CHAPTER OVERVIEW

Negligence is the most important field of tort liability today because it regulates most activities in our society. Whenever anyone is accidentally injured, negligence law may be called in to determine whether the defendant was negligent. This chapter is broken into three main sections. The first section begins by explaining negligence and the three factors that must be determined to prove negligence. The second section examines the special types of liability if the defendant is found negligent. The special types of liability discussed are product liability, occupiers’ liability, host liability, vicarious liability, and automobile accidents. As well, strict liability (in which one person may be required to compensate another for injury or damages, even though the loss was neither intentionally nor negligently inflicted) is examined. The third section explains defences to negligence, focusing primarily on contributory negligence, voluntary assumption of risk, and the role of the statute of limitations.

The “Looking Back” activities provided at the end of the chapter offer students opportunities to demonstrate and apply their understanding of the key vocabulary and concepts related to negligence and unintentional torts. The Extension Activities and Additional Cases provided in this resource offer further opportunities to assess student learning of the material covered in the chapter. Assessment tools (rubrics and a checklist) are provided for Looking Back Activity #13, Extension Activity 2: Defending a Position, and Extension Activity 5: Liability In-service.
### Planning Chart

<table>
<thead>
<tr>
<th>Key Content</th>
<th>Suggested Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Topic:</strong> Negligence</td>
<td>1. Ask students the following questions and record their responses on the board: What is meant by the term “negligence”? What are some examples of negligence?</td>
</tr>
<tr>
<td><strong>Key Vocabulary</strong></td>
<td>2. Explain that you will be looking at an example of negligence and determining what factors must be proven in a civil action for negligence.</td>
</tr>
<tr>
<td>negligence</td>
<td>3. Put the following example on the board or provide it as a handout:</td>
</tr>
<tr>
<td>duty of care</td>
<td>Tom, in an extremely intoxicated state, went to a bar and was served three or four beers over a 50-minute period. After he left the bar, Tom drove his vehicle on the wrong side of the road and collided with Sam’s car, killing Sam. Sam’s wife decided to sue Tom and the bar owner over the death of her husband.</td>
</tr>
<tr>
<td>foreseeability</td>
<td>4. List the factors that need to be proven for negligence on the board:</td>
</tr>
<tr>
<td>standard of care</td>
<td>a) duty of care—Explain, and ask students what duty the defendants owe Sam. Record their responses on the board.</td>
</tr>
<tr>
<td>reasonable person</td>
<td>b) standard of care—Explain, and ask students what a reasonable person in Sam’s or the bar owner’s position would do in a similar situation. Record their responses on the board.</td>
</tr>
<tr>
<td>specialized standard of care</td>
<td>c) causation—Explain, and ask students if the actions of the defendants caused Sam’s death. Record their responses on the board.</td>
</tr>
<tr>
<td>liability insurance</td>
<td>5. Explain that duty of care, standard of care, and causation must be proven to be successful in a negligence action. Refer students to page 332 of their text to study negligence in greater detail.</td>
</tr>
<tr>
<td>cause-in-fact</td>
<td><strong>Resources</strong></td>
</tr>
<tr>
<td>apportionment</td>
<td><strong>Law in Action</strong>, pp. 332–341</td>
</tr>
<tr>
<td>remoteness of damage</td>
<td><strong>BLM 14-2: Assessing Negligence</strong></td>
</tr>
<tr>
<td>intervening act</td>
<td>Legal Inquiry</td>
</tr>
<tr>
<td>thin-skull rule</td>
<td><strong>Topic:</strong> Special Types of Liability</td>
</tr>
<tr>
<td><strong>Key Vocabulary</strong></td>
<td>1. A person who commits a tort may be liable for his or her actions. Ask students the following questions and record their responses on the board: What is meant by “liable”? What groups (e.g., manufacturers, car and pet owners, etc.) may be held liable for their actions?</td>
</tr>
<tr>
<td>product liability</td>
<td>2. List the terms associated with liability on the board (see terms under “Key Vocabulary”). Explain each term and ask students to provide an example for each.</td>
</tr>
<tr>
<td>occupiers’ liability</td>
<td>Terms Associated with Liability</td>
</tr>
<tr>
<td>invitee</td>
<td></td>
</tr>
<tr>
<td>licensee</td>
<td></td>
</tr>
<tr>
<td>trespasser</td>
<td></td>
</tr>
<tr>
<td>allurement</td>
<td></td>
</tr>
<tr>
<td>host</td>
<td></td>
</tr>
<tr>
<td>vicarious liability</td>
<td></td>
</tr>
<tr>
<td>strict liability</td>
<td></td>
</tr>
<tr>
<td><strong>Resources</strong></td>
<td>3. Refer students to page 341 of their text to study the special types of liability in more detail.</td>
</tr>
<tr>
<td><strong>Law in Action</strong>, pp. 341–347</td>
<td></td>
</tr>
</tbody>
</table>
### Key Content

**Topic:** Defences to Negligence

**Key Vocabulary**
- contributory negligence
- voluntary assumption of risk
- waiver
- inevitable accident
- act of God
- explanation
- statute of limitations

**Resources**
*Law in Action*, pp. 347–350

### Suggested Strategies

1. Ask students to identify the three factors that must be proven for a negligence action (duty of care, standard of care, causation) and write them on the board. Explain that if one of these factors is missing, then it is a defence to negligence.

2. Explain the meaning of “defence.” Indicate that there are certain specific defences. List the specific defences on the board (see terms under “Key Vocabulary”), explaining each term and asking students to provide an example for each.

### Specific Defences

<table>
<thead>
<tr>
<th>Specific Defences</th>
<th>Examples</th>
</tr>
</thead>
</table>

3. Have students generate a list of examples other than the ones given in class for each of the specific defences. Randomly select students to share the examples they wrote for each specific offence.

4. Refer students to page 347 of their text to study defences to negligence in more detail.

### Chapter Review

**Resources**
- BLM 14-2: Assessing Negligence
- Assessment Master 14-2: Rubric: Case Analysis


*Case Analysis*

*Law in Action Test Bank*, Chapter 14

### Extension Activities

**Activity 1:** Legal Vocabulary
- BLM 14-1: Developing Your Legal Repertoire

**Activity 2:** Defending a Position
- BLM 14-3: Defending a Position: Writing a Letter to the Editor
- Assessment Master 14-1: Rubric: Letter to the Editor—Personal Responsibility

**Activity 3:** Waivers/Product Warnings
- BLM 14-4: Risky Business—Waivers

**Activity 4:** Details Count: Case Study
- Additional Cases
- BLM 14-2: Assessing Negligence

**Activity 5:** Liability In-service
- BLM 14-5: Lessons in Liability: Creating an In-service
- Assessment Master 14-3: Checklist: Liability In-service
- Assessment Master 14-4: Rubric: Liability In-service

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*Planning Chart (continued)*
Thirty years ago, hardly anyone thought about going to court to sue someone. A person could be nudged by a car and the victim would likely say “no harm done,” and walk away. No filing of cause of action documents or statements of defence.

Which one of the following sentences most logically continues the above story?

a) Cars today are much more powerful than they used to be.

b) Drivers drive faster and more aggressively today.

c) Unfortunately, times have changed.

d) More people today are aware of their rights under the law.

e) Lawyers are having a difficult time finding clients.

Answer: c)

The law classifies those who come onto your property as either invitees or licensees. Invitees are those that have been invited for a business purpose, while a licensee arrives for a social visit. A trespasser is someone who has no legal right or permission to be on your property.

Using the above definitions, determine which of the following situations could lead to a civil lawsuit.

a) A mail carrier delivers mail to your door.

b) A friend is invited to a dinner party at your home. He slips and falls, injuring his knee on your newly waxed floor.

c) A burglar breaks into your home. While climbing the stairs, he trips over the sleeping cat. He falls and breaks his leg.

d) The police arrive at your door in response to a noise complaint from your neighbours.

e) The neighbourhood kids are playing a game of road hockey in front your house. They continually go onto your property to retrieve their ball.

