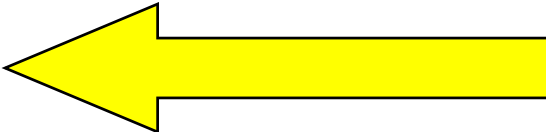


Chapter III Duty A . Introduction

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

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?

Goals that support a “no duty to act” rule

Autonomy / Liberty interest of actor

Slippery slope in defining obligation

Uncertainty of what to do / potential liability if you act

The freezing homeless problem

Create incentives for people to watch out for themselves

Respect the autonomy of others, who choose to act
dangerously

Chapter III Duty

There may be a duty to act, warn, rescue IF:

You are in a “special relationship”

From *Harper*, p. 133: common carrier, innkeeper, possessor of land open to the public, custody + deprived of normal opportunities for self-protection

Prosser, n.2: plaintiff vulnerable and dependent on D, who holds power over p's welfare. Economic advantage to the defendant.

Farwell: companions on a social venture, with an implicit understanding that assistance will be rendered.

Chapter III Duty

There may be a duty IF:

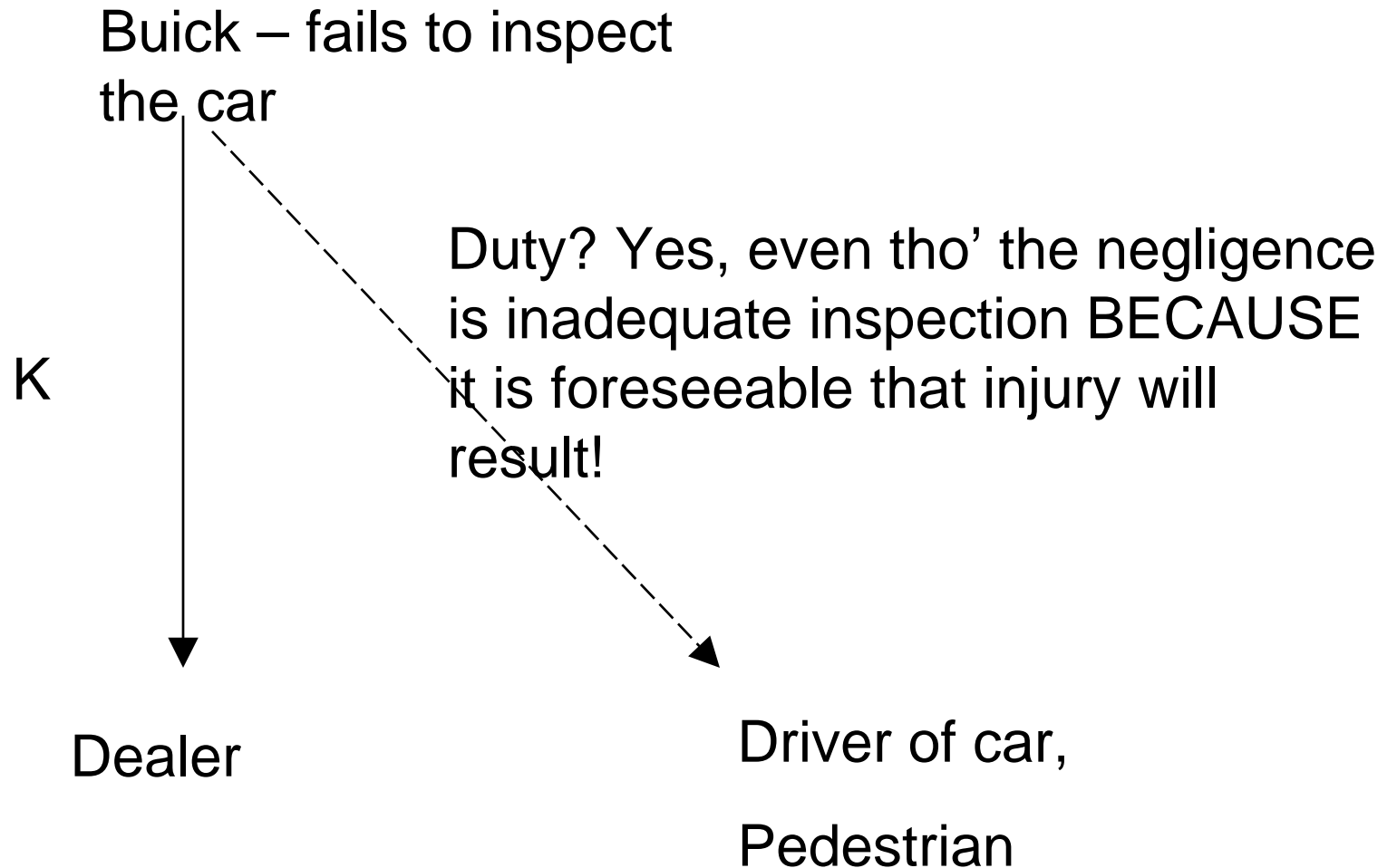
Note 4. p. 135: you negligently or innocently injure another, must take reasonable care to prevent further harm

Note 6, p. 136 – you innocently create a risk, you may have a duty to take reasonable steps to prevent the risk from occurring.

