

PJC 2.1 Negligence and Ordinary Care

“Negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

COMMENT

When to use. These definitions should be included in the court’s charge in every case in which ordinary negligence is the standard of care. They include the standard and accepted elements of negligence. *See, e.g., Colvin v. Red Steel Co.*, 682 S.W.2d 243, 245 (Tex. 1984); *Great Atlantic & Pacific Tea Co. v. Evans*, 175 S.W.2d 249, 250–51 (Tex. 1943).

Modify if “ordinary care” not applicable to all. If “ordinary care” is not the standard applicable to all persons whose conduct is inquired about (as in cases involving a high degree of care owed by a common carrier to its passengers, cases involving the conduct of a child, or certain negligent entrustment cases), the phrase “when used with respect to the conduct of [*insert name of person held to standard of ordinary care*]” should be added after the first word, “negligence,” in the instruction.

When to use PJC 2.2 or 2.3. PJC 2.2 or 2.3 should be used *in addition to* PJC 2.1 in cases in which both “ordinary care” and either “high degree of care” or “child’s degree of care” are to be considered by the jury. *See* above paragraph. If only “high degree” or “child’s degree” is to be considered, PJC 2.2 or 2.3 should be used *in lieu of* PJC 2.1.