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Negligence: General

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A. [13.1] Cause of Action

An action for general negligence originates under common law and may also arise through implication from statute.

B. [13.2] What Law Controls

Extensive common law exists. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill.2d 278, 730 N.E.2d 1119, 246 Ill.Dec. 654 (2000); *Matthews v. Aganad*, 394 Ill.App.3d 591, 914 N.E.2d 1233, 333 Ill.Dec. 421 (1st Dist. 2009).

Statutory law may give rise to an implied private right of action when (1) the plaintiff is a member of the class for whose benefit the statute was enacted, (2) such an action is consistent with the underlying purpose of the statute, (3) the plaintiff's injury is one that the statute was designed to prevent, and (4) it is necessary to provide an adequate remedy for violations of the statute. *Fisher v. Lexington Health Care, Inc.*, 188 Ill.2d 455, 722 N.E.2d 1115, 243 Ill.Dec. 46 (1999); *Metzger v. DaRosa*, 209 Ill.2d 30, 805 N.E.2d 1165, 282 Ill.Dec. 148 (2004).

C. [13.3] Elements

1. A duty owed by the defendant to the plaintiff.
2. A breach of that duty.
3. An injury proximately caused by that breach.

D. [13.4] Relevant Standard Jury Instructions

The following Illinois Pattern Jury Instructions — Civil (2006) (I.P.I. — Civil) are applicable to actions for general negligence:

10.00 Series (Negligence and Ordinary Care):

I.P.I. — Civil No. 10.01 (Negligence — Adult — Definition)

I.P.I. — Civil No. 10.02 (Ordinary Care — Adult — Definition)

I.P.I. — Civil No. B10.03 (Duty To Use Ordinary Care — Adult — Plaintiff — Definitions of Contributory and Comparative Negligence — Negligence)

I.P.I. — Civil No. 10.04 (Duty To Use Ordinary Care — Adult — Defendant)

I.P.I. — Civil No. 10.05 (Ordinary Care — Minor — Definition)

I.P.I. — Civil No. 10.08 (Careful Habits As Proof of Ordinary Care)

11.00 Series (Contributory Negligence):

I.P.I. — Civil No. 11.01 (Contributory Negligence — Adult — Definition)

I.P.I. — Civil No. 11.02 (Contributory Negligence As To Fewer Than All Plaintiffs)

I.P.I. — Civil No. 11.03 (Presumption That Child Under Seven Years is Incapable of Contributory Negligence)

I.P.I. — Civil No. 11.04 (Parent's Negligence Not an Issue)

I.P.I. — Civil No. 11.05 (Negligence of Parents Not Imputed)

I.P.I. — Civil No. B11.06 (Contributory Negligence Claimed — Parents, Child Seven or Over, Parent's Cause of Action Not Assigned To Child)

I.P.I. — Civil No. B11.06.01 (Contributory Negligence Claimed — Parents, Child Seven or Over, Parent's Cause of Action Assigned To Child)

12.00 Series (Specific Factors Affecting Negligence and Contributory Negligence):

I.P.I. — Civil No. 12.01 (Intoxication)

I.P.I. — Civil No. 12.04 (Concurrent Negligence Other Than Defendant's)

I.P.I. — Civil No. 12.05 (Negligence — Intervention of Outside Agency)

13.00 Series (Assumption of Risk):

I.P.I. — Civil No. 13.01 (Assumption of Risk — Contractual Relationship — Burden of Proof)

I.P.I. — Civil No. 13.02 (Assumption of Risk — Employer-Employee Relationship — Burden of Proof)

15.00 Series (Proximate Cause)

I.P.I. — Civil No. 15.01 (Proximate Cause — Definition)

E. [13.5] Statute of Limitations

The limitation period for personal injury actions is two years. 735 ILCS 5/13-202. An action alleging damages to personal or real property must be filed within five years. 735 ILCS 5/13-205.

F. [13.6] Parties

Proper plaintiff. One who has suffered damages to person or property. The appointed legal representative of one who has suffered damages if that person is a minor, an incompetent, or deceased.

Proper defendant. Usually one who actively commits a tort. If the tortfeasor is an agent/employee acting within scope of his or her agency/employment, the principal/employer may be joined under a vicarious liability theory.

G. [13.7] Special Considerations

As with all situations of pleading, consideration and care must be given to the requirements of Illinois Supreme Court Rule 137, which requires that a complaint be signed by at least one attorney of record in his or her individual name with address stated. By signing the complaint, the attorney certifies “that he has read the pleading, motion or other document [and] that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” S.Ct. Rule 137(a). Sanctions may be imposed for the violation of this rule. *Id.* Federal Rule of Civil Procedure 11 is the federal counterpart to S.Ct. Rule 137.

