

# PARTICULARIZED STANDARDS OF CONDUCT

## 100.00 COMMON CARRIERS

### INTRODUCTION

These instructions are provided to address the common law and statutory duty imposed upon common carriers with regard to maintaining the safety of their passengers. A common carrier owes its passengers the duty to use the highest degree of care consistent with the type of vehicle used in the practical operation of its business. *Rotheli v. Chicago Transit Authority*, 7 Ill.2d 172, 130 N.E.2d 172 (1955).

Various conveyances and devices have been classified as common carriers:

*Plane*: *Kamienski v. Bluebird Air Service*, 321 Ill.App. 340, 53 N.E.2d 131 (1st Dist.1944); *McCusker v. Curtiss Wright Flying Service*, 269 Ill.App. 502 (1st Dist.1933).

*Ship*: *Keokuk Northern Line Packet Co. v. True*, 88 Ill. 608 (1878).

*Bus*: *Ward v. Peoria Transit Lines*, 2 Ill.App.2d 170, 118 N.E.2d 611 (2d Dist.1954); *Duncan v. Fisher*, 101 Ill.App.2d 213, 242 N.E.2d 479 (3d Dist.1968).

*Taxicab*: *Przybylski v. Yellow Cab Co.*, 6 Ill.App.3d 243, 285 N.E.2d 506 (1st Dist.1972).

*Limousine*: *Smith v. Chicago Limousine Service*, 109 Ill.App.3d 755, 441 N.E.2d 81, 65 Ill.Dec. 289 (1st Dist.1982).

*Amusement Devices*: *Pajak v. Mamsch*, 338 Ill.App. 337, 87 N.E.2d 147 (1st Dist.1949) (ferris wheel).

*Railroads*: *McNealy v. Illinois Cent. R. Co.*, 43 Ill.App.2d 460, 193 N.E.2d 879 (1st Dist.1963).

*Elevator*: *Shoemaker v. Rush-Presbyterian-St. Luke's Medical Center*, 187 Ill.App.3d 1040, 543 N.E.2d 1014, 135 Ill.Dec. 446 (1st Dist.1989); *Cobb v. Marshall Field & Co.*, 22 Ill.App.2d 143, 159 N.E.2d 520 (1st Dist.1959). The duty of highest degree of care is limited to the business house or the owner of the building operating the elevator as a part of its business operation. It does not extend to those who undertake to inspect and maintain elevators. They need only exercise due care. *Jardine v. Rubloff*, 73 Ill.2d 31, 382 N.E.2d 232, 21 Ill.Dec. 868 (1978) (owners of buildings with elevators are viewed as common carriers). *Kaminsky v. Arthur Rubloff & Co.*, 72 Ill.App.2d 68, 218 N.E.2d 860 (1st Dist.1966).

However, escalators have been held not to be common carriers. *See Tolman v. Wieboldt Stores, Inc.*, 38 Ill.2d 519, 525, 233 N.E.2d 33 (1967); *Stach v. Sears, Roebuck and Co.*, 102

Ill.App.3d 397, 412, 57 Ill.Dec. 879, 429 N.E.2d 1242 (1st Dist. 1981).

The relationship of passenger and carrier exists only when the person is in the act of boarding, is upon, or is in the act of alighting from the carrier's vehicle. *Katamay v. Chicago Transit Authority*, 53 Ill.2d 27, 289 N.E.2d 623 (1972) (*citing* IPI 100.09). The scope of “boarding” the conveyance has been held to include standing in line to get on a train (*Katamay, supra*) and “alighting” the conveyance does not terminate until the passenger has had a reasonable opportunity to reach a place of safety. *Garrett v. Grant School Dist. No. 124*, 139 Ill.App.3d 569, 487 N.E.2d 699, 93 Ill.Dec. 874 (2d Dist.1985).

