

December 1942

Masthead Volume 49, Issue 1

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Recommended Citation

Masthead Volume 49, Issue 1, 49 W. Va. L. Rev. (1942).

Available at: <https://researchrepository.wvu.edu/wvlr/vol49/iss1/1>

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West Virginia Law Quarterly

and The Bar

Published by the Faculty of the College of Law of West Virginia University, and issued in December, February, April and June of each academic year. Official publication of The West Virginia Bar Association.

Subscription price to individuals, not members of The West Virginia Bar Association, \$2.00 per year. To those who are members of the Association the price is \$1.00 per year and is included in their annual dues. Single copies, 50 cents.

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PUBLIC UTILITIES — *RESPONDEAT SUPERIOR* PLUS NONDELEGABLE DUTY TO PROTECT PATRONS

MUCH difference of opinion exists in the cases as to the nature and extent of the duty of a public utility to its patrons. When, for example, a passenger in a taxicab is injured by the outrageous acts of the driver, is the taxicab company's liability governed by the duty to use due care ["the utmost care compatible with driving"¹] together with the doctrine that a principal is liable for the acts of an agent only when done within the scope of his employment? Or is there an additional extraordinary duty—a *su*i* generis* nondelegable duty—which not only transcends the doc-

¹ The standard of care required in West Virginia in this class of cases is the "utmost care compatible with the practicable operation of the vehicle." See, *e. g.*, *Venable v. Gulf Taxi Line*, 105 W. Va. 156, 141 S. E. 622 (1928); *Gilmore v. Huntington Cab Co.*, 21 S. E. (2d) 137 (W. Va. 1942). In order to measure up to the standard of "due care", a common carrier must, as the courts often put it, exercise a so-called "highest degree of care" or the utmost care compatible with the operation of the particular mode of transportation. Sometimes this measure of care is dealt with as something more than "due care".