. 1

§ 7. Duty

(a) An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm.

BUT

§ 37. Subject to §§ 39-45, an actor whose conduct has not created a risk of physical harm to another has no duty of care to the other.

What are the goals of tort law?

Compensation

Deterring unsafe conduct

Promote economic efficiency

Encouraging productive activity / liberty

Internalizing costs

-- Especially by commercial activities

Protecting “innocents” from those who create risks

Settling normative, contested social issues

Redistributing wealth

Is the “no duty if you didn’t create risk”
rule consistent with these goals?

Chapter III Duty

B. Obligations to others

Harper v. Herman:

“The fact that an actor realizes or should realize that action on his part is necessary for another’s aid or protection does not of itself impose upon him a duty to take such action . . . unless a special relationship exists.”

Jeremy Waldron, On the Road Again: Good Samaritans and Compelling Duties, 40 Santa Clara L. Rev. 1053 (2001)

Chapter III Duty

Farwell v. Keaton:

No relation to harm but that you know or should know that action is required to avoid harm – no duty unless

- Special relationship with the victim OR
- You act in a way that leaves a helpless victim worse off
- AND OTHERS: see the notes

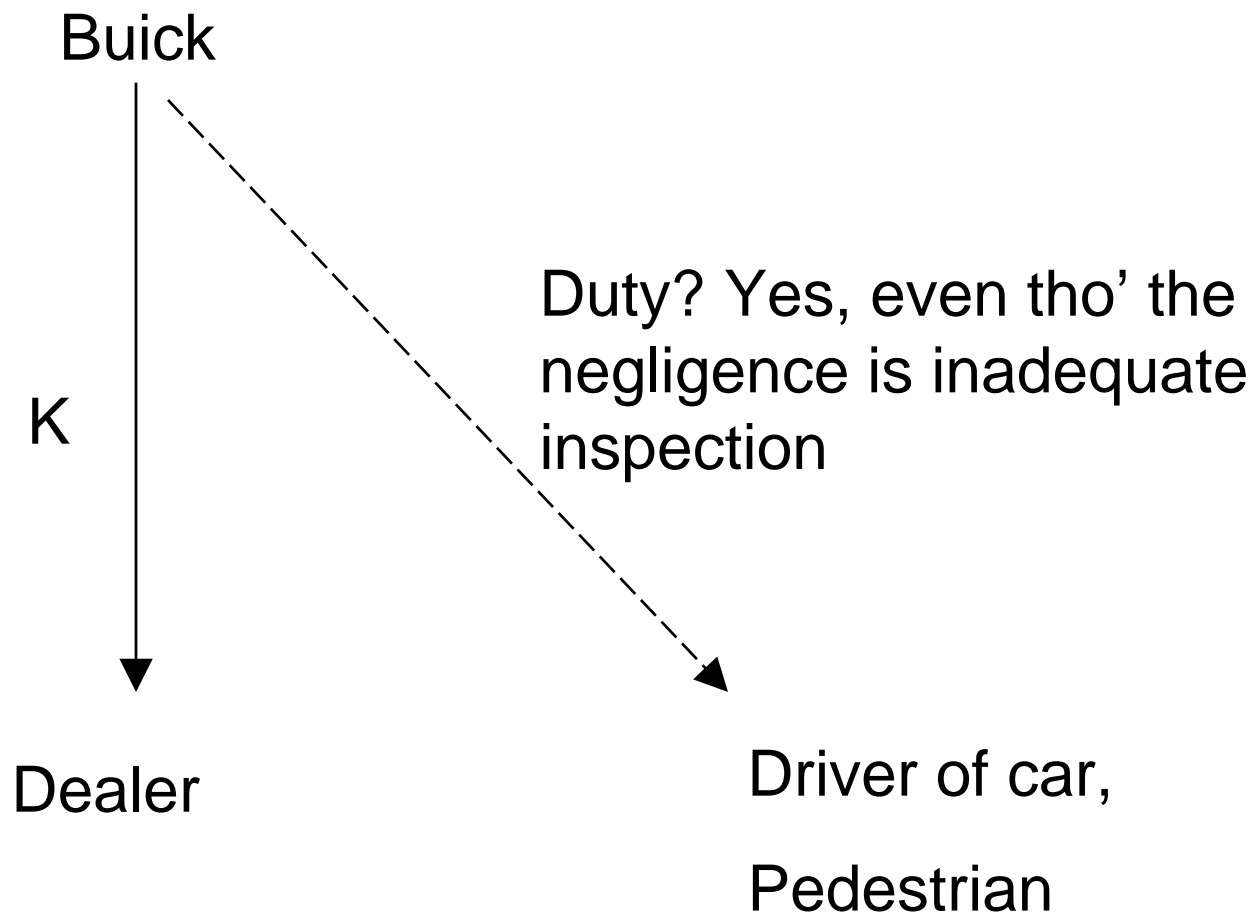
Chapter III Duty

Problem (distributed in class; also on the web page)

Did Dorothy have a duty to take some steps to assure that Maria received prompt medical attention?

