CHAPTER TEN

MOTOR VEHICLES

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Instruction No. 10.1

**GENERAL DUTY OF DRIVERS AND PEDESTRIANS**

It is the duty of the driver of a motor vehicle and a pedestrian to use ordinary care to prevent injury to themselves or other persons.

**Comments**


Instruction No. 10.2

**DUTY TO MAINTAIN LOOKOUT**

It is the duty of every operator of a vehicle to exercise ordinary care in keeping a lookout consistent with the safety of other [vehicles/property/persons].

**Notes on Use**

This instruction sets out a duty of care and should be used with the instruction defining ordinary care, Instruction 9.3.

**Comments**


Instruction No. 10.3

**DUTY OF CARE OF DRIVER HAVING RIGHT-OF-WAY**

The driver of an automobile having the right-of-way must exercise ordinary care and operate [his/her] vehicle with due regard to existing conditions. [He/she] is entitled to assume that [his/her] right-of-way will be respected, until [he/she] has warning, notice or
knowledge to the contrary. If the situation is such as to indicate to a reasonably careful person in [his/her] position that to proceed would probably result in a collision, then [he/she] should exercise ordinary care to prevent an accident, even to the extent of yielding [his/her] right-of-way.

Notes on Use

This instruction should be given with the instruction defining ordinary care, Instruction 9.3.

Comments


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Instruction No. 10.4

**DUTY OF CARE OF PEDESTRIANS OR BICYCLE OPERATOR HAVING RIGHT-OF-WAY**

A [pedestrian/(bicycle operator)] having the right-of-way must exercise ordinary care and [walk/(operate [his/her] bicycle)] with due regard to the existing conditions.

Notes on Use

Use whichever bracketed words or phrases are appropriate. Instruction 9.3, "Ordinary Care- Defined," should be given with this Instruction.

Comments

See generally Fielding v. Dickerson, 204 Okla. 372, 376, 230 P.2d 466, 470 (1951), although that case involved a controlled street crossing. This case further provides that a pedestrian who has the right-of-way when he goes into the street continues to have it until he can reach the opposite curb.
Instruction No. 10.5

**CARE REQUIRED FOR SAFTEY OF CHILD**

**NO INSTRUCTION SHOULD BE GIVEN**

**Notes on Use**

A "care required for safety of child" instruction should not be given. The standard of care is ordinary care, and anticipation of the behavior of children is one circumstance as to what constitutes ordinary care in the situation. The essence of the instruction is that one must anticipate the ordinary behavior of children and exercise greater care for their protection.

Instruction No. 10.6

**DUTY OF CARE OF MINOR OPERATING MOTOR VEHICLE**

**NO INSTRUCTION SHOULD BE GIVEN**

**Notes on Use**

A "duty of care of minor operating motor vehicle" instruction should not be given. All drivers, regardless of age, are treated the same under the rules of negligence law. An instruction concerning a driver under the age of 18 years would over-emphasize that point and upset the balance that has been created in a set of instructions.

Instruction No. 10.7

**DUTY OF CARE OF PHYSICALLY HANDICAPPED DRIVER**

**NO INSTRUCTION SHOULD BE GIVEN**
Notes on Use

A "duty of care of physically handicapped driver" instruction should not be given. All drivers, regardless of disability, are treated the same under the rules of negligence law. An instruction concerning a partially disabled driver would over-emphasize that point and upset the balance that has been created in a set of instructions.

Instruction No. 10.8

RIGHT TO ASSUME OTHERS WILL OBEY THE LAW

A driver of a motor vehicle has a right to assume that other persons will obey the law and is not required to anticipate negligence, or unlawful operation, on the part of another driver. However, the driver of a motor vehicle must, at all times, use ordinary care, despite [his/her] right to assume that other drivers of motor vehicles will obey the law.