The common carrier's duty to protect its passengers also extends to acts committed by the carrier's employees, other passengers, and strangers. A common carrier undertakes by contract of carriage to protect its passengers. Therefore, the carrier is responsible for injury caused by the intentional acts of its employees regardless of whether the act was within the actual or apparent scope of the employee's authority. *Chicago & Eastern Railroad Co. v. Flexman*, 103 Ill. 546 (1882); *McMahon v. Chicago City Railway Co.*, 239 Ill. 334, 88 N.E. 223 (1909).

However, when a passenger leaves a conveyance and reaches a place of safety, normal rules of respondeat superior apply. *Horecker v. Pere Marquette R. Co.*, 238 Ill.App. 278 (1st Dist.1925).

A common carrier also owes the highest degree of care to protect its passengers from assault, injury, or abuse by other passengers or third parties. Where the common carrier knows, or from facts and circumstances known to it should anticipate the danger of assault to a passenger by a fellow passenger, then it has the duty to exercise the highest degree of care to protect a passenger from assault, injury or abuse. *Blackwell v. Fernandez*, 324 Ill.App. 597, 602-603; 59 N.E.2d 342, 344-345 (1st Dist.1945); *McCoy v. Chicago Transit Authority*, 69 Ill.2d 280, 371 N.E.2d 625, 13 Ill.Dec. 690 (1977); *Letsos v. Chicago Transit Authority*, 47 Ill.2d 437, 265 N.E.2d 650 (1970).

This duty arises only when the carrier has actual notice of a danger or notice of facts and circumstances that a danger probably exists. The carrier's knowledge is a prerequisite to the imposition of the duty of the highest degree of care. *Anderson v. Yellow Cab Co.*, 28 Ill.App.3d 656, 329 N.E.2d 278 (1st Dist.1975).

Public Act 84-939, effective September 24, 1985, amended the Metropolitan Transit Authority Act (70 ILCS 3605/27 (1994)), the Regional Transportation Authority Act (70 ILCS 3615/2.08 (1994)), and the Local Mass Transit District Act (70 ILCS 3610/4 (1994)) excluding the entities governed by these acts, their board members, officers, and employees from liability for:

[F]ailure to provide a security or police force or, if a security or police force is provided, for failure to provide adequate police protection or security, failure to prevent the commission of crimes by fellow passengers or other third persons or for the failure to apprehend criminals.

70 ILCS 3605/27 (1994).

The Illinois Supreme Court upheld the constitutionality of this Act in *Bilyk v. Chicago Transit Authority*, 125 Ill.2d 230, 531 N.E.2d 1, 125 Ill.Dec. 822 (1988). The Appellate Court in *Young v. Chicago Transit Authority*, 209 Ill.App.3d 84, 568 N.E.2d 18, 154 Ill.Dec. 18 (1st Dist.1990), held that the immunity afforded under this statute applied only prospectively from the statute's effective date of September 24, 1985.

In discharging its duty to passengers as a general class, a carrier has a qualified privilege under the common law to eject passengers for a failure to properly conduct themselves or obey reasonable rules. Carriers have the right to promulgate reasonable rules necessary to perform its statutory duty and may eject a passenger who violates such rules. *Chicago & Alton Railroad Co. v. Willard*, 31 Ill.App. 435 (4th Dist.1888). Railroad conductors are given the statutory power to arrest and eject passengers for specified acts under certain conditions. 610 ILCS 80/2, 80/3, 90/1, 90/2 (1994).

## **100.01 Duty Of Common Carrier To Passenger**

At the time of the occurrence in question, the defendant, [name of carrier], was a common carrier. A common carrier is not a guarantor of its passengers' safety, but it has a duty to its passengers to use the highest degree of care consistent with the mode of conveyance used and the practical operation of its business as a common carrier by [rail, air, etc.]. Its failure to fulfill this duty is negligence.

### **Notes on Use**

This instruction is not appropriate in a case where the affirmative act of a third person led to a passenger's injury. See IPI 100.02 (injury by third person); IPI 100.03 (injury by another passenger); IPI 100.04 (injury by carrier's employee). This instruction shall be used in place of IPI 10.04 to define the duty underlying the issue of negligence when the defendant is a common carrier.