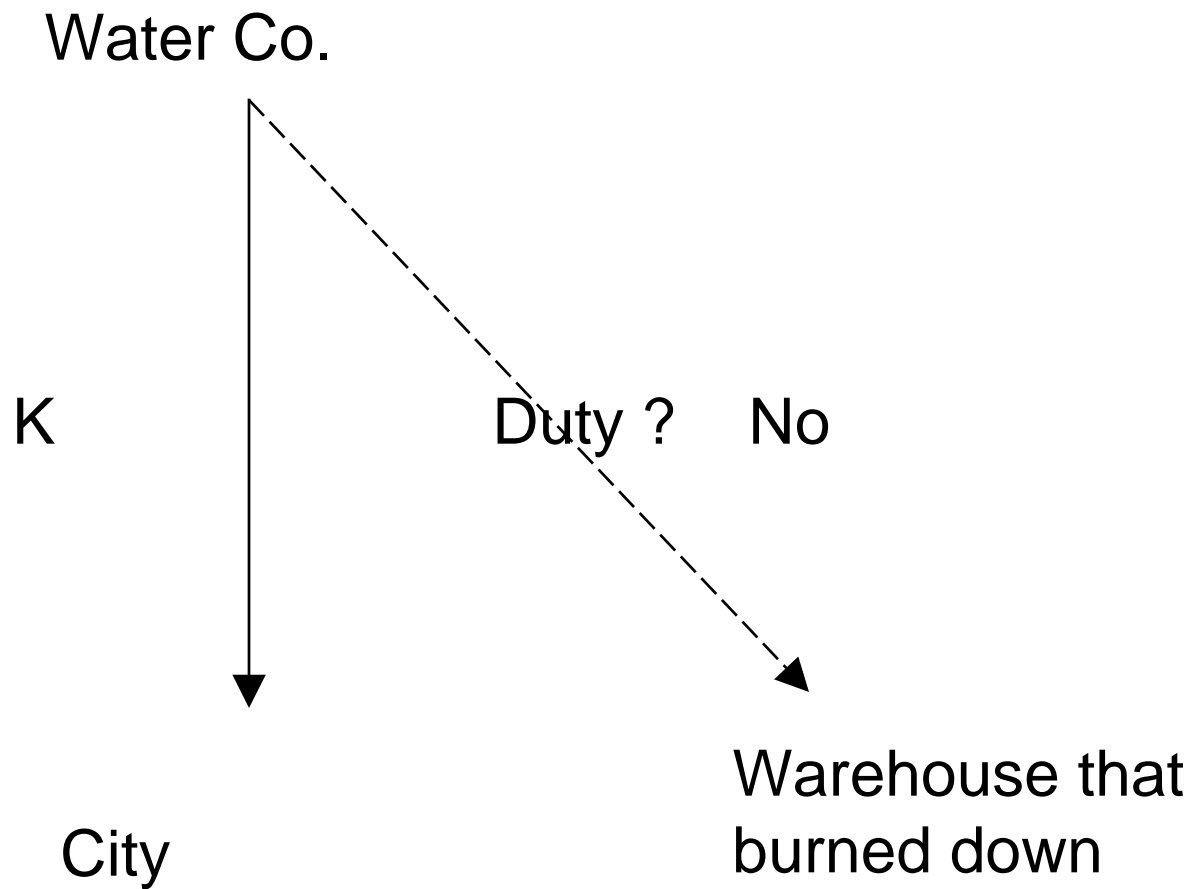
Chapter III B. Obligations to others

MacPherson v. Buick Motor Co. (p. 130)



