1 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
E. Effect of Violation of Statute, Ordinance, or Regulation

8 Am Jur 2d Automobiles and Highway Traffic § 724

§ 724 Generally

There is no requirement that traffic regulations be introduced in evidence in order to establish negligence in automobile negligence action.[n1] The question of whether the fact of the violation of a statute or ordinance regulating the operation of motor vehicles constitutes negligence per se, or merely evidence of negligence, is determined by application of the general rules of negligence.[n2] Where the statute or ordinance expressly provides as to the effect of its violation, that provision governs. For example, statutes have been enacted establishing rules of the road and providing that violation thereof shall not constitute negligence as a matter of law.[n3] However, a jury finding of negligence may be predicated on the violation of such a statute.[n4]

In some jurisdictions, the violation of a statute or ordinance is deemed negligence per se.[n5] In other jurisdictions, it has been held that the violation of a statute or ordinance governing the operation of motor vehicles is not negligence per se, but merely evidence of negligence which may be taken into consideration with all the other facts and circumstances in determining whether or not negligence is established thereby,[n6] or only prima facie evidence of negligence[n7] that may be overcome by other facts or circumstances.[n8]

With respect to violation of regulations governing the size or weight of vehicles, or combinations thereof, the courts have applied the rule of the particular jurisdiction respecting the effect of regulatory violations generally, some courts holding that violation of such a regulation constitutes negligence per se or negligence as a matter of law,[n9] while others support the view that violation of such a regulation is merely evidence of negligence which may be considered with other facts and circumstances in determining whether negligence is established thereby.[n10]

In some states, a distinction is drawn between the violation of a statute and the violation of an ordinance.[n11] However, elsewhere it has been said that there is no sound reason for such a distinction.[n12]

Whatever the rule may be with respect to the effect of a violation of a statute or ordinance regulating the operation of motor vehicles, no liability can be imposed upon one violating such a statute or ordinance unless such violation can be said to be the proximate cause of the injuries or damages complained of.[n13] Moreover, in order to establish liability based on violation of such a statute or ordinance, it is incumbent upon the plaintiff to establish that he was a member of the class for whose protection the statute or ordinance was enacted.[n14]

FOOTNOTES:

n1 King v. Pagliaro Bros. Stone Co., 703 A.2d 1232 (D.C. 1997).

n2

Related References:
See Am. Jur. 2d, Negligence §§ 675 et seq.

n3 McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc., 248 N.C. 146, 102 S.E.2d 816 (1958).

n4 McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc., 248 N.C. 146, 102 S.E.2d 816 (1958).

n5 Sinclair Disposal Service, Inc. v. Ochoa, 265 Ga. App. 172, 593 S.E.2d 358 (2004) (in absence of valid defense, violation of the Uniform Rules of the Road establishes negligence per se); Eaton v. Eaton, 119 N.J. 628, 575 A.2d 858 (1990); Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962) (violation of statute requiring automobiles to be lighted during certain hours).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1398 (Instruction -- Violation as negligence).

n6 Deguio v. U.S., 920 F.2d 103 (1st Cir. 1990); Hardy v. Lambert, 252 F.2d 709 (5th Cir. 1958); France v. Benter, 256 Iowa 534, 128 N.W.2d 268, 22 A.L.R.3d 313 (1964); Youngs v. Potter, 237 Neb. 583, 467 N.W.2d 49 (1991); Kenyon v. Murray, 90 R.I. 423, 159 A.2d 376 (1960); Wheaton v. Stuck, 34 Wash. 2d 725, 209 P.2d 377 (1949).

n7 Getchell v. Lodge, 65 P.3d 50 (Alaska 2003); Oliver v. Eisenman, 523 So. 2d 189 (Fla. Dist. Ct. App. 1st Dist. 1988); City of Kankakee v. Vreeman, 177 Ill. App. 3d 835, 127 Ill. Dec. 229, 532 N.E.2d 1058 (3d Dist. 1988); Reuille v. Bowers, 409 N.E.2d 1144 (Ind. Ct. App. 1980); Duncan v. Wescott, 142 Vt. 471, 457 A.2d 277 (1983).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1402 (Instruction -- Violation of statute as prima facie evidence of negligence -- Necessity that violation be proximate cause of accident).

n8 Oliver v. Eisenman, 523 So. 2d 189 (Fla. Dist. Ct. App. 1st Dist. 1988); Reuille v. Bowers, 409 N.E.2d 1144 (Ind. Ct. App. 1980).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1401 (Instruction -- Violation of statute as evidence of negligence raising rebuttable presumption)

n9 Pelkey v. Kent, 28 A.D.2d 636, 280 N.Y.S.2d 517 (4th Dep't 1967); Byers v. Standard Concrete Products Co., 268 N.C. 518, 151 S.E.2d 38, 21 A.L.R.3d 983 (1966).

Related References:
Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 A.L.R.3d 989.

n10 Marmor v. Marmor, 409 S.W.2d 526 (Ky. 1966).

n11 Holmes v. Merson, 285 Mich. 136, 280 N.W. 139 (1938) (stating that the violation of a statute is deemed to be negligence per se, but this rule has not been followed with reference to violations of ordinances).

Violation of an ordinance or regulation may be only evidence of negligence, whereas violation of a statute constitutes negligence per se. Pierce v. International Harvester Co., 61 A.D.2d 255, 402 N.Y.S.2d 674 (4th Dep't 1978).

n12 Simpson v. Glenn, 264 Ala. 519, 88 So. 2d 326 (1956).

n13 § 729.

n14 Town of Remington v. Hesler, 111 Ind. App. 404, 41 N.E.2d 657 (1942); Lynghaug v. Payte, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956); Haver v. Hinson, 385 So. 2d 605 (Miss. 1980); King v. Morgan, 873 S.W.2d 272 (Mo. Ct. App. W.D. 1994); Salvitti v. Throppe, 343 Pa. 642, 23 A.2d 445, 138 A.L.R. 842 (1942); Powell v. Virginian Ry. Co., 187 Va. 384, 46 S.E.2d 429 (1948).

SUPPLEMENT:

Cases

The violation of a traffic ordinance is not always an indication of negligence. Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]85, 244(21)
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driver's License
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]85, 244(21)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1356 to 1361, 1397 to 1404
West's Key Number Digest, Automobiles [westkey]85, 244(21)

2 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
E. Effect of Violation of Statute, Ordinance, or Regulation

8 Am Jur 2d Automobiles and Highway Traffic § 725

§ 725 Violation of vehicle registration or license laws

Generally, the mere operation of an unlicensed or unregistered motor vehicle is not, in the absence of statutory provision subjecting an owner of an unlicensed or unregistered motor vehicle to civil liability for injuries sustained, negligence per se so as to render the owner absolutely liable for injuries or damages resulting from an accident in which the vehicle is involved without reference to want of care in its operation.[n1] The danger of operating a motor vehicle is the same whether it is licensed or unlicensed, and no liability may be imposed upon one driving an unlicensed vehicle for injuries sustained in an accident where the unlawful act of driving an unlicensed vehicle does not in any sense contribute to the accident.[n2] Similarly, a dealer who permits a motor vehicle bearing his or her special dealer's plates to be used for a purpose not authorized by the statute under which such plates were issued is not liable for this reason alone for injuries sustained in an accident in which the vehicle is involved.[n3]

The fact that a motor vehicle is not properly registered does not preclude the owner or operator thereof from claiming the benefits of a guest statute limiting his or her liability to a gratuitous guest to injuries arising from the former's wanton or willful misconduct or gross negligence.[n4]

FOOTNOTES:

n1 Burke v. Auto Mart, Inc., 37 N.J. Super. 451, 117 A.2d 624 (App. Div. 1955); Gulla v. Straus, 154 Ohio St. 193, 42 Ohio Op. 261, 93 N.E.2d 662 (1950); Black v. Moree, 135 Tenn. 73, 185 S.W. 682 (1916).

Related References:
What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843.

n2 Hyde v. McCreery, 145 A.D. 729, 130 N.Y.S. 269 (3d Dep't 1911).

n3 Nichols v. McGraw, 152 So. 2d 486 (Fla. Dist. Ct. App. 1st Dist. 1963).

Related References:
Improper use of automobile license plates as affecting liability or right to recover for injuries, death, or damages in consequence of automobile accident, 99 A.L.R.2d 904.

n4 § 551.

REFERENCE: West's Key Number Digest, Automobiles [westkey]85, 244(21)
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driver's License
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]85, 244(21)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1356 to 1361, 1397 to 1404
West's Key Number Digest, Automobiles [westkey]85, 244(21)

3 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
E. Effect of Violation of Statute, Ordinance, or Regulation

8 Am Jur 2d Automobiles and Highway Traffic § 726

§ 726 As precluding recovery for injuries

In most jurisdictions, the failure to comply with statutory requirements as to the licensing or registration of a motor vehicle does not preclude the owner or operator thereof from recovering for injuries sustained, while operating or riding in such vehicle, by reason of the negligence of another.[n1]

FOOTNOTES:

n1 Ruckman v. Cudahy Packing Co., 230 Iowa 1144, 300 N.W. 320 (1941); Standard Auto Ins. Ass'n v. Neal, 199 Ky. 699, 251 S.W. 966, 35 A.L.R. 1468 (1923); Ostertag v. Cahalin, 343 Mass. 523, 179 N.E.2d 894 (1962); Clark v. Town of Hampton, 83 N.H. 524, 145 A. 265, 61 A.L.R. 1171 (1929); Speight v. Simonsen, 115 Or. 618, 239 P. 542, 43 A.L.R. 1149 (1925).

