



Activity Two

This worksheet contains questions based on the second video. There are answers or answers within the videos and further materials but try to think about the answers, rather than just try to look them up. In particular, these questions refer to the case of *Nettleship v Weston* available at <http://www.bailii.org/ew/cases/EWCA/Civ/1971/6.html>

1. After understanding the facts, what was your initial reaction? What do you think about any harm that Mr Nettleship has suffered? Should he have to bear that loss, or should someone else bear some or all of it? If someone else, who should bear the loss?
2. Do you think the *criminal law* sets the right standard, and the right penalty, for the kind of thing that Mrs Weston did?
3. All three judges in the Court of Appeal agreed that the appeal should be allowed, and the claim succeed, but only for half the amount claimed, that is, about £7000: before going further, do you think that was the right decision? If so, why?
4. Do you think the availability of insurance should affect the decision about whether someone was at fault within the tort of negligence? Is it any different to whether the defendant is rich? Should wealth be a reason to make a defendant liable? Looking at the standard of care another way, what is the role of the 'L' plates that learner drivers must display on the car they drive?
5. Lord Denning argued that the level of care expected of a learner-driver was the same if a passenger knew the driver was still learning to drive: do you agree? In particular, Lord Denning wondered how you could set the standard of care? What level, precisely, did the passenger have to think the driver was at? One might imagine a long spectrum of skills, from a first lesson through to the moment before starting a driving test after years of practice. Lord Denning was sure mere knowledge of a lower ability was insufficient for a lower standard of care or no standard at all: do you agree?
6. Do you agree with Lord Denning that a driving instructor does not automatically consent to the risk of being injured? What evidence was there about Mr Nettleship's view of the risks of being insured?
7. The result of considering Mr Nettleship as contributorily negligent for half the injury or Mrs Weston and Mr Nettleship as each responsible as co-drivers is the same, Mr Nettleship only recovers half the damages, but which analysis do you prefer?
8. Salmon LJ would have dismissed the appeal except for one vital piece of factual evidence that Lord Denning also found vital and he quoted from the factual evidence to prove it: why did that piece of evidence persuade Lord Justice Salmon do you think? Would you have had the foresight to ask for such detailed proof before you helped a friend to learn to drive?
9. How practical do you think varying the standard of care for learner drivers is? Lord Justice Megaw thought it was impractical, and compared it to doctors and solicitors, who also learn their trade in part by having to practice it. Do you agree? Lord Justice Megaw went on to say that: "It is not a valid argument against such a principle that it attributes tortious liability to one who may not be morally blameworthy. For tortious liability has in many cases ceased to be based on moral blameworthiness. For example, there is no doubt whatever that if Mrs. Weston had knocked down a pedestrian on the pavement when the accident occurred, she would have been liable to the pedestrian. Yet so far as any moral blame is concerned, no different considerations would apply in respect of the pedestrian from those which apply in respect of Mr. Nettleship." Do you see the same problem elsewhere in our daily lives



other than through inexperience? What about someone who falls ill while driving, such as having a stroke or heart attack: a reasonable driver does not do that, so should the defendant be automatically liable? To find out more, look at *Dunnage v Randall*, a recent Court of Appeal decision: www.bailii.org/ew/cases/EWCA/Civ/2015/673.html.

10. Having read through the case of *Nettlehip v Weston*, and thought about the issues, do you still think the way you did at the beginning about whether it was rightly decided or not?
11. Should driving lessons, perhaps only the first few, have to take place in a dual-control car, such that the instructor can exercise more control to prevent accidents?
12. When can you effectively put yourself under a higher standard of care? What if you tell your passengers you are a very good driver, can they expect a higher standard of care? What if you are a lawyer, or a doctor, and you tell the other person you are very talented at what you do? There's an argument that holding yourself out as having a higher skill might make a difference. Of course, this case was not about having a *high* standard of care, but simply about a standard of care for all drivers to all potential victims. That standard was the standard of the reasonable person and here, that reasonable person was a driver.
13. Does the way insurance work affect how you think about the case of *Nettlehip v Weston*?
14. How do you think the judges decide the case between themselves when they hear them as a panel of three in the Court of Appeal (or five, seven or sometimes even nine in the Supreme Court)?