

IV. STANDARD OF CARE [§28.4]

A. STANDARD OF CARE—ADULTS [§28.5]

4. I will now discuss with you the second element, dealing with the standard of care. If *[the defendant's]* conduct fell below the standard of care expected in the circumstances, (he/she/they) was in breach of (his/her/their) duty of care to *[the plaintiff]*. The conduct of the defendant is not measured against perfection, but rather against the conduct of a person of ordinary prudence and intelligence in the community. A defendant is not required to exercise extraordinary caution or unusual skill or foresight. You must decide what a reasonably prudent person would have done in the circumstances described in the evidence. If the conduct of *[the defendant]* fell below that standard, then, subject to what I say elsewhere, you must find *[the defendant]* liable in negligence. But if you find that *[the defendant]* met the standard of care required of a reasonably careful person in the circumstances, you must dismiss the action.⁵

| User Note: Review evidence.

B. STANDARD OF CARE—CHILDREN [§28.6]

5. A child of tender or early years is not held to the same standard of conduct as an adult. A child is only required to exercise the degree of care that is normally exercised by children of similar age, intelligence, and experience under similar circumstances. In determining whether *[the infant defendant]* was negligent in this case, you must ask yourselves whether (his/her/their) conduct was of such a nature as might reasonably have been expected of a child of (his/her/their) age, intelligence, and experience, acting under similar circumstances. If the conduct of *[the infant defendant]* fell below that standard, then, subject to what I say elsewhere, you must find *[the infant defendant]* liable in negligence. But if you find that *[the infant defendant]* met the standard of care of a child of similar age, intelligence, and experience under similar circumstances, you must dismiss the action.⁶

| User Note: Review evidence.

**C. STANDARD OF CARE—SPECIAL RELATIONSHIP—
POSITIVE DUTY—FORESEEABILITY [§28.7]**

6. In this case, you heard evidence that *[the plaintiff]* injured (himself/herself/themselves) after *[leaving the defendant's premises]* in a state of *[intoxication, confusion]*. Because of the special relationship between *[the plaintiff]* and *[the defendant, e.g., pub owner, care home]*, I decided that *[the defendant, e.g., pub owner, care home]* owed a positive duty of care to take all reasonable steps to see that *[the plaintiff]* did not injure (himself/herself/themselves) or others after leaving *[the defendant's premises]*.

But it is for you to decide whether *[the defendant]* did or did not take all reasonable steps to see that *[the plaintiff]* did not injure (himself/herself/themselves) or others. This is an objective test. In other words, what would a reasonably prudent person have done in the circumstances?

If you find that *[the defendant]* took all reasonable steps in the circumstances to avoid injury to *[the plaintiff]*, then *[the defendant]* must succeed. If you find otherwise, then, subject to what I may say elsewhere, *[the plaintiff]* must succeed.⁷

**D. STANDARD OF CARE—ATHLETES IN TEAM
SPORTS [§28.8]**

7. In the context of playing a team sport, an athlete is held to the standard of conduct expected of a reasonable competitor in the athlete's circumstances. Those circumstances may include the speed of the game, the amount of body contact in the game, the rules of the game, and the risks that players might reasonably be expected to take during the game while acting within the spirit of the game and according to the standards of fair play.⁸ By participating in the *[soccer game/hockey game/etc.]*, *[the plaintiff]* consented only to the risks normally accepted as part of the game by reasonable players *[in a recreational league/in a professional league/etc.]*—not to the risk of all injuries that they may suffer merely by

participating in the sport. You must consider all the circumstances in determining whether *[the defendant]* met the standard of care of a reasonable athlete in these circumstances. The rules of the game are only one factor. An athlete may be liable for the *manner* in which the athlete executes a play, even if that play is permitted by the rules of the game, where a reasonable competitor in the athlete's place would not have executed the play in that manner.⁹

V. STANDARD PRACTICES—EXPERT EVIDENCE [§28.9]

8. You have heard evidence from expert witnesses, *[name]* and *[name]*, about standard practices followed by those who, like the defendant, *[e.g., maintain swimming pools]*. If you accept that evidence, and conclude that *[the defendant]* was following accepted, recognized, and respected practices, you should take that into account in assessing whether *[the defendant]* met the standard of care required in the circumstances. Normally, that would be sufficient. However, you are not bound to conclude that because *[the defendant]* followed standard practices (he/she/they) (was/were) not negligent. You may conclude, on the basis of the evidence, that the practice itself did not meet the standard of care required in the circumstances in that it offends logic or common sense no matter how many followed it.¹⁰

VI. DID THE PLAINTIFF SUFFER DAMAGE? [§28.10]

9. The third element that I mentioned to you is whether *[the plaintiff]* suffered any damage in the sense of injury or loss. This is an issue where the burden of proof rests on *[the plaintiff]*. I will later discuss the various types of damage that *[the plaintiff]* claims in this case.¹¹

VII. CAUSATION—“BUT FOR” TEST [§28.11]

User Note: Use paragraph 10 where causality can be proven on an application of the “but for” test. In an exceptional case where (1) it is impossible to prove