

A 13-year-old girl was operating a high-speed motorboat. The boat was towing a 9-year-old boy in an inner tube tied to the rear of the motorboat by a rope. The rope became tangled around the boy's foot, causing him to suffer severe injuries.

In a suit brought on the boy's behalf against the girl, the boy has introduced uncontroverted evidence that the girl drove carelessly in such a way as to entangle the boy in the rope.

Is the boy likely to prevail?

- A. No, because the boy assumed the risk.
- B. No, because the girl was too young to be expected to appreciate and avoid the risk to which she exposed the boy.
- C. Yes, because children of the girl's age should have the capacity to operate motorboats.
- D. Yes, because the girl will be held to an adult standard of care.

## Explanation:

### Standards of care for negligence

<b>Adult</b>	Must act in same manner as ordinary, reasonable adult in similar circumstances  Standard adjusted for physical disabilities, superior skill & knowledge, involuntary intoxication Standard not adjusted for mental & emotional disabilities, voluntary intoxication
<b>Professional</b>	Must demonstrate same knowledge, skill & care as another professional in similar community  National (not community) standard applied to medical specialists*
<b>Child</b>	Must act in same manner as reasonable child of same age, intelligence & experience  Adult standard applied to children engaged in dangerous adult activity Children under five years old incapable of negligence

\*A modern trend applies a national standard of care to *all* physicians.

Children are generally expected to conform to a child's standard of care, which requires them to act like a reasonable child of the same age, intelligence, and experience. But a **child who engages** in a **dangerous activity** that is **normally undertaken by adults** (eg, driving a car) will be held to an **adult standard of care**. The child's conduct will then be measured against that of an **ordinary, reasonable adult** under the circumstances. And if the child breaches this duty of care and causes the plaintiff physical harm, the child is liable for [negligence](#).

Here, the 13-year-old girl may have been too young to appreciate and avoid the risk to which she exposed the boy by towing him in an inner tube behind the motorboat. But she will be held to an adult standard of care because she was engaged in a dangerous adult activity (**Choice B**). And since the girl breached that duty of care by driving carelessly and caused the boy to suffer severe injuries, the boy will likely prevail in his suit against her.

**(Choice A)** In most jurisdictions, a plaintiff's voluntary [assumption of the risk](#) reduces—but does not bar—recovery. So even if the boy assumed the risk by choosing to ride in the inner tube, his recovery will not be barred.

**(Choice C)** Children of the girl's age should *not* be expected to have the capacity to operate motorboats. Instead, the boy's claim will likely succeed because the girl will be held to an adult standard of care.

**Educational objective:**

Children who engage in a dangerous adult activity (eg, driving a motor vehicle) will be held to an adult standard of care, which requires them to conform their conduct to that of an ordinary, reasonable adult.

**References**

Restatement (Third) of Torts § 10 (Am. Law Inst. 2010) (standard of care for children).

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