

# Minimum Safety Standards in Tort Litigation: The Battle Between “Barely Passing” and Reasonable Care

By Ben Rubinowitz, Evan Torgan and Olympia Rubino

## Introduction

This article examines one of the most overlooked yet powerful concepts in tort litigation: the distinction between minimum safety standards and reasonable care. From building codes and OSHA regulations to ANSI standards and accepted medical practices, safety standards permeate virtually every negligence case. Yet the significance of those standards is often viewed differently by plaintiffs and defendants. Plaintiffs frequently argue that such standards represent only the minimum acceptable level of conduct and that human safety deserves more than a bare minimum effort. Defendants counter that the law requires reasonable care, not perfection, excellence, or extraordinary precaution, and that juries must resist attempts to elevate the legal standard through hindsight. Understanding both perspectives allows lawyers to better frame issues of responsibility, accountability, and reasonableness before a jury.

Virtually every area of tort litigation involves safety standards. Whether the case concerns a construction accident, a premises liability claim, a transportation disaster, a defective product, or medical malpractice, lawyers inevitably focus on the rules, regulations, and standards designed to protect human beings from foreseeable harm.

Building owners must comply with fire codes and building codes. Employers must comply with OSHA regulations. Manufacturers must follow industry standards. Physicians must adhere to accepted standards of medical care. Nurses must comply with professional protocols. Engineers, architects, and contractors are similarly governed by established safety requirements.

These standards serve an important function. They provide objective benchmarks by which conduct can be evaluated. They help define what society expects from those entrusted with the safety of others.

Yet one critical point is frequently overlooked by plaintiff lawyers and vigorously disputed by defense lawyers: most safety standards are minimum standards.

That distinction can become one of the most powerful themes in a negligence trial.

From the plaintiff's perspective, minimum standards establish only the floor of acceptable conduct. Human safety, they argue, deserves more than the bare minimum.

From the defense perspective, however, the law requires reasonable care, not perfection, excellence, or extraordinary precaution. The danger, according to the defense, is allowing jurors to transform a standard of reasonableness into an ever-expanding duty to do more.

The tension between those competing viewpoints lies at the heart of many negligence cases.

## **Safety Standards as Minimum Requirements**

Safety standards exist because experience has repeatedly demonstrated that certain dangers predictably cause injury and death.

Fires spread rapidly through buildings. Falls from elevation cause catastrophic injuries. Unsafe machinery amputates limbs. Failure to diagnose disease leads to needless suffering and death. Defective products injure consumers. Unsafe premises cause serious falls.

As a result, society creates rules intended to reduce those risks.

Building codes require smoke detectors, emergency exits, handrails, and fire suppression systems. OSHA requires fall protection, trench protection, hard hats, and other workplace safeguards. ANSI standards govern industrial practices and machine operation. Hospitals establish protocols for monitoring patients and responding to emergencies. Medical professionals are required to act in accordance with accepted standards of care.

Each of these requirements exists because someone, somewhere, was injured when appropriate precautions were not taken.

Importantly, however, these standards generally represent the minimum level of acceptable conduct.

A building code does not describe the safest building imaginable.

An OSHA regulation does not represent the highest level of workplace protection possible.

Accepted medical standards do not require physicians to achieve perfect outcomes.

Rather, these standards establish the lowest level of conduct society is willing to tolerate before conduct becomes unacceptable.

That distinction is critically important.

## **The Plaintiff's Perspective: The Floor Is Not the Goal**

Plaintiff lawyers often focus on violations of safety standards because violations provide powerful evidence of negligence.

But compliance itself should not necessarily end the inquiry.

The plaintiff's argument is straightforward:

The existence of minimum standards does not mean that doing the minimum is admirable.

Nor does it necessarily mean that doing the minimum is sufficient under every circumstance.

A property owner who ignores repeated complaints about malfunctioning smoke detectors may technically satisfy portions of a code while still exposing tenants to unnecessary danger.

An employer who barely complies with OSHA requirements may create a workplace that remains unsafe in practice.

A physician who performs only the most basic diagnostic evaluation may satisfy certain procedural requirements while missing critical signs of disease.

In each of these examples, the plaintiff's focus is not simply on whether a rule was followed.

The focus is on whether safety was genuinely prioritized.

Plaintiff's counsel may argue that standards establish a floor, not a ceiling. They define what is minimally acceptable. They do not define what is ideal, prudent, or sufficiently protective in every circumstance.