Answer: b) and e)

An inevitable accident is one that the plaintiff had no control over. Which of the following statements would fit into that definition?

a) Karim is being sued for injuries caused when he rear-ended another vehicle during a bad snowstorm. He was not speeding.

b) Angela is being sued for running her shopping cart into an overly large end-of-aisle display at the local supermarket. All of the cans fell, injuring another customer who was reaching for a can from the display.

c) Narmetha is suing her insurance company for not assisting her in recovering the cost of replacing her car. During a large wind and rainstorm, the old oak tree in her front yard was blown onto her car.

d) Jason was having a new pool constructed in his backyard. The backhoe that was digging the hole inadvertently destroyed his neighbour’s fence.

e) A boat owner is being sued for damages caused to a dock during a flash thunderstorm. The storm was so severe that the boat owner claims she had no other choice than to tie up at the plaintiff’s dock.

Answer: a)
CHAPTER 14 ◆ Negligence and Unintentional Torts

Solutions to Questions and Cases

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Case: Donoghue v. Stevenson

1. The definition of neighbour principle includes three attributes:
   - duty of care—you must not carelessly harm your neighbour
   - neighbour—anyone who can be injured by your actions (omissions)
   - foreseeability—you can reasonably foresee the consequences of your actions (omissions)

Note: Student examples should include all three attributes.

2. With this ruling, the duty of care is not limited to contractual parties but can include “anyone” who may be harmed.

Arguments in support: Generally would stress the benefits of including more people harmed by the negligence of others and/or the abuses that can result from a more limited application of a duty of care.

Arguments against: May focus on the increased number of tort claims, as well as the trivial or somewhat bizarre picture of the claims (e.g., see “Weird Tort Claims,” student text p. 331).

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Law in Action: Family Sues Over Fatal Crash

1. The defendants were representatives of the manufacturer, John Deere, and the two organizations that sponsored the job-shadow program.

2. The Peat family will have to prove that John Deere and the two organizations:
   - owed Amanda and Robert a duty of care (to avoid careless actions that may harm others);
   - failed to provide a proper standard of care (the amount of care that a “reasonable person” would provide in a similar situation); and
   - caused the injuries to Amanda and Robert by their actions/omissions.

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Consider This

The Canadian Red Cross owed a standard of care that would require taking the necessary precautions to ensure that the blood received by people would not infect them with HIV. Since the Canadian Red Cross specialized in blood collection, storage, and distribution, the agency owed a specialized standard of care. That is, the agency would have been knowledgeable in the proper procedures and therefore would have been expected to reasonably foresee the consequences of its collection methods.

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Case: Thibault v. Fewer

1. The plaintiff had to prove each of the following factors:
   - the neurosurgeon owed the plaintiff a duty of care
   - a specialized standard of care had been breached
   - there was a causal link between the pain-blocking procedure and the loss of vision in the right eye
2. The case description cites two reasons why the trial judge dismissed the case:
   - a less than 1 percent risk of complication was not sufficient to require the surgeon to disclose the risks or potential side effects
   - the plaintiff would have had the procedure done even if the risks had been disclosed

Students should defend their decision to agree or disagree. They may argue that serious risks, such as possible blindness, must be disclosed even if the chances are slight. Students may question the standard of measure used by the judge to establish what constitutes a “slight” occurrence. Students should argue that since no causal link was made between the procedure and the injury, and since the plaintiff would have consented to the procedure even if the risks were disclosed, the failure to disclose was not a critical factor regarding informed consent.

3. As the plaintiff, a student might consider appealing the decision with regard to the trial judge’s claim that less than 1 percent risk of complication did not warrant full disclosure of risks. However, this avenue of appeal would have to be balanced against two findings of the trial court:
   - The court asserted that the plaintiff would have had the procedure done anyway.
   - There was no proof of a causal link between the procedure and the injury.

Consider This
Student responses may contain the following considerations or circumstances:
   - The standard of care required of a rescuer is quite low, so negligence may be difficult to prove.
   - There may be circumstances in which no other rescuers are available, or no one of greater experience (first aid/rescue) shows up.
   - It may be foreseeable that you may cause greater harm to someone in need of assistance or cause great harm to yourself.

Building Your Understanding
1. Unintentional tort is damage to property or a personal injury caused by an accident or an action that was not intended to cause harm.

2. To prove tort of negligence, the following factors must be proven:
   - the defendant owed the plaintiff a duty of care
   - the defendant failed to provide the proper standard of care that a reasonable person would have provided in a similar situation
   - the defendant’s actions (omissions) caused the plaintiff’s injury/injuries

3. In law, your neighbour is anyone whom you can reasonably foresee being injured by your actions. The neighbour principle was established by the Donoghue v. Stevenson case of 1932, in which a friend purchased a bottle of ginger beer for Mrs. Donoghue that contained decomposed remains of
a snail, and from which Mrs. Donoghue became physically ill. The neighbour principle has more inclusive applications than the previous legal principle that limited a manufacturer’s duty of care to be given to the purchaser only (in this case, Mrs. Donoghue’s friend). The neighbour principle extended the duty of care owed to “anyone” who consumes the product and is injured by it.

4. **Foreseeability** is the ability of a reasonable person to anticipate the consequences of an action. It is important in determining duty of care owing because the courts cannot reasonably expect an ordinary person to anticipate all possible consequences of their actions to every potential neighbour (because someone may be indirectly or remotely connected to the defendant’s actions). Thus, applying the principle of foreseeability limits the duty of care to the anticipated consequences of the defendant’s actions.

5. **Duty of care** is the obligation to foresee and avoid careless actions that might cause harm to others. **Standard of care** is the standard used to establish “how much” care the defendant owed the plaintiff. Determining the standard of care involves matching the defendant’s actions (omissions) against that which is expected from a careful person of equivalent qualifications and skills. For instance, the actions of a neurosurgeon would be measured against that which is expected from a careful medical specialist in the same area of practice. Similarly, the actions of a teenager would be measured against that which is expected of a careful person of a similar age and experience.

   Student examples will vary and can be illustrative of the standard of care if the idea of matching equivalence is stressed.

6. For legal purposes, a “reasonable person” is the standard to which the action of an ordinary (everyday) defendant (non-expert) is measured. To determine this, the courts will look at what an ordinary person of normal intelligence would do in a similar situation.

7. To be successful in a suit for medical negligence, the plaintiff must show the following:
   - the practitioner failed to adequately inform the patient of the medical treatment/procedure, any significant or unusual risks or potential side effects, and any alternative procedures available
   - the plaintiff would not have had the treatment if the above information had been disclosed
   - the treatment/procedure caused the injury

   Student examples will vary and are illustrative if they pass the “but for” test.

8. To help determine the causal link between the actions of the defendant and the plaintiff’s injury, the “but for” test is applied. If an injury would not have happened “but for” the defendant’s actions, then those actions did in fact cause the plaintiff’s harm, or *cause-in-fact*. Student examples will vary and are illustrative if they pass the “but for” test.

   The principle of remoteness of damage is connected to the attribute of foreseeability. That is, if the defendant could not have foreseen that his/her actions could cause the type of injury that resulted, then the defendant is not liable. An ordinary person cannot be expected to anticipate the chain of causal links between their actions and all of the possible injuries that may result because some of these injuries may be indirect or too remote. Student examples will vary and are illustrative if they include two or more links in a chain of events that result in a specific injury to the plaintiff and do not pass the “but for” test.

9. An **intervening act** is an unforeseeable event that interrupts the chain of events started by the defendant and becomes the legal cause of the injury. Since this intervening act could not be foreseen by an ordinary person of normal intelligence (reasonable person), the defendant is not liable in tort law.