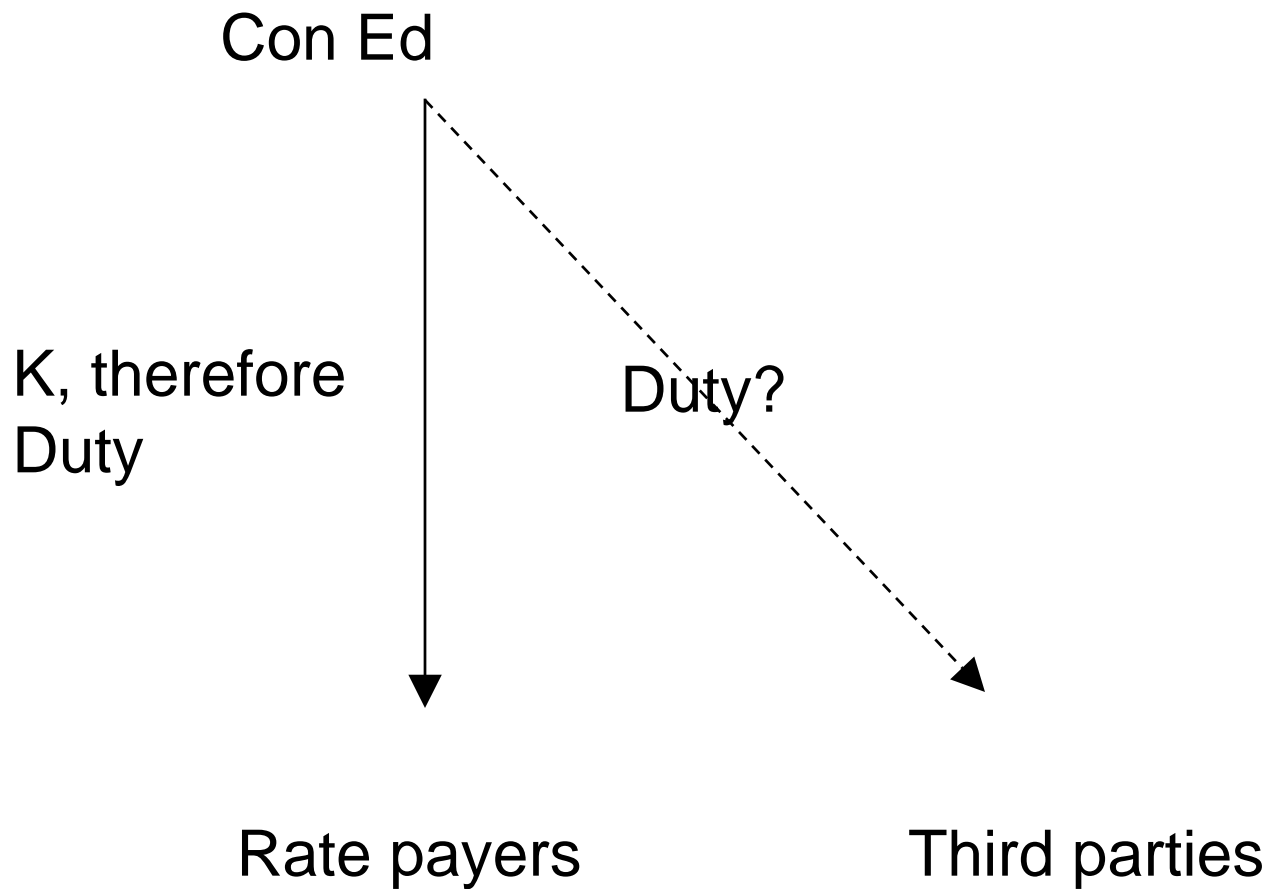
Chapter III B. Obligations to others

Moch v. Rensselaer Water Co. (p. 143)



