

Negligence and Unintentional Torts

14

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.

CHAPTER OUTLINE

Negligence

Stage One: Duty of Care

Stage Two: Standard of Care

Professional Liability

Medical Negligence

Children

Parental Responsibility

Rescuers

Stage Three: Causation

Cause-in-Fact

Remoteness of Damage

Special Types Of Liability

Product Liability

Occupiers' Liability

Children Who Trespass

Hosts

Vicarious Liability

Automobile Negligence

Strict Liability

Defences To Negligence


Contributory Negligence













Voluntary Assumption of Risk

Other Defences

Statute of Limitations

PLANNING CHART

Key Content	Suggested Strategies						
<p>Topic: Negligence</p> <p>Key Vocabulary negligence duty of care neighbour principle forseeability standard of care reasonable person specialized standard of care liability insurance cause-in-fact apportionment remoteness of damage intervening act thin-skull rule</p> <p>Resources <i>Law in Action</i>, pp. 332–341</p> <p>BLM 14-2: Assessing Negligence  Legal Inquiry</p>	<ol style="list-style-type: none"> 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? 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. 3. Put the following example on the board or provide it as a handout: 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. 4. List the factors that need to be proven for negligence on the board: a) duty of care—Explain, and ask students what duty the defendants owe Sam. Record their responses on the board. 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. c) causation—Explain, and ask students if the actions of the defendants caused Sam’s death. Record their responses on the board. 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. 						
<p>Topic: Special Types of Liability</p> <p>Key Vocabulary product liability occupiers’ liability invitee licensee trespasser allurement host vicarious liability strict liability</p> <p>Resources <i>Law in Action</i>, pp. 341–347</p>	<ol style="list-style-type: none"> 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? 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. <table border="1"> <thead> <tr> <th>Terms Associated with Liability</th><th>Examples</th></tr> </thead> <tbody> <tr> <td> </td><td> </td></tr> <tr> <td> </td><td> </td></tr> </tbody> </table> <ol style="list-style-type: none"> 3. Refer students to page 341 of their text to study the special types of liability in more detail. 	Terms Associated with Liability	Examples				
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Key Content	Suggested Strategies						
<p>Topic: Defences to Negligence</p> <p>Key Vocabulary contributory negligence voluntary assumption of risk waiver inevitable accident act of God explanation statute of limitations</p> <p>Resources <i>Law in Action</i>, pp. 347–350</p>	<ol style="list-style-type: none"> 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. <table border="1" data-bbox="651 506 1463 621"> <thead> <tr> <th>Specific Defences</th><th>Examples</th></tr> </thead> <tbody> <tr> <td> </td><td> </td></tr> <tr> <td> </td><td> </td></tr> </tbody> </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. 	Specific Defences	Examples				
Specific Defences	Examples						
<p>Chapter Review</p> <p>Resources</p> <p>Extension Activities</p>	<p><i>Law in Action</i>, “Looking Back,” pp. 351–352</p> <ul style="list-style-type: none"> - BLM 14-2: Assessing Negligence  <i>Legal Inquiry</i> - Assessment Master 14-2: Rubric: Case Analysis  <i>Assessment</i> <p><i>Law in Action</i>, “Cases,” pp. 353–354</p> <p>Additional Cases: <i>Athey v. Leonati</i>; <i>Thomas v. Bell Helmets, Inc.</i>; <i>Gaudry v. Binning</i>; <i>MacMillan v. Ontario</i>  <i>Case Analysis</i></p> <p><i>Law in Action</i> Test Bank, Chapter 14</p> <p>Activity 1: Legal Vocabulary</p> <ul style="list-style-type: none"> - BLM 14-1: Developing Your Legal Repertoire  <i>Legal Inquiry</i> <p>Activity 2: Defending a Position</p> <ul style="list-style-type: none"> - BLM 14-3: Defending a Position: Writing a Letter to the Editor  <i>Legal Inquiry</i> - Assessment Master 14-1: Rubric: Letter to the Editor—Personal Responsibility  <i>Assessment</i> <p>Activity 3: Waivers/Product Warnings</p> <ul style="list-style-type: none"> - BLM 14-4: Risky Business—Waivers  <i>Legal Inquiry</i> <p>Activity 4: Details Count: Case Study</p> <ul style="list-style-type: none"> - Additional Cases  <i>Case Analysis</i> - BLM 14-2: Assessing Negligence  <i>Legal Inquiry</i> <p>Activity 5: Liability In-service</p> <ul style="list-style-type: none"> - BLM 14-5: Lessons in Liability: Creating an In-service  <i>Legal Inquiry</i> - Assessment Master 14-3: Checklist: Liability In-service  <i>Assessment</i> - Assessment Master 14-4: Rubric: Liability In-service  <i>Assessment</i> 						

Legal Logic

Test Your Aptitude for Law: Activities for Getting Started

Puzzle

1

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)

Puzzle

2

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)

Puzzle

3

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 snow-storm. 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)

Solutions to Questions and Cases

Page 334

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).