10. **Apportionment** is the division of fault among several negligent parties.

11. The **thin-skull rule** is the application of a principle that a defendant is liable for all damages caused by negligence, despite any pre-existing condition that makes the plaintiff more prone to injury. To help students predict the impact of applying this principle to the standard of care owed to “legal neighbours,” encourage them to examine polar extremes such as thin skulls versus super-thick skulls. If humans were all injury-free (i.e., indestructible—except for aging), would a “reasonable person” be expected to be very careful to avoid harming others?
Consider This
The judge would likely have applied the following criteria in reaching that judgment:

- duty of care—was the woman a “legal neighbour”?
- foreseeability—could this sequence of events be anticipated with normal handling of this product?
- standard of care—was the consumer adequately warned of the risk of explosion?
- causation—was the injury a direct result of handling this product?

Case: Prevost v. Vetter et al.

1. The Vetters applied to have the case dismissed without a trial on the basis that there is no liability imposed on social hosts in Canadian law. They argued that, as social hosts, they did not owe Adam Prevost a duty of care to prevent him from injury.

2. The British Columbia Supreme Court ruled that the Vetters owed a duty of care to Prevost, since the Vetters claimed that they had supervised proceedings on past occasions, discouraged the use of alcohol by minors, and cared for the intoxicated. Thus, by their actions the Vetters themselves recognized that they had a duty of care to prevent minors from the potential dangers of driving while under the influence of alcohol and to protect those (such as Prevost) who might ride with them.

3. The Vetters would have a standard of care to their guests and to their neighbours (other drivers on the highway) that a reasonable person who was not intoxicated would exercise in a situation that involved drinking and driving.

Case: F.S.M. v. Clarke

1. The government and the Church owed F.S.M. a duty of care because they assumed a parental role in caring for F.S.M. while he was in their charge.

2. Previously, the courts recognized three kinds of visitors and each required a different standard of care. However, legislation has been introduced to reduce the difficulty encountered in distinguishing between an invitee and a licensee. Since the standard of care owed to an invitee and a licensee is the same, a distinction between them is not required. Occupiers owe trespassers a lower standard of care than that owed to business or social guests. Still, that standard requires that the occupier not intend any injury upon trespassers.

3. The law treats children who trespass differently because it recognizes that children are easily attracted to sites (allurement) such as construction sites, and the children may not understand the concept of private property. Owners of an allurement site must take all reasonable precautions to protect children who could be lured to their premises.

4. An employer might become vicariously liable for damages in an auto accident if the employer failed to ensure the work carried out by an employee was...
without negligence. A car owner might become vicariously liable for damages that result from the negligent behaviour of anyone who drives their car.

5. Under the principle of strict liability, the defendant is automatically liable, even if the defendant was not careless or at fault. This principle applies to activities or situations that are inherently dangerous, such as owning dangerous pets and transporting hazardous goods. Student examples will vary, but each should exhibit activities or situations that are inherently dangerous.

Case: Laws v. Wright

1. Jane Laws claimed that the stable owners failed to warn her of the dangers posed by the horse and failed to protect the users of the farm from the horse.

2. The judge dismissed the case using the following argument:

Premise: Since Jane was experienced and knowledgeable about equine behaviour, and

Since Jane had been warned not to feed that particular horse,

Conclusion: Therefore, Jane had decided to accept the risks involved by continuing to feed the horse (voluntary assumption of risk).

3. If the horse had escaped from its stable and caused injury, then Laws’s claim that the stables failed to protect the users of the barn from the horse would carry more validity. Otherwise, it is difficult to counter the judge’s argument, which is clearly valid.

Case: Smith v. McGillivary

1. The courts applied the statute of limitations defence—that the period of two years in which Richard Smith must begin legal action had expired.

2. Possible defences Dr. McGillivary’s attorney could have used:

- **Standard of care**: Argue that Dr. McGillivary provided the same standard of care as another dentist would in performing that procedure (no breach of a specialized standard of care).
- **Causation**: Question the cause-in-fact of the decay due to the length of time involved. This approach may provide the opportunity to apply the partial defence of contributory negligence. That is, Smith’s diet or lack of oral hygiene may have contributed to the decay.

Building Your Understanding

1. Contributory negligence is a partial defence to the extent that the negligent acts of the plaintiff helped to cause the plaintiff’s injuries. Student examples will vary, but each should contain negligent actions (omissions) on the part of the plaintiff and a cause-in-fact linkage to the plaintiff’s injuries.

2. Defences a defendant may use in a tort action:
   - inevitable accident
   - act of God
   - valid explanation
   - statute of limitations

3. Probably not as a willing player, Jones accepted the risk of being injured during the game (voluntary assumption of risk). However, if the particularly hard check was considered so brutal that it far exceeded the force necessary to move the plaintiff out of the play, then a lawsuit for damages might be successful because the plaintiff did not consent to the risk of being injured by actions inconsistent with the ordinary play of hockey.

4. a) No. By their willingness to ride in the car, passengers voluntarily assume the risk of injury from an accident that does not involve negligence. In this case, the passenger (plaintiff) sustained injuries he/she might not have suffered while wearing a seat belt, and thus may have contributed to his/her injuries (contributory negligence).

   b) Yes. Dmitri knowingly and willingly assumed the risks involved in accepting a ride with an intoxicated driver.

   c) No. Kirsten did not knowingly assume the risks connected with eating peanuts because she was not informed about the peanut content in the candy bar. There appears to be some negligence on the part of the producers of the candy bar for
failing to warn consumers of risks associated with using the product (product liability).

d) No. Nurul did not knowingly and willingly assume the risks involved in playing football.

5. The defences of inevitable accident and act of God both involve uncontrollable and unforeseeable events that the plaintiff had no control over and that could not be prevented by any amount of reasonable care. The distinguishing feature is in the nature of the event. An act of God pertains to an extraordinary natural event, while an inevitable accident involves something other than a natural event.

natural event = lightning strike or landslide (uncontrollable, unforeseeable)
non-natural event = sudden stroke (uncontrollable, unforeseeable)

Looking Back

Quick Quiz

1. a) voluntary assumption of risk; b) contributory negligence; c) allurement; d) statute of limitations; e) vicarious liability; f) product liability; g) duty of care; h) cause-in-fact; i) thin-skull rule; j) foreseeability; k) tort; l) negligence

Checking Your Knowledge

2. It would not be fair to expect the same standard of care from all people because not all people are similarly situated. That is, not all people have the expertise of a lawyer or surgeon. Thus, the standard of care for a professional is higher than that set for ordinary people. It is fair to set the same standard for people in a similar situation (e.g., surgeon-to-surgeon and ordinary people—to—ordinary people). Thus, the standard for ordinary people is the “reasonable person” who is regarded as an ordinary careful person of normal intelligence.

3. The standard of care required of rescuers, particularly in an emergency, is quite low. One reason for this law standard is to make it more difficult to prove negligence. If it is difficult to prove the case, fewer people will initiate lawsuits against rescuers and it is hoped that fewer people will be deterred from helping their “legal neighbour.”

4. Causation—aspects to prove

Cause-in-fact: Illustrative examples will vary, but each example should contain the assertion that the injury would not have occurred “but for” the actions of the defendant.

Remoteness of damage: Illustrative examples will vary, but each example should contain the concept of foreseeability. Thus, each example should contain the assertion that the defendant could not have foreseen that his/her actions would cause the injury that resulted because two or more of the links in a chain of events are connected to the injury.

5. Manufacturers must take the following steps to ensure their products are safe for consumers:
- design products that are free from harmful defects
- manufacture products that are free from harmful defects
- warn consumers on the safe use of the product
- warn consumers of risks associated with using the product

6. Invitee: Student examples will vary, but each example must contain two attributes. First, the visitor has permission to be on the occupier’s property and second, some economic benefit is obtained by the occupier and the person invited.