Note 3. p.141 – you begin to render assistance, you may have a duty to use reasonable care not to leave the person worse off (or, maybe, a duty to use reasonable care. *Farwell.*).

Chapter III B. Obligations to others

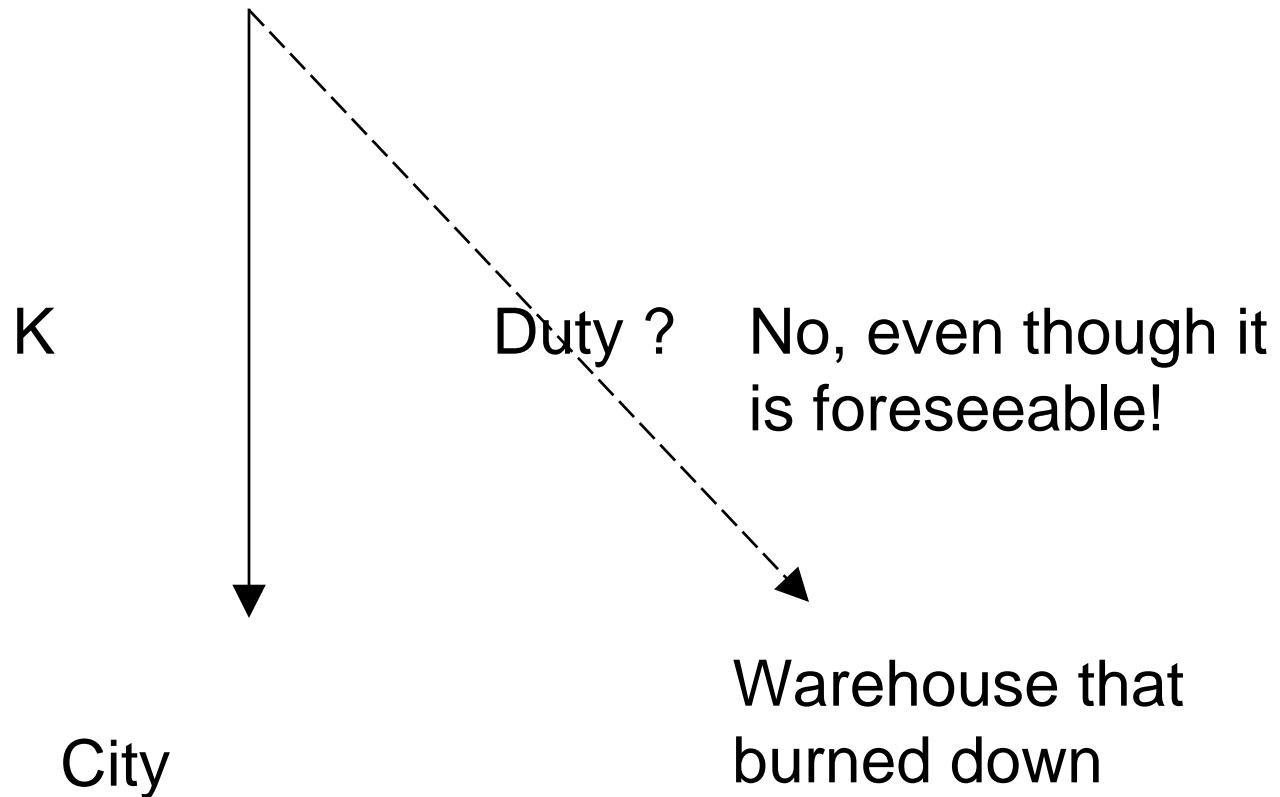
MacPherson v. Buick Motor Co. (p. 130)