Comments


Instruction No. 10.9

UNAVOIDABLE ACCIDENT

An unavoidable accident is one which occurs without negligence on the part of either party. If you find from the weight of the evidence that the accident was unavoidable, then your verdict should be for [Defendant].
Notes on Use

This Instruction should not be given in most cases, and the general instructions on negligence will be sufficient. *Athey v. Bingham*, 823 P.2d 347, 350 (Okla. 1991) ("In most negligence cases the instruction clearly should not be given."). In reversing a defense judgment on account of the giving of an unavoidable accident instruction, the Oklahoma Supreme Court emphasized:

Great caution should be exercised in submitting a case to a jury on an unavoidable accident instruction. It should rarely be given. Its use should be restricted to those instances where the evidence indicates the occurrence was caused by unforeseen circumstances or conditions and not by the negligence of either party. In the absence of a showing of some factor over which the parties had no control or could not have predicted, a requested instruction on unavoidable accident should be firmly rejected.

*Ankney v. Hall*, 764 P.2d 153, 156 (Okla. 1988). Nevertheless, this Instruction would be appropriate if there was a showing that an accident had been caused by something over which the parties had no control, or could not have predicted, except through the exercise of extraordinary foresight. *Id.* at 154. A showing of adverse road conditions or a latent mechanical defect in an automobile might warrant the giving of this Instruction. See *Athey v. Bingham*, 823 P.2d 347, 350 (Okla. 1991) (evidence was sufficient to support the giving of an unavoidable accident instruction).

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**Instruction No. 10.10**

**SUDDEN EMERGENCY**

**NO INSTRUCTION SHOULD BE GIVEN**

Notes on Use

The Committee recommends that no Instruction should be given, because the general instructions on negligence adequately cover this issue.

Comment

in a position of sudden emergency may act in good faith according to their best judgment to avoid disaster."; and Justice v. Harrison, 569 P.2d 439, 441 (Okla. 1977) (affirming judgment where sudden emergency instruction was given). The basis of the sudden emergency doctrine is that the standard of care required of a party depends on the particular circumstances, and the circumstances would include whether an emergency exists. The requirement in Instruction No. 9.2 that a party must act with the care that a reasonably careful person would use under the circumstances means that a party faced with an emergency situation is permitted to act differently than he would under ordinary circumstances. Thus, the sudden emergency doctrine is already incorporated into the general instructions on negligence, and giving a separate instruction might mislead the jury into believing that it is an affirmative defense on which the defendant would have the burden of proof. Cf. Anderson v. Jennings, 813 P.2d 539 (Okla. Ct. App. 1991) (doctrine of sudden emergency is not an affirmative defense, but instead it requires the jury to evaluate a party's conduct in light of the emergency presented).

### Instruction No. 10.11

**REAR-END ACCIDENT -- PRESUMPTION OF NEGLIGENCE**

NO INSTRUCTION SHOULD BE GIVEN

### Instruction No. 10.12

**BRAKE OR OTHER EQUIPMENT FAILURE**

NO INSTRUCTION SHOULD BE GIVEN

**Comments**

Instruction No. 10.13

**DUTY OF PASSENGER**

A passenger has the duty to use ordinary care for [his/her] own safety. When, considering all circumstances, the exercise of ordinary care requires that the passenger either caution the driver against the manner of the vehicle's operation or warn the driver of a dangerous condition, [he/she] has a duty to do so.

**Comments**

The Oklahoma Supreme Court ruled that a jury instruction on a passenger's duty of care was appropriate under the particular facts in *Matchen v. McGahey*, 1969 OK 48, ¶ 26, 455 P.2d 52, 58. This instruction should not be given, however, unless there is evidence presented that would warrant making a passenger responsible for warning the driver or taking other action to prevent injury. *See Snyder v. Dominguez*, 2008 OK 53, 202 P.3d 135.

(2016 Supp.)

Instruction No. 10.14

**DRAM SHOP -- DUTY OF CARE**

A bar owner [or other commercial vendor that sells liquor for on-the-premises consumption] has a duty to use ordinary care not to serve alcohol to a person that the bar owner [or other commercial vendor] knows or reasonably should know from the circumstances is already intoxicated.

