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**David v. Abel**  
**NEGLIGENCE**

Negligence is the failure to exercise due care under the circumstances. The Plaintiff must show duty, breach, causation and damages without defenses in order to prevail.

Your format is excellent - you have adapted well to the approach - using selected headings to give the grader the ability to see the issues you have addressed at a glance - this is very effective and will serve you well.

Good

Duty  
Standard of care

good All persons should act as a reasonable person would under the same, or similar, circumstances. Here David working for a parcel delivery company, would be held to the higher standard of common carrier, and therefore will be held liable for even the slightest negligence. Excellent!

Palsgraf - Good

Good emphasis - nice use of underlining

Although David owes a duty to act with reasonable care, Abel would still need to show that the standard extends to him. Under Cardozo, the majority view, a duty is owed to any foreseeable plaintiff in the zone of danger. Here Abel's parked car was stuck while David was driving on his street place Abel's property in the zone of danger. Therefore under the Cardozo view a duty is owed to Abel's property. Under Andrews, the minority view, a defendant owes a duty to all. Therefore David owes to duty to Abel under Andrews as well.

You are on the right track here - you set out the rule and then begin to apply it. But, you

do you mean: placed? something is missing or is off in this sentence.

Breach - Good

To be found negligent, Defendant must also have breached the duty of care. good

Negligence pre se

When a person violates a statute, this violation may be used to establish negligence when the plaintiff is within the class of persons that the statute is intended to protect and the harm that occurred is the type that the statute was designed to prevent. Here David drove 30 mph in a 25mph zone which is a speed violation, designed to protect person's and property in the zone of limited speed. Therefore, David breached his duty to Abel by speeding, a breach which is negligence pre se.

Again, you are trying to say too much in one sentence. see extra

need to clean up your analysis sentence as it is not clear. Try to use a few shorter sentences to address Cardozo -

Causation

David must also have been the actual and proximate cause of Abel's property damage.

Actual - Cause Good

Abel's car was parked on the street when David was driving while delivering packages, but for his violation of the speed limit Abel's car would still be undamaged. Thus David was the actual cause of Abel's property damage.

Proximate Good

Here there do not appear to be any intervening causes between David's conduct and Abel's property damage. Thus David is also the proximate cause of Abel's injuries.

you don't have to wrap it up all in one sentence.

Good

Damages

Plaintiff must have incurred actual damages in order to hold Defendant liable for negligence. Here Abel was injured when David hit his parked car. Therefore Abel suffered actual damages.

\* for continuation of comments - see "extra comments" page.

## DEFENSES

There is no indication that Abel contributed to his own injuries or that he knowingly assumed the risk of injury from David's negligence. Therefore there are no defenses available to David and he would be liable to Abel for the negligent damage to his car.

Excellent!

**David v. Baker**  
NEGLIGENCE  
Defined supra.

clean up this sentence - the tenses are not consistent - this sentence switches between present + past and singular plural verb tenses.

### Duty Standard of care

Though all persons must act as a reasonable person would here David is a common carrier, therefore his action are held to a higher standard than the ordinary reasonable person. Here David owed a duty of care to Baker to be careful in his placement of the package where it would not be harmful to Baker. Baker would be in "the zone" for which David has to a duty towards.

David does not owe a duty toward "the zone"! Be more clear here.

### Breach

Here David placed the package directly in front of the door, which Baker is likely to walk out of, likely to hinder her progress. Thus David breach his duty of care to Baker.

good

The package placed in front of the door would

### Causation

David must also have been the actual and proximate cause of Baker's injuries.

### Actual Cause

But for David's placing the package in front of Baker's door, Baker would not have tripped and broken her hip. Therefore David is the actual cause of Baker's injuries.

excellent!

### Proximate Cause

There are no facts to support that any intervening acts occurred to cause Baker's injuries. Thus David is also the Proximate cause of her breaking the hip.

are no

### Damages

Here Baker was injured when she broke her hip tripping over the poorly placed package. Thus Baker suffered actual damages. Great!

### Defenses

There is no indication that Baker contributed to her own injuries or that she knowingly assumed the risk of injury from David's negligence. Therefore there are no defenses available to David and he would be liable to Baker for the negligent injury to her hip.

Great!

**David v. Carl**

Under these facts of David seeing an impending car accident involving Carl and another car, Carl would have no cause of action against David.

The duty of care would be that of a rescuer, however there is no duty to rescue another from danger, unless another duty exists. Since there is no other duty between Carl and David then David cannot be held liable.

Okay, but this can be cleaned up a bit. Your point is made, but you could start with the fact that generally there is no duty to act unless there is some special relationship or unless the defendant created the peril. David and Carl do not have a special relationship and David did not create the peril. Therefore, David owes no duty.

accident?