Chapter III B. Obligations to others

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

Water Co.: Fails to provide water pressure



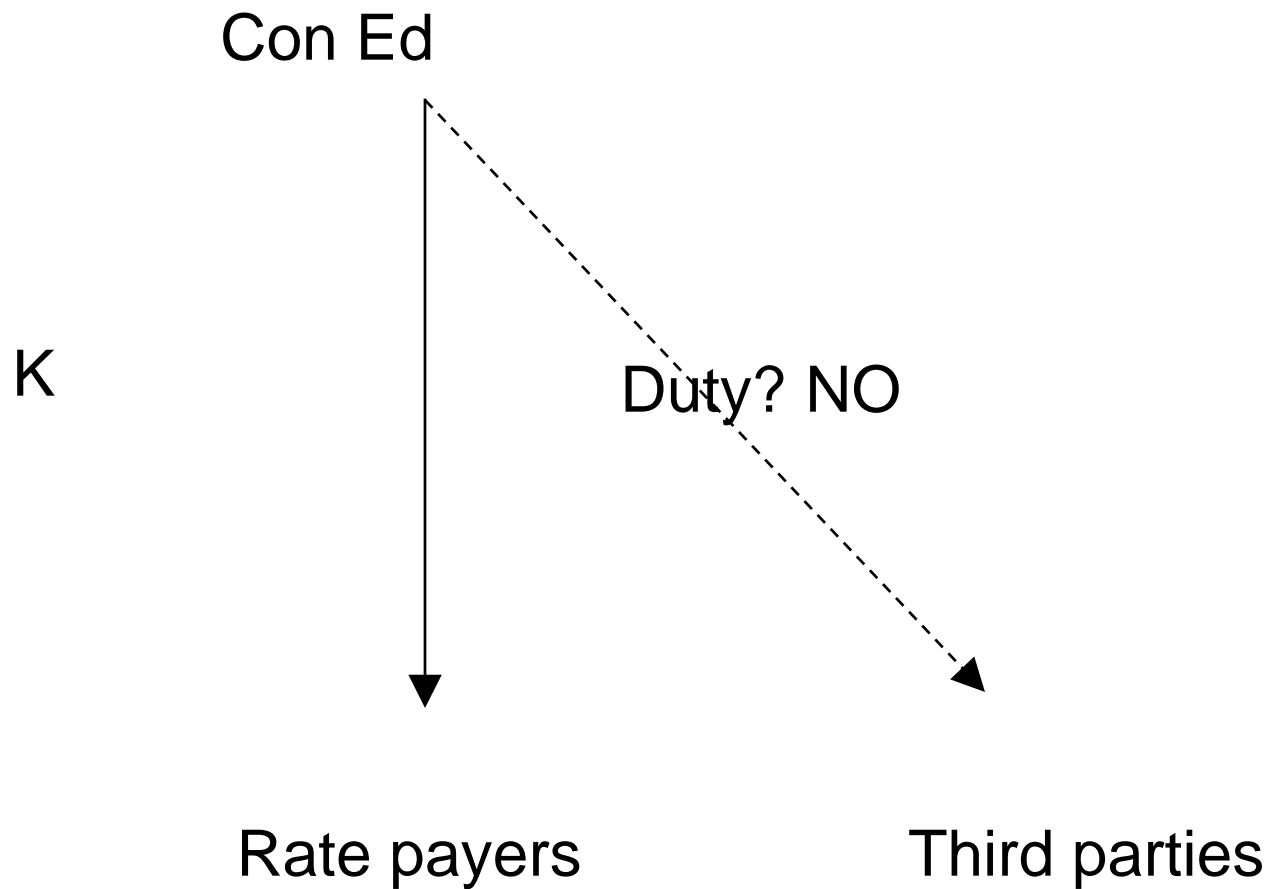
Chapter III Duty

Incomplete the
formula is, young
Skywalker, and
misleading!