H. [13.8] Remedies — Special Issues

In a cause of action for general negligence, the usual form of relief sought is compensatory damages, including

1. general damages — those that “naturally flow” from the tort;
2. special damages;
3. economic loss/medical expenses, property damage, wages, or income;
4. noneconomic loss/physical pain, emotional anguish, disfigurement, disability, and loss of normal life;
5. nominal damages; and
6. interest.

I. [13.9] Checklist for Complaint

1. Jurisdictional facts.
2. Venue.
3. Date, time, and place.
4. Identity of the plaintiff.
5. Identity of the defendant(s).
6. Facts of the event.
7. A description of specific negligent conduct.
8. Damages sustained.
9. A request for relief.

J. [13.10] Affirmative Defenses Specific to Cause of Action

1. Period of limitations.
2. Contributory negligence.
3. Assumption of risk.

K. [13.11] Related Actions

A general negligence count is often combined with a count alleging willful and wanton misconduct or even intentional misconduct if the factual situation involved would allow for a good-faith basis of such allegations. The pleading of counts alleging willful and wanton misconduct or intentional misconduct would allow for a request for award of punitive damages in addition to compensatory damages. While 735 ILCS 5/2-604.1 by its terms states that leave of court must be obtained prior to filing or amending a complaint praying for punitive damages in “all actions on account of bodily injury or physical damage to property, based on negligence, or product liability based on any theory or doctrine,” that provision of the Illinois Civil Practice Law has been held unconstitutional as a result of the Illinois Supreme Court’s decisions in *Best v. Taylor Machine Works*, 179 Ill.2d 367, 689 N.E.2d 1057, 228 Ill.Dec. 636 (1997), and *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217, 930 N.E. 2d 895, 341 Ill.Dec. 381 (2010).

L. [13.12] Sample Form

[Caption]

COMPLAINT**COUNT I
Negligence**

NOW COMES Plaintiff, _____, by [his] [her] attorney, _____, of _____, and for [his] [her] complaint against Defendant, _____, alleges and states as follows:

- 1. Plaintiff is a resident of _____ County, Illinois.**
- 2. Defendant is a[n] _____, with principal business offices in _____, County, Illinois.**
- 3. Defendant** [operates a railway museum near _____, _____ County, Illinois, and as part of the museum, Defendant, for a fee, provides a train ride to its business invitees from the museum site to and from the _____ in downtown _____.
- 4. On (date), as part of its _____ event, Plaintiff was a passenger on the train operated by Defendant.**
- 5. Prior to the occurrence complained of, Plaintiff paid the required charge to Defendant for (him) (her) and other family members to ride the train, and Plaintiff was a passenger in the caboose of said train.**
- 6. On the aforesaid date and at said location, Defendant corporation had employees present to operate said train, including individuals operating the engine of said train and individuals who were stationed on the back of the caboose of said train.**
- 7. At the aforesaid time and place, Defendant, by its agents and employees, owed a duty to individuals participating in the train rides offered by Defendant to transport those passengers safely and to avoid and prevent injury to such individuals, including Plaintiff herein.**
- 8. At the aforesaid time and location, Defendants' employees, while returning the train to the museum site, caused the caboose of said train to collide with other stationery railroad cars located on the track at its museum site, thereby causing Plaintiff to be thrown against interior portions of the caboose where Plaintiff was a passenger.**
- 9. At the aforesaid time and location, the employees of Defendant were located on the back of the caboose when they saw that a collision was inevitable and jumped from said caboose, failing to shout any warning to Plaintiff or other passengers as to the impending collision.**
- 10. Defendant corporation, by and through its agents and/or employees, was then and there guilty of one or more of the following negligent acts or omissions:**

- a. it failed to properly train or supervise the person operating the locomotive at the time of the occurrence, with due regard to the safety of its passengers;
- b. it operated the train at a speed greater than reasonable, without regard to the safety of its passengers;
- c. it failed to keep a proper lookout for other stationery cars on the railway track;
- d. it failed to slow the train or apply the brakes of the train in sufficient time to avoid collision with other railway cars on the track; and/or
- e. it failed to warn Plaintiff and other passengers that the train was going to strike other cars on the railway].

11. As a direct and proximate result of one or more of the foregoing negligent acts or omissions of Defendant, by and through its agents and/or employees, Plaintiff received [severe and permanent injuries, including injury to bones, ligaments, muscles, nerves, or tissue in (his) (her) arms, neck, and back]. Plaintiff incurred, and will incur in the future, [medical and doctor expenses, and pain and suffering, all to (his) (her) great damage].

WHEREFORE, Plaintiff, _____, prays for a judgment in [his] [her] favor and against Defendant, _____, in an amount in excess of \$_____ that will justly compensate Plaintiff for the injuries [he] [she] has sustained, plus the costs of the suit.

[Plaintiff demands trial by jury of twelve.]

_____, Plaintiff

By: _____
Attorney