The Basics

- Railroads have common carrier obligation
  - Freight as well as passenger
  - “holding out” to provide service

- Common carrier obligation ➔
  Heightened Duty of Care
  - Reduced in some states, but not Virginia

- Virginia: duties of common carrier defined in cases, not codified
Passengers’ Rights

- Common law: Responsibilities of carriers to passengers quite clearly articulated
  - Not codified in Virginia
- Previously, VA Code conferred numerous rights and accompanying remedies for passengers —
- Repealed: 1996
- But: Conductors, engineers, station employees are “conservators of the peace”
Passengers’ Bill of Rights

► New Jersey: proposed “Passenger Bill of Rights” or “Pledge”
  - 10 points – to be enforced by Consumer Protection Agency – for example:
    - On time operation
    - Clear announcements
    - Information about delays and alternative routes
    - Safe, clean stations
    - Heated, A/C equipment
    - Well-trained, courteous, responsive employees
Passengers’ Bill of Rights – cont’d

- New York agencies: 9 point “Pledge”:
  - Safe Reliable Ride
  - Accurate and Timely Information
  - Courteous Employees
  - Clean Environment
  - Alternate Transportation
  - Comfort
  - Weather Emergency Notification
  - Service Disruption Procedures
  - Waiver Refund Processing Fee
No Passenger Bill of Rights or “Pledge” in VA
But some remedies are available – carriers still responsible for injuries to passengers, etc.
But – VA state law limits liability for passenger RR’s to $250 Million (VA Code §56.446.1)
Federal damages cap: 49 U.S.C. §28103
  ▪ Substantial limit on availability of punitive damages
  ▪ Requires showing of “conscious, flagrant indifference to the rights or safety of others”
Damages (including punitives) capped at $200 Million
Recent safety statutes added requirement that passenger carriers have plan for addressing needs of families of passengers involved in an accident

- 49 U.S.C. §24316
- 49 C.F.R. Part 840
Other Remedies

- Surface Transportation Board: power to investigate late performance
  - 49 U.S.C. §24308(f)

- STB can award damages to Amtrak (not passenger) if host carrier is causing delays
CONCLUSION

- Carriers’ duty is less elevated than under old common law rules
- No Passenger Bill of Rights in Virginia
- But –
  - negligence, other tortious actions can lead to big damages against passenger railroads
- In other words:
  - Casey Jones, you’d better watch your speed
QUESTIONS:

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