

MOTOR VEHICLES

70.00.

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72.00

AUTOMOBILE GUESTS—JOINT ENTERPRISE— PASSENGERS

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Introduction

The instructions in this section deal with some of the duties of persons operating motor vehicles upon the public highways of Illinois. IPI 70.01 is a statement of the common law duty of ordinary care. This common law duty is supplemented by numerous specific obligations imposed by the various sections and subsections of the Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.* (1994). IPI 70.02 is a statement of the combined statutory and case law governing the difficult subject of the right of way at unmarked intersections. Other violations of the statute may be covered by adapting IPI 60.01.

An example of an instruction pertaining to the duties of pedestrians is set out in IPI 70.03.

IPI 70.02, pertaining to the right of way at an open, unmarked intersection, presents unique problems. The governing statute, now 625 ILCS 5/11-901 (1994), does not clearly codify the applicable law. A proper understanding of the statute requires some knowledge of its history. Prior to its amendment in 1953, the predecessor of this section (then §165) read as follows:

Except as hereinafter provided, motor vehicles traveling upon public highways shall give the right-of-way to vehicles approaching along intersecting highways from the right and shall have the right-of-way over those approaching from the left.

The cases have made it clear that a driver does not have an unqualified right of way simply because he is approaching from the right. Instead, the car approaching from the right has the right of way only where, with both cars being driven within the recognized speed limits, the car on the right would reach the intersection before or at about the same time as the car on the left. *Salmon v. Wilson*, 227 Ill.App. 286, 288 (1st Dist.1923); *Heidler Hardwood Lumber Co. v. Wilson & Bennett Mfg. Co.*, 243 Ill.App. 89, 94-95 (1st Dist.1926); *Gauger v. Mills*, 340 Ill.App. 1, 6; 90 N.E.2d 790, 792-793 (2d Dist.1950); *Sharp v. Brown*, 343 Ill.App. 23, 30; 98 N.E.2d

122, 125 (3d Dist.1951); *Relli v. Leverenz*, 23 Ill.App.3d 718, 320 N.E.2d 169 (1st Dist.1974).

In 1953, in an apparent attempt to put this judicial construction into the express terms of the statute, the legislature amended §165 to read as follows:

- (a) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.
- (a) When two vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

Subsection (b) of the amended statute appears to be an attempt to codify the language of the cases which, under the old statute, had held that “where two vehicles at approximately the same time *approach* an intersection, the vehicle at the right has the right of way.” *Leech v. Newell*, 323 Ill.App. 510, 56 N.E.2d 138 (1st Dist.1944) (emphasis added); *Partridge v. Enterprise Transfer Co.*, 307 Ill.App. 386, 30 N.E.2d 947 (1st Dist.1940); *Salmon v. Wilson*, 227 Ill.App. 286, 288 (1st Dist.1923). Note that the express terms of subsection (b) of the amended statute apply only to the case where “two vehicles *enter* an intersection . . . at approximately the same time.” This language would seem too narrow to provide the necessary guidance to motorists, since, when two vehicles have actually *entered* an intersection at approximately the same time, it is usually too late to avoid a collision. It would appear that subsection (b) should have been addressed, as were the cases noted above, to the situation where two vehicles *approach* an intersection at approximately the same time.

Ordinary rules of reasonable care would seem to require that motorists approach intersections in such a manner that they will be able to comply with the terms of subsection (b) when they actually enter the intersection. Such a rule would, in effect, give the right of way to the driver on the right, where the vehicles approach the intersection at approximately the same time. This appears to be the result intended by the legislature. In this connection, it should be remembered that the Illinois courts developed the rule of relative speeds and distances at a time when the old §165 was silent on the subject.

The Supreme Court of Minnesota, confronted with the problem of construing a provision identical to subsection (b) of the 1953 version of the Illinois statute, held:

By approximately, the legislature must have meant the *approach* to an intersection of two vehicles so nearly at the same time that there would be imminent hazard of a collision if both continued the same course at the same speed. In that case, he on the left should yield to him on the right. While the driver on the left is not required to come to a dead stop, as at a through highway stop sign, unless it is necessary to avoid a collision, he nevertheless must *approach* the intersection with his car so under control that he can yield the right-of-way to a vehicle within the danger zone on the right. Such must have been the legislative intent.

Moore v. Kujath, 225 Minn. 107, 112; 29 N.W.2d 883, 886 (1947) (emphasis on “approach” supplied).