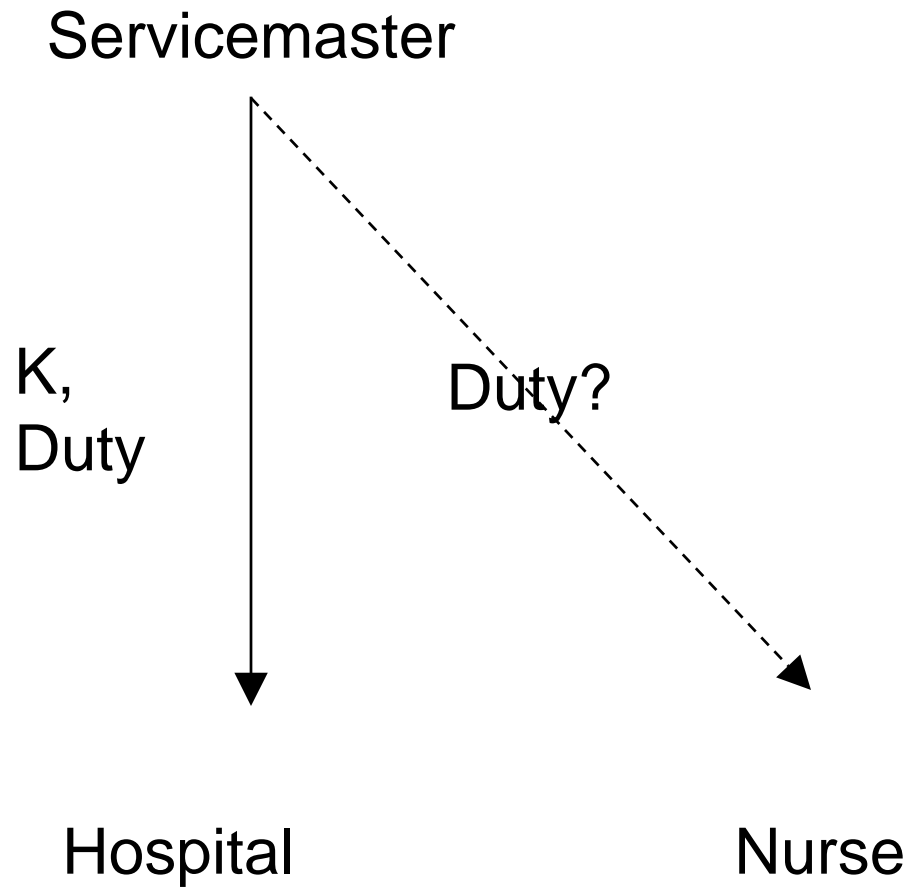
Chapter III B. Obligations to others

Strauss v. Belle Realty (p.144)