Licensee: Contains two attributes. First, the guest has permission to be on the property and second, a mutual benefit of social exchange is obtained.

Trespasser: Contains two attributes. First, this visitor does not have the permission of the occupier to be on the property and/or the visitor has no legal right to be on the property (e.g., a search warrant provides a legal right to be on the property, even without the permission of the occupier).
7. **Suggestion:** Divide students into groups of four, and have students pair off to each create one case. Provide students with the criteria provided in Table TR 14.1 to assess each case. Have each pair of students assess the other pair’s case before the group presents both cases. Alternatively, ask the students to generate the assessment criteria and then confirm its relevance prior to creating each case.

**Developing Your Thinking and Inquiry Skills**

8. Table TR 14.2, below, charts the types of liability and some possible school-based situations derived from the information presented in this chapter.

9. Answers to this activity appear in Table TR 14.3.

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### Table TR 14.1: Criteria for Activity 7, Page 351

<table>
<thead>
<tr>
<th>Case #</th>
<th>Defences</th>
<th>Assessment Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Duty of care not owed</td>
<td>Applies neighbour principle successfully</td>
</tr>
<tr>
<td></td>
<td>Standard of care was met</td>
<td>Applies “reasonable person” test with equivalence with similar situation</td>
</tr>
<tr>
<td></td>
<td>Causation, not cause-in-fact</td>
<td>Identifies intervening act or proves remoteness of damage</td>
</tr>
<tr>
<td>2</td>
<td>Inevitable accident</td>
<td>Identifies uncontrollable, unforeseeable <em>natural</em> event</td>
</tr>
<tr>
<td></td>
<td>Act of God</td>
<td>Identifies uncontrollable, unforeseeable <em>non-natural</em> event</td>
</tr>
<tr>
<td></td>
<td>Valid explanation</td>
<td>Proves “reasonable person” took every precaution</td>
</tr>
</tbody>
</table>

### Table TR 14.2: Answers for Activity 8, Page 352

<table>
<thead>
<tr>
<th>Type of Liability</th>
<th>School-based Situations</th>
<th>How to Avoid Unreasonable Risk of Harm to Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>personal liability</td>
<td>rough-housing activity</td>
<td>use behaviour and actions consistent with a “reasonable person”</td>
</tr>
<tr>
<td>product liability</td>
<td>soft drinks, candy bars</td>
<td>design/produce products free of harmful defects, inform consumers on safe use, and warn of risks</td>
</tr>
<tr>
<td>occupiers’ liability</td>
<td>invitee—service to vending machine</td>
<td>provide and maintain safe conditions</td>
</tr>
<tr>
<td>occupiers’ liability</td>
<td>allurement—playground</td>
<td>inform consumers on safe use, warn of risks, and supervise</td>
</tr>
<tr>
<td>vicarious liability</td>
<td>company hosting job-shadow site, school swimming/canoeing programs</td>
<td>provide adequate supervision, training, equipment, and warning of risks</td>
</tr>
</tbody>
</table>

### Table TR 14.3: Answers for Activity 9, Page 352

<table>
<thead>
<tr>
<th>Important Facts</th>
<th>Grounds for Negligence</th>
<th>Defences Available to Bungee Jumping Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alex warned of risks. Alex acknowledges risks (signs waiver)</td>
<td>duty of care is owed (contractual)</td>
<td>voluntary assumption of risk</td>
</tr>
<tr>
<td>Alex did not know employee was inexperienced</td>
<td>plaintiff could not reasonably foresee any injury beyond the ordinary risks of the event</td>
<td>none</td>
</tr>
<tr>
<td>New employee did not adjust jump to Alex’s weight</td>
<td>vicarious liability, inadequate training, breach of standard of care</td>
<td>none</td>
</tr>
<tr>
<td>Bungee cord ripped apart</td>
<td>product liability</td>
<td>bungee cord or harness had design or material defects</td>
</tr>
<tr>
<td>Alex fell and suffered severe injuries</td>
<td>causation—apply “but for” test (i.e., cause-in-fact)</td>
<td>none</td>
</tr>
</tbody>
</table>
10. a) Tort of negligence
   b) Answers to this activity appear in Table TR 14.4.

Communicating Your Ideas

11. Provide students with the organizer in BLM 14-2: Assessing Negligence to help them develop their storyline and to assist them with making the judge’s decision. Legal Inquiry

12. Student arguments will vary, but should include some of the points included in Table TR 14.5.

Table TR 14.4: Answers for Activity 10, Page 352

<table>
<thead>
<tr>
<th>Tests of Negligence</th>
<th>Chances of Success in a Lawsuit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty of Care</td>
<td>Teacher owes a duty of care to Rafay and all students. This could be established by using the School Act or applying the neighbour principle. Chances are good.</td>
</tr>
<tr>
<td>Standard of Care</td>
<td>Although there may have been a breach in the standard of care regarding the personal supervision of Rafay, there was no breach in the standard of care regarding all other students since the teacher was supposed to lead the students out of the building during a fire drill. - teacher was required to make a split-second decision - difficult to assess chances of success in this case</td>
</tr>
<tr>
<td>Causation</td>
<td>Application of the “but for” test to the moving away action of the teacher would likely be seen as a cause-in-fact. Chances are good.</td>
</tr>
</tbody>
</table>

Table TR 14.5: Answers for Activity 12, Page 352

<table>
<thead>
<tr>
<th>Pro</th>
<th>Con</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty of care owed</td>
<td>Voluntary assumption of risk</td>
</tr>
<tr>
<td>• smokers are “legal neighbours”</td>
<td>• warnings of potential risks are provided on packaging—</td>
</tr>
<tr>
<td>• duty of care not met: selling a product known to cause health risks</td>
<td>consumers assume the risks when they purchase cigarettes</td>
</tr>
<tr>
<td>Standard of care not met</td>
<td>Valid explanation</td>
</tr>
<tr>
<td>• breached standard of care; a “reasonable person” would not sell a product that was known to be addictive and dangerous to health</td>
<td>• consumers adequately warned of risks associated with use</td>
</tr>
<tr>
<td>• tobacco companies knew about some of the health problems caused by smoking more than 40 years ago through their own research; the defendant’s omission of facts caused injuries to consumers</td>
<td>Contributory negligence of plaintiff</td>
</tr>
<tr>
<td>• until recently, consumers were not adequately warned of health risks</td>
<td>• excessive use by plaintiffs</td>
</tr>
<tr>
<td>Causation</td>
<td>Contributory negligence of plaintiff</td>
</tr>
<tr>
<td>• tobacco smoke has been causally linked to cancers, respiratory illnesses, and other diseases</td>
<td>• plaintiffs could have foreseen potential health risks; can’t prove consumers experience negative health effects “but for” smoking (i.e., remoteness of damage), as other factors may have contributed</td>
</tr>
<tr>
<td>• tobacco companies could have foreseen damaging health effects</td>
<td></td>
</tr>
</tbody>
</table>

Putting It All Together

13. Provide students with the assessment criteria from Assessment Master 14-2: Rubric: Case Analysis to assist them in preparation of their case analysis.

14. This is an excellent active-learning assignment that lends itself to an analysis of different argument types and informal fallacies. However, without a specific controversial Supreme Court decision, it could be difficult to generate specific
suggestions. Provide students with the following assessment criteria:

Questions should
- be clear in meaning
- be specific to a legal issue, case, or principle of law
- give lots of information—can’t be answered by “yes” or “no”
- not be easy to answer without research

Answers should
- be clear and relevant to question
- be concise and accurate
- contain at least one illustrative example

Page 353

Cases

Teaching Suggestion: Each of the cases on pages 353–354 of the student text and the Additional Cases provided with the teaching notes for this chapter might be analyzed by a group of students (6 cases = approximately 4–5 students/group) and presented to the class, using the following outline:

a) Relevant facts (incident, people involved in the incident, and damages/injuries, in your own words)

b) Test of negligence applicable to this case and the possible defences available

c) Answers to questions

d) Consideration (criteria for judgment) applicable to reaching a judgment

Case: Cempel v. Harrison Hot Springs Hotel Ltd.