Page 335

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.

3. To apply the principle of *foreseeability*, consider the following:

Could a “reasonable person” anticipate that the plaintiffs could be injured by being placed in a situation in which they were

- not familiar with the plant complex;
- not warned of dangers existing in the plant complex;
- inexperienced or had no all-terrain vehicle training; and
- unsupervised within an educational program?

Page 335

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.

Page 336

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.

Page 338

Case: *Dobson v. Dobson*

1. The legal term for the grandfather’s role as Ryan’s representative in court is “next friend” or “guardian *ad litem*” (Chapter 13).
2. A person cannot sue his or her mother for injuries caused before birth because, according to the Supreme Court of Canada, a mother does not owe a legal duty of care toward her fetus.
3. If Ryan’s mother owed a duty of care to her fetus, she would have two standards of care to meet. One standard would relate to the amount of care owed to the fetus, while the other standard would be

attached to the amount of care owed to her “neighbours” (any drivers or passengers who might be injured by her actions). For instance, the standard of care owed to the fetus would be matched to a careful pregnant female of ordinary intelligence. Would this “reasonable person” drive into a snowstorm while pregnant and then drive in a negligent manner?

The standard of care owed to her neighbours would be measured against a careful person of ordinary intelligence. Would this “reasonable person” drive in a snowstorm in a negligent manner?

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.

Page 341

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 Vettters 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 Vettters owed a duty of care to Prevost, since the Vettters 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 Vettters 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 Vettters 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. The standard of care would be equivalent to “*loco parentis*.” It would be expected that the government and the Church would ensure that employees (such as Clarke) would be adequately informed and supervised to ensure that such assaults did not occur.

Building Your Understanding

1. Student examples will vary, but each example should illustrate the way in which that product meets or fails to meet one of the following standards:
 - product is free of harmful defects (e.g., brakes fail because of material defect)
 - product is properly manufactured (e.g., air bags improperly installed and set)
 - consumer is properly informed of safe use (e.g., external valve of propane tank must be closed before driving)
 - consumer is warned of risks associated with using the product (e.g., *Warning*: Failure to maintain proper oil level can result in damage to engine.)
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.

Page 348

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.

Page 350

Case: *Smith v. McGillivray*

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. McGillivray's attorney could have used:

- *Standard of care:* Argue that Dr. McGillivray 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

Page 351

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.

Table TR 14.1: Criteria for Activity 7, Page 351

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

Table TR 14.2: Answers for Activity 8, Page 352

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


Table TR 14.3: Answers for Activity 9, Page 352

Important Facts	Grounds for Negligence	Defences Available to Bungee Jumping Company
Alex warned of risks. Alex acknowledges risks (signs waiver)	duty of care is owed (contractual)	voluntary assumption of risk
Alex did not know employee was inexperienced	plaintiff could not reasonably foresee any injury beyond the ordinary risks of the event	none
New employee did not adjust jump to Alex's weight	vicarious liability, inadequate training, breach of standard of care	none
Bungee cord ripped apart	product liability	bungee cord or harness had design or material defects
Alex fell and suffered severe injuries	causation—apply “but for” test (i.e., cause-in-fact)	none

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.

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

Table TR 14.4: Answers for Activity 10, Page 352

Tests of Negligence	Chances of Success in a Lawsuit
Duty of Care	Teacher owes a duty of care to Rafay and all students. This could be established by using the <i>School Act</i> or applying the neighbour principle. Chances are good.
Standard of Care	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. <ul style="list-style-type: none">- teacher was required to make a split-second decision- difficult to assess chances of success in this case
Causation	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.

Table TR 14.5: Answers for Activity 12, Page 352

Pro	Con
Duty of care owed <ul style="list-style-type: none">• smokers are “legal neighbours”• duty of care not met: selling a product known to cause health risks	Voluntary assumption of risk <ul style="list-style-type: none">• warnings of potential risks are provided on packaging—consumers assume the risks when they purchase cigarettes• tobacco companies are not selling to “an unsuspecting public”: federal government has warned public via anti-smoking advertising campaigns
Standard of care not met <ul style="list-style-type: none">• breached standard of care: a “reasonable person” would not sell a product that was known to be addictive and dangerous to health• 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• until recently, consumers were not adequately warned of health risks	Valid explanation <ul style="list-style-type: none">• consumers adequately warned of risks associated with use Contributory negligence of plaintiff <ul style="list-style-type: none">• excessive use by plaintiffs• smoking is a personal choice—consumers are free to discontinue
Causation <ul style="list-style-type: none">• tobacco smoke has been causally linked to cancers, respiratory illnesses, and other diseases• tobacco companies could have foreseen damaging health effects	Contributory negligence of plaintiff <ul style="list-style-type: none">• 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

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

Pages 22–23 of this Teacher Resource

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

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

Activity 2

Defending a Position

Purpose

To exercise thinking, inquiry, and communication skills. Judicial decisions and legal opinions often express opposing viewpoints. This exercise will provide students with the opportunity to review controversial legal decisions. Students will develop their debating and writing skills as they defend a position that may be contrary to their own personal opinion.