### **Comment**

This instruction sets forth the common law duty owed by a common carrier to its passengers. *Loring v. Yellow Cab Co.*, 33 Ill.App.3d 154, 337 N.E.2d 428 (1st Dist.1975). While a common carrier owes its passengers the highest degree of care consistent with the operation of its vehicles, it is not an absolute insurer of its passengers' safety. A common carrier is not responsible for injuries suffered by a passenger unless a breach of the duty described herein is the proximate cause of the injury. *Smith v. Chicago Limousine Service, Inc.*, 109 Ill.App.3d 755, 441 N.E.2d 81, 65 Ill.Dec. 289 (1st Dist.1982).

## **100.02 Duty Of Carrier To Protect Passengers From Injury By Third Persons**

It was the duty of the defendant to exercise the highest degree of care consistent with the type of vehicle used and the practical operation of its business as a common carrier by [rail, air, etc.] to protect its passengers from the danger of injury from [e.g., stone throwing] of which it knew or should have anticipated from facts and circumstances known to it while the passengers were on its [train, plane, etc.] or while boarding or alighting therefrom. The failure of the defendant to fulfill this duty is negligence.

### **Notes on Use**

This instruction is applicable when the injury is alleged to be the result of the direct conduct of a non-passenger. This instruction shall be used in place of IPI 10.04 to define the duty underlying the issue of negligence when the defendant is a common carrier.

### **Comment**

This instruction, IPI 100.03 (common carrier's duty to protect passengers from assaults by other passengers) and IPI 100.12 (common carrier's duty to protect invitees from assault) have one rule of law in common. In order for any duty of protection to arise, the carrier must have notice of the actual danger, or notice from facts and circumstances known to it that the danger probably exists. *Morris v. Chicago Transit Authority*, 28 Ill.App.3d 183, 328 N.E.2d 208 (1st Dist.1975) (defendant had no notice of rock throwing incidents prior to occurrence); *Blackwell v. Fernandez*, 324 Ill.App. 597, 602-603; 59 N.E.2d 342, 344-345 (1st Dist.1945) (the carrier had notice from the insulting behavior of a drunk that an assault was likely); *Neering v. Illinois Central R. Co.*, 383 Ill. 366, 378-380; 50 N.E.2d 497, 502-503 (1943) (the railroad was liable for an assault on a person waiting on a train platform by one of a group of hobos the railroad knew congregated in the area).

These situations where notice of the danger is required before a duty to protect from it arises must be distinguished from those situations in which the accident was caused by the act of a third person but the carrier was negligent in not guarding against the occurrence. *Elgin, A. & S. Traction Co. v. Wilson*, 217 Ill. 47, 51-52; 75 N.E. 436, 437 (1905) (railroad liable for injuries to passenger when boys threw unlocked and unattended switch); *Chicago, P. & St. L. Ry. Co. v. Lewis*, 145 Ill. 67, 33 N.E. 960 (1893) (an instruction that the carrier was not liable if its tracks were “apparently” in good condition was held erroneous because the carrier had the duty to exercise the highest degree of care to discover the defects).

Amendments to the Metropolitan Transit Authority Act (70 ILCS 3605/27 (1994)), the Regional Transportation Authority Act (70 ILCS 3615/2.08 (1994)), and the Local Mass Transit District Act (70 ILCS 3610/4 (1994)), effective September 24, 1985, have exempted the Chicago Transit Authority and the other entities governed by these acts from liability for the failure to prevent the commission of crimes by fellow passengers or other third parties. *See* Introduction.

### **100.03 Duty Of Carrier To Protect Passengers From Other Passengers**

It was the duty of the defendant to exercise the highest degree of care consistent with the type of vehicle used and the practical operation of its business as a common carrier by [rail, air, etc.] to protect its passengers while they were on its [train, plane, etc.], or while boarding or alighting therefrom, from [assault,] [injury,] [and] [abuse] from fellow passengers, of which it knew, or should have anticipated, from facts and circumstances known to it. The failure of the defendant to fulfill this duty is negligence.

