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

More than one person may be to blame for causing an injury. If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.

[However, if you decide that the sole proximate cause of injury to the plaintiff was the conduct of some person other than the defendant, then your verdict should be for the defendant.]

Notes on Use

This instruction should be used only where negligence of a person who is not a party to the suit may have concurred or contributed to cause the occurrence. This instruction may not be used where the third person was acting as the agent of the defendant or the plaintiff. Where two or more defendants are sued and one or more may be liable and others not liable, use IPI 41.03.

The second paragraph should be used only where there is evidence tending to show that the sole proximate cause of the occurrence was the conduct of a third person.

See also IPI 12.05 (outside agency); IPI 60.01 (statutory violation).

Comment

"Where a person is guilty of the negligence charged against him, it is no defense that some other person, or thing, contributed to bring about the results for which the damages are claimed." *Romine v. City of Watseka*, 341 Ill.App. 370, 377; 91 N.E.2d 76, 79 (2d Dist.1950); *Manion v. Chicago, R.I. & P. Ry. Co.*, 12 Ill.App.2d 1, 18; 138 N.E.2d 98, 106-107 (2d Dist.1956); *Liby v. Town Club*, 5 Ill.App.2d 559, 565; 126 N.E.2d 153, 156 (1st Dist.1955). This form of instruction was approved in *Dickeson v. Baltimore & O.C.T.R.R. Co.*, 73 Ill.App.2d 5, 34; 220 N.E.2d 43, 56 (1st Dist.1965), *aff'd*, 42 Ill.2d 103, 245 N.E.2d 762 (1969); *Ballweg v. City of Springfield*, 114 Ill.2d 107, 120; 499 N.E.2d 1373, 1379; 102 Ill.Dec. 360, 366 (1986); *Berry v. American Commercial Barge Lines*, 114 Ill.App.3d 354, 373; 450 N.E.2d 436, 449; 71 Ill.Dec. 1, 14 (5th Dist.1983), *cert. denied*, 465 U.S. 1029, 104 S.Ct. 1290, 79 L.Ed.2d 692 (1984).

In *Frank Parmelee Co. v. Wheelock*, 224 Ill. 194, 79 N.E. 652 (1906), and West Chicago St. R. Co. v. Horne, 100 Ill.App. 259 (1st Dist.1902), *aff'd*, 197 Ill. 250, 64 N.E. 331 (1902), the courts approved use of the word "blame."

12.05 Negligence--Intervention of Outside Agency

If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that something else may also have been a cause of the injury.

[However, if you decide that the sole proximate cause of injury to the plaintiff was something other than the conduct of the defendant, then your verdict should be for the defendant.]

Notes on Use

The second paragraph should be used only where there is evidence tending to show that the sole proximate cause of the occurrence was something other than the conduct of the defendant.

See also IPI 12.04 (negligence of third person); IPI 60.01 (statutory violation).

Comment

See Comment to IPI 12.04.