

## Elements of Negligence

**Duty:** The defendant owed the plaintiff a duty to act reasonably. A reasonable person would consider (1) the burden of taking precautions; (2) the likelihood of harm; and (3) the seriousness of the harm. If the burden of taking precautions is low and the likelihood of serious harm is high, then a reasonable person would take that precaution. If the burden is high, and there is only a small risk of non-serious harm, then a reasonable person would not take that precaution.

**Breach:** The defendant's conduct violated that duty (the defendant did not act reasonably).

**Causation:** The defendant's conduct caused the plaintiff's harm and the harm was foreseeable.

**Damages:** The plaintiff suffered actual damages (medical costs, lost wages, pain and suffering, etc.).

## **Weirum v. RKO General, Inc.**

Radio station KHJ is a successful Los Angeles broadcaster with a large teenage audience. To attract more teenage listeners and to increase advertising revenue, KHJ started a promotion called “The Summer Spectacular.” On July 16, 1970 a popular DJ traveled in a conspicuous red automobile to a number of locations in the L.A. area. Periodically, he announced his current location and where he was planning on going next on the radio. The first listener to physically locate Steele received a cash prize.

Robert, a 17 year old, and Marsha, a 19 year old, heard where the DJ was headed, but arrived just as someone else was claiming the prize. Without knowledge of the other, each decided to follow the DJ’s car so that he or she would be the first person to claim the prize. For the next few miles, Robert’s and Marsha’s cars jockeyed for the position closest to the DJ’s car, reaching speeds up to 80 miles per hour.

About a mile and a half from the Westlake offramp the two teenagers heard the radio broadcast, “The DJ is headed to Thousand Oaks to give money away.” The DJ’s car left the freeway at the Westlake offramp. In attempting to follow the DJ, either Marsha’s or Robert’s car forced another car onto the center divider, where it overturned. Marsha stopped to report the accident. Robert stopped momentarily to relate the tragedy to a passing police officer, continued to follow the DJ, and collected a cash prize.

The passenger in the overturned car died, leaving behind a wife and two children.

### Activity:

The wife sues the radio station for the wrongful death of her husband caused by the radio station’s negligence.

Group 1: Argue why the radio station acted reasonably and did not violate the elements of duty and breach.

Group 2: Argue why the radio station did not act reasonably and did violate the elements of duty and breach.

Group 3: Argue why the radio station caused the husband’s death.

Group 4: Argue why the radio station did not cause the husband’s death.

## ASSIGNMENT

- A. Read the article about the University of Washington Medical Center at <http://archives.seattletimes.nwsourc.com/cgi-bin/texis.cgi/web/vortex/display?slug=malpractice04m0&date=20011204>

Write one page applying the four elements of negligence to this set of facts and decide whether or not the medical center was negligent.