**Notes on Use**

If the claim is based on sale of alcohol to a minor, this Instruction should be modified to read as follows: "A seller of alcohol has a duty to use ordinary care not to sell alcohol to a person that [he/she/it] knows or reasonably should know from the circumstances is under 21 years old."
The Oklahoma Supreme Court established a civil cause of action by an injured third person against a commercial vendor of liquor in *Brigance v. Velvet Dove Restaurant, Inc.*, 725 P.2d 300 (Okla. 1986). See also 37 O.S.1991 § 537. The Oklahoma Supreme Court decided in *Ohio Casualty Ins. Co. v. Todd*, 813 P.2d 508 (Okla. 1991), that the duty of a tavern owner did not extend to an adult customer who voluntarily consumes alcohol and is injured. It reasoned that an adult must bear responsibility for injuries caused by his own drinking and driving, *Id.* at 512.

Relying on *Brigance*, the Oklahoma Supreme Court upheld a negligence claim based on a sale of alcohol to a minor in *Tomlinson v. Love's Country Stores, Inc.*, 854 P.2d 910 (Okla. 1993). In contrast to *Brigance*, the defendant in the Tomlinson case sold the alcohol for off the premises consumption, and there was no allegation that the minor was intoxicated at the time he entered his car.

The Oklahoma Supreme Court has not yet decided whether a social host or other noncommercial server of alcoholic beverages is liable for injuries to third persons caused by intoxicated guests. See *Kellogg v. Ohler*, 825 P.2d 1346, 1348 (Okla. 1992) (refusing to decide the question of social host liability because the defendant was not a social host).

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**Instruction No. 10.15**

**DEFENDANT NOT INSURER**

**NO INSTRUCTION SHOULD BE GIVEN**

**Notes on Use**

A "defendant not insurer" instruction should not be given. The jury should be instructed affirmatively as to issues, and negative instructions should be discouraged.

**Comments**

Instruction No. 10.16

NEGLIGENT ENTRUSTMENT

An owner [or provider] of a vehicle [or other dangerous instrumentality] has a duty to use ordinary care to avoid lending it to another person whom he knows [or reasonably should know] is [intoxicated/careless/reckless/incompetent to drive].

Notes on Use

This Instruction should be modified in cases involving a dangerous instrumentality other than a motor vehicle.

Comments

*Berg v. Bryant*, 305 P.2d 517, 519 (Okla. 1956) has the following discussion of tort liability for negligent entrustment:

The liability of one who knowingly permits a careless, reckless, or otherwise incompetent driver to operate his automobile, for damages resulting therefrom is recognized in this jurisdiction. [Citation omitted.]. This rule of law, existing independent of statute, charging the owner of an automobile with liability for injury or damage resulting from the negligence of an incompetent, reckless, careless, or unqualified driver to whom the vehicle is entrusted is well settled in this State and elsewhere. [Citation omitted.]. This rule as stated by the annotator in the A.L.R. citation above, " * * * is a specific application of the general principle laid down by the American Law Institute, charging one who supplies, directly or through a third person, a chattel for the use of another whom the supplier knows, or should know, because of youth, inexperience, or otherwise, to be likely to use it in a manner involving unreasonable risk of bodily harm to others, with liability for the harm caused thereby."
See also Ingram v. State, 786 P.2d 77, 81 (Okla. 1990) (plaintiff stated a claim for negligent entrustment of dangerous weapons to postal employee); Vance By and Through Vance v. Thomas, 716 P.2d 710, 711 (Okla. Ct. App. 1986) (negligent entrustment claim based on ten year old's possession of a BB gun). Restatement (Second) of Torts (1965) provides as follows:

It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

In addition, Oklahoma has several statutes that impose liability on owners and employers for knowingly permitting unlicensed persons to operate motor vehicles. See 47 O.S. 1991 §§ 6-304 to 6-307.