[This obligation cannot be delegated to another. It is therefore not a defense for the defendant that another person, including [i.e., police department] failed to protect the defendant's passengers while they were on the defendant's [train, plane, etc.] from assault, injury and abuse from fellow passengers, of which the defendant knew, or should have anticipated from facts and circumstances known to it. Now, when I use the term "cannot be delegated" in these instructions, I mean that the duty must be performed by the defendant and cannot be left to some other person.]

#### **Notes on Use**

This instruction is applicable when the injury is alleged to be the result of the direct conduct of another passenger. This instruction shall be used in place of IPI 10.04 to define the duty underlying the issue of negligence when the defendant is a common carrier.

The bracketed second paragraph should only be used where evidence has been offered that a third party or entity (i.e., local police department) may have had a concurrent duty to protect the plaintiff or been present under circumstances where such third party or entity may have been expected to render protection to the plaintiff.

#### **Comment**

The duty to exercise the highest degree of care extends to the protection of passengers from assault by other passengers.

If the common carrier knows, or from facts and circumstances known to it should anticipate the danger of assault to a passenger by a fellow passenger, then it has the duty to exercise the highest degree of care to protect a passenger from assault, injury, or abuse. *McCoy v. Chicago Transit Authority*, 69 Ill.2d 280, 371 N.E.2d 625, 13 Ill.Dec. 690 (1977) (question of fact as to whether carrier should have been aware that three intoxicated men had propensity to cause injury); *Watson v. Chicago Transit Authority*, 52 Ill.2d 503, 288 N.E.2d 476 (1972) (question of fact whether bus driver should have known of danger presented by passengers brandishing a gun); *Blackwell v. Fernandez*, 324 Ill.App. 597, 602-603; 59 N.E.2d 342, 344-345 (1st Dist.1945) (the carrier had the duty to protect its passenger from abuse of a drunk and was therefore liable for the resulting knifing). This duty to protect passengers cannot be delegated by the carrier. The bracketed language was approved in *Gordon v. Chicago Transit Authority*, 128 Ill.App.3d 493, 470 N.E.2d 1163, 83 Ill.Dec. 743 (1st Dist.1984).

Amendments to the Metropolitan Transit Authority Act (70 ILCS 3605/27 (1994)), the

Regional Transportation Authority Act (70 ILCS 3615/2.08 (1994)), and the Local Mass Transit District Act (70 ILCS 3610/4 (1994)), effective September 24, 1985, have exempted the Chicago Transit Authority and the other entities governed by these acts from liability for the failure to prevent the commission of crimes by fellow passengers or other third parties. *See* Introduction.

## **100.04 Duty Of Carrier To Protect Passengers From Assault, Abuse, Or Intentional Harm By Employees**

The defendant is liable for any injury caused to its passengers by any [assault] [abuse] [intentional harm] to them by an employee of the carrier [then on duty].

### **Notes on Use**

The material in the last bracket, “then on duty,” should only be used when this is an issue.

### **Comment**

A common carrier undertakes by contract of carriage to protect its passengers. Therefore, when an employee is on duty, whether the act is or is not in the actual or apparent scope of authority is immaterial. In *Chicago & E. R. Co. v. Flexman*, 103 Ill. 546 (1882), a passenger who had lost his watch accused a brakeman of having it and was assaulted by the brakeman. The court held that whether or not the brakeman was furthering his employment was immaterial; the railroad by contract had undertaken to carry the passenger safely and treat him respectfully. *McMahon v. Chicago City Ry. Co.*, 239 Ill. 334, 88 N.E. 223 (1909) (passenger knocked down in a scuffle between conductor and another passenger over a right to further “transfers”).

However, when a passenger leaves a conveyance and reaches a place of safety, normal rules of respondeat superior apply. *Horecker v. Pere Marquette R. Co.*, 238 Ill.App. 278 (1st Dist.1925) (railroad not liable for the assault of an off-duty gatekeeper on a husband accompanying his wife to the station).