1. Cassandra Cempel was an invitee to the camping facilities, but she was a trespasser to the source pool where the injuries occurred (e.g., you’re invited into the bank, but you must get permission to enter the vault). Generally, a lower standard of care is owed to trespassers. Still, occupiers of a property have a duty to maintain their property so that anyone entering the premises is not injured—including trespassers.

   Since the fence surrounding the pool was of an inadequate safety standard and there appeared to be an absence of signs warning that the extremely hot temperatures of the pool were dangerous (the plaintiff believed the temperature of the source pool was like a hot tub, or approximately 40°C), the defendants would still be liable for a significant portion of the damages.

2. In the final judgment, the court apportioned 60 percent to the defendant and 40 percent to the plaintiff. Student responses to this apportionment should consider the following facts and circumstances of the case:

   • The fence surrounding the source pool was of an inadequate safety standard.
   • There was inadequate or a complete lack of warning regarding the extremely hot temperature of the source pool.
   • The plaintiff knowingly entered the source pool premises without permission (climbed over the fence). (One judge concluded that she was “the author of her own misfortune.”)
   • The plaintiff could not have anticipated the kind of damages she would suffer because she did not know the temperature of the source pool (believed the temperature to be 40°C, when in fact it was 60°C).

3. The degree of liability to the defendant was altered (25 percent increased to 60 percent apportionment) to the extent to which the standard of care was not met. For instance, the fence surrounding the pool was of an inadequate safety standard. There was inadequate warning of the dangers regarding the hot temperature of the source pool. In addition, the defendant would have known the temperature of the pool and should have reasonably anticipated that anyone entering the pool would be injured by the extremely hot temperatures.

Case: Empire Co. v. Sheppard

1. Joan’s injury was caused by the snagging of her coat in the exposed part of the seam of the escalator wall.

2. The appellant is the shopping mall. The respondent is Joan Sheppard.

3. If Joan’s injuries had been more serious, it may be possible that the safety inspection of the escalator had not been carefully done—in which case, the standard of care was not met (vicarious liability). Thus, a different decision is possible.
Case: Crocker v. Sundance Northwest Resorts

1. To prove the resort was negligent, Mr. Crocker had to prove
   • Sundance owed the plaintiff a duty of care
   • Sundance breached the standard of care
   • the actions of the defendant caused the injuries

2. Possible defences:
   • Sundance did not owe a duty of care
   • Voluntary assumption of risk
   • Contributory negligence

3. Mr. Crocker appealed the case with the expectation that he would be awarded 100 percent damages to be paid by Sundance by the appeal court. Both the trial judge and the Supreme Court awarded 75 percent damages to be paid by Sundance and 25 percent by Mr. Crocker.

4. If Mr. Crocker’s intoxication had not been evident, and if the resort had warned Mr. Crocker of the potential risks, and if Mr. Crocker had carefully read and signed the waiver form releasing the resort from its duty of care, and if the resort had not breached the expected standard of care, then Sundance Northwest Resorts would not have been liable for his injuries (assuming the defence of voluntary assumption of risk was successful).

Solutions to Additional Cases

Additional Case: Athey v. Leonati

1. “The defendant must take the plaintiff as he finds him” means that a defendant is liable for all damages caused by negligence, despite any pre-existing condition that makes the plaintiff more prone to injury (application of the principle of the thin-skull rule).

2. Both the trial court and the British Columbia Court of Appeal decided that Mr. Athey should be awarded 25 percent of the total damages because the second accident was not the sole cause of his herniated disc.

3. In making a decision, students should consider the criteria for judgment relevant to causation.
   • Cause-in-fact—apply the “but for” test to determine if the injuries would not have happened “but for” the negligence of the defendant.

   • Thin-skull rule—applying this rule reduces the need to establish a direct connection. (The defendant could have foreseen that his action of negligent driving would cause the type of injury that resulted.) Instead, application of the thin-skull rule means that the defendant is liable for all damages caused by his negligence despite any pre-existing condition that makes the plaintiff more prone to injury.

Additional Case: Thomas v. Bell Helmets, Inc.

1. Bell Helmets was partly at fault because the warning label on the helmet did not contain important information on how to make sure the helmet fit properly (product liability—i.e., the consumer must be informed on how to use the product safely).

2. If Thomas was not informed on how to make sure the helmet fit properly, then he could not reasonably anticipate (foresee) that the helmet would fly off his head. The courts found that if he had been provided with that information, Thomas would not have purchased the oversized helmet.
Additional Case: *Gaudry v. Binning*

1. Yes. Although dog owners are liable for injuries caused by their dogs, if the dog was provoked to bite, it lessens the owner’s liability, especially if the dog did not have a history of causing injury. In this case, the defendant’s dog became visibly agitated after one of the children threw a puppy to the ground. In addition, the dog only bit the plaintiff’s four-year-old son, David, after he moved away because the plaintiff had told the children to move away. It may be successfully argued that the movement of the children triggered the dog to react by biting one of them. In this case, the plaintiff’s actions could have interrupted the chain of events and thus could be considered part of the cause of David’s injuries (intervening act).

2. Under strict liability, a duty of care is assumed and the dog owner is liable. Thus, students should focus their decision to determine the degree to which the dog owner is liable. Students should consider the following circumstances that may reduce the dog owner’s liability:
   - Was the dog provoked into biting?
   - Can any action of the plaintiff be considered an intervening act that became part of the cause of the injury?

Additional Case: *MacMillan v. Ontario (Ministry of Transportation and Communication)*

1. The Ontario Ministry of Transportation and Communication cannot be reasonably expected to sand every bridge by morning rush hour in all kinds of situations. However, the standard of care expected of the Ministry is to repair and maintain the highways in a safe condition and to provide signs to warn motorists of any anticipated hazards (e.g., Warning—Slippery Bridge).

2. The Ontario Court of Appeal ruling on the concept of foreseeability was “even if the Ministry did not know of the actual formation of ice on the bridge, it ought reasonably to have anticipated the real risk of this happening.” In other words, based on its specialized experience and knowledge, the Ministry of Transportation would be expected to know about preferential icing on bridges.

3. The occurrence of ice in early September would be unusual, but because of the Ministry of the Environment’s daily predictions of weather conditions (generally accurate), the Ministry of Transportation ought to reasonably anticipate the real risk of icing on bridges. However, if the temperatures conducive to preferential icing were not predicted or anticipated, the Ministry of Transportation could not reasonably be expected to foresee this happening (unforeseeable natural event). Foreseeability is an important consideration.
Extension Activities

**Activity 1**

**Legal Vocabulary**

**Purpose**

This exercise is intended to reinforce student understanding of terms and concepts associated with intentional torts.

**Resources**

- BLM 14-1: Developing Your Legal Repertoire

**Teaching Strategies**

a) Review with students the importance of understanding legal terms. Encourage students to review the margin notes in the text to make sure that they understand the concepts discussed in the chapter.

b) Have students complete the vocabulary exercise provided in BLM 14-1: Developing Your Legal Repertoire as they read through the chapter.

c) Instruct students to develop a board game incorporating the legal terms, definitions, and examples from the vocabulary exercise (legalopoly, legal pursuit, legal scrabble, or a game of students’ choice).

**Evaluation**

- Assessment Master 14-1: Rubric: Letter to the Editor

**Waivers/Product Warnings**

**Purpose**

To allow students to apply their knowledge of tort law to an everyday experience that may require them to assess risk and liability.