Related References:
Improper use of automobile license plates as affecting liability or right to recover for injuries, death, or damages in consequence of automobile accident, 99 A.L.R.2d 904.

REFERENCE: West's Key Number Digest, Automobiles [westkey]85, 244(21)
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driver's License
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]85, 244(21)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1356 to 1361, 1397 to 1404
West's Key Number Digest, Automobiles [westkey]85, 244(21)

4 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
E. Effect of Violation of Statute, Ordinance, or Regulation

8 Am Jur 2d Automobiles and Highway Traffic § 727

§ 727 Violation of drivers' license laws

Generally, the fact that the driver of a motor vehicle involved in an accident was not licensed to drive does not render him or her liable, solely for that reason, for injuries sustained by another in such accident.[n1] The absence of a driver's license does not, in a negligence action based upon a motor vehicle accident, establish liability as an automatic legal result,[n2] and a right of recovery cannot be based upon the operation of a motor vehicle without a valid driver's license, unless such violation was the proximate cause of the injury.[n3] Thus, a defendant driver's operation of a road grader without a class B driver's license, allegedly in violation of a licensing statute, did not constitute negligence per se.[n4]

The fact that the driver of a motor vehicle involved in an accident wherein a gratuitous guest receives injuries does not have a driver's license does not preclude him or her from claiming the benefit of a guest statute limiting his or her liability to such a guest to injuries arising from the driver's wanton or willful misconduct or gross negligence.[n5]

FOOTNOTES:

n1 Lindsay v. Cecchi, 26 Del. 133, 3 Boyce 133, 80 A. 523 (1911); Durden v. Caulkins, 110 So. 2d 39 (Fla. Dist. Ct. App. 2d Dist. 1959); McMahon v. Pearlman, 242 Mass. 367, 136 N.E. 154, 23 A.L.R. 1467 (1922).

n2 McMahon v. Pearlman, 242 Mass. 367, 136 N.E. 154, 23 A.L.R. 1467 (1922).

n3 Lindsay v. Cecchi, 26 Del. 133, 3 Boyce 133, 80 A. 523 (1911); Mahowald v. Beckrich, 212 Minn. 78, 2 N.W.2d 569 (1942); Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40 S.E.2d 345 (1946).

n4 Hagel v. Schoenbauer, 532 N.W.2d 255 (Minn. Ct. App. 1995).

n5 § 551.

REFERENCE: West's Key Number Digest, Automobiles [westkey]85, 244(21)
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driver's License
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]85, 244(21)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1356 to 1361, 1397 to 1404
West's Key Number Digest, Automobiles [westkey]85, 244(21)

5 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
E. Effect of Violation of Statute, Ordinance, or Regulation

8 Am Jur 2d Automobiles and Highway Traffic § 728

§ 728 As precluding recovery for injuries

The fact that the driver of a motor vehicle was not licensed to drive as required by law does not preclude him or her from recovering for injuries, sustained while driving, by reason of the negligence of another,[n1] if, in other respects, he or she was exercising proper care.[n2] Such a driver is not considered to be a trespasser upon the highways so as to be beyond the protection of the rule that one using the public ways must observe due care to prevent injury to others driving thereon.[n3]

The absence of a valid driver's license, so far as it concerns the question of contributory negligence in an action to recover for injuries sustained in a motor vehicle accident, does not defeat recovery, unless such licensing violation proximately contributed to the injuries in question.[n4]

FOOTNOTES:

n1 Lindsay v. Cecchi, 26 Del. 133, 3 Boyce 133, 80 A. 523 (1911); Ruckman v. Cudahy Packing Co., 230 Iowa 1144, 300 N.W. 320 (1941); Myrick v. Holifield, 240 Miss. 106, 126 So. 2d 508 (1961); Siess v. Layton, 417 S.W.2d 6 (Mo. 1967).

n2 Mandell v. Dodge-Freedman Poultry Co., 94 N.H. 1, 45 A.2d 577, 163 A.L.R. 1370 (1946); Weihs v. Watson, 32 Wash. 2d 625, 203 P.2d 350 (1949).

n3 Davis v. Simpson, 138 Me. 137, 23 A.2d 320 (1941); McMahon v. Pearlman, 242 Mass. 367, 136 N.E. 154, 23 A.L.R. 1467 (1922); Orose v. Hodge Drive-It-Yourself Co., 132 Ohio St. 607, 9 Ohio Op. 10, 9 N.E.2d 671, 111 A.L.R. 954 (1937).

n4 Davis v. Simpson, 138 Me. 137, 23 A.2d 320 (1941); Zageir v. Southern Express Co., 171 N.C. 692, 89 S.E. 43 (1916).

REFERENCE: West's Key Number Digest, Automobiles [westkey]85, 244(21)
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driver's License
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]85, 244(21)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1356 to 1361, 1397 to 1404
West's Key Number Digest, Automobiles [westkey]85, 244(21)

6 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
E. Effect of Violation of Statute, Ordinance, or Regulation

8 Am Jur 2d Automobiles and Highway Traffic § 729

§ 729 Necessity of showing as to proximate cause

Even though it may be determined that the violation of a statute or ordinance relating to motor vehicles or the operation thereof constitutes negligence per se,[n1] proof of such violation by the operator of a motor vehicle involved in an accident does not, of itself, establish liability for injuries sustained therein.[n2] The plaintiff must establish further that the violation of the statute or ordinance was the proximate cause, or at least a proximate cause, of the accident and resulting injuries.[n3] There must be a direct relation of cause and effect between the violation of the statute or ordinance and the ensuing accident and injury, otherwise there is no liability.[n4] For example, committing a misdemeanor traffic offense is negligence, but such negligence does not constitute a prima facie case of vehicular manslaughter if a death results; the negligence of speeding or of running a stop sign must still be shown to have been the cause of the accident.[n5]

Practice Tip: In determining what constitutes proximate cause, the same principles apply where the alleged negligence consists of a violation of a statutory duty as where it consists of the violation of nonstatutory duty.[n6]

FOOTNOTES:

n1 § 724.

n2 Dayton v. Palmer, 1 Ariz. App. 184, 400 P.2d 855 (1965); Stumpf v. Reiss, 502 N.W.2d 620 (Iowa Ct. App. 1993); Boudreaux v. Farmer, 604 So. 2d 641 (La. Ct. App. 1st Cir. 1992), writ denied, 605 So. 2d 1373 (La. 1992) and writ denied, 605 So. 2d 1374 (La. 1992); Myers v. Bright, 327 Md. 395, 609 A.2d 1182 (1992); Thomas v. Settle, 247 Va. 15, 439 S.E.2d 360 (1994); Smith v. Penn Line Service, Inc., 145 W. Va. 1, 113 S.E.2d 505 (1960); Checker Yellow Cab Co. v. Shiflett, 351 P.2d 660 (Wyo. 1960).

Related References:
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1357 (Proximate cause -- Defined).

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1402 (Instruction -- Violation of statute as prima facie evidence of negligence -- Necessity that violation be proximate cause of accident).

n3 Dayton v. Palmer, 1 Ariz. App. 184, 400 P.2d 855 (1965); Stumpf v. Reiss, 502 N.W.2d 620 (Iowa Ct. App. 1993); Boudreaux v. Farmer, 604 So. 2d 641 (La. Ct. App. 1st Cir. 1992), writ denied, 605 So. 2d 1373 (La. 1992) and writ denied, 605 So. 2d 1374 (La. 1992); Myers v. Bright, 327 Md. 395, 609 A.2d 1182 (1992); Thomas v. Settle, 247 Va. 15, 439 S.E.2d 360 (1994); Smith v. Penn Line Service, Inc., 145 W. Va. 1, 113 S.E.2d 505 (1960); Checker Yellow Cab Co. v. Shiflett, 351 P.2d 660 (Wyo. 1960).

n4 Ross v. Jones, 316 S.W.2d 845 (Ky. 1958); Oppenheimer v. Linkous' Adm'x, 159 Va. 250, 165 S.E. 385 (1932).

n5 McFarland v. Leake, 864 So. 2d 959 (Miss. Ct. App. 2003).

n6 Zanetti Bus Lines, Inc. v. Hurd, 320 F.2d 123 (10th Cir. 1963); Denver-Los Angeles Trucking Co. v. Ward, 114 Colo. 348, 164 P.2d 730 (1945); Meese v. Goodman, 167 Md. 658, 176 A. 621, 98 A.L.R. 480 (1935); Larsen v. Webb, 332 Mo. 370, 58 S.W.2d 967, 90 A.L.R. 67 (1932).