Still another problem is created by the language of subsection (a) of the 1953 version of the statute, which provides that a driver who is “approaching” an intersection shall yield the right of way to one who has “entered” the intersection. What of the case where the car on the left enters the intersection before the car on the right, but where the two cars were nonetheless *approaching* the intersection at approximately the same time? In such a case, which car has the right of way, the car on the left, under subsection (a), or the car on the right under the suggested construction of subsection (b)? The Supreme Court of Minnesota also offered a resolution of this apparent dilemma in the *Moore* case (225 Minn. at 112, 29 N.W.2d at 886):

Obviously, both of the foregoing sentences (subsections a and b) were placed in the statute by the legislature in an endeavor to promote safety on the highways, and they should be so interpreted. As we view the two sentences, the second one (subsection b) so modifies the first (subsection a) as to require the driver on the left, even though he may reach the intersection first, to yield the right-of-way to the driver on the right in a situation where the two vehicles would collide were each to continue its course and maintain its rate of speed. To otherwise interpret the law and to arbitrarily give to him who first enters the intersection the right-of-way *over another* vehicle approaching at approximately the same time from the right would be to increase rather than diminish the hazards of driving.

The Illinois statute was amended in 1969 (effective July 1, 1970) to its present form:

§ 11-901 Vehicles approaching or entering intersection.

- (a) When 2 vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left must yield the right-of-way to the vehicle on the right.

- (b) The right-of-way rule declared in paragraph (a) of this Section is modified at through highways and otherwise as stated in this Chapter.

625 ILCS 5/11-901 (1994). Although the language of the present version is significantly different from that of former §165, which it replaced, the 1969 provision does not appear to clarify the difficulty with the old statute which is described above. Section 11-901(a) provides that the driver on the right has an unqualified right-of-way if the two vehicles enter or approach the intersection at approximately the same time. Yet, the Illinois courts had interpreted the old statute to provide that the car on the left would have the right-of-way if it could, while being driven at a reasonable speed, clear the intersection before the vehicle on the right entered it, even if the car on the right could be said to have been approaching the intersection “at approximately the same time.” It is this proposition which is expressed in the second paragraph of IPI 70.02. The disparity between the decisional law and the unqualified statement of the statute remains. Since, however, there is no reason to believe that the General Assembly intended to change the substance of the decisional law when it enacted the 1969 Illinois Vehicle Code, IPI 70.02 has not been revised.

IPI 70.02 as it appeared in the first edition was held to be a correct statement of the law

(*Payne v. Kingsley*, 59 Ill.App.2d 245, 250; 207 N.E.2d 177, 179 (2d Dist.1965)), and to be couched in terms fair to all (*Tipsword v. Melrose*, 13 Ill.App.3d 1009, 301 N.E.2d 614, 617 (3d Dist.1973)). It has been held that the instruction provides the only reasonable interpretation of §11-901 of the Illinois Vehicle Code. *Martin v. Clark*, 92 Ill.App.3d 518, 522; 415 N.E.2d 30, 33; 47 Ill.Dec. 305, 308 (3d Dist.1980).

In a 1990 decision, the appellate court reaffirmed that IPI 70.02 accurately reflects Illinois law, emphasizing that the vehicle on the left has the right-of-way only if the driver of that vehicle justifiably believes that he will be able to “pass through the intersection, that is, clear the intersection, before the vehicle on the right enter[s] the intersection.” *Seaman v. Wallace*, 204 Ill.App.3d 619, 561 N.E.2d 1324, 1334; 149 Ill.Dec. 628, 638 (4th Dist.1990).

70.01 Duty of Driver Using Highway

It is the duty of every [driver] [operator] of a vehicle using a public highway to exercise ordinary care at all times to avoid placing [himself or] others in danger and to exercise ordinary care at all times to avoid a collision.

Notes on Use

This instruction defines the common law duty of persons operating motor vehicles on public highways and, when given, should be followed by IPI 10.02, which defines the term “ordinary care.” If there are issues of both common law negligence and violation of statute, this instruction may be given in addition to the instructions on the statute involved.

If a driver is charged with contributory negligence, the bracketed phrase “himself or” should be included.

Comment

The common law duty of ordinary care and the specific duties imposed by statute are cumulative. *Christy v. Elliott*, 216 Ill. 31, 48-49; 74 N.E. 1035, 1043 (1905). This instruction provides a guideline of fairness to all parties. *Tipsword v. Melrose*, 13 Ill.App.3d 1009, 301 N.E.2d 614, 618 (3d Dist.1973).

70.02 Right of Way--Intersection

At the time of the occurrence in question, there was in force in the State of Illinois a statute governing the operation of motor vehicles approaching intersections.

If two vehicles are approaching an intersection from different highways at such relative distances from the intersection that if each is being driven at a reasonable speed, the vehicle on the right will enter the intersection first or both vehicles will enter the intersection at about the same time, then this statute requires the driver of the vehicle on the left to yield the right of way to the vehicle on the right.

On the other hand, if two vehicles are approaching the intersection from different highways at such relative distances from the intersection that if each is being driven at a reasonable speed, the vehicle on the left will enter the intersection and pass beyond the line of travel of the vehicle on the right before the vehicle on the right enters the intersection, then this statute requires the driver of the vehicle on the right to yield the right of way to the vehicle on the left.