From that perspective, a defendant who treats safety obligations as boxes to be checked rather than responsibilities to be honored may create precisely the type of risk the standards were designed to prevent.

## **The Fire Code Example**

Consider a residential apartment building fire.

The building owner is required to maintain functioning smoke detectors, alarms, and emergency notification systems.

Suppose a fire occurs late at night.

The smoke detectors have not been inspected timely. Batteries have not been replaced. Maintenance requests have been ignored. Tenants receive inadequate warning.

As a result, residents are trapped, injured, or killed.

The plaintiff's case may include evidence of fire code violations.

But the larger issue becomes whether the owner treated safety as a meaningful obligation or merely a technical requirement.

Why were inspections delayed?

Why were warnings ignored?

Why was tenant safety treated as something requiring only minimal effort?

Those questions often resonate more powerfully with jurors than the technical language of the code itself.

## **The "Barely Passing" Analogy**

One effective way to communicate this concept during summation is through analogy.

Imagine a college student returning home after a semester away at school.

His mother asks how he performed academically.

The student responds:

"I barely passed. I got a D+."

Technically, he passed.

Technically, he achieved the minimum necessary to avoid failure.

But would any reasonable parent celebrate that result?

Of course not.

No parent says:

"I'm proud that you barely passed."

Instead, the natural reaction is:

"Why didn't you work harder? Why didn't you put in more effort? Why was barely passing good enough?"

The analogy resonates because everyone understands the difference between doing enough to avoid failure and genuinely striving to succeed.

Plaintiff's counsel may argue that safety standards operate in much the same way.

Building codes, OSHA regulations, ANSI standards, and accepted medical standards establish minimum requirements.

They are not gold medals.

They are not evidence of excellence.

They are not proof of extraordinary care.

They are simply the lowest acceptable standard before conduct becomes unacceptable.

And when human life is at stake, merely "barely passing" may not be enough.

## **The Defense Perspective: The Danger of Raising the Standard**

The defense, of course, views the issue very differently.

Defense counsel will argue that plaintiff's counsel is attempting to elevate the legal standard beyond what the law actually requires.

Words such as "true safety," "genuine safety," and "doing more" may sound appealing, but they are not legal standards.

The law requires reasonable care under the circumstances.

Nothing more.

Nothing less.

The defense may argue that plaintiff's counsel is attempting to transform negligence law into something it was never intended to be.

When counsel argues that reasonable care requires more than the minimum, the defense may respond that the standard is no longer objective. Instead, it becomes a moving target, defined by hindsight and subjective opinion.

The jury may be reminded that the legal question is not whether more could have been done.

More can almost always be imagined after an accident occurs.

The question is whether the defendant acted reasonably before the accident occurred.

## **The Law Does Not Require Perfection**

A central defense theme is that negligence law does not impose a duty of perfection.

Doctors are not required to guarantee successful outcomes.

Property owners are not required to guarantee that accidents never occur.

Employers are not required to eliminate every conceivable risk.

Manufacturers are not required to design products that are incapable of misuse.

The law recognizes that accidents can occur even when reasonable care is exercised.

Defense counsel may therefore argue:

"The plaintiff wants you to judge this case based upon what could have been done. But the law requires you to evaluate what reasonably should have been done."

The distinction is significant.

If every injury automatically established negligence, the concept of reasonableness would disappear.

Liability would become outcome-driven rather than conduct-driven.

Negligence law has never embraced such a standard.

### **Re-Anchoring the Jury in the Actual Standard**

Defense counsel may remind jurors that the law does not ask whether the defendant achieved excellence. Nor does it ask whether the defendant achieved the highest possible level of safety.

Rather, the law asks a much narrower question:

Did the defendant act reasonably under the circumstances?

When plaintiff's counsel repeatedly emphasizes "minimum standards," defense counsel may argue that the phrase itself is designed to create a negative emotional reaction. The jury may be encouraged to focus on whether the defendant "barely passed" rather than whether the defendant acted reasonably.

From the defense perspective, that reframing improperly elevates the standard.

Reasonable care is a fixed legal standard.

It does not change simply because an accident occurred.

It does not change because a safer alternative can be imagined after the fact.

And it does not change because counsel asks the jury to hold defendants to a higher moral standard than the law requires.

