

RES IPSA LOQUITUR

1. **The accident must be one which ordinarily does not happen unless there is negligence—*inferring negligence generally.***
 - a. The facts as we know them, combined with common knowledge or expert testimony, give rise to an inference that it is more likely than not that someone was negligent.
2. **Other possible causes of the accident, including the conduct of the π and other persons, have been sufficiently [but need not be completely] eliminated by the evidence—*inferring a δ 's negligence.***
 - a. The facts as we know them, combined with common knowledge or expert testimony, give rise to an inference that the δ was more likely than not a person who was negligently responsible for the accident.
 - b. We have to be mindful that there can be more than one person who is negligent—e.g., a π or an additional δ —and that multiple negligent parties will not necessarily preclude RIL.
 - i. If a π 's comparative negligence does not lessen the probability that the δ was also negligent, then requirement #2 is met as to that δ .
 - ii. The same goes for a case where there are multiple δ s, all of whom allegedly contributed to the π 's injury. If δ A's negligence does not lessen the probability that δ B was also negligent, then requirement #2 is met as to δ B. Assuming the converse is true—that δ B's negligence does not lessen the probability that δ A was negligent—then requirement #2 will be satisfied as to δ A. Ultimately, then, it might be satisfied as to both δ A and B.
 - iii. Cases involving serial control usually differ. If a π 's injury happened while in the custody of δ A or δ B, but not both, and one of those δ s is therefore innocent, then requirement #2 is not satisfied. We cannot say, when looking at δ A, that it is more likely than not that he was the negligent one. Nor can we say that of δ B. The probabilities are 50-50. We are tossing a coin. "More likely than not" requires a >50% probability. Therefore, it is not fair to use RIL against both δ s given that one of them is definitely innocent. The *Collins* court departs from this reasoning and allows RIL. The Restatement 3d believes that the *Collins* rule should be adopted more broadly to factually similar cases; viz., where the two δ s have a special relationship. It is difficult to know whether this push will succeed. One area in which a *Collins*-like rule does receive widespread acceptance is in the special medical-malpractice context. This is something we will return to later in the semester.
 - c. Exclusive control is one way to strengthen the inference that a δ was negligent, but it is not required.
3. **Investigation:** Because many courts require this, you will want to show that obtaining specific evidence of negligent conduct was infeasible.