REFERENCE: West's Key Number Digest, Automobiles [westkey]85, 244(21)
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driver's License
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]85, 244(21)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1356 to 1361, 1397 to 1404
West's Key Number Digest, Automobiles [westkey]85, 244(21)

7 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
1. Condition and Physical Features of Road

8 Am Jur 2d Automobiles and Highway Traffic § 730

§ 730 Generally; obstructions and ruts or other unevenness

Regardless of the road conditions, all drivers are held to the standard of exercising every care which a reasonable and prudent driver would exercise under the circumstances confronting him or her.[n1] Moreover, a motorist may generally assume that the road is safe for travel and the motorist is not required to anticipate unexpected obstructions in his or her traffic lane which are, under the circumstances, difficult to discover.[n2] However, a motorist has a duty to maintain a proper lookout for hazards, which by the use of ordinary care and observation, he or she should be able to see in time to avoid running into them.[n3] In other words, extremely adverse driving conditions call for unusual caution on the part of motorists.[n4]

Liability for negligence in the operation of a motor vehicle is sometimes predicated upon the driver's permitting his or her vehicle to get into a rut or similar unevenness running parallel with the highway,[n5] or upon the driver's failure to attempt to get out of the rut or unevenness within a reasonable time,[n6] or upon his or her method of operation while in the rut,[n7] and sometimes upon the driver's method in getting out of a rut or unevenness, such as the abrupt turning of the vehicle in another direction,[n8] or upon attempting to get out of the rut without keeping a sufficient lookout for other traffic,[n9] or upon driving at an excessive speed under the circumstances.[n10]

The driver of a motor vehicle who does not know or has no reason to anticipate an unevenness in the highway is not, in the absence of any negligence on his or her part in the operation of the vehicle, liable for any injury or damage caused by the loss of control over the vehicle because of the condition of the highway.[n11] Nor is the driver of a motor vehicle guilty of actionable negligence in his or her attempt to get out of a rut or some other unevenness running parallel with the highway if, in such attempt, the driver loses control over the vehicle through no fault of his or her own.[n12]

FOOTNOTES:

n1 Campbell v. Ingram, 636 S.E.2d 847 (N.C. Ct. App. 2006), appeal withdrawn, 361 N.C. 351, 645 S.E.2d 79 (2007) and appeal withdrawn, 361 N.C. 351, 645 S.E.2d 79 (2007).

n2 Lino v. Allstate Ins. Co., 937 So. 2d 888 (La. Ct. App. 4th Cir. 2006), writ denied, 942 So. 2d 542 (La. 2006) (holding that a motorist, who was struck by an oncoming car as she stood beside her stalled vehicle on the road, acted as a reasonably prudent person in her situation, and the oncoming driver breached her duty as an operator of a motor vehicle to focus her attention to the front to see what was in her path, and consequently, the oncoming driver was 90% at fault and the motorist was 10% at fault for the accident).

n3 Lino v. Allstate Ins. Co., 937 So. 2d 888 (La. Ct. App. 4th Cir. 2006), writ denied, 942 So. 2d 542 (La. 2006); Manno v. Gutierrez, 934 So. 2d 112 (La. Ct. App. 1st Cir. 2006).

n4 Hebert v. Lafayette Consolidated Government, 930 So. 2d 281 (La. Ct. App. 3d Cir. 2006).

n5 O'Neal v. Caffarello, 303 Ill. App. 574, 25 N.E.2d 534 (1st Dist. 1940).

n6 Bohren v. Lautenschlager, 239 Wis. 400, 1 N.W.2d 792 (1942).

n7 Kovar v. Beckius, 133 Neb. 487, 275 N.W. 670 (1937).

n8 Acosta v. State, Dept. of Highways, 399 So. 2d 1189 (La. Ct. App. 4th Cir. 1981).

n9 Moore v. Burriss, 132 W. Va. 757, 54 S.E.2d 23 (1949).

n10 Ebben v. Farmers Mut. Auto. Ins. Co. of Madison, 254 Wis. 249, 36 N.W.2d 75, 10 A.L.R.2d 895 (1949).

n11 Martiniano v. Booth, 359 Mich. 680, 103 N.W.2d 502 (1960).

n12 Marsh v. Henriksen, 213 Minn. 500, 7 N.W.2d 387 (1942).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595

Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]146, 168(3), 170(7)
West's Key Number Digest, Highways [westkey]188, 191 to 195
Duty and liability of one driving motor vehicle in or along rut, ridge, or the like, in highway, 10 A.L.R.2d 901

8 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
1. Condition and Physical Features of Road

8 Am Jur 2d Automobiles and Highway Traffic § 731

§ 731 Slippery pavement; skidding

A motorist is not guilty of negligence per se in driving on pavement known to him or her to be slippery, although the motorist has a duty to exercise unusual care to keep his or her vehicle under control under such circumstances so as not to cause injury to another vehicle or occupant thereof by skidding into it.[n1] Under such highway conditions, motorists are charged with the duty to take care and caution in the operation of their vehicles proportionate to the known and obvious dangerous condition of the highway.[n2]

The mere fact that a motor vehicle skids is not, in itself, evidence of the driver's negligence; rather, the question of negligence in that respect depends on all the pertinent circumstances.[n3] Nor is the mere fact of skidding sufficient in itself to make the doctrine of res ipsa loquitur applicable, since skidding is not so uncommon or unusual that unless explained, it furnishes evidence of the motorist's negligence.[n4]

Slippery roadway conditions do not, alone, constitute an adequate nonnegligent explanation for a motor vehicle collision, absent proof that the condition was unanticipated.[n5] It may be held under the particular circumstances of the case, that a motorist who skidded can not be regarded as negligent, the skidding being viewed as unavoidable, so that the motorist had a valid excuse for a departure from his or her regular course.[n6] Nevertheless, skidding may constitute negligence or evidence of negligence, where it appears that it was caused by a failure to take reasonable precaution to avoid it when the conditions at the time made such a result probable in the absence of such precaution.[n7] In other words, even though the skidding of a motor vehicle, considered by itself as an isolated factor unrelated to surrounding circumstances, is not evidence of negligence, this does not mean that skidding always constitutes a defense to other proved acts of negligence.[n8] Where there is conflicting evidence and different inferences of fact may be drawn therefrom, the question whether a motorist was negligent in skidding is generally one for the jury.[n9]

In determining whether or not a motorist who skidded is guilty of negligence or contributory negligence under the circumstances, the court's principal inquiry is into the motorist's conduct prior to the skidding,[n10] such as his or her driving speed.[n11] The courts have taken into consideration the motorist's manner of application of the brakes in determining the negligence or contributory negligence of a motorist who skidded into another motorist moving in the same direction,[n12] or from an opposite direction,[n13] or across an intersection,[n14] or who skidded into a train[n15] or a parked or standing vehicle.[n16]

Under the particular circumstances of the case, a motorist may be found guilty of negligence where the motorist skidded into another motor vehicle,[n17] or where the motorist skidded on a curve[n18] or a hill.[n19] However, under the particular circumstances of the case, a motorist who skidded into another motor vehicle may not be found guilty of negligence, where the skidding was unavoidable.[n20]

FOOTNOTES:

n1 Wise v. Lodge, 247 N.C. 250, 100 S.E.2d 677 (1957).

n2 Tenczar v. Milligan, 47 A.D.2d 773, 365 N.Y.S.2d 272 (3d Dep't 1975).

n3 Franklin v. Cannon, 565 So. 2d 119 (Ala. 1990) (if the driver loses control of the vehicle on a road slippery with water or ice, the mere fact that vehicle skids into another driver's lane does not make the driver liable as matter of law).

n4 § 1142.

n5 Topczij v. Clark, 28 A.D.3d 1139, 814 N.Y.S.2d 425 (4th Dep't 2006).

n6 Trusty v. Wooden, 251 Md. 294, 247 A.2d 382 (1968).

n7 Sparks v. Craft, 75 F.3d 257, 1996 FED App. 0042P (6th Cir. 1996).

n8 Coerver v. Haab, 23 Wash. 2d 481, 161 P.2d 194, 161 A.L.R. 909 (1945) (holding that the fact that the defendant's automobile skidded to the wrong side of the road, where it collided with another car, may properly be found not to excuse his presence on the wrong side of the road, where it appears that, in driving on a road which he was familiar with and which he knew to be slippery, he applied the brakes on making a turn, causing the car to skid).

n9 Tate v. Christy, 114 N.C. App. 45, 440 S.E.2d 858 (1994), aff'd, ordered not precedential, 339 N.C. 731, 454 S.E.2d 242 (1995).

n10 Rushing v. Polk, 258 N.C. 256, 128 S.E.2d 675 (1962) (the crossing of a yellow line on the highway was held admissible to show negligence where an automobile went into a skid on a wet blacktop pavement while passing other vehicles).

n11 Tentoni v. Slayden, 2006 WL 3594232 (Miss. Ct. App. 2006), cert. granted, 958 So. 2d 1232 (Miss. 2007).

n12 Quimby v. Eastern Mass. St. Ry. Co., 333 Mass. 41, 127 N.E.2d 894 (1955).

n13 Karch v. Stewart, 315 S.W.2d 131 (Mo. 1958).

n14 Tinker v. Trevett, 155 Me. 426, 156 A.2d 233 (1959).

n15 Holtz v. Elgin, J. & E. Ry. Co., 121 Ind. App. 175, 98 N.E.2d 245 (1951).

