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## Two recent CTA cases provide aid to premises owners

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Argument by analogy is fundamental to the common law system. Likening the facts of other cases to the facts of the case before the court and arguing for a favorable outcome based upon those cases is how many are won. By determining which, if any, case cited is factually similar to the case at bar to be precedent in a particular case, is how judges often determine whether they are bound to rule for one side or the other.

Two recently issued opinions, involving tragic situations and concerning whether the Chicago Transit Authority had a duty to the plaintiffs’ decedents, may provide support for defendant premises owners’ arguments that no duty was owed. If the CTA, given its heightened duty owed in certain situations, did not owe a duty in these cases, then neither could a premises owner in a similar situation.

In *Anderson v. CTA*, 2019 IL App (1st) 181564, the court held that there was no duty owed to a patron on the platform who fell to his death. The court rejected the argument that the deceased was a passenger owed a heightened duty of care because “[t]o be a passenger, one must be in the act of boarding, be upon, or be in the act of alighting from the carrier’s vehicle.”

Of particular importance to premises owners, the court held that “mere presence on a CTA platform, followed by an accidental death on the train tracks possibly from a medically induced condition and, without more, does not garner the injured person the status of a ‘passenger’ to whom the CTA owes the highest duty of care, notwithstanding that the injured person paid his fare and at one point had intentions of boarding a train.”

The court went on to hold that a “common carrier is not liable when he lacks knowledge of an unreasonable risk, illness, or injury.” If the CTA had no duty in this circumstance, how could a premises owner?

Amplifying the point, is the decision in *Daniel v. CTA*, 2020 IL App (1st) 190479, Par. 7-10, in which a passenger entered a CTA bus intoxicated, threw a bottle out of the door of the bus and then sat down in the rear of the bus and did not exit at the end of the route. Upon discovering the passenger, the bus driver called for assistance from the police, who arrived a short time later. The passenger was the found to be dead.

The trial court dismissed the case, finding no duty, and the court's first question to counsel for appellant at oral argument was, "what should the driver have done?" Indeed. The CTA did not place the deceased in a worse position, and the deceased was not exposed to death because the hazards of travel. Citing *Anderson*, the court found the touchstone of a potential duty was notice of a medical emergency.

Without citation to *Anderson* and *Daniel*, but in the same vein and in the context of a private premises owner, the court in *Vogt v. Round Robin Enterprises, Inc.*, 2020 IL App (4th) 190294, Par. 1-4, affirmed the dismissal of a complaint in which it was alleged that the defendant had voluntarily undertaken a duty to prevent harm to an intoxicated patron who died following ejection from the bar. The court held that the defendant did not place the deceased in a worse position upon his ejection and that the defendant did not undertake to do anything for the deceased after he was asked to leave.

The trial court found there was no duty to get the deceased home safely, and the appellate court distinguished this case from one in which a patron was placed in a car and drove, another where the defendant provided care to the intoxicated person, and a third in which the patron was placed in a cold car where he froze to death.

Notice of a life-threatening health condition or emergency and placing the individual in a worse situation together may be the source of duty in a particular case, but in the absence of either of those, even for an entity that is subject to a heightened duty of care under certain circumstances, no duty can exist. Premises owners and their counsel should look to *Anderson* and *Daniel* for support in defending similar cases and crafting policies to instruct employees on how to handle such situations.