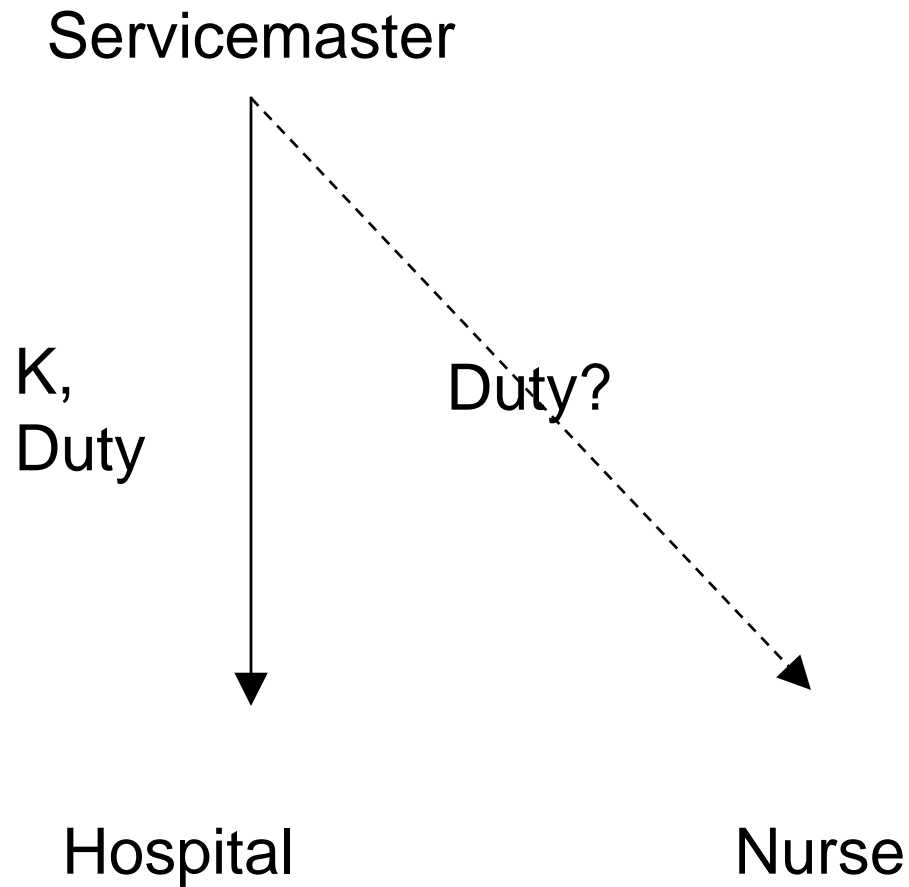
Chapter III B. Obligations to others

Strauss v. Belle Realty (p.144)