n16 Kopp v. Ryckman, 238 Minn. 342, 57 N.W.2d 31 (1953).

n17 Pretto v. Leiwant, 80 A.D.2d 579, 435 N.Y.S.2d 778 (2d Dep't 1981).

n18 Tesiero v. Kiskis, 263 A.D. 171, 32 N.Y.S.2d 38 (3d Dep't 1942), order aff'd, 288 N.Y. 639, 42 N.E.2d 739 (1942).

n19 Peters v. B. & F. Transfer Co., 7 Ohio St. 2d 143, 36 Ohio Op. 2d 180, 219 N.E.2d 27 (1966).

n20 Whitley v. Patterson, 204 Va. 36, 129 S.E.2d 19 (1963) (ice).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(3), 170(7)
West's Key Number Digest, Highways [westkey]196, 197
Negligence of driver of motor vehicle as respects manner of timely application of proper brakes, 72 A.L.R.2d 6

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 413 (Complaint, petition, or declaration -- Ice and snow on pavement -- Skidding tractor-trailer collided with truck forcing it into head-on collision with plaintiff's bus -- Concurrent negligence of truck and tractor-trailer drivers -- Damage to bus)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1407 (Instruction -- Negligence not implied from loss of control of vehicle through skidding)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1548 (Instruction -- Excessive speed -- Wet and slippery road)

9 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
1. Condition and Physical Features of Road

8 Am Jur 2d Automobiles and Highway Traffic § 732

§ 732 Curves

In approaching and rounding a curve where the view is shortened, a motorist must reasonably anticipate that another vehicle may appear from the opposite direction at any moment,[n1] and the motorist is under an increased duty to stay on the right-hand side of the road.[n2] The failure of a motorist to stay on his or her side of the road when rounding a curve may constitute negligence.[n3] This is especially the case in a jurisdiction where the violation of a statute requiring motorists to proceed on the right-hand side of the road[n4] is held to constitute negligence or evidence of negligence.[n5]

In most situations, the exercise of ordinary care requires that a motor vehicle be driven around a curve, and especially a sharp curve, at a speed less than that at which motor vehicles are normally driven on straight stretches in the same general area.[n6] Indeed, it is common knowledge that it is impossible to drive an automobile around a curve, at a high or suddenly accelerated speed, without going off the traffic lane, or sliding or causing passengers to shift or lurch in their seats or to be tossed about or thrown against one another or against the car doors; and the courts have taken judicial notice of this.[n7] Accordingly, the driver of a motor vehicle generally has the duty to decrease speed as he or she approaches a curve.[n8] A motorist may be found guilty of negligence where the motorist does not slacken his or her speed in rounding a curve, and an accident ensues from skidding[n9] or from running off the road[n10] or from running into another motorist who is on the proper side of the road.[n11]

A motorist rounding a curve is not required to anticipate that a vehicle will be standing in the highway on his or her side of the road on the far side of the curve, and is not ordinarily guilty of negligence in colliding with such a vehicle.[n12]

The failure of a motor vehicle operator to give an audible signal when approaching a curve where the view ahead is obstructed has been found to constitute negligence for which he or she may be held liable if such negligence is a proximate cause of the resulting accident.[n13]

FOOTNOTES:

n1 Pohler v. Humboldt Motor Stages, 100 Cal. App. 2d 571, 224 P.2d 440 (3d Dist. 1950).

n2 Ross v. Carroll, 138 Neb. 1, 291 N.W. 726 (1940).

n3 American Products Co. v. Villwock, 7 Wash. 2d 246, 109 P.2d 570, 132 A.L.R. 1010 (1941).

As to passing on a curve, see § 849.

n4 § 245.

n5 § 818.

n6 Proctor v. Town of Colonie, 6 A.D.2d 967, 176 N.Y.S.2d 560 (3d Dep't 1958), judgment aff'd, 8 N.Y.2d 952, 204 N.Y.S.2d 183, 168 N.E.2d 849 (1960).

n7 Smith v. Prater, 206 Va. 693, 146 S.E.2d 179 (1966).

n8 Trahan v. State, Dept. of Transp. & Development, 536 So. 2d 1269 (La. Ct. App. 3d Cir. 1988), writ denied, 541 So. 2d 854 (La. 1989); Hinnant v. Holland, 92 N.C. App. 142, 374 S.E.2d 152 (1988).

n9 § 731.

n10 McClure v. Latta, 348 P.2d 1057 (Wyo. 1960).

n11 Conant v. Collins, 90 N.H. 434, 10 A.2d 237, 136 A.L.R. 1266 (1939).

N12 Nolan v. Nally, 342 S.W.2d 400 (Ky. 1961); Gillespie v. Bentz, 401 Pa. 588, 166 A.2d 25 (1960).

n13 Ross v. Carroll, 138 Neb. 1, 291 N.W. 726 (1940).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405

Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(3), 168(7), 170(9)
West's Key Number Digest, Highways [westkey]191
Automobiles: duty and liability with respect to giving audible signal where driver's view ahead is obstructed at curve or hill, 16 A.L.R.3d 897

10 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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§ 733 Hills

In approaching the summit of a hill where the view is shortened, a motorist is under increased duty to stay on the right-hand side of the road, and the failure of a motorist to do so may constitute negligence.[n1] In some jurisdictions, the statutes require a motorist approaching a hill crest to operate his or her vehicle at an appropriate reduced speed,[n2] but because of the variables involved in determining what is an "appropriate reduced speed,"particular speeds in going up a hill do not ordinarily constitute a violation of such statute and negligence as a matter of law, but rather the issue is one for the jury.[n3]

A motorist reaching the summit of a hill is not required to anticipate that a vehicle will be standing in the highway immediately on the other side of the summit, and is not liable for injuries sustained from running into such vehicle, where the motorist has done everything he or she can to avoid a collision.[n4] Where a motorist coming over the crest of a hill is confronted with another vehicle approaching in his or her lane of travel, the motorist may not be held guilty of negligence for turning to the left in an attempt to avoid collision with the approaching vehicle.[n5]

In descending a hill, a motorist has the duty not to drive at an excessive speed under the circumstances,[n6] and to maintain control over his or her vehicle[n7] so that it does not skid[n8] or so that it will negotiate a curve or turn at the bottom of the hill.[n9]

In the absence of statute, coasting on a downgrade does not in itself constitute negligence, as long as the coasting vehicle does not get out of the driver's control.[n10] However, coasting without maintaining control of the vehicle may constitute actionable negligence.[n11] Most jurisdictions have enacted statutes prohibiting coasting, and coasting in violation of such statute has been held to be negligence per se.[n12]

The failure of a motor vehicle operator to give an audible signal when approaching a hill where his or her view ahead is obstructed has been found to constitute negligence for which he or she may be liable if such negligence is the proximate cause of a resulting accident.[n13] However, the circumstances may not require the sounding of an audible horn warning when approaching the crest of a hill, because the operator has a right to assume upon approaching the crest that an approaching car would be in its own lane, and when the other car becomes visible, a warning signal would not avoid the collision.[n14]

Although there is authority to the contrary,[n15] it has been held that the failure of a driver seeking recovery to sound an audible signal of his or her approach at a hill where the driver's view ahead is obstructed constitutes negligence which may bar or diminish his or her recovery for damages resulting from a collision.[n16]

FOOTNOTES:

n1 Curry v. Vesely, 66 N.M. 372, 348 P.2d 490 (1960).

As to liability for attempting to pass another vehicle near the summit of a hill, see § 849.

n2 Aranzullo v. Seidell, 96 A.D.2d 1048, 466 N.Y.S.2d 690 (2d Dep't 1983).

n3 Sawdey v. Schwenk, 2 Wis. 2d 532, 87 N.W.2d 500, 69 A.L.R.2d 1256 (1958).

n4 Bergstrom v. Ove, 39 Wash. 2d 78, 234 P.2d 548 (1951).

n5 Murray v. Lang, 252 Iowa 260, 106 N.W.2d 643 (1960).

n6 Dansky v. Kotimaki, 125 Me. 72, 130 A. 871 (1925).

n7 Spink v. State, 255 A.D. 824, 7 N.Y.S.2d 3 (4th Dep't 1938).

n8 § 731.

n9 Tyler v. Conway, 253 A.D. 865, 1 N.Y.S.2d 563 (3d Dep't 1938).

n10 Iannone v. Weber-McLoughlin Co., 186 A.D. 594, 174 N.Y.S. 580 (1st Dep't 1919).

n11 Sylvester v. Gray, 118 Me. 74, 105 A. 815 (1919) (a driver who, in coasting downhill at the rate of at least 15 m.p.h. per hour, on the wrong side of the road, is struck by another motorist, who is on the right side of the road, cannot recover, notwithstanding the fact that the latter is drunk).

n12 Graban v. Gonzales, 134 Cal. App. 657, 26 P.2d 39 (4th Dist. 1933); Dillon v. City of Winston-Salem, 221 N.C. 512, 20 S.E.2d 845 (1942).

n13 Whatley v. Henry, 65 Ga. App. 668, 16 S.E.2d 214 (1941).

n14 Christensen v. Kelley, 257 Iowa 1320, 135 N.W.2d 510, 16 A.L.R.3d 885 (1965).

