

A 14-year-old girl of low intelligence received her parents' permission to drive their car. She had very little experience driving a car and did not have a driver's license. Although she did the best she could, she lost control of the car and hit a pedestrian.

The pedestrian has brought a negligence action against the girl.

Is the pedestrian likely to prevail?

- A. No, because only the girl's parents are subject to liability.
- B. No, because the girl was acting reasonably for a 14-year-old of low intelligence and little driving experience.
- C. Yes, because the girl was engaging in an adult activity.
- D. Yes, because the girl was not old enough to obtain a driver's license.

## 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 required to act like a reasonable child of the same age, intelligence, and experience. But **children who engage in a dangerous activity** that is **normally undertaken by adults** are held to an **adult standard of care**. This means that the child's conduct will be **measured against** that of an **ordinary, reasonable adult**—irrespective of individual shortcomings like low intelligence and lack of experience. A child whose conduct falls below this standard of care and causes the plaintiff physical harm is liable for [negligence](#).

Here, the 14-year-old girl engaged in a dangerous adult activity when she drove her parents' car. As a result, the adult standard of care applies, and it will not be adjusted to reflect the girl's low intelligence or limited driving experience **(Choice B)**. And since the girl's conduct fell below that standard of care when she lost control of the car and hit the pedestrian, the pedestrian will likely prevail in his negligence action against her.

**(Choice A)** The girl's parents are likely subject to liability for negligently entrusting their car to her. But this does not mean that the girl cannot be held liable for her own negligence.

**(Choice D)** The mere fact that the girl was not old enough to obtain a driver's license does not establish that her conduct fell below the adult standard of care at the time of the accident.

### Educational objective:

Children are generally required to act in the same manner as a reasonable child of the same age, intelligence, and experience. But a child who engages in a dangerous adult activity will be held to an adult standard of care, under which the child's conduct will be measured against that of an ordinary, reasonable adult.

**References**

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

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.