## **100.05 Statutory Duty And Power Of Railroad Conductor To Arrest For Drinking Or Intoxication**

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that any person who shall drink any intoxicating liquor, or who shall be intoxicated in or upon any railroad car in use for the transportation of passengers, or in or about any railroad station or platform, shall be subject to arrest and conviction and any railroad conductor while on duty is authorized and empowered, for the purposes of enforcing this statute, to exercise all the powers conferred upon sheriffs. It is the duty of conductors to enforce this statute and to arrest without process any person who violates the statute and in so doing the railroad conductor shall be held to be acting for the State of Illinois and not as the employee of the railroad.

### **Notes on Use**

This instruction should be used only where an arrest is made or attempted by a conductor. Where a conductor does not make an arrest, IPI 100.06 and 100.07 are more appropriate.

### **Comment**

This instruction is based on 610 ILCS 90/1, 90/2 (1994).

## **100.06 Duty Of Carrier To Protect Passengers--Conductor Vested With Police Powers**

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that the conductors of all railroad trains carrying passengers shall be vested with police powers while on duty on their respective trains. It is further provided in this statute that when any passenger [shall be guilty of disorderly conduct] [uses any obscene language, to the annoyance and vexation of passengers] [plays any games of cards or other games of chance for money or other valuable thing] upon any railroad train, the conductor of the train is authorized to stop the train and eject the passenger from the train, using only such force as may be necessary to accomplish the removal, and may command the assistance of the employees of the railroad company, or any of the passengers, to assist in the passenger's removal; but before ejecting the passenger the conductor shall tender to him any unused portion of the fare which he has paid.

In ejecting the passenger the conductor must exercise reasonable care to put him off at a reasonably safe place.

### **Comment**

This instruction is based on 610 ILCS 80/2, 80/3 (1994). A carrier may have right to eject passenger but not at a time or under circumstances which make it dangerous to life or limb. *Chicago City Ry. Co. v. Pelletier*, 134 Ill. 120, 24 N.E. 770 (1890) (noisy passenger forcibly ejected from train).

## **100.07 Conduct Of Passengers--Right Of Carriers To Eject**

Passengers riding in public conveyances are required to conform their conduct to the ordinary and usual standards of passengers. They must also comply with reasonable rules and regulations of the carrier designed to provide for the safety and comfort of the passengers and the proper management of the conveyance as are made known to them.

The failure or refusal of a passenger so to conduct himself, or a violation of known reasonable rules and regulations of the carrier, results in a termination of his rights as a passenger. The defendant's employees then have the right to use such force as is reasonably necessary to eject the passenger from the conveyance on the tender by the carrier's employee to the plaintiff any unused portion of the fare which he has paid.

### **Comment**

The carrier has the common law right to make and enforce reasonable and just rules enabling it to perform the duty owed to its passengers. Passengers must comply with such rules. A railroad may eject a passenger who violates reasonable rules and regulations. *Chicago & Alton R. Co. v. Willard*, 31 Ill.App. 435 (4th Dist.1888) (the railroad was privileged to eject a person who failed to produce a ticket by the time the train reached the next station and was forcibly put off). A train conductor has a statutory right to eject a passenger for failing to pay his lawful fare; the use of abusive, profane, vulgar, or obscene language; or conducting himself so as to make his presence offensive or unsafe to other passengers. 740 ILCS 135/31 (1994).

So long as the ejection does not employ unreasonable or unnecessary force and violence, it does not constitute an assault. *People v. Ibom*, 25 Ill.2d 585, 185 N.E.2d 690 (1962). The use of unreasonable force gives rise to a cause of action for damages against a train conductor. 740 ILCS 135/31 (1994).

## **100.08 Duty To Disabled, Infirm, Or Intoxicated Person, Or To A Child**

When a carrier is aware that a passenger is [mentally or physically disabled] [feeble or infirm] [intoxicated] [a child traveling alone] so that the hazards of travel are increased as to [him] [her], it is the duty of the carrier to provide that additional care which the circumstances reasonably require. The failure of the defendant to fulfill this duty is negligence.

