

CASEBRIEFS

The Understanding Video Lecture
Series™

BREACH

Part 1

Breach

- The usual test for breach is the reasonable person standard.
- What the defendant is breaching is their duty, or *standard of care*.
- A horrible outcome isn't enough. There must be a *falling below* the standard of care.

Tania's NYU High Heeled Fiasco

An Example



Ways of Proving Negligence

We'll look at three ways a defendant can breach his or her duty of care:

1. Show the defendant was unreasonably careless.
2. Show the defendant violated a statute (Negligence Per Se)
3. Use Res Ipsa Loquitur (*the thing speaks for itself*).

Breach or Not?

P, a bright 5-year-old, is delivered by his father to a nursery school, operated by D, on the second floor of a building. While the teacher is dealing with a different child's sudden and unforeseeable illness, P opens the window, climbs out, falls, and is badly injured.

Did D breach her standard of care?

Spotting Key Words

Answer: No liability. The key words are italicized here:

P, a bright 5-year-old, is delivered by his father to a nursery school, operated by D, on the second floor of a building. While the teacher is dealing with a different child's *sudden and unforeseeable* illness, P *opens* the window, climbs out, falls, and is badly injured.

Why are the italicized words so important?

Rules About Children

Q: D, a minor (10 years old), runs over P on his bicycle. By what standard do you judge D?

A: A reasonable child of *his* age and experience.

Q: What if D had been driving a car or motorboat?

A: It's an adult activity, so he's judged as an adult.

One More Rule About Children

Q: In the bicycle or motorboat case, can D's parents be held liable?

A: Not “vicariously”; not automatically. But yes if there were negligent in supervising him or enabling him to do it.