Resources

- *Prevost v. Vetter et al.* (text, p. 344)
- *Hunt v. Sutton Group Incentive Realty Inc.*, [2001] O.J. 374 (S.C.J). See the Pearson Web site: www.pearsoned.ca/law

- **BLM 14-3: Defending a Position: Writing a Letter to the Editor**



Teaching Strategies

- Familiarize students with the case of *Prevost v. Vetter et al.* and *Hunt v. Sutton Group Incentive Realty Inc.* (See the Pearson Web site.)
- Lead a class discussion on the debate around the issue of personal responsibility.
- Provide students with examples of letters to the editor and discuss the purpose of community-level debate and the “letter to the editor” forum.
- Explain to students the importance of being able to argue a position that they themselves may not hold, pointing out that lawyers may sometimes suspend personal beliefs in order to develop the best arguments for their client.
- Assign BLM 14-3: Defending a Position: Writing a Letter to the Editor. Students will develop an argument to respond to the letter to the editor provided in the BLM from an opposing point of view. You might wish to provide Assessment Master 14-1: Rubric: Letter to the Editor—Personal Responsibility to students before they begin to write their letters.

Evaluation

- **Assessment Master 14-1: Rubric: Letter to the Editor—Personal Responsibility**



Activity 3

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**



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.



Activity 4

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)**
 *Case Analysis*
- **BLM 14-2: Assessing Negligence**  *Legal Inquiry*

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**  *Legal Inquiry*
- Computer lab/Internet access/Resource Centre
- *Law in Action* text
- **Assessment Master 14-3: Checklist: Liability In-service**  *Assessment*

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**  *Assessment*

Additional Resources

Books

Irvine, John, ed. *Canadian Cases on the Law of Torts*. 2nd Series. Toronto: Carswell Publishers, 2001.

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

Kerr, Margaret, Joann Kurtz, and Lawrence M. Olivo. *Canadian Tort Law in a Nutshell*. Toronto: Carswell Publishers, 1997.

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.

Klar, Lewis N., Allen M. Linden, Earl Cherniak, and Peter Krywouruk. *Tort Law*. 2nd ed. Toronto: Carswell Publishers, 1996.

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

***Athey v. Leonati*, [1996] 3 S.C.R. 458**

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?

***Thomas (Committee of) v. Bell Helmets, Inc.*, [1999] O.J. No. 4293**

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?

Additional Cases

***Gaudry v. Binning*, [1996] S.J. 669**

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.

DEVELOPING YOUR LEGAL REPERTOIRE

Name: _____

Date: _____

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.

Term or Concept	Definition	Example
Tort	A civil action in which the injured party can sue the wrongdoer for damages.	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.
Negligence		
Duty of care		
Foreseeability		
Reasonable person		
Cause-in-fact		
Remoteness of damage		

BLM 14-1 (continued)

Intervening act		
Thin-skull rule		
Product liability		
Occupiers' liability		
Vicarious liability		
Strict liability		
Contributory negligence		
Voluntary assumption of risk		
Waiver		
Act of God		
Statute of limitations		

ASSESSING NEGLIGENCE

Name: _____

Date: _____

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.

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

DEFENDING A POSITION: WRITING A LETTER TO THE EDITOR

Name: _____

Date: _____

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.

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

Newspaper Articles (Points)	Actual Case (Judge's Decision)

RISKY BUSINESS—WAIVERS

Name: _____

Date: _____

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

Name: _____

Date: _____

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)

