

1025 NEGLIGENCE OF A COMMON CARRIER

In this case, (defendant) is a common carrier. A common carrier is not required to guarantee the safety of its passengers. However, to discharge the duty that it owes to its passengers, a common carrier must exercise the highest degree of care for their safety. The care required is the highest that can be reasonably exercised by persons of vigilance and foresight when acting under the same or similar circumstances, taking into consideration the type of transportation used and the practical operation of its business as a common carrier.

A failure to exercise the highest degree of care on the part of (defendant) is negligence.

COMMENT

This instruction and comment were originally approved in 1972 and revised in 1985. The comment was updated in 2005.

A similar instruction was approved in Victorson v. Milwaukee & Suburban Transp. Corp., 70 Wis.2d 336, 234 N.W.2d 332 (1975). Spleas v. Milwaukee & Suburban Transp. Corp., 21 Wis.2d 635, 124 N.W.2d 593 (1963); Bradford v. Milwaukee & Suburban Transp. Corp., 25 Wis.2d 161, 130 N.W.2d 282 (1964). See also Boynton Cab Co. v. ILHR Dept., 96 Wis.2d 396, 416, 291 N.W.2d 850 (1980), and Sabinasz v. Milwaukee & Suburban Transp. Corp., 71 Wis.2d 218, 224, 238 N.W.2d 99 (1976). Werlein v. Milwaukee Elec. Ry & Transp. Corp., 267 Wis. 392, 395, 66 N.W.2d 185, 186-87 (1954); Dauplaise v. Yellow Taxicab Co., 204 Wis. 419, 235 N.W. 771 (1931); Scales v. Boynton Cab Co., 198 Wis. 293, 294-95, 233 N.W. 836 (1929); Ormond v. Wisconsin Power & Light Co., 194 Wis. 305, 307-08, 216 N.W. 489-90 (1927); Anderson v. Yellow Cab Co., 179 Wis. 300, 303, 191 N.W. 748 (1923).

The first paragraph is explained in United States Fidelity & Guar. Co. v. Milwaukee & Suburban Transp. Corp., 18 Wis.2d 1, 117 N.W.2d 708 (1962); Ormond v. Wisconsin Power & Light Co., 194 Wis. 305, 308, 216 N.W. 489 (1927). In Victorson, supra at 346, the court stated:

Because the operation of a common carrier involves greater risks and potentially more serious harm through negligent conduct than would the operation of freight vehicles or individual modes of transport, recognition must be given to the circumstances in which the ordinarily prudent person is operating.

For the determination of whether the defendant is a "common carrier," see Hunt v. Clarendon Nat'l Ins. Service, Inc., 2005 WI App 11, 278 Wis.2d 439, 691 N.W.2d 904.

The common-law duty as to common carriers applies equally to taxicabs. Dauplaise v. Yellow Taxicab Co., *supra*; Scales v. Boynton Cab Co., *supra*; Anderson v. Yellow Cab Co., *supra*. But Wis. Stat. § 194.01(5) is a regulatory statute and, hence (see Wis. Stat. § 194.02), is inapplicable to a taxicab company's negligence. Anderson v. Yellow Cab Co., *supra*.

The common law requires common carriers to use the highest degree of care for the safety of their passengers. This "highest degree of care" language does not create a special area within the field of negligence law. Victorson, *supra* at 345; Ormond v. Wisconsin Power & Light Co., *supra* at 308. In Ormond, the court held that the duty imposed upon common carriers to exercise the highest degree of care falls within the class of ordinary care, and their failure to observe that care amounts to ordinary negligence under our classification of negligence. 194 Wis. at 308.

For the liability of a common carrier for injuries to a pedestrian caused by the acts of passenger, see Hamed v. Milwaukee County, 108 Wis.2d 257, 321 N.W.2d 199 (1982); Finken v. Milwaukee County, 120 Wis.2d 69, 353 N.W.2d 827 (Ct. App. 1984).