n15 Scott v. Pendleton, 282 S.W.2d 55 (Ky. 1955).

n16 Riess v. Long, 229 Iowa 378, 294 N.W. 592 (1940).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(3), 170(7)
West's Key Number Digest, Highways [westkey]191
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 822 (Allegation -- Unreasonable speed -- Over crest of hill)

11 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
1. Condition and Physical Features of Road

8 Am Jur 2d Automobiles and Highway Traffic § 734

§ 734 Stone or other object thrown by passing vehicle

The owner or operator of a motor vehicle may be found liable for injury or damage caused by such vehicle in striking and throwing an object, such as a stone, lying on the surface of the road.[n1] The negligence usually consists of the excessive speed at which the motor vehicle travels upon a road covered with loose gravel or stones.[n2] However, in other cases involving the throwing of an object, such as a stone, lying on the surface of the road, the owner or operator of the motor vehicle has been held not negligent,[n3] where the vehicle was not traveling at an excessive rate of speed, and there was no evidence that the operator knew, or should have known, of the stone or stones on the road, and could have anticipated that such an event would happen.[n4] Under such circumstances, the throwing of the stone is deemed such an unusual occurrence that it can not be found that the operator of the motor vehicle in the exercise of reasonable care ought to have guarded against it.[n5]

FOOTNOTES:

n1 Howard v. Bell, 232 N.C. 611, 62 S.E.2d 323 (1950).

n2 Ford & Son Paving Contractors, Inc. v. Proffitt, 414 S.W.2d 406 (Ky. 1967).

n3 Randall v. Shelton, 293 S.W.2d 559 (Ky. 1956) (a woman struck by a stone allegedly thrown from the roadway by a truck cannot recover unless the truck driver committed a culpable act or there was an intentional trespass or an extra hazardous activity involved).

n4 Miller v. Bolyard, 142 W. Va. 580, 97 S.E.2d 58 (1957).

n5 In re Manning's Ex'r, 269 N.Y. 636, 200 N.E. 34 (1936).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(3), 170(7), 180
Liability for injury or damage from stone or other object on surface of highway thrown by passing vehicle, 56 A.L.R.2d 1392

12 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
2. Condition and Status of Driver

8 Am Jur 2d Automobiles and Highway Traffic § 735

§ 735 Generally; physical incapacity or handicap

The operator of a motor vehicle may not claim exemption from the consequence of an accident caused by his or her unskillfulness in handling a vehicle, on the ground that his or her physical deficiencies handicapped him or her.[n1] Where the operator's hearing is impaired, the operator is nevertheless required to hear at his or her peril that which a normal driver would hear.[n2] However, the fact that the operator of a motor vehicle involved in an accident has some physical defect will not, in itself, make him or her guilty of negligence which may render the operator liable[n3] or which may bar or diminish the operator's recovery for his or her own injuries or damage[n4] as a matter of law, although it may be taken into consideration as any other factor in determining the question of such negligence. The rule that a physical handicap or defect is a matter to be taken into consideration, along with other facts, in determining the negligence or contributory negligence of the operator of a motor vehicle has been applied to operators with infirmities or handicaps involving their arms, hands,[n5] legs, or feet,[n6] defective hearing,[n7] faulty vision,[n8] or nervous disorders,[n9] as well as to those affected by infirmities of old age,[n10] or incapacities caused by reason of short stature.[n11]

Under traditional negligence theory, a driver would not be negligent if he or she were incapacitated before the collision, the incapacity caused the collision, and his or her incapacitation was not foreseeable.[n12]

FOOTNOTES:

n1 Otterbeck v. Lamb, 85 Nev. 456, 456 P.2d 855 (1969) (persons with impaired faculties are obligated to use ordinary care for their own protection, and to achieve the standard of ordinary care they must use their nonimpaired faculties to rise to that standard).

n2 Bull v. Drew, 286 A.D. 1138, 146 N.Y.S.2d 85 (3d Dep't 1955).

n3 Hala v. Worthington, 130 N.J.L. 162, 31 A.2d 844 (N.J. Ct. Err. & App. 1943).

n4 Gibbons v. Delta Contracting Co., 301 Mich. 638, 4 N.W.2d 39 (1942).

n5 White v. State Through Dept. of Public Safety & Corrections, 644 So. 2d 684 (La. Ct. App. 1st Cir. 1994), writ denied, 648 So. 2d 927 (La. 1995).

n6 White v. State Through Dept. of Public Safety & Corrections, 644 So. 2d 684 (La. Ct. App. 1st Cir. 1994), writ denied, 648 So. 2d 927 (La. 1995); Hosmer v. Distler, 150 A.D.2d 974, 541 N.Y.S.2d 650 (3d Dep't 1989) (left leg prosthesis).

n7 Atkinson v. Cardinal Stage Lines Co., 148 Kan. 244, 80 P.2d 1073 (1938).

n8 Tanner v. Fireman's Fund Ins. Companies, 589 So. 2d 507, 49 A.L.R.5th 893 (La. Ct. App. 1st Cir. 1991), writ denied, 590 So. 2d 1207 (La. 1992) and writ denied, 590 So. 2d 1207 (La. 1992); Hosmer v. Distler, 150 A.D.2d 974, 541 N.Y.S.2d 650 (3d Dep't 1989) (bifocals); Kolster v. City of El Paso, 972 S.W.2d 58 (Tex. 1998), petition for reh'g of writ of error/cause filed, (July 9, 1998) (holding that the evidence supported the finding that the ambulance driver was negligent in not wearing corrective lenses for purposes of a personal injury action brought by a motorist who collided with the ambulance, where the ambulance driver was not wearing corrective lenses at the time of the accident in violation of the restriction on her driver's license).

n9 Bozeman v. Reed, 633 So. 2d 944 (La. Ct. App. 1st Cir. 1994), writ denied, 640 So. 2d 1345 (La. 1994) and writ denied, 640 So. 2d 1345 (La. 1994) and writ denied, 640 So. 2d 1345 (La. 1994) (multiple sclerosis).

n10 McCalla v. Grosse, 42 Cal. App. 2d 546, 109 P.2d 358 (2d Dist. 1941).

n11 Mahan v. State, to Use of Carr, 172 Md. 373, 191 A. 575 (1937) (while persons of small stature may and do lawfully operate automobiles, if that condition makes it more difficult for them to see children or objects in the highway, it imposes upon them the duty of exercising greater watchfulness to avoid injuring others also in the lawful use of the highway than would be necessary for one of normal stature).

n12 Piatt v. Welch, 974 S.W.2d 786 (Tex. App. El Paso 1998).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127

Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]157, 161, 222
West's Key Number Digest, Highways [westkey]197(2)
Liability of physician, for injury to or death of third party, due to failure to disclose driving-related impediment, 43 A.L.R.4th 153
Motor vehicle passenger's contributory negligence or assumption of risk where accident resulted from driver's drowsiness, physical defect, or illness, 1 A.L.R.4th 556
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 783 (Allegation -- Driving when physically disabled -- Generally)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 784 (Allegation -- Driving when physically disabled -- Epileptic)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 785 to 788 (Allegation -- Driving when physically disabled -- Defective eyesight)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1511 (Instruction -- Hearing defect -- Duty to use greater care)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1512 (Instruction -- Driving without glasses -- Proximate cause of accident)

13 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
2. Condition and Status of Driver

8 Am Jur 2d Automobiles and Highway Traffic § 736

§ 736 Sudden illness or unconsciousness

Where the driver of a motor vehicle suffers an unforeseeable illness causing him or her to suddenly lose consciousness and control of the vehicle, the driver's loss of control is deemed not to be negligence, and the driver is not liable for any damages caused by the out-of-control vehicle.[n1] In other words, fainting or momentary loss of consciousness while driving is a complete defense to an action based on negligence, if such loss of consciousness was not foreseeable.[n2] However, one who relies upon such a sudden unconsciousness to relieve him or her from liability must show that the accident was caused by reason of this sudden incapacity,[n3] and, if the evidence is insufficient to prove sudden loss of consciousness, he or she may be held liable.[n4] Also, there is authority to the effect that unforeseeable loss of consciousness does not constitute a defense if the motorist at the time of the accident was violating a statutory duty.[n5]

Practice Tip: Where the operator of a motor vehicle knows that he or she is subject to attacks in the course of which he or she is likely to lose consciousness, such a loss of consciousness does not constitute a defense in an action brought by a person injured as a result of the operator's conduct,[n6] unless the defendant can establish that his or her sudden loss of consciousness or physical capacity to control the vehicle was not reasonably foreseeable to a prudent person.[n7] On the other hand, violations of the vehicle and traffic law which give rise to negligence per se may be excused if the accident clearly results from an unforeseen and unexpected medical emergency.[n8]

FOOTNOTES:

n1 Halligan v. Broun, 285 Ga. App. 226, 645 S.E.2d 581 (2007) (holding that the defendant motorist's loss of consciousness that occurred just prior to his running a red light and striking the plaintiff motorist's vehicle was an "act of God,"such as precluded the defendant motorist's liability for the plaintiff motorist's injuries, the court stating that the uncontradicted evidence revealed that the defendant motorist suffered a sudden and unforeseeable loss of consciousness just prior to the accident).