### **Notes on Use**

This instruction shall be used in place of IPI 10.04 to define the duty underlying the issue of negligence when the defendant is a common carrier.

### **Comment**

When a common carrier has actual knowledge that a person is suffering from some physical or mental disability, and further realizes that that person is in an unsafe place or cannot safely alight from its conveyance, the carrier owes him a duty to provide the additional care which his circumstances reasonably require. *Burke v. Chicago & N.W. R. Co.*, 108 Ill.App. 565 (2d Dist.1902) (a helpless drunk was injured by a switching train after he had been deposited on a platform located between two sets of tracks). *Chevalier v. Chicago Transit Authority*, 338 Ill.App. 119, 86 N.E.2d 838 (1st Dist.1949) (carrier not on notice that drunk requires special attention when he was able to stand by himself). *Dabney v. Baltimore & O.S.W. R. Co.*, 140 Ill.App. 269 (4th Dist.1908) (carrier's duty of additional care had terminated when drunk was deposited safely on platform and was later injured while trying to walk back to station along the tracks). *Smorawski v. Chicago City R. Co.*, 211 Ill.App. 557, 561 (1st Dist.1918) (verdict affirmed for boy between 6 and 7 who fell from the back step of a streetcar where he was hanging by a grabrail).

## 100.09 Who Is A Passenger

When I use the word passenger, I mean a person who with the actual or implied consent of the carrier [is in the act of boarding] [is upon] [or] [is in the act of alighting from] the [vehicle] [conveyance] of a common carrier.

### Notes on Use

IPI 100.10 covers the definition of a passenger when the issue of a transfer from one conveyance to another exists. IPI 100.11 covers the definition of a passenger on an elevator or escalator.

### Comment

It is not a requirement that the plaintiff be in physical contact with the conveyance in order to occupy the status of passenger. In *Katamay v. Chicago Transit Authority*, 53 Ill.2d 27, 289 N.E.2d 623 (1972), the Illinois Supreme Court held that a woman standing on the platform provided for boarding and alighting was in the “act of boarding” if with the intent to board a standing train she was moving toward the train for that purpose. Although it is not necessary that a person shall have paid his fare or be in possession of a ticket, the person must put himself in the care of the carrier or directly within its control with the bona fide intention of becoming a passenger. *Burns v. Regional Transp. Authority*, 112 Ill.App.3d 464, 445 N.E.2d 348, 67 Ill.Dec. 868 (1st Dist.1982), *rev'd on other grounds sub nom.* *Stack v. Regional Transp. Authority*, 101 Ill.2d 284, 461 N.E.2d 969, 78 Ill.Dec. 135 (1984).

One who intends to become a passenger and boards a conveyance through the customary entrance becomes a passenger when expressly or impliedly accepted as such by the carrier. *Illinois Cent. R. Co. v. O'Keefe*, 168 Ill. 115, 119; 48 N.E. 294, 294 (1897) (a person who jumped on the baggage car platform of a moving train after the passenger doors had been closed was not impliedly accepted as a passenger by the railroad even though the conductor knew that someone had boarded the baggage car). *Finley v. Chicago, A. & E. Ry. Co.*, 3 Ill.App.2d 436, 122 N.E.2d 594 (1st Dist.1954) (person who got on slowly-moving train at station only to be thrown off by a violent acceleration was a passenger). Actually paying a fare is unnecessary. *Ruch v. Aurora, E. & C. R. Co.*, 150 Ill.App. 329 (2d Dist.1909) (plaintiff, who had fare and intended to pay it, was passenger notwithstanding conductor had not asked for the fare).

The relationship of passenger and carrier continues after the passenger alights until the passenger has had a reasonable opportunity to reach a place of safety. *Loring v. Yellow Cab Co.*, 33 Ill.App.3d 154, 337 N.E.2d 428 (1st Dist.1975). From the moment a passenger reaches a place of safety, a common carrier owes a person only the duty of ordinary care. *Sims v. Chicago Transit Authority*, 4 Ill.2d 60, 122 N.E.2d 221 (1954) (person no longer a passenger after getting off streetcar in the middle of block and walking around in front of it where she was struck by streetcar coming in opposite direction).