**Resources**

- waivers, product warnings, and cautions from local businesses and organizations, as well as from household products

- BLM 14-4: Risky Business—Waivers

- www.pearsoned.ca/law
Teaching Strategies

a) In preparation for this activity, instruct students to collect waivers from the community relating to activities that may involve risk (e.g., golf cart rentals, ski clubs, rock climbing, white-water rafting). Students may also collect product warnings from household products.

b) Using the above samples, introduce students to the purpose of waivers and product warnings.

c) Develop a framework of questions relating to the samples (e.g., Who and what does the waiver protect? Does the waiver or warning change liability for negligent action?).

d) Ask students to speculate on what may have caused the implementation of the waiver or warning.

e) Using BLM 14-4: Risky Business—Waivers, have students read the sample waiver and apply their knowledge of the tort of negligence.

f) Have students create a classroom bulletin board containing a selection of the waivers and product warnings they have collected, with key questions and points highlighted.

Details Count: Case Study

Purpose

• To promote student inquiry and critical thinking skills.
• This activity is intended to help students understand how a change in a specific detail relating to a tort case may alter a legal outcome. This understanding lays the foundation for an appreciation of the rule of precedent.

Resources

- Additional Cases (pp. 22–23 in this resource)  
- BLM 14-2: Assessing Negligence

Teaching Strategies

a) Ask students to review the Additional Cases provided in this resource.

b) Direct students to choose one case and rewrite the scenario, changing one detail that they believe will alter the outcome. Students could use BLM 14-2: Assessing Negligence to help them identify the details and arguments of their chosen case.

c) Have students prepare a new written judgment (decision) on the case, based on the new information.

Activity 5

Liability In-service

Purpose

• To provide students with the opportunity to communicate their knowledge of torts by creating an in-service for the school community.
• To allow students the opportunity to present information in a creative format.

Resources

- BLM 14-5: Lessons in Liability: Creating an In-service
- Computer lab/Internet access/Resource Centre
- Law in Action text
- Assessment Master 14-3: Checklist: Liability In-service

Teaching Strategies

a) Introduce the assignment by reviewing in-service events or other formats for learning about specific issues students may have encountered during their school career (e.g., a pamphlet on a health issue, a university/college seminar, a dramatization of a specific issue, a guest speaker, a presentation, a Web site, etc.).

b) Provide students with BLM 14-5: Lessons in Liability: Creating an In-service and discuss resources that could be used to gather information on their selected topic.

c) You may wish to provide copies of Assessment Master 14-3: Checklist: Liability In-service and Assessment Master 14-4: Rubric: Liability In-service to students before they begin to plan and prepare their in-service.

Evaluation

- Assessment Master 14-4: Rubric: Liability In-service
Additional Resources

Books

Contains key decisions in Canadian tort law (e.g., negligence principles, medical malpractice, professional negligence, personal injury, contributory negligence, and products liability).


Provides an overview of Canadian tort law, including: negligence, proof of negligence, defences to negligence, limitation on the defendant’s liability, special categories of negligence, strict liability, and vicarious liability.


An in-depth exploration of Canadian tort law. Reviews developments in case law and legislation in Canada.

Magazines
*Law Now* (published six times a year by the Legal Studies Program, Faculty of Extension, at the University of Alberta) often features articles pertaining to civil liability and sports negligence. *Law Now* can be reached at: University of Alberta, 11019 - 90 Ave., Edmonton, AB T6G 1A6. Tel.: (780) 492-1751. E-mail: lawnow@ualberta.ca.

Other Resources
- Newspapers are an excellent resource for tort law. Check frequently for current cases.
- A court visit to observe a civil trial, such as automobile negligence, is an excellent way to begin or end the topic of tort law.
- Inviting a lawyer to speak about negligence and other torts is always a great activity. Health-care workers, insurance agents, or mediators/arbitrators might also offer interesting insights into precautions against legal action, liability, or dispute resolution.
Additional Cases


Jon Athey had a history of back problems. In February 1991, he was in a car accident and suffered back and neck injuries. Unfortunately, he was involved in another car accident in April of the same year. Mr. Leonati, the driver of the other car in the second accident, admitted liability for the accident. Subsequent to this accident, Mr. Athey suffered a herniated disc. Was the herniated disc, for which Mr. Athey claimed damages, caused by the accident or by Mr. Athey's previous back problems?

The trial judge found that although the accidents contributed to the injury, they were not the sole cause of the herniated disc. The judge awarded Mr. Athey only 25 percent of the total damages he wanted. Mr. Athey appealed, but the Court of Appeal for British Columbia agreed with the trial judge's decision.

The case then went to the Supreme Court of Canada, which applied the thin-skull rule. The judges concluded that the defendant “must take the plaintiff as he finds him.” In other words, while Mr. Athey's condition made it more likely that he would suffer injury due to the accident, the defendant was fully liable because the herniated disc would not have occurred without the harm caused by the defendant's negligence.

1. What did the Supreme Court mean when it said the defendant “must take the plaintiff as he finds him”?

2. What decision did each court in this case make, and how did they arrive at their decisions?

3. How would you have decided this case?


Steven Thomas was riding his motorcycle when he collided with another vehicle and was thrown from his bike. Even though Thomas's helmet was fastened securely at the time of the accident, it flew off his head while he was in the air because the helmet did not fit properly. When Thomas's unprotected head hit the pavement, he suffered serious and permanent brain damage. Thomas was wearing an M2 motorcycle helmet that he had purchased second-hand several months before the accident. Thomas sued the maker of the helmet for negligence.

A jury found that the manufacturer, Bell Helmets, contributed to Thomas's injuries because the warning label on the helmet did not contain important information on how to make sure the helmet fit properly. If it had contained that information, Thomas would not have purchased that helmet, which was too large for him. The jury found Bell Helmets 25 percent liable. Bell Helmets appealed the decision, but the appeals court also held that Bell Helmets was 25 percent liable for Steven Thomas's injuries.

1. Why was Bell Helmets found partly at fault?

2. How would the principle of foreseeability apply in this case?

Flora Binning was not home when her younger brother and sister invited Sherry Gaudry and her three children to see the puppies belonging to Flora's dog, Lady. Flora's two children were also present. The children were standing around Lady and her puppies in Flora's backyard. One of Flora's children picked up a puppy. When Sherry Gaudry told the child to put the puppy down, the child threw the puppy to the ground. Lady became visibly agitated, and Sherry Gaudry told the children to back away from the dog. When the children moved, Lady jumped up and bit Sherry's four-year-old son, David, in the face.

David required stitches to his eye and suffered from recurring eye problems. David's family sued Flora Binning for damages. The judge found the defendant at fault because she knew that her dog had been "grouchy" and protective of her puppies. Consequently, she should have been aware of the possible danger of keeping Lady and her puppies in the yard.

1. Is there any evidence that liability should be shared between the plaintiff and the defendant?

2. Explain how you would have decided this case.

MacMillan v. Ontario (Ministry of Transportation and Communication), [2001] ONCA C30264

On a snowy morning in October 1998, Marilyn MacMillan was driving to work. Although the road was bare and dry, she had to cross a bridge. Bridges are subject to a condition known as preferential icing, which means that ice will form on a bridge deck in conditions where the road itself may not be icy—a condition very hazardous to motorists. Mrs. MacMillan's car skidded on the icy bridge, rolled several times, crossed the median, and was hit by another car. She suffered devastating head injuries as a result of the accident.

Mrs. MacMillan sued the Province of Ontario for damages, claiming that the province failed to keep the highway safe for motorists. The Province argued that its workers could not have reasonably foreseen that ice would form on the bridge where the accident occurred. The trial judge found against her and dismissed her action. Mrs. MacMillan appealed this decision.

The Ontario Court of Appeal held that, under provincial legislation, the Province had a statutory duty to keep the highway in repair—that the duty of repair is a duty of care: “Even if the ministry did not know of or have constructive knowledge of the actual formation of preferential ice on the bridge, it ought reasonably to have known of the real risk of this happening.” The Court awarded Mrs. MacMillan close to $4 million in damages.