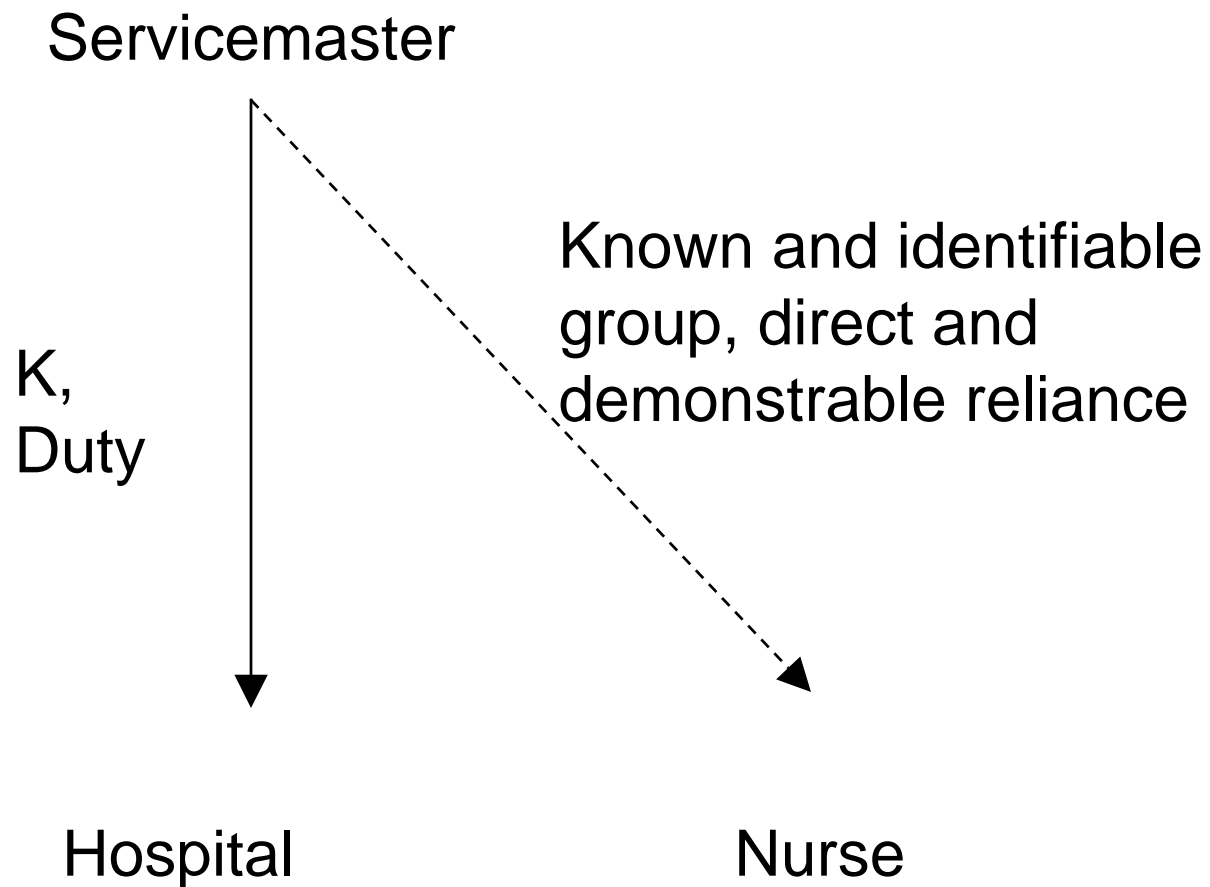
Chapter III B. Obligations to others

Palka v. Servicemaster, note 5 p. 149



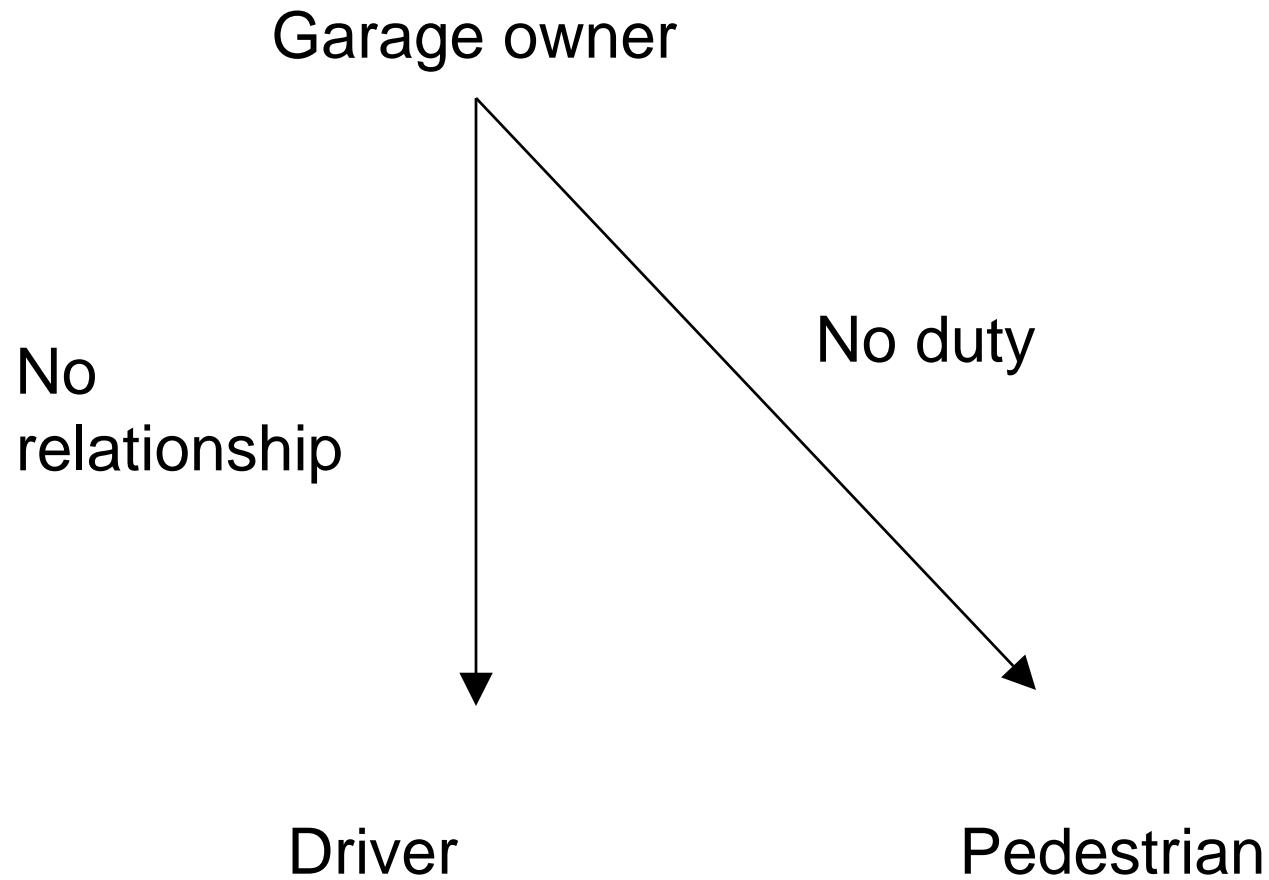
Chapter III B. Obligations to others

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.”