## **The Difference Between an Accident and Negligence**

The defense will often remind jurors that not every accident results from negligence.

Some accidents are simply accidents.

Some injuries occur despite careful planning and reasonable precautions.

Some unfortunate outcomes are unavoidable.

The law recognizes that distinction.

Defense counsel may tie this argument to concepts of personal responsibility and accountability.

Reasonable care is a shared obligation.

The existence of an injury does not establish fault.

The existence of a tragedy does not establish negligence.

The jury's responsibility is to determine whether the defendant acted reasonably, not whether the outcome was unfortunate.

## **Codes and Regulations as Objective Benchmarks**

The defense will also challenge attempts to minimize the significance of compliance with codes and regulations.

Plaintiff's counsel may argue that compliance is merely technical.

The defense may respond:

"There is no separate legal standard called 'true safety.' There is no distinction between 'technical safety' and 'real safety.' There is only one standard: reasonable care under the circumstances."

Codes and regulations exist because society has determined that they provide objective benchmarks.

They do not guarantee absolute safety.

Nothing can.

But they remain important evidence that a defendant acted reasonably.

To disregard compliance altogether, the defense may argue, would undermine the very purpose of creating objective standards in the first place.

## **"Do More" Is Not the Legal Test**

Another anticipated defense argument focuses on plaintiff counsel's recurring theme that the defendant should have done more.

Defense counsel may argue that "doing more" is not the legal standard.

The existence of a safer alternative does not automatically establish negligence.

The existence of additional precautions does not automatically establish negligence.

The defense may argue:

"Plaintiff's counsel repeatedly says these standards are floors, not ceilings. What they are really suggesting is that the defendant had a duty to go above and beyond. But that is not the law. The law does not require every conceivable precaution. The law requires conduct that is reasonable and sufficient under the circumstances."

The jury's role is not to expand the law.

The jury's role is to apply it.

## **Returning to the D+ Analogy**

Defense counsel may even confront the plaintiff's analogy directly.

"The D+ analogy is persuasive rhetoric, but it confuses personal aspiration with legal responsibility. We encourage our children to strive for excellence. The law, however, does not require excellence. It requires reasonableness."

The defense may continue:

"The law does not require an A+. It does not require perfection. It does not require extraordinary care. It requires reasonable care under the circumstances."

Thus, from the defense perspective, the plaintiff's analogy improperly invites jurors to substitute moral expectations for legal standards.

## **Competing Narratives**

Ultimately, both sides are telling a story about responsibility.

The plaintiff's narrative is that preventable harm occurs when individuals and corporations treat safety obligations as something to be minimally satisfied rather than genuinely embraced.

The defense narrative is that negligence law requires objective evaluation, not moral condemnation, and that reasonable care should not be transformed into a standard of perfection.

Both themes have force.

Both themes appeal to common experience.

The plaintiff asks:

"When safety mattered most, why was barely passing considered good enough?"

The defense asks:

"Are we judging reasonable conduct, or are we simply demanding more because an accident occurred?"

The answers to those questions often determine the outcome of a negligence trial.

## **Conclusion**

Safety standards occupy a foundational role in tort litigation. They help jurors evaluate conduct across countless disciplines, including construction, transportation, premises liability, product liability, and medicine.

Yet the significance of those standards is often disputed.

Plaintiffs emphasize that most standards are minimum standards and argue that human safety deserves more than conduct aimed at merely avoiding failure.

Defendants emphasize that the law requires reasonable care, not perfection, and caution against transforming negligence law into a limitless duty to do more.

Ultimately, the debate centers on two competing visions of responsibility.

One asks whether defendants did enough to truly protect those placed in their care.

The other asks whether defendants acted reasonably under the circumstances that existed at the time.

The answer to that question often determines the outcome of a negligence case.

And that is why the distinction between minimum safety standards and reasonable care remains one of the most important and enduring issues in tort litigation.

## **About the Authors**

Ben Rubinowitz is the managing partner at Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf. [BBR@gairgair.com](mailto:BBR@gairgair.com)

Evan Torgan is a member of the firm Torgan Cooper & Aaron, PC. [TorganCooper.com](http://TorganCooper.com); [etorgan@torgancooper.com](mailto:etorgan@torgancooper.com)

Olympia Rubino is co-managing partner at the defense firm Cascone & Kluepfel. [orubino@cklaw.com](mailto:orubino@cklaw.com)