## **100.10 Who Is A Passenger--Transfer From One Vehicle To Another At Issue**

The duty of the defendant to a passenger to exercise the highest degree of care is suspended from the time the passenger alights at an intermediate point to transfer to another [train, plane, etc.] after the passenger has had a reasonable opportunity to reach a place of reasonable safety, and resumes when the passenger is in the act of boarding another [train, plane, etc.] within the time and place fixed by the transfer, to continue his journey. During the period from the time the plaintiff alighted from the defendant's [train, plane, etc.] and after he had a reasonable opportunity to reach a place of reasonable safety, until the time when he was in the act of boarding another of the defendant's [train, plane, etc.]s, the duty the defendant owed to the plaintiff was the same it owed to the general public, that is to exercise ordinary care.

A failure of the defendant to fulfill the duty applicable to the facts as you determine them to be in this case is negligence.

### **Notes on Use**

This instruction is to be used only when there is a question of fact as to whether the injured person was in the process of transferring from one vehicle to another. This instruction may only be used in conjunction with IPI 100.09 defining a passenger. This instruction shall be used in place of IPI 10.04 to define the duty underlying the issue of negligence when the defendant is a common carrier under evidence giving rise to this instruction.

### **Comment**

The duty of a common carrier to exercise the highest degree of care arises out of the contract of carriage in exchange for consideration. While the duty is continuous throughout this relationship and extends to transferring passengers from one conveyance to another, it is suspended from the time the carrier discharges a passenger at an intermediate point of his journey until the conveyance is resumed. The duty during the interim is one of ordinary care. *Rotheli v. Chicago Transit Authority*, 7 Ill.2d 172, 130 N.E.2d 172 (1955); *Jones v. Chicago & N.W. Transp. Co.*, 206 Ill.App.3d 136, 563 N.E.2d 1120, 151 Ill.Dec. 14 (1st Dist.1990).

## **100.11 Who Is A Passenger--Elevator, Escalator Only**

When I use the word passenger, I mean a person, who, with the actual or implied consent of the defendant, is [entering] [leaving] [or] [riding] upon an [elevator] [escalator] to be carried from one floor of the defendant's [building] [place of business] to another.

### **Notes on Use**

This instruction is limited to passengers on elevators and escalators. For the definition of passengers in other situations *see* IPI 100.09, 100.10.

### **Comment**

In elevator and escalator cases, whether the operator has accepted a person as a passenger will usually depend on the purpose for which the person is in the building. *Steiskal v. Marshall Field & Co.*, 238 Ill. 92, 87 N.E. 117 (1908) (an unsolicited, prospective employee who was directed to see the superintendent on the ninth floor was a passenger while on an elevator on the way down from that floor after he could not locate the superintendent); *Heffernan v. Mandel Brothers*, 297 Ill.App. 272, 17 N.E.2d 523 (1st Dist.1938) (a customer who slipped when an escalator jerked was a passenger).

## 100.12 Duty Of Carrier To Protect Invitees From Assault

It was the duty of the defendant to exercise ordinary care to protect [the plaintiff] [its invitees] while within or upon the premises of its [station] [depot] [platform] from the danger of assault of which it knew, or should have anticipated from facts and circumstances known to it.

### Notes on Use

This instruction may be used when either a common carrier or terminal station operator is sued. This instruction should be used in conjunction with IPI 10.04.

The Premises Liability Act, 740 ILCS 130/1-130/4 (1994), abolished the distinction between licensees and invitees as to occurrences on or after September 12, 1984. The Act imposes a duty of ordinary care as to both licensees and invitees. Therefore, as to cases arising out of occurrences on or after September 12, 1984, “the plaintiff” will be used in the second line.

See IPI 120.06 as to duties to invitees for injuries other than assault.