The fact that a vehicle has the right of way does not relieve its driver from the duty to exercise ordinary care in approaching, entering and driving through the intersection.

If you decide that a party violated the statute on the occasion in question, then you may consider that fact together with all the other facts and circumstances in evidence in determining whether and to what extent, if any, that party was negligent before and at the time of the occurrence.

Notes on Use

This instruction applies only when the occurrence involved an open, unmarked intersection, with neither vehicle on a preferential highway; if one of the vehicles was on a preferential highway, this instruction should not be used. *Voyles v. Sanford*, 183 Ill.App.3d 833, 837; 539 N.E.2d 801, 803; 132 Ill.Dec. 238, 240 (3d Dist.1989).

This instruction should not be given when an intersection's traffic lights are temporarily inoperative due to a mechanical failure. In that case, the driver must stop before entering the intersection in accordance with the rules applicable in making a stop at a stop sign. 625 ILCS 5/11-305(e) (1994). This statute effectively overrules *Spiotta v. Hamilton*, 120 Ill.App.2d 387, 393-394; 256 N.E.2d 649, 651-652 (2d Dist.1970), which had held that under such circumstances this instruction was proper.

Comment

The statute governing right-of-way at unmarked intersections, 625 ILCS 5/11-901 (1994), reads as follows:

§ 11-901 Vehicles approaching or entering intersection.

- (a) When 2 vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left must yield the right-of-way to the vehicle on the right.
- (b) The right-of-way rule declared in paragraph (a) of this Section is modified at through highways and otherwise as stated in this Chapter.

This instruction does not quote the right-of-way statute, nor does it paraphrase the literal provisions of the statute. The reason for this is that the literal terms of the present statute are ambiguous, and would only confuse a jury. For a complete discussion of the history of this statute and the cases interpreting it, *see* the introduction to this chapter.

IPI 70.02 as it appeared in the first edition was held to be a correct statement of the law (*Payne v. Kingsley*, 59 Ill.App.2d 245, 250; 207 N.E.2d 177, 179 (2d Dist.1965)), and to be couched in terms fair to all (*Tipsword v. Melrose*, 13 Ill.App.3d 1009; 301 N.E.2d 614, 617 (3d Dist.1973)). It has been held that the instruction provides the only reasonable interpretation of §11-901 of the Illinois Vehicle Code. *Martin v. Clark*, 92 Ill.App.3d 518, 522; 415 N.E.2d 30, 33; 47 Ill.Dec. 305, 308 (3d Dist.1980).

In a 1990 decision, the appellate court reaffirmed that IPI 70.02 accurately reflects Illinois law, emphasizing that the vehicle on the left has the right-of-way only if the driver of that vehicle justifiably believes that he will be able to “pass through the intersection, that is, clear the intersection, before the vehicle on the right enter[s] the intersection.” *Seaman v. Wallace*, 204 Ill.App.3d 619, 561 N.E.2d 1324, 149 Ill.Dec. 628 (4th Dist.1990).

70.03 Pedestrians--Crossing At Other Than Crosswalks

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:

[Quote or paraphrase applicable part of statute or ordinance as construed by the courts (see, e.g., 625 ILCS 5/11-1001 to 11-1010 (1994)). For example:

Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

Notwithstanding the foregoing provisions of this section every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway.]

If you decide that [a party] [the parties] violated the [statute] [ordinance] on the occasion in question, then you may consider that fact together with all the other facts and circumstances in evidence in determining whether and to what extent, if any, [a party] [the parties] [was] [were] negligent before and at the time of the occurrence.

Notes on Use

This instruction is similar to IPI 60.01. *See* the Notes on Use and Comment to that instruction.

If 625 ILCS 5/11-1003(a) (1994) is applicable but there is a factual dispute as to distance and speed so as to raise the question of whether the motorist had the right-of-way, the language of that subsection may have to be modified if used in this instruction. An exact quotation of that paragraph might create the erroneous impression that the driver of a vehicle has an absolute right-of-way at places other than crosswalks. *Randal v. Deka*, 10 Ill.App.2d 10, 17; 134 N.E.2d 36, 40 (1st Dist.1956); *Parkin v. Rigdon*, 1 Ill.App.2d 586, 588-595; 118 N.E.2d 342, 343-347 (3d Dist.1954).

When children may reasonably be expected to be in the vicinity, a motorist, although still held to a standard of ordinary care, must exercise greater care for the safety of those children than he would for adults. *Toney v. Marzariegos*, 166 Ill.App.3d 399, 403; 519 N.E.2d 1035, 1037; 116 Ill.Dec. 820, 822 (1st Dist.1988).

Comment

See introduction to IPI 10.00 and IPI 10.01 and 10.02 (negligence and ordinary care).