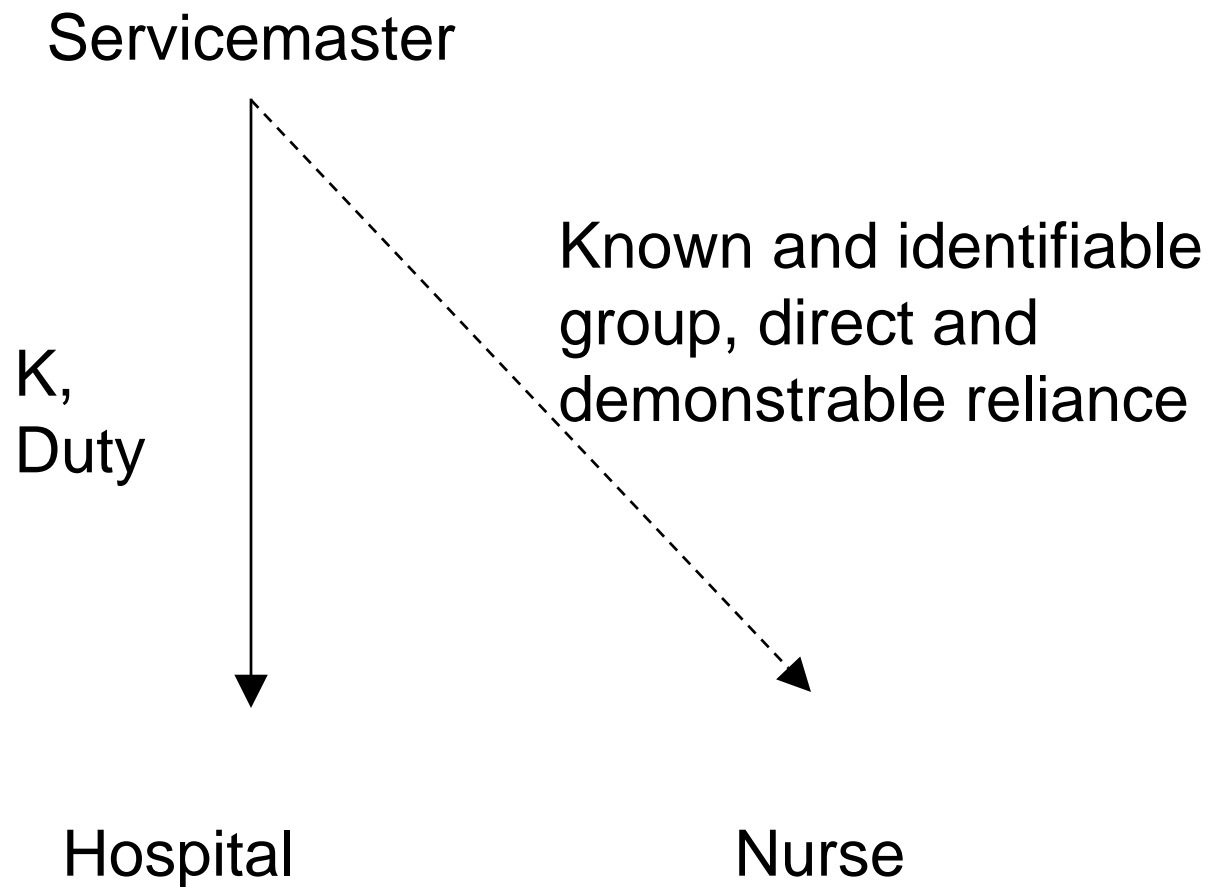
Chapter III B. Obligations to others

Palka v. Servicemaster, note 5 p. 149



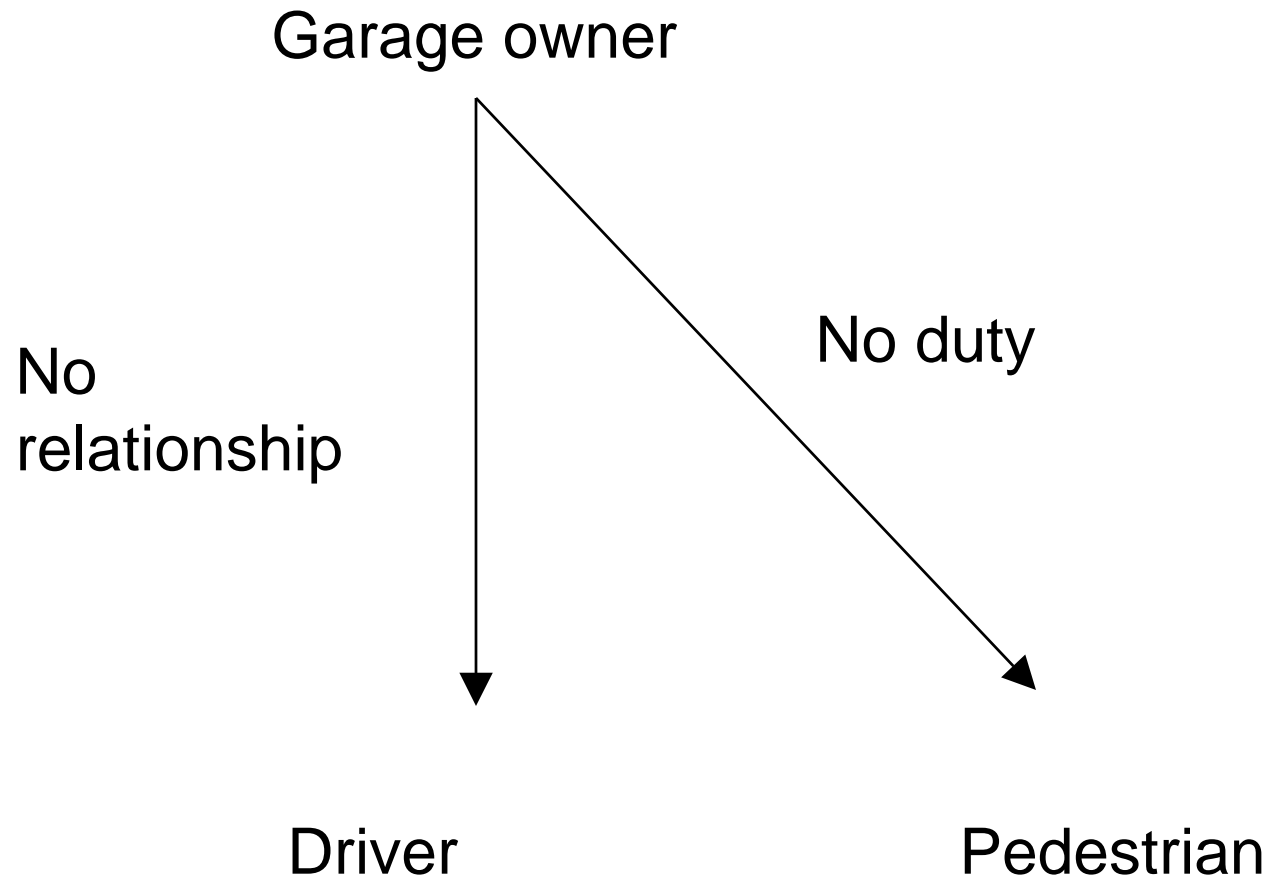
Chapter III B. Obligations to others

Palka v. Servicemaster, note 5 p. 149



Chapter III B. Obligations to others

Pulka v. Edelman, note 7 p. 150



Negligence: The Cause of Action

The Prima Facie Case: 4 *elements*

- Duty

Restatement (Third) of Torts Proposed Final Draft No. 1

§ 7. Duty

(a) An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm.

(b) In exceptional cases, when an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases, a court may decide that the defendant has no duty or that the ordinary duty of reasonable care requires modification.

Chapter III B. Obligations to others

Cases in which you act unreasonably, in a way that threatens foreseeable harm to others

MacPherson: you are liable to anyone who might foreseeably be harmed by your actions

Palka (hospital fan case): you are liable, but only to “specifically” foreseeable victims -- a limited class, known to be affected

Strauss: you are liable, but only to customers, in their residences

Pulka (garage case): you are not liable to anyone, because you have no duty.

Chapter III B. Obligations to others

Strauss, at page 146

“In fixing the bounds of . . . duty, not only logic and science, but policy play an important role. The courts’ definition of an orbit of duty based on public policy may at times result in the exclusion of some who might otherwise have recovered for losses or injuries if traditional tort principles had been applied.”