

## II. Negligence

### A. Prima-Facie Case

- 2. Breach
  - a. Unreasonable Risk
  - b. Proving the Underlying Conduct
    - i. Generally
      - a. Burden of Proof
      - b. Standard of Proof
    - ii. Evidence
      - a. Generally
      - b. Direct Evidence
      - c. Circumstantial Evidence
    - iii. Common Knowledge v. Expert Testimony
  - c. Evaluating the Underlying Conduct to Determine if it Constitutes an Unreasonable Risk
    - i. Common Knowledge v. Expert Testimony
    - ii.  $\partial$ 's Own Rules of Conduct
    - iii. Industry Custom

#### **Hypothetical for 2.c.i.**

$\pi$  was a child who slid down a slide in a park in D.C. The hand rails on each side of the slide were hollow metal pipes that had open ends, including on the ends at the top of the slide.  $\pi$  put her thumb in one hole and then slid down, ripping her thumb out. It could not be reattached. She sued the slide manufacturer and the District for negligence. The slide manufacturer settled. In her suit against the District,  $\pi$  won at trial, and the  $\partial$  appealed, arguing that the jury needed to hear expert testimony to determine negligence.