n2 Storjohn v. Fay, 246 Neb. 454, 519 N.W.2d 521 (1994); McGinn v. New York City Transit Authority, 240 A.D.2d 378, 658 N.Y.S.2d 121 (2d Dep't 1997) (the operator of an automobile who experiences sudden medical emergency will not be chargeable with negligence, provided that the medical emergency was unforeseen); McCall v. Wilder, 913 S.W.2d 150 (Tenn. 1995).

n3 Frechette v. Welch, 621 F.2d 11, 6 Fed. R. Evid. Serv. 239 (1st Cir. 1980); Henneke v. Julian's Paint and Body Shop, Inc., 431 So. 2d 298 (Fla. Dist. Ct. App. 1st Dist. 1983).

n4 Brannon v. Shelter Mut. Ins. Co., 507 So. 2d 194 (La. 1987); Storjohn v. Fay, 246 Neb. 454, 519 N.W.2d 521 (1994).

n5 Rogers v. Wilhelm-Olsen, 748 S.W.2d 671 (Ky. Ct. App. 1988).

n6 Storjohn v. Fay, 246 Neb. 454, 519 N.W.2d 521 (1994) (epileptic condition); Howle v. PYA/Monarch, Inc., 288 S.C. 586, 344 S.E.2d 157 (Ct. App. 1986) (diabetic motorist); Harvey v. Culpepper, 801 S.W.2d 596 (Tex. App. Corpus Christi 1990) (diabetic motorist).

n7 McCall v. Wilder, 913 S.W.2d 150 (Tenn. 1995).

The determination that the driver blacked out just before the collision and was not negligent per se in running a red light, and that he did not negligently fail to maintain his diabetes, was supported by his own testimony about his condition and about circumstances leading up to the accident, the testimony of a police officer and an emergency room nurse about the aftermath of the accident, and the testimony of an expert about the condition. Piatt v. Welch, 974 S.W.2d 786 (Tex. App. El Paso 1998).

n8 Hazelton v. D.A. Lajeunesse Bldg. and Remodeling, Inc., 38 A.D.3d 1071, 832 N.Y.S.2d 114 (3d Dep't 2007).

The doctrine of sudden emergency excused a driver's failure to obey statutory law and thus precluded the imposition of liability for personal injuries sustained by a passenger in an automobile accident, although the driver died as a result of injuries from the accident, not from a heart attack, where the driver was in the process of having heart attack, then lost consciousness, and then the accident occurred. Wheeler v. Strunk, 728 N.W.2d 851 (Iowa Ct. App. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575

Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]157, 159, 161, 222
Liability for automobile accident allegedly caused by driver's blackout, sudden unconsciousness, or the like, 93 A.L.R.3d 326
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1

14 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
2. Condition and Status of Driver

8 Am Jur 2d Automobiles and Highway Traffic § 737

§ 737 Falling asleep

Falling asleep at the wheel of an automobile has been held to constitute negligence as a matter of law.[n1] There are few agencies more fraught with danger to life and property than an automobile proceeding at a high speed along a highway covered with loose gravel, without the direction of a conscious mind, and the fact that one continues to drive an automobile at a high speed after recognizing and appreciating signals of the near approach of sleep furnishes a proper basis from which an inference of negligence may be drawn.[n2]

On the other hand, it has been held that the mere fact that a driver goes to sleep while operating his or her motor vehicle does not, as a matter of law, constitute negligence under all conditions and circumstances.[n3]

Practice Tip: Whether or not the operator of a motor vehicle fell asleep while driving is a question of fact to be determined by the jury.[n4] Moreover, the trial court properly allows the jury to consider the issue of punitive damages against a driver who fell asleep at the wheel, resulting in an accident that caused the plaintiff decedent's death, where, although the act of falling asleep generally would not constitute a conduct that would allow punitive damages, the length of driving time had been excessive and was accompanied by the driver's use of stimulants, indicating that the driver had known of his or her condition and had persisted in driving despite the danger, in that such conscious and intentional conduct constituted substantial evidence of wanton and willful disregard for the safety of others.[n5]

FOOTNOTES:

n1 Budget Rent-a-Car of Atlanta, Inc. v. Webb, 220 Ga. App. 278, 469 S.E.2d 712 (1996); Busby v. Anderson, 2006 WL 3409899 (Miss. Ct. App. 2006) (a driver, who lost control of his car when he fell asleep while driving, was negligent as a matter of law in the operation of his vehicle, regardless of whether the passenger refused to drive upon the driver's request).

n2 Busby v. Anderson, 2006 WL 3409899 (Miss. Ct. App. 2006) (holding that a peremptory jury instruction that the driver was negligent as a matter of law was warranted in a personal injury action brought by a passenger, where the uncontradicted evidence showed that the driver fell asleep at the wheel).

n3 Roszell v. Martin, 591 So. 2d 511 (Ala. Civ. App. 1991) (the required knowledge for imposition of liability in tort cases involving diminished alertness in which the driver is alleged to have had consciousness or awareness of sleepiness is a realization of premonitory symptoms of sleep).

n4 Sample v. Witt, 712 S.W.2d 394 (Mo. Ct. App. W.D. 1986).

n5 Briner v. Hyslop, 337 N.W.2d 858 (Iowa 1983).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]146, 157

Motor vehicle passenger's contributory negligence or assumption of risk where accident resulted from driver's drowsiness, physical defect, or illness, 1 A.L.R.4th 556
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 791 (Allegation -- Sleeping while driving)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1509, 1510 (Instructions to jury -- Falling asleep while driving)

15 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
2. Condition and Status of Driver

8 Am Jur 2d Automobiles and Highway Traffic § 738

§ 738 Intoxication

As a general rule, it is negligence per se to violate a statute making it unlawful to operate a motor vehicle while in an intoxicated condition or under the influence of intoxicating liquor,[n1] although there is authority to the contrary.[n2] In any event, a civil liability does not result unless the violation of the statute is the proximate cause of an accident.[n3]

Observation: A statute providing an intoxicated defendant with a defense to a personal injury action when the injured plaintiff was also intoxicated does not operate to bar the injured passenger's action against the intoxicated driver, notwithstanding evidence that the passenger had been drinking alcohol that evening, in the absence of evidence that he or she was intoxicated or that his or her actions contributed to causing the accident.[n4]

Practice Tip: Punitive damages are recoverable from an intoxicated driver who causes personal injuries.[n5]

FOOTNOTES:

n1 Hinkamp v. American Motors Corp., 735 F. Supp. 176 (E.D. N.C. 1989), judgment aff'd, 900 F.2d 252 (4th Cir. 1990) (applying North Carolina law); Richardson v. U.S., 835 F. Supp. 1236, 39 Fed. R. Evid. Serv. 1012 (E.D. Wash. 1993) (applying Washington law); Carroll v. Deaton, Inc., 555 So. 2d 140 (Ala. 1989); Hasson v. Hale, 555 So. 2d 1014 (Miss. 1990); Cook By and Through Uithoven v. Spinnaker's of Rivergate, Inc., 878 S.W.2d 934 (Tenn. 1994).

n2 Loevsky v. Carter, 70 Haw. 419, 773 P.2d 1120 (1989) (holding that although a violation of the statute prohibiting driving while under the influence of intoxicating liquor may constitute evidence of negligence, violation of the statute does not constitute negligence per se); Angers v. Etie, 625 So. 2d 347 (La. Ct. App. 3d Cir. 1993) (holding that the mere fact that the driver had consumed alcohol prior to involvement in the automobile accident did not per se establish negligence contributing to the accident); Guzzi v. Clarke, 252 N.J. Super. 361, 599 A.2d 956 (Law Div. 1991) (even if the motorist knew that his driving ability would be impaired as a result of the taking of medication and drinking, such knowledge would only be evidence of negligence and would not be negligence per se).

n3 Taylor v. Coats, 636 S.E.2d 581 (N.C. Ct. App. 2006).

n4 Hickly v. Bare, 135 Wash. App. 676, 145 P.3d 433 (Div. 2 2006) (stating that the statute providing an intoxicated defendant with a defense when the injured plaintiff was intoxicated and proximately caused injurious incident did not abolish comparative fault as a defense for intoxicated drivers sued by injured passengers who did not proximately cause the accident).

n5 Peterson v. Superior Court, 31 Cal. 3d 147, 181 Cal. Rptr. 784, 642 P.2d 1305 (1982); Owens v. Anderson, 631 So. 2d 1313 (La. Ct. App. 4th Cir. 1994), writ denied, 635 So. 2d 1135 (La. 1994) and writ denied, 635 So. 2d 1135 (La. 1994).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]157, 161
Excessiveness or Inadequacy of Damage Awards Against Drunk Drivers, 14 A.L.R.6th 263
Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115

Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 332 (Complaint, petition, or declaration -- Head-on collision -- Wrongful death -- Defendant driver intoxicated)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 789 (Allegation -- Driving while intoxicated -- General form)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 790 (Allegation -- Driving while intoxicated -- Violation of statute)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 790.1 (Allegation -- Driving while intoxicated -- Speeding -- Leaving the scene)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 790.2 (Instruction to jury -- When driving while intoxicated constitutes conscious disregard for safety of others)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1501 to 1508.1 (Instruction -- Driving while intoxicated)

