

Two coworkers agreed to carpool to work each day. The driver agreed to pick the passenger up each morning and return her home after work. In exchange, the passenger agreed to pay the driver a monthly fee. One morning, while on their way to work, the driver and the passenger drove down a city street. As they approached a busy intersection, the driver's cell phone made a beeping sound, indicating that she had received a text message. The driver glanced over at her cell phone, which was attached to her dashboard, to read the message. As a result, the driver failed to notice that she was driving through a red light. As the driver's vehicle entered the intersection, a car that had the right-of-way struck the vehicle on the passenger's side. The driver was not injured, but the passenger sustained a broken arm and bruised ribs. The passenger subsequently filed a negligence action against the driver.

What standard of care should the court apply to determine if the driver breached her duty to the passenger?

- A. Duty to refrain from gross or wanton and willful misconduct.
- B. Extraordinary care.
- C. Ordinary care.
- D. That of a reasonable person of similar age, intelligence, and experience.

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.

In **negligence** actions, the standard most often applied to determine if the defendant breached a duty to the plaintiff is one of ordinary care. Ordinary care is the care that a reasonably prudent person would use under the circumstances. In most jurisdictions, **automobile drivers** owe a **duty of ordinary care** to their **passengers** (those who pay money for the ride) **as well as** their **guests** (those who ride for free).

A few jurisdictions have enacted "guest statutes," under which an automobile driver's only duty to *guests* is to refrain from gross or wanton and willful misconduct. However, there is no indication that this jurisdiction has enacted such a statute. And even if it had, guest statutes do not apply to *passengers* (**Choice A**). Therefore, the court should apply the ordinary-care standard in this passenger's negligence action against the driver.

(Choice B) A duty of extraordinary care imposes liability on a defendant who is slightly negligent. This standard of care has been imposed on common carriers, innkeepers,* and bailees—but not automobile drivers.

*Most modern courts hold innkeepers (ie, hotel operators) to an ordinary standard of care.

(Choice D) The standard of care generally imposed upon a *child*, age five or older, is that of a reasonable child of similar age, intelligence, and experience. However, a child who engages in a high-risk activity usually undertaken by adults (eg, driving a car) is held to the same ordinary standard of care as an adult.

Educational objective:

In most jurisdictions, automobile drivers owe a duty of ordinary care to both their guests (who ride for free) and passengers (who pay money for the ride).

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 7 (Am. Law Inst. 2010) (duty).

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