Student: _____

Task: _____

Date: _____

Assessor: ☐ Self ☐ Peer ☐ Teacher

Criteria	Level 1 50–59%	Level 2 60–69%	Level 3 70–79%	Level 4 80–100%
Knowledge/Understanding <ul style="list-style-type: none"> information 	<input type="checkbox"/> shows limited understanding of issues relating to personal responsibility	<input type="checkbox"/> shows some understanding of issues relating to personal responsibility	<input type="checkbox"/> shows considerable understanding of issues relating to personal responsibility	<input type="checkbox"/> shows a thorough understanding of issues relating to personal responsibility
Thinking/Inquiry <ul style="list-style-type: none"> development of argument/use of evidence 	<input type="checkbox"/> develops argument with limited effectiveness and supporting evidence	<input type="checkbox"/> develops argument with some degree of effectiveness and supporting evidence	<input type="checkbox"/> develops argument with a considerable degree of effectiveness and supporting evidence	<input type="checkbox"/> develops argument with a high degree of effectiveness; argument is logically and interestingly supported
Communication <ul style="list-style-type: none"> command of editorial form 	<input type="checkbox"/> shows limited command of the conventions of editorial style	<input type="checkbox"/> shows some command of the conventions of editorial style	<input type="checkbox"/> shows considerable command of the conventions of editorial style	<input type="checkbox"/> shows strong command of the conventions of editorial style
Application <ul style="list-style-type: none"> language conventions 	<input type="checkbox"/> applies rules of grammar, spelling, and punctuation with limited accuracy and effectiveness	<input type="checkbox"/> applies rules of grammar, spelling, and punctuation with some accuracy and effectiveness	<input type="checkbox"/> applies rules of grammar, spelling, and punctuation with considerable accuracy and effectiveness	<input type="checkbox"/> applies rules of grammar, spelling, and punctuation with a high degree of accuracy and effectiveness
<ul style="list-style-type: none"> making connections 	<input type="checkbox"/> makes few relevant connections between tort law and everyday scenarios	<input type="checkbox"/> makes some relevant connections between tort law and everyday scenarios	<input type="checkbox"/> makes relevant and logical connections between tort law and everyday scenarios	<input type="checkbox"/> makes effective and logical connections between tort law and everyday scenarios

RUBRIC: CASE ANALYSIS

(Activity #13, p. 352)

Student: _____

Task: _____

Date: _____

Assessor: ☐ Self ☐ Peer ☐ Teacher

Criteria	Level 1 50–59%	Level 2 60–69%	Level 3 70–79%	Level 4 80–100%
Knowledge/Understanding <ul style="list-style-type: none"> case details 	<input type="checkbox"/> shows limited understanding of details related to the case	<input type="checkbox"/> shows some understanding of details related to the case	<input type="checkbox"/> shows considerable understanding of details related to the case	<input type="checkbox"/> shows a thorough understanding of details related to the case
<ul style="list-style-type: none"> legal considerations of case (criteria for judgment) 	<input type="checkbox"/> demonstrates limited understanding of legal considerations	<input type="checkbox"/> demonstrates some understanding of legal considerations	<input type="checkbox"/> demonstrates considerable understanding of legal considerations	<input type="checkbox"/> demonstrates a thorough understanding of legal considerations
Thinking/Inquiry <ul style="list-style-type: none"> analysis 	<input type="checkbox"/> analyzes the various perspectives of the case with limited effectiveness	<input type="checkbox"/> analyzes the various perspectives of the case with some effectiveness	<input type="checkbox"/> analyzes the various perspectives of the case with considerable accuracy	<input type="checkbox"/> analyzes the various perspectives of the case with a high degree of accuracy
<ul style="list-style-type: none"> decision 	<input type="checkbox"/> identifies the judge's explanation or reasoning on the legal question with limited accuracy	<input type="checkbox"/> identifies the judge's explanation or reasoning on the legal question with some accuracy	<input type="checkbox"/> identifies the judge's explanation or reasoning on the legal question with considerable accuracy	<input type="checkbox"/> identifies the judge's explanation or reasoning on the legal question with a high degree of accuracy
Communication <ul style="list-style-type: none"> clarity 	<input type="checkbox"/> communicates facts and ideas with limited clarity	<input type="checkbox"/> communicates facts and ideas with some clarity	<input type="checkbox"/> communicates facts and ideas with considerable clarity	<input type="checkbox"/> communicates facts and ideas with a high degree of clarity
Application <ul style="list-style-type: none"> legal, social, or historical significance of case 	<input type="checkbox"/> makes few relevant connections to other similar situations	<input type="checkbox"/> makes some relevant connections to other similar situations	<input type="checkbox"/> makes relevant and logical connections to other similar situations	<input type="checkbox"/> makes effective and logical connections to other similar situations

CHECKLIST: LIABILITY IN-SERVICE

(Extension Activity 5, Chapter 14)

Name: _____

Date: _____

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

Key: 0 = not at all; 1 = limited; 2 = somewhat; 3 = fully; 4 = thoroughly and insightfully

RUBRIC: LIABILITY IN-SERVICE

(Extension Activity 5, Chapter 14)

Student: _____

Task: _____

Date: _____

 Assessor: ☐ Self ☐ Peer ☐ Teacher

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