16 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
2. Condition and Status of Driver

8 Am Jur 2d Automobiles and Highway Traffic § 739

§ 739 Mental incapacity

One operating a motor vehicle on the public highways is required to comply with statutes prescribing fixed and positive rules for the government of those who operate motor vehicles on the public highways, regardless of his or her mental capacity, and whether his or her violation of such statutes constitutes negligence is governed by such statutes and not by the operator's mental capacity.[n1] The plain intent of the law is that no one shall operate a motor vehicle on the highways who is incapable of understanding and observing these rules, and the courts may not invite the mentally deficient to operate vehicles capable of doing great damage when improperly handled, by fixing a rule absolving them from observation of the statutory mandate.[n2]

FOOTNOTES:

n1 Kuhn v. Zabotsky, 9 Ohio St. 2d 129, 38 Ohio Op. 2d 302, 224 N.E.2d 137 (1967) (mental illness not a defense to a negligence action).

n2 Criez v. Sunset Motor Co., 123 Wash. 604, 213 P. 7, 32 A.L.R. 627 (1923).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]157, 161, 222
West's Key Number Digest, Highways [westkey]197(2)
Mental incapacity as justifying refusal to submit to tests for driving while intoxicated, 76 A.L.R.5th 597

17 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
2. Condition and Status of Driver

8 Am Jur 2d Automobiles and Highway Traffic § 740

§ 740 Youth of operator

Although there is authority that a minor operating a motor vehicle is held to a standard of care consistent with his or her age and experience and not to the same standard of care as an adult,[n1] nevertheless, as a general rule, a minor operating a motor vehicle is to be held to the same standard of care as an adult.[n2] In this regard, while minors are entitled to be judged by standards commensurate with their age, experience, and wisdom when engaged in activities appropriate to their age, experience, and wisdom, it is unfair to the public to permit a minor in the operation of a motor vehicle to observe any other standards of care and conduct than those expected of all others.[n3] In other words, although a minor's conduct is generally not to be judged by adult standard of care, nevertheless where the minor is engaged in dangerous activity normally undertaken only by adults, such as driving a car, no special allowance is made for the minor's limited experience or age and, therefore, the minor is held to adult standard of care.[n4] In particular, where "every person"operating a motor vehicle is required by statute to exercise a requisite degree of care, the age, intelligence, and discretion of a child operating a motor vehicle, and whether such child did or did not possess the intelligence and discretion of an adult, are not proper matters for the jury to consider in determining whether the child exercised that degree of care required by the statute.[n5]

Practice Tip: The rule that a child will be held to an adult standard without any allowance for his or her age when engaging in an activity which is normally one for adults does not apply in a personal injury action in which a four-year-old child has thought to have released the emergency brake of an automobile or placed the vehicle in gear.[n6]

Observation: Even though bicyclists are governed by traffic regulations or rules of the road,[n7] the operation of a bicycle on a public street is not an "adult activity"as will require children participating in the activity to be held to an adult standard of care.[n8] However, minors operating "minibikes"[n9] and motorcycles[n10] are subject to the same standard of care as adults.

In cases where a minor has been charged with willful and wanton misconduct in the operation of a motor vehicle, within the meaning of a guest statute,[n11] the driver's age is an important factor for the jury to consider, and the measure of caution that is required of adults to disprove willful or wanton misconduct is not to be expected of inexperienced children operating motor vehicles.[n12] Such a driver is required to conform to conduct which is reasonably expected from children of like age, intelligence, and experience.[n13]

FOOTNOTES:

n1 Arlan v. Cervini, 478 A.2d 976 (R.I. 1984).

n2 Goad v. Evans, 191 Ill. App. 3d 283, 138 Ill. Dec. 523, 547 N.E.2d 690 (4th Dist. 1989); Cooper v. Rosston, 232 Mont. 186, 756 P.2d 1125 (1988); Cook By and Through Uithoven v. Spinnaker's of Rivergate, Inc., 878 S.W.2d 934 (Tenn. 1994); Summerill v. Shipley, 890 P.2d 1042 (Utah Ct. App. 1995).

n3 Dellwo v. Pearson, 259 Minn. 452, 107 N.W.2d 859, 97 A.L.R.2d 866 (1961).

n4 Cook By and Through Uithoven v. Spinnaker's of Rivergate, Inc., 878 S.W.2d 934 (Tenn. 1994).

n5 Wilson v. Shumate, 296 S.W.2d 72 (Mo. 1956); Daniels v. Evans, 107 N.H. 407, 224 A.2d 63 (1966).

n6 Smedley v. Piazzolla, 59 A.D.2d 940, 399 N.Y.S.2d 460 (2d Dep't 1977).

n7 § 225.

n8 Chu v. Bowers, 275 Ill. App. 3d 861, 212 Ill. Dec. 113, 656 N.E.2d 436 (3d Dist. 1995).

n9 Moore v. Swoboda, 213 Ill. App. 3d 217, 157 Ill. Dec. 37, 571 N.E.2d 1056 (4th Dist. 1991).

n10 Costa v. Hicks, 98 A.D.2d 137, 470 N.Y.S.2d 627 (2d Dep't 1983); Westfall by Terwilliger v. Kottke, 110 Wis. 2d 86, 328 N.W.2d 481 (1983).

n11 As to guest statutes, see § 550.

n12 Wittmeier v. Post, 78 S.D. 520, 105 N.W.2d 65, 97 A.L.R.2d 853 (1960).

n13 Wittmeier v. Post, 78 S.D. 520, 105 N.W.2d 65, 97 A.L.R.2d 853 (1960).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]157, 161, 222
Standard for judging conduct of minor motorist charged with gross negligence, recklessness, wilful or wanton misconduct, or the like, under guest statute or similar common-law rule, 97 A.L.R.2d 861
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127

18 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
2. Condition and Status of Driver

8 Am Jur 2d Automobiles and Highway Traffic § 741

§ 741 Student driver

A person learning to operate a motor vehicle under the tutelage of another is liable for injuries resulting from his or her own negligence in the operation of such vehicle.[n1] An operator of a motor vehicle is not relieved from liability for such negligence because of reliance upon the promise of his or her instructor to render assistance in avoiding danger.[n2]

FOOTNOTES:

n1 Goff v. Hubbard, 217 Ky. 729, 290 S.W. 696, 50 A.L.R. 1382 (1927).

n2 Goff v. Hubbard, 217 Ky. 729, 290 S.W. 696, 50 A.L.R. 1382 (1927).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]157, 161, 222

19 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 742

§ 742 Generally

Although generally the owner or operator of a motor vehicle has no absolute duty to other users of the highway to see that the vehicle is in a safe and proper condition, he or she is required to exercise reasonable care to see that the vehicle is in such condition, and is generally held liable for injuries shown to have resulted from the operation of the vehicle which the owner/operator knew, or in the exercise of reasonable care ought to have known, was in such an unsafe condition as to endanger others.[n1] The owner or operator of a motor vehicle must exercise reasonable care in the inspection of the vehicle to discover any defects that may prevent its proper operation, and is chargeable with knowledge of any defects which such inspection would disclose.[n2] Where the operator or person in charge of the vehicle has done all that would be expected of an ordinarily prudent person, and failure of his or her equipment occurs, that is not reasonably foreseen, he or she is not liable for negligence.[n3]

Observation: An automobile owner or lessor is under no duty to maintain a vehicle with which it is safe to collide.[n4]

The law not only imposes upon a motorist the duty toward others using the highway, to exercise reasonable care to keep his or her vehicle in a safe and proper condition, but will hold the motorist negligent in operating a vehicle known to be in an unsafe condition and thus bar him or her from recovery, or diminish the motorist's recovery, for injuries incurred in a collision where the defective condition of the motorist's vehicle proximately contributed to the cause of the accident.[n5]

FOOTNOTES:

n1 Prosser v. Glass, 481 So. 2d 365 (Ala. 1985) (an operator of a motor vehicle on a public highway's has the duty to see that the automobile is in reasonably good condition so as not to present a source of danger to others, and to fulfill such duty, must exercise reasonable care in inspection and operation); Bourke v. Watts, 223 Neb. 511, 391 N.W.2d 552 (1986) (generally, the operator of a motor vehicle is only liable for defects in the vehicle of which he or she was aware or, in exercise of due care, should have been aware); Thomas v. Deloatch, 45 N.C. App. 322, 263 S.E.2d 615 (1980) (it is the duty of a person operating a car to see to it that it is in reasonably good condition and properly equipped so that it does not become a source of danger for the occupants or other travelers).

n2 Fouts v. Builders Transport, Inc., 222 Ga. App. 568, 474 S.E.2d 746 (1996).

n3 Trione v. Mike Wallen Standard, Inc., 902 P.2d 454 (Colo. Ct. App. 1995).

n4 Beattie v. Lindelof, 262 Ill. App. 3d 372, 199 Ill. Dec. 236, 633 N.E.2d 1227 (1st Dist. 1994).

n5 Yance v. Hoskins, 225 Iowa 1108, 281 N.W. 489, 118 A.L.R. 1186 (1938).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606

