The Reasonable Person

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The Reasonable Person

aka the Reasonably Prudent Person (RPP)
aka the Person of Ordinary Prudence

• **RPP appears throughout law but especially in tort law**
  ▫ antecedents in ancient law; well-established feature of Anglo-American law by the early 1800s

• **RPP is most strongly linked to the tort of negligence**
  ▫ negligence ≈ injuring another by acting less carefully than a RPP would have acted under the circumstances

• **RPP: Pluses and Minuses**
  ▫ flexible & readily applied by jurors (who usually decide if the RPP standard has been met)
  ▫ vague
The Reasonable Person in Negligence Law

Four Paradoxes

• **RPP is a Standard of Conduct & a Safe Harbor**
  - RPP specifies a duty (how one should behave) but also provides a liability-avoidance map (how to stay out of legal trouble)

• **RPP is Moderately Demanding & is Unforgiving**
  - RPP requires only *ordinary care* (not extraordinary care) but does not recognize excuses for failing to use ordinary care (a generally excellent MD who messes up under pressure faces liability)

• **RPP is Tied to How Things Are & How Things Should Be**
  - To satisfy the RPP standard, it’s enough to be as diligent as folks ‘round here tend to be …… except when it’s not

• **RPP is Uniform & Attribute-Dependent**
  - The clumsy, elderly, & mentally ill are held to the standard but kids & the physically disabled sometimes get a less demanding standard
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From Paternalism to Autonomy/Consumer Protection?

• **Informed Consent: From Paternalism to Patient Autonomy**
  ▫ Pre-1975: MD required to inform patient of a treatment risk only if it was the practice among MDs to inform of that risk
  ▫ Post-1975: MD required to inform patient of a treatment risk if a RPP in the position of the patient would regard such information as material/significant

• **Failure to Warn: From Paternalism to Consumer Protection?**
  ▫ Product sellers required to provide warnings of product dangers that a RPP would provide
  ▫ Product sellers required to provide warnings of product dangers adequate to alert a RPP to the dangers
Conclusions

• In tort law, RPP sets a standard of conduct that is meant to be moderately rather than maximally protective.

• However, in parts of tort law involving duties to provide information, courts tend to require disclosures that a RPP in the position of the patient (or consumer) would want and, in doing so, have slightly (?) raised the bar.

• Still, RPP requires competent performance, a standard that tends to be less demanding than a “best practices” standard.