1. What standard of care is required of the Ministry of Transportation and Communication? Should it be expected to sand every bridge by morning rush hour?

2. How did the concept of foreseeability apply in this case?

3. If this accident had taken place in early September when ice would be considered an unusual occurrence, do you think the Court would have come to the same decision? Discuss, using your knowledge of standard of care.
The following terms and concepts are used in Chapter 14: Negligence and Unintentional Torts. Many of these words have a specific legal meaning and it is helpful in your understanding of torts to clearly understand what these terms and concepts mean.

You can find all of these terms in your text. Complete the following chart by providing a definition of the term or concept (in your own words) and an illustrative example.

<table>
<thead>
<tr>
<th>Term or Concept</th>
<th>Definition</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tort</td>
<td>A civil action in which the injured party can sue the wrongdoer for damages.</td>
<td>The bindings on my snowboard were not properly fastened by the store, causing the bindings to snap off and resulting in my falling and breaking my leg.</td>
</tr>
<tr>
<td>Negligence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of care</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forseeability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reasonable person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cause-in-fact</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remoteness of damage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>Intervening act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thin-skull rule</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupiers’ liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vicarious liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strict liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributory negligence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Voluntary assumption of risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Act of God</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statute of limitations</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Use the following organizer to help you identify or assess the facts, arguments, defences, and criteria applied in a judicial decision relating to a negligence case.

<table>
<thead>
<tr>
<th>Facts</th>
<th>Tests of Negligence</th>
<th>Possible Defences Available</th>
<th>Criteria Applied in Judge's Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incident and people</td>
<td>Duty of care owed</td>
<td>Duty of care not owed</td>
<td>Apply “neighbour” principle</td>
</tr>
<tr>
<td>involved</td>
<td></td>
<td>Voluntary assumption of risk</td>
<td>Apply relevant statute law (e.g., <em>School Act</em>)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Statute of limitations</td>
<td>Was risk consistent with activity, or was there a breach in the standard of care provided?</td>
</tr>
<tr>
<td>Standard of care not</td>
<td>Valid explanation</td>
<td>Contributory negligence of plaintiff</td>
<td>Consider degree of carefulness of defendant or “reasonable person” test</td>
</tr>
<tr>
<td>met</td>
<td></td>
<td></td>
<td>Consider degree of carefulness of plaintiff or “reasonable person” test</td>
</tr>
<tr>
<td>Damages/Injuries</td>
<td>Causation</td>
<td>Contributory negligence of plaintiff</td>
<td>Consider foreseeability</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Apply “but-for” test</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Consider remoteness of damage</td>
</tr>
<tr>
<td></td>
<td>Cause-in-fact</td>
<td>Inevitable accident</td>
<td>Determine if uncontrrollable and unavoidable non-natural event</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Act of God</td>
<td>Determine if uncontrrollable and unavoidable natural event</td>
</tr>
</tbody>
</table>
Dear Editor,

I have read with interest the case involving the woman who got drunk at an office party, drove her car, and was then involved in a serious accident. This person subsequently sued her employer, arguing that they shouldn’t have let her drive drunk. Really! When will people accept responsibility for their own actions? By encouraging this kind of “don’t blame me” attitude, our courts are encouraging irresponsible behaviour. We smoke too much and then sue the tobacco companies for harming us. We drive while we are drinking coffee and then sue because the company that sold us the coffee made it too hot. If our children fail at school, we blame the teacher. If we commit a criminal act, it must be our parents’ fault or the fault of society. It is time personal responsibility made a comeback. Lawyers who take on these cases and judges who decide to ignore common sense are creating a society of people who sue for everything. If you knowingly engage in risky, criminal, or stupid behaviour, you should accept the consequences. Enough said!

Sincerely,
Provocative Pete

The following sample letter to the editor expresses an opinion on the issue of personal responsibility in tort actions. Read the letter and then follow the instructions provided below.

1. Do some research. Read newspaper articles on this case and other similar cases involving the concept of personal responsibility in tort actions. (You could use the Pearson Web site as a starting point.)

2. Compare the headlines and content of articles with the facts of each case and the judicial decision, using a chart such as the one below.

3. Write a reply to the letter arguing that the writer is wrong and that the bar and the employer should be liable.

<table>
<thead>
<tr>
<th>Newspaper Articles (Points)</th>
<th>Actual Case (Judge’s Decision)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
RISKY BUSINESS—WAIVERS

Read the sample waiver provided below. Then complete the questions and activities that follow.

Sample Waiver

By signing this document, you will waive certain legal rights, including the right to sue. Please read carefully.

I am aware that skiing involves many risks, dangers, and hazards, such as boarding, riding and disembarking, ski lifts, ice, trees and other natural objects, changing weather conditions, changes due to human-made or artificial snow, impact with snow-making or snow-grooming equipment or other structures or any other objects used in connection with skiing and snowboarding, colliding with other skiers, and failing to ski safely, failing to stay within one’s skiing level or within designated areas, negligence of other skiers or any negligence on the part of the ski staff. I am also aware that there are many risks throughout the ski area, marked and unmarked. I hereby accept and assume all such risks and hazards and the possibility of injury resulting from any or all of the above.

Release of liability and waiver of claims:
In order to use the skiing facilities, including lifts, runs, restaurants, and parking, I agree as follows:

1. To waive any and all claims against the ski resort’s officers, employees, agents, and representatives.
2. To release the ski resort from any and all liability for any loss, damage, injury, or expense I may suffer or that my next of kin may suffer as a result of my use of the skiing facilities for any reason whatsoever, including negligence, breach of statutory duty of care, and/or breach of the Occupiers' Liability Act, R.S.O. 1990.

I have read and understood this agreement prior to signing it, and I am aware that by signing this agreement, I am waiving certain rights against the ski resort.

Questions

1. Who does the waiver protect? If the ski resort is negligent, does this waiver absolve it of liability?

2. In many cases where the liability of ski operators has been clear, they have been able to successfully defend their negligent actions, based on the exclusion of liability provisions in waivers. This defence has been successful if the operator was able to show that the plaintiff had adequate notice of the exclusion of liability waiver. Do you agree that a waiver, such as the one provided, should absolve a ski operator of all liability, even if they were grossly negligent? Discuss.

3. Locate and examine a waiver of your choice. Explain how it affects liability and whether this is appropriate, in your opinion.

4. Assume that you are the owner of a business that involves a certain amount of risk, such as a golf club, an amusement park, a riding stable, or a fitness club. In a group situation, think about the responsibilities and liabilities of the owner/operator. Design a waiver that you think would offer protection from possible lawsuit.
LESSONS IN LIABILITY: CREATING AN IN-SERVICE

Using your knowledge of tort law, you are to present an in-service for your class or other school event. You may choose to present your in-service in any of the following formats, or you may suggest to your teacher another suitable format.

