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COMMON CARRIERS:

Not Insurers of Passenger Safety

BY PATRICK O'BRIEN

I am always interested to hear the various ways that knowledgeable people in this industry define "common carrier." Most frequently, they describe a common carrier as "strictly liable" for any injuries to its passengers, while others say it means having extra liability to third parties. I often hear that common carriers have to "insure" the safety of their passengers.

None of the above is actually true. In fact, livery operators were not even considered common carriers until relatively recently, and some states still exclude chauffeured ground transportation companies from their definition.

WHERE IT STARTED

Common carrier law can be traced to at least the mid-17th century, but certainly has changed in scope and breadth over time. The earliest common carrier laws are found in English common law, which held that common carriers of goods were absolutely responsible, or "insurers," for the loss of or damage to such goods. Until the 1800s, this law only applied to transporters of goods.

The earliest application of common carrier law to the transportation of people is likely found in the United States in 1839, where the law applied to a personal injury suffered on a stagecoach. The law in most states only applied to "public" transportation, meaning government-operated mass transit such as buses and trains.

Since the early 1900s, many states have dramatically broadened that definition to include other forms of transportation, including the livery industry. In that time, the standard of care has also been lessened somewhat.

HOW IT'S BEING SHAPED IN THE 21ST CENTURY

In California—often used as a legal authority for many other states because of its size—the duty of the common carrier states that "a carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill."

The California language is fairly typical of statutes throughout the country; thus, if your state defines you as common carrier, you then shoulder an increased duty regarding the safety of your passengers. What is interesting is that the law has now been extended to include any type of conveyance including ski resorts' chair lifts and even the *Indiana Jones* and *Pirates of the Caribbean* rides at Disneyland.

In the area of tort law, the first question we ask as lawyers is, "Did my client have a duty to the plaintiff?" In most circumstances, your obligation is to act as a reasonable person; in the context of vehicle operations, driving your personal car dictates that you must operate the vehicle in a manner similar to other "reasonable persons."

When operating a livery vehicle for profit, your duty to all other vehicles on the road does not change, meaning that you are still held to the general "reasonable person" standard. When it comes to your passengers, however, you agree to a higher standard of care, which is defined by statute.

To try to make practical sense of what this heightened duty means to you, the California Supreme Court has provided some guidance.

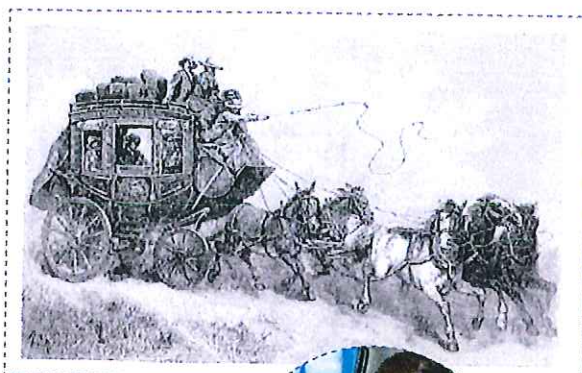
In the case of the *Indiana Jones* ride, the court applied California's definition of the common carrier, but took it one step further.

The court continued—and distinguished the U.S. law from earlier British common law—by stating "Common carriers are not, however, insurers of their passengers' safety. Rather, the degree of care and diligence, which they must exercise, is only such as can reasonably be exercised consistent with the character and mode of conveyance adopted and the practical operation of the business of the carrier."

HOW IT COULD APPLY TO YOUR COMPANY

In my review of many common carrier cases, this duty can be divided into two categories. First, you must operate the vehicle in a skillful manner on par with other reasonable operators; in short, your drivers must be trained and safe. This could translate into providing additional training, offering safety meetings, or other practices you can point to as going beyond what the normal driver might do.

The second is that the vehicle must be appropriate for the demands of its task and in a safe operating condition. For example, in a situation where an operator sends a sedan without chains onto an icy mountain road, the chauffeur loses control of the vehicle, and the passenger sustains an injury during the incident, this would perhaps fall below the standard of care for a common carrier. Likewise, sending out a vehicle at night with non-working lights or in the rain without a decent pair of wipers would likely lead to adverse findings on liability in both cases.





COMMON CARRIERS cont.

The bad news is that in jurisdictions where livery companies are now governed by common carrier law, you're subject to a heightened standard of care. Conversely, the good news is that your increased duty only applies to your passengers and not other drivers, so that you are no longer the insurer of passengers' safety in all respects—including those beyond your control—



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meaning that you merely have to act in a manner consistent with other good operators in the industry.

From a practical perspective, and as someone who defends these cases for a living, it would certainly help your lawyer if you would take the time to document your vehicles' maintenance and inspections, as well as

whatever training your employees receive. In most cases, the simple facts that your chauffeurs have extensive experience, and your fleet has been thoroughly inspected and noted to be in excellent operating condition are often enough evidence to support compliance with the heightened duty requirements of common carrier law; however, any and all additional documentation proving your dedication to increased safety obligations will bolster your defense. **[CD]**



Disclaimer: The foregoing is provided solely as general information, is not intended as legal advice, and may not be applicable within your jurisdiction or to your specific situation. You are advised to consult with your attorneys for guidance before relying upon any of the information presented herein.

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