### Comment

The duties owed business visitors by common carriers in their stations and on their platforms was historically the same as that owed by the owners of business premises to their invitees. *Haynes v. Chicago Transit Authority*, 59 Ill.App.3d 997, 376 N.E.2d 680, 17 Ill.Dec. 534 (1st Dist.1978). Section 2 of the Premises Liability Act, 740 ILCS 130/2 (1994), provides (emphasis added):

§2. The distinction under the common law between invitees and licensees as to the duty owed by an owner or occupier of *any premises* to such entrants is abolished.

The duty owed to such entrants is that of reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them.

The statute therefore expanded the duty owed by the owner of any premises to include not only invitees, but licensees as well.

If the carrier's employees assault or injure the invitee, the carrier will be liable if the employee was acting in the actual or apparent scope of his duties. *Horecker v. Pere Marquette R. Co.*, 238 Ill.App. 278 (1st Dist.1925) (the railroad was not liable for an assault by an off-duty gatekeeper on a husband accompanying his wife to the station).

On the other hand, if the assault is made by a stranger or another invitee, the carrier must know, or from facts or circumstances known to it should have known, that an assault was likely. *Neering v. Illinois Central R. Co.*, 383 Ill. 366, 50 N.E.2d 497 (1943) (the railroad was liable to an invitee who was assaulted by one of a number of hobos, who usually congregated in that vicinity, while she was waiting for a train on the platform). *Meyer v. Riverview Park Co.*, 342 Ill.App. 218, 96 N.E.2d 379 (1st Dist.1950) (defendant had no notice that a passenger who had just gotten off a roller-coaster would be assaulted by another passenger with whom he had a trivial scuffle before getting on the roller-coaster).



Amendments to the Metropolitan Transit Authority Act (70 ILCS 3605/27 (1994)), the Regional Transportation Authority Act (70 ILCS 3615/2.08 (1994)), and the Local Mass Transit District Act (70 ILCS 3610/4 (1994)), effective September 24, 1985, have exempted the Chicago Transit Authority and the other entities governed by these acts from liability for the failure to prevent the commission of crimes by fellow passengers or other third parties. *See* Introduction.

## **100.15 Place To Board And Alight**

In selecting a place for the plaintiff to [board] [alight from] its vehicles, it was the duty of the defendant, as a common carrier, to exercise the highest degree of care consistent with the mode of conveyance used and the practical operation of its business as a common carrier by [bus, taxi, etc.]. The failure of the defendant to fulfill this duty is negligence.

### **Notes on Use**

This instruction shall be used in place of IPI 10.04 to define the duty underlying the issue of negligence when the defendant is a common carrier.

### **Comment**

A common carrier has a duty to exercise the highest degree of care to a passenger, and that duty extends until the passenger has been given an opportunity to alight in a safe place. *Miskunas v. Chicago Transit Authority*, 42 Ill.App.3d 202, 355 N.E.2d 738 (1st Dist.1976). Therefore, the common carrier has a duty to furnish a reasonably safe place for a passenger to alight. *Borus v. Yellow Cab Co.*, 52 Ill.App.3d 194, 367 N.E.2d 277, 9 Ill.Dec. 843 (1st Dist.1977); *DeBello v. Checker Taxi Co.*, 8 Ill.App.3d 401, 290 N.E.2d 367 (1st Dist.1972); *O'Shea v. Chicago Motor Coach Co.*, 328 Ill.App. 457, 66 N.E.2d 482 (1st Dist.1946) (the bus company was negligent when it stopped at a dark place where the street was severely cracked); *Sims v. Chicago Transit Authority*, 4 Ill.2d 60, 65; 122 N.E.2d 221, 223-224 (1954) (a streetcar discharged plaintiff at a reasonably safe place notwithstanding that it was in the middle of the block on a heavily-traveled street); *Kiesel v. Chicago Transit Authority*, 6 Ill.App.2d 13, 126 N.E.2d 170 (1st Dist.1955) (it was not negligent to let the plaintiff off on an icy patch where icy conditions were general throughout the city).