- School intranet posting
- Informational Web site
- Computer presentation
- Booklet/Pamphlet
- Dramatization (e.g., documentary, play, video)

**Possible Topics:**

- Pet responsibility and liability
- Occupiers’ liability
- Automobile liability
- School liability
- Medical malpractice
- Parental responsibility
- Product liability
- Rescuer’s liability

Your in-service should inform your audience of the law involved, issues of liability, relevant cases, judgments, possible future problems, and any other information you believe would be useful for your audience to know.
### Rubric: Letter to the Editor—Personal Responsibility

(Extension Activity 2, Chapter 14)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Level 1 (50–59%)</th>
<th>Level 2 (60–69%)</th>
<th>Level 3 (70–79%)</th>
<th>Level 4 (80–100%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge/Understanding</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• information</td>
<td>❑ shows limited understanding of issues relating to personal responsibility</td>
<td>❑ shows some understanding of issues relating to personal responsibility</td>
<td>❑ shows considerable understanding of issues relating to personal responsibility</td>
<td>❑ shows a thorough understanding of issues relating to personal responsibility</td>
</tr>
<tr>
<td>Thinking/Inquiry</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• development of argument/use of evidence</td>
<td>❑ develops argument with limited effectiveness and supporting evidence</td>
<td>❑ develops argument with some degree of effectiveness and supporting evidence</td>
<td>❑ develops argument with a considerable degree of effectiveness and supporting evidence</td>
<td>❑ develops argument with a high degree of effectiveness; argument is logically and interestingly supported</td>
</tr>
<tr>
<td>Communication</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• command of editorial form</td>
<td>❑ shows limited command of the conventions of editorial style</td>
<td>❑ shows some command of the conventions of editorial style</td>
<td>❑ shows considerable command of the conventions of editorial style</td>
<td>❑ shows strong command of the conventions of editorial style</td>
</tr>
<tr>
<td>Application</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• language conventions</td>
<td>❑ applies rules of grammar, spelling, and punctuation with limited accuracy and effectiveness</td>
<td>❑ applies rules of grammar, spelling, and punctuation with some accuracy and effectiveness</td>
<td>❑ applies rules of grammar, spelling, and punctuation with considerable accuracy and effectiveness</td>
<td>❑ applies rules of grammar, spelling, and punctuation with a high degree of accuracy and effectiveness</td>
</tr>
<tr>
<td>• making connections</td>
<td>❑ makes few relevant connections between tort law and everyday scenarios</td>
<td>❑ makes some relevant connections between tort law and everyday scenarios</td>
<td>❑ makes relevant and logical connections between tort law and everyday scenarios</td>
<td>❑ makes effective and logical connections between tort law and everyday scenarios</td>
</tr>
</tbody>
</table>
### RUBRIC: CASE ANALYSIS

(Activity #13, p. 352)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Level 1 (50–59%)</th>
<th>Level 2 (60–69%)</th>
<th>Level 3 (70–79%)</th>
<th>Level 4 (80–100%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Knowledge/Understanding</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• case details</td>
<td>❑ shows limited understanding of details related to the case</td>
<td>❑ shows some understanding of details related to the case</td>
<td>❑ shows considerable understanding of details related to the case</td>
<td>❑ shows a thorough understanding of details related to the case</td>
</tr>
<tr>
<td>• legal considerations of case (criteria for judgment)</td>
<td>❑ demonstrates limited understanding of legal considerations</td>
<td>❑ demonstrates some understanding of legal considerations</td>
<td>❑ demonstrates considerable understanding of legal considerations</td>
<td>❑ demonstrates a thorough understanding of legal considerations</td>
</tr>
<tr>
<td><strong>Thinking/Inquiry</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• analysis</td>
<td>❑ analyzes the various perspectives of the case with limited effectiveness</td>
<td>❑ analyzes the various perspectives of the case with some effectiveness</td>
<td>❑ analyzes the various perspectives of the case with considerable accuracy</td>
<td>❑ analyzes the various perspectives of the case with a high degree of accuracy</td>
</tr>
<tr>
<td>• decision</td>
<td>❑ identifies the judge’s explanation or reasoning on the legal question with limited accuracy</td>
<td>❑ identifies the judge’s explanation or reasoning on the legal question with some accuracy</td>
<td>❑ identifies the judge’s explanation or reasoning on the legal question with considerable accuracy</td>
<td>❑ identifies the judge’s explanation or reasoning on the legal question with a high degree of accuracy</td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• clarity</td>
<td>❑ communicates facts and ideas with limited clarity</td>
<td>❑ communicates facts and ideas with some clarity</td>
<td>❑ communicates facts and ideas with considerable clarity</td>
<td>❑ communicates facts and ideas with a high degree of clarity</td>
</tr>
<tr>
<td><strong>Application</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• legal, social, or historical significance of case</td>
<td>❑ makes few relevant connections to other similar situations</td>
<td>❑ makes some relevant connections to other similar situations</td>
<td>❑ makes relevant and logical connections to other similar situations</td>
<td>❑ makes effective and logical connections to other similar situations</td>
</tr>
</tbody>
</table>
### Checklist: Liability In-service

(Extension Activity 5, Chapter 14)

Name: __________________________ Date: __________________________

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Assessment</th>
<th>Notes/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Knowledge/Understanding</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information is legally accurate and relevant.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td>Topic is clearly identified and defined.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td><strong>Thinking/Inquiry</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presentation of relevant legal facts and issues is thorough.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td>Information is current, from a variety of sources, and well documented.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Material is organized and presented in a logical manner.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td>Format of in-service engages audience and enhances communication of legal information.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td><strong>Application</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presentation includes relevant examples and applications of principles to everyday experiences.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td>Format is multisensory and aesthetically pleasing.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
<tr>
<td>Technical production operates efficiently and smoothly.</td>
<td>0 1 2 3 4</td>
<td></td>
</tr>
</tbody>
</table>

Key: 0 = not at all; 1 = limited; 2 = somewhat; 3 = fully; 4 = thoroughly and insightfully
## Rubric: Liability In-service

*(Extension Activity 5, Chapter 14)*

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Level 1 50–59%</th>
<th>Level 2 60–69%</th>
<th>Level 3 70–79%</th>
<th>Level 4 80–100%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Knowledge/Understanding</strong></td>
<td>❑ provides few relevant facts related to tort law</td>
<td>❑ provides some relevant facts related to tort law</td>
<td>❑ provides several relevant facts related to tort law</td>
<td>❑ provides many highly relevant facts related to tort law</td>
</tr>
<tr>
<td>• facts and terms</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• concepts, principles, and theories</td>
<td>❑ demonstrates limited understanding of liability</td>
<td>❑ demonstrates some understanding of liability</td>
<td>❑ demonstrates considerable understanding of liability</td>
<td>❑ demonstrates a high degree of understanding of liability</td>
</tr>
<tr>
<td><strong>Thinking/Inquiry</strong></td>
<td>❑ uses limited criteria to analyze and evaluate specific area of tort law</td>
<td>❑ uses some logical criteria to evaluate specific area of tort law</td>
<td>❑ uses logical criteria to evaluate specific area of tort law</td>
<td>❑ uses logical criteria to evaluate and provide insight into specific area of tort law</td>
</tr>
<tr>
<td>• analysis</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• use of evidence</td>
<td>❑ sources are limited; few are carefully documented</td>
<td>❑ some sources are appropriate and well documented</td>
<td>❑ most sources are appropriate and well documented</td>
<td>❑ all or almost all sources are appropriate and well documented</td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td>❑ communicates information with limited clarity and logic</td>
<td>❑ communicates information with some clarity and logic</td>
<td>❑ communicates information with considerable clarity and logic</td>
<td>❑ communicates information with a high degree of clarity and logic</td>
</tr>
<tr>
<td>• clarity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• command of in-service form</td>
<td>❑ format of in-service has limited use as a communication tool</td>
<td>❑ format of in-service is an adequate tool for communication</td>
<td>❑ format of in-service is an effective tool for communication</td>
<td>❑ format of in-service is a highly effective tool for communication</td>
</tr>
<tr>
<td><strong>Application</strong></td>
<td>❑ connects specific area of tort law to personal experiences with limited effectiveness</td>
<td>❑ connects specific area of tort law to personal experiences with some effectiveness</td>
<td>❑ connects specific area of tort law to personal experiences with considerable effectiveness</td>
<td>❑ connects specific area of tort law to personal experiences with a high degree of effectiveness</td>
</tr>
<tr>
<td>• connections to personal experiences</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• visual aids</td>
<td>❑ uses multimedia tools with limited effectiveness</td>
<td>❑ uses multimedia tools with some effectiveness</td>
<td>❑ uses multimedia tools with considerable effectiveness</td>
<td>❑ uses multimedia tools with a high degree of effectiveness</td>
</tr>
</tbody>
</table>