

1. Is π entitled to a negligence per se instruction?

Judge decides all these issues:

- a. Does the statute (or regulation, ordinance, etc.) fail to provide for a private, civil cause of action?
- b. Does the statute set forth a specific and particular rule of conduct?
- c. Is the statute designed to protect against the type of accident/harm that occurred in this case?
- d. Is the statute designed to protect a class of persons to which the accident victim belongs?

If the above are satisfied, then at least legally speaking, the party is usually entitled to a negligence per se instruction.

2. Has ∂ violated the statute (as interpreted by the judge)?

Jury decides whether the ∂ has violated the statute as interpreted; unless there is no triable issue of fact.

3. Is ∂ entitled to an excuse instruction?

Judge decides which excuses, if any, are legally recognized in the particular jurisdiction.

4. Is ∂ 's violation of the statute excused?

Jury decides this issue, unless there is no triable issue of fact.

Plaintiffs were practicing lowering a life boat from an oil rig to the ocean. One lever on the boat rig would lower the boat at a reduced, controlled speed. But a second lever would drop it like a brick. The second lever had a warning label describing what it did placed **next** to the lever but not **on** the lever itself.

While practicing, plaintiffs were sitting in the boat when someone pulled the wrong lever and the boat dropped like a brick 60 feet into the water, causing severe injuries. Plaintiffs sued the life boat manufacturer for negligence, alleging negligent failure to warn. (For purposes of this exercise, ignore the fact there might be a claim against the guy who pulled the lever).

Plaintiffs sought a negligence per se instruction because there was a Coast Guard regulation which mandated that the warning label appear on the lever. The defendant argued excuse because there was another, less-specific regulation which said that the warning must appear near the lever.

The Coast Guard regulation did not provide for a private, civil cause of action.