

A pedestrian who was blind took her guide dog to the veterinarian for a checkup. While she was waiting, she decided to get a coffee at the coffee shop across the street from the veterinarian's office. Without the assistance of her guide dog, the pedestrian left the veterinarian's office. She was able to find the crosswalk because it was just outside the entrance to the office. Once there, she pressed the crosswalk button on the light post. When the audible pedestrian signal indicated that it was safe to cross the street, the pedestrian stepped out into the crosswalk. Another person walking in the crosswalk accidentally bumped into the pedestrian, causing the pedestrian to unknowingly veer out of the crosswalk and into oncoming traffic. At the same time, the plaintiff was driving his car toward the pedestrian. In order to avoid hitting the pedestrian, the plaintiff swerved into a lamppost. The plaintiff sustained injuries as a result of the accident.

The plaintiff has filed a negligence action against the pedestrian to recover damages for his injuries.

Which of the following standards will the court apply to the pedestrian's conduct?

- A. Whether the pedestrian acted in good faith when she crossed the street without her guide dog.
- B. Whether the pedestrian exercised the care of a reasonably careful blind person.
- C. Whether the pedestrian exercised the care of a reasonably prudent person under the circumstances.
- D. Whether the pedestrian used her best efforts to safely cross the street without her guide dog.

Explanation:

Standards of care for negligence

Adult	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
Professional	Must demonstrate same knowledge, skill & care as another professional in similar community National (not community) standard applied to medical specialists*
Child	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.

The **standard of care** most often imposed in **negligence cases** is that of a **reasonably prudent person** under the circumstances. A defendant's *mental or emotional* disabilities are not considered in determining whether conduct was negligent unless the defendant is a child. This means that the conduct of a defendant with a mental disability will be measured by the standard of someone of ordinary intelligence and knowledge.

However, a defendant's particular *physical* characteristics (eg, blindness) are considered. This means that the conduct of a **defendant with a physical disability** will be measured by the standard of a **reasonably careful person with the same disability**. Therefore, the standard that the court will apply to the pedestrian's conduct is whether she exercised the care of a reasonably careful blind person (**Choice C**).

(Choices A & D) The standard of care for negligence is an objective one, measured by what a reasonably prudent person with the same physical characteristics would have done. Whether a particular defendant acted in good faith or used his/her best efforts is irrelevant.

Educational objective:

In negligence cases, the conduct of a defendant with a physical disability (eg, blindness) will be measured by the standard of a reasonably careful person with the same disability.

References

Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 11 (2010)
(standard of care for persons with a disability).

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