

## 12.00

# SPECIFIC FACTORS AFFECTING NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE

### 12.01 Intoxication

Intoxication is no excuse for failure to act as a reasonably careful person would act. An intoxicated person is held to the same standard of care as a sober person. If you find that [insert allegedly intoxicated person] was intoxicated at the time of the occurrence, you may consider that fact, together with other facts and circumstances in evidence, in determining whether [insert allegedly intoxicated person] conduct was [negligent] [willful and wanton] [or] [contributorily negligent].

*Instruction, Notes on Use and Comment revised May 2009.*

#### Notes on Use

If there is evidence of intoxication on the part of multiple persons, separate instructions should be submitted for each person to avoid confusion. The use of the instruction is not limited to cases in which the intoxicated party was operating a motor vehicle. *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 454, 605 N.E.2d 493, 502, 178 Ill.Dec. 699, 708 (1992) (intoxicated pedestrian electrocuted by electrified railway track); *Marshall v. Osborn*, 213 Ill.App.3d 134, 140, 571 N.E.2d 492, 497, 156 Ill.Dec. 708, 713 (3rd Dist. 1991) (intoxicated pedestrian struck by vehicle).

#### Comment

Intoxication neither bars recovery nor relieves the intoxicated party of the duty to exercise the same degree of care as a sober person. *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 454, 605 N.E.2d 493, 502, 178 Ill.Dec. 699, 708 (1992) (plaintiff's intoxication relevant to his contributory negligence); *Wilcke v. Henrotin*, 241 Ill. 169, 173, 89 N.E. 329, 330 (1909); *Petraski v. Thedos*, 382 Ill.App.3d 22, 28, 887 N.E.2d 24, 31, 320 Ill.Dec.244, 251 (1st Dist. 2008) (plaintiff's intoxication relevant to her contributory negligence); *Biel v City of Bridgeview*, 335 Ill.App. 3d 526, 534-35, 781 N.E.2d 555, 562, 269 Ill.Dec. 758, 765 (1st Dist. 2002) (plaintiff's intoxication was irrelevant to defendant's duty); *Countryman v. Winnebago County*, 135 Ill.App. 384, 393, 481 N.E.2d 1255, 1262, 90 Ill.Dec. 344, 351 (2d Dist. 1985); *Brown v. Decatur Memorial Hosp.*, 74 Ill.App.3d 436, 443, 393 N.E.2d 84, 89, 30 Ill.Dec. 429, 434 (4th Dist. 1979), *aff'd*, 83 Ill.2d 344, 415 N.E.2d 337, 47 Ill.Dec. 332 (1980).

A party's intoxication is not, in and of itself, proof of fault. Evidence of a party's intoxication is relevant to the extent that it affects his exercise of due care and is therefore admissible as a circumstance to be weighed by the trier of fact in its determination of the issue of due care. See *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 454, 605 N.E.2d 493, 502, 178 Ill.Dec. 699, 708 (1992) (plaintiff's contributory negligence); *Petraski v. Thedos*, 382 Ill.App.3d 22, 28, 887 N.E.2d 24, 31, 320 Ill.Dec. 244, 251 (1st Dist. 2008); *Marshall v. Osborn*, 213 Ill.App.3d 134, 140, 571 N.E.2d 492, 496-97, 156 Ill.Dec. 708, 712-13 (3rd Dist. 1991).

Evidence of alcohol consumption is inadmissible unless accompanied by proof of a resulting diminution in the ability to think and act with ordinary care. *Bielaga v. Mozdzeniak*, 328 Ill.App.3d 291, 296, 765 N.E.2d 1131, 1135-36, 262 Ill.Dec. 523, 527-28 (1st Dist. 2002); *Sandburg-Schiller v. Rosello*,

119 Ill.App.3d 318, 331, 456 N.E.2d 192, 202, 74 Ill.Dec. 690, 700 (1st Dist. 1983); *Clay v. McCarthy*, 73 Ill.App.3d 462, 466, 392 N.E.2d 693, 696, 30 Ill.Dec. 38, 41 (3rd Dist. 1979). The degree of impairment required to be deemed intoxicated is that which affects intellect and self-control. See *Osborn v. Leuffgen* 381 Ill. 295, 298-99, 45 N.E.2d 622, 624 (1942); *People v. Schneider*, 362 Ill. 478, 484-85, 200 N.E. 321, 323-24 (1936); *Wade v. City of Chicago Heights*, 295 Ill.App.3d 873, 885-86, 693 N.E.2d 426, 434, 230 Ill.Dec. 297, 305 (1st Dist. 1998).

## **12.04 Concurrent Negligence Other Than Defendant's**

[WITHDRAWN]

IPI 12.04 is withdrawn. Use the current version of IPI 15.01 for proximate cause definition and use.

*Instruction withdrawn August 2021.*

## **12.05 Negligence--Intervention of Outside Agency**

[WITHDRAWN]

IPI 12.05 is withdrawn. Use the current version of IPI 15.01 for proximate cause definition and use.

*Instruction withdrawn August 2021.*