

COMMON CARRIERS OWE A HIGHER DUTY TO PASSENGERS THAN THE ORDINARY STANDARD OF CARE.

Fact Pattern:

Bob was a passenger aboard a United Airlines flight when a briefcase fell out of an overhead compartment and hit him in the head, causing serious injuries. Bob alleged that United, as a common carrier, owed him an utmost duty of care and that United breached that duty by not doing more to prevent objects from falling out of overhead compartments. Bob did not claim that United's personnel were involved; rather, he claimed that his injury was foreseeable and that United did not prevent it.

Question:

May even a small risk of serious injury form the basis of a common carrier's liability if that risk could be eliminated consistent with the practical operation of airline travel?

Rule

Though a common carrier is responsible for any, even the slightest, negligence and is required to do all that human care, vigilance, and foresight reasonably can do under all the circumstances, it is not an insurer of its passengers' safety. The degree of care and diligence which it must exercise is only such as can reasonably be exercised consistent with the character and mode of conveyance adopted and the practical operation of its business.

Discussion

Bob was able to demonstrate that United Airlines was aware of the problem of items falling out of overhead bins; however, its solution was to merely warn passengers of the danger. Here, United Airlines as a common carrier owed an utmost duty of care to Bob. Bob presented enough proof that United Airlines had a duty to do more than just warn passengers about the possibility of falling luggage. Common carriers owe a higher duty to passengers than the ordinary standard of care (reasonable care under the circumstances).

Duty of care may be considered as a formalized social contract: the implicit responsibilities held by individuals toward others. In tort law, a duty of care is a legal obligation which is imposed on

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an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence. The claimant must be able to show a duty of care imposed by law which the defendant has breached. For example, a duty of care is owed by an accountant in correctly preparing a customer's tax returns in order to minimize the chance of being audited.