West's Key Number Digest, Automobiles [westkey]148, 149, 156, 201(3)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 889 (Allegation -- Defective or improper equipment -- General form)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 895 (Allegation -- Windshield -- Not equipped with safety glass)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 896 (Allegation -- Windshield wiper -- Not in operation)

20 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 743

§ 743 Tires

Although the owner of a motor vehicle does not owe to users of the highway the absolute duty to have the tires on his or her vehicle in a safe and proper condition, the owner is, nevertheless, bound to use reasonable care to see that the tires are in proper condition for operation on the highway, and may be held liable for a collision or accident resulting from failing to have the vehicle equipped with tires in reasonably safe and proper condition.[n1] This rule has been applied in a number of cases involving a collision with a moving vehicle[n2] or a standing vehicle.[n3] However, even though one is operating a motor vehicle on the public highways with defective tires, this does not render him or her liable for injuries sustained in a collision with another vehicle, where there was no causal connection between the accident and the condition of the tires.[n4]

The determinative factor in rendering the owner or operator of a motor vehicle liable for injuries sustained in an accident as a result of the defective condition of the tires is usually the knowledge of the owner or operator, express or implied, of the condition of the tires.[n5] Where it is not shown that the owner or operator had knowledge, or should have had knowledge, of the defective condition of the tires, the resulting accident is considered to have been unavoidable and he or she cannot ordinarily be held liable therefor.[n6] However, even if the operator is not chargeable with knowledge of the defective condition of a tire, he or she may, nevertheless, be liable where a blowout from a defective tire merely activates a condition created by prior negligence on the part of the operator.[n7]

Generally, the blowout of a tire, caused not by any defect in the tire but by the striking of a nail, spike, or other object, and resulting in an accident, is an unavoidable accident for which the owner or operator of the vehicle may not be held liable.[n8]

Even though under the circumstances the owner or operator of a motor vehicle is not chargeable with negligence with respect to the failure or blowout of a tire, he or she is not relieved from liability for an accident resulting from his or her negligent operation of the vehicle after the tire failure.[n9] However, in most cases under such circumstances, the sudden emergency rule is applicable,[n10] so that the operator of the motor vehicle is not held to such accuracy of judgment and decision in the operation of the vehicle as would be the case under normal driving conditions or nonemergency circumstances.[n11] The fact of the emergency confronting the operator by the failure of the tire does not excuse him or her from the further exercise of all care, but it requires that the operator's conduct should be measured only by the standard of what would be reasonably expected of the usual motorist when faced with a similar emergency.[n12] However, where the situation or peril of the emergency itself arises by reason of the operator's own antecedent negligence, the emergency rule cannot be invoked by the operator.[n13]

FOOTNOTES:

n1 Slagle v. Singer, 419 S.W.2d 9 (Mo. 1967); Scott v. Clark, 261 N.C. 102, 134 S.E.2d 181 (1964).

n2 Sherman v. Frank, 63 Cal. App. 2d 278, 146 P.2d 704 (2d Dist. 1944); Dostie v. Lewiston Crushed Stone Co., 136 Me. 284, 8 A.2d 393 (1939).

n3 Zarrillo v. Stone, 317 Mass. 510, 58 N.E.2d 848 (1945); Spates v. Gillespie, 191 Minn. 1, 252 N.W. 835 (1934).

n4 Burwell v. Siddens, 238 Iowa 645, 25 N.W.2d 864 (1947).

n5 Aetna Cas. & Sur. Co. v. Condict, 417 F. Supp. 63 (S.D. Miss. 1976); Otto v. Sellnow, 233 Minn. 215, 46 N.W.2d 641, 24 A.L.R.2d 152 (1951) (holding the defendant not liable where the tires had been used only 3,000 or 4,000 miles, and the mechanic who towed the car to the garage testified that they showed little evidence of wear and seemed in good outward appearance).

n6 Otto v. Sellnow, 233 Minn. 215, 46 N.W.2d 641, 24 A.L.R.2d 152 (1951); Lively v. Atchley, 36 Tenn. App. 399, 256 S.W.2d 58 (1952).

n7 Amerco Marketing Co. of Memphis, Inc. v. Myers, 494 F.2d 904 (6th Cir. 1974) (applying Kentucky law and holding that in a wrongful death action resulting from a head-on collision, the blowout was not the superseding cause of the accident where the jury could reasonably have found that the blowout merely activated the dangerous condition created by the negligent failure of the agents of the defendant to install a trailer hitch properly).

n8 Bonacci v. Cerra, 134 Neb. 476, 279 N.W. 173 (1938).

n9 Lloyd v. Mowery, 158 Wash. 341, 290 P. 710 (1930).

n10 § 424.

n11 Crupe v. Spicuzza, 86 S.W.2d 347 (Mo. Ct. App. 1935).

n12 Crupe v. Spicuzza, 86 S.W.2d 347 (Mo. Ct. App. 1935); Ingle v. Cassady, 208 N.C. 497, 181 S.E. 562 (1935).

n13 Howse v. Weinrich, 133 Kan. 132, 298 P. 766 (1931).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156, 201(3)
Liability of motor vehicle owner or operator for accident occasioned by blowout or other failure of tire, 24 A.L.R.2d 161
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 405 (Complaint, petition, or declaration -- Defective tires -- Defect known to owner -- Head-on collision after blowout)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 649 (Complaint, petition, or declaration -- Tire -- Negligence in manufacture -- Failure to inspect -- Exploded while being mounted -- Against manufacturer -- By employee of purchaser)

21 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 744

§ 744 Steering apparatus

The owner or operator of a motor vehicle is guilty of negligence in operating or permitting the operation of the vehicle and is liable for the injury or damage resulting from an accident caused by the defect in the steering apparatus where such owner or operator knows that the steering apparatus is in a defective condition,[n1] or should know of such defective condition by the exercise of reasonable care in inspecting the vehicle.[n2] On the question whether the defective condition of the steering apparatus was the proximate cause of the accident, the evidence in such cases is usually conflicting, and therefore the question is ordinarily one of fact for the jury.[n3]

The owner or operator of a motor vehicle is not liable for injuries or damages suffered in an accident caused by a defect in the steering apparatus, where he or she did not know of its existence, and would not have known by the use of reasonable care in inspecting the vehicle.[n4] Where, without knowledge of any defect in the steering apparatus which could be ascertained by a reasonably careful inspection, an owner or operator of a motor vehicle has exercised ordinary care as required by common law, or the higher degree of care required by some statutes, and has nevertheless inflicted injury on another, the accident and such injury are said to be inevitable or unavoidable and no liability attaches.[n5] The sudden-emergency doctrine[n6] is applicable in such cases in measuring the conduct of the operator after the failure or breaking of the steering apparatus, and he or she is required only to exercise that care which a reasonably prudent person would have exercised under similar circumstances.[n7] However, where the emergency arises from a situation created at least in part by the operator's own negligence, the emergency rule is not applicable and the breaking of the steering apparatus would be no defense.[n8]

FOOTNOTES:

n1 Penton v. Favors, 262 Ala. 262, 78 So. 2d 278 (1955).

n2 Harvey v. Corr, 91 R.I. 1, 160 A.2d 355 (1960).

n3 Burnett v. Avera, 203 So. 2d 788 (Miss. 1967).

n4 Burnett v. Avera, 203 So. 2d 788 (Miss. 1967).

n5 Bewley v. Western Creameries, 1936 OK 350, 177 Okla. 132, 57 P.2d 859 (1936).

n6 § 424.

n7 Watkins v. Holmes, 93 N.H. 53, 35 A.2d 395 (1943).

n8 Interstate Veneer Co. v. Edwards, 191 Va. 107, 60 S.E.2d 4, 23 A.L.R.2d 532 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369,

371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156, 201(3)
Liability of owner or operator of motor vehicle for accident resulting from alleged breaking of or defect in steering mechanism, 23 A.L.R.2d 539
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 406 (Complaint, petition, or declaration -- Defective steering apparatus -- Defect known to owner -- Head-on collision)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 636 (Complaint, petition, or declaration -- Steering mechanism -- Negligence in installation -- Failure to inspect -- Breach of warranty of fitness -- Ran off highway into guardrail -- Against manufacturer and dealer -- By purchaser)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 894 (Allegation -- Steering apparatus -- Defective)

22 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
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3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 745

§ 745 Rear-view mirror

A breach of a statute requiring a motor vehicle to be equipped with a rear-view mirror has been held to be negligence per se which may render the guilty party liable to one injured as a result of such violation.[n1] However, the failure to have a motor vehicle equipped with the rear-vision mirror required by statute is relevant to the question of liability only where the absence of such a mirror operates as a proximate cause of the injury or damage complained of.[n2] Likewise, in order for the absence of a rear-view mirror to constitute negligence by the plaintiff, barring or diminishing the plaintiff's recovery, such absence must have been a proximate cause of the plaintiff's injury or damage.[n3]

The absence or inadequacy of a rear-view mirror on a motor vehicle has been considered a relevant circumstance on the issue of negligence, in a number of cases where vehicles traveling in the same direction collided when one passed the other or when the leading vehicle suddenly stopped or turned.[n4] The absence or inadequacy of a rear-view mirror required by statute is also a relevant consideration where the complaint is that the operator of a motor vehicle backed or moved it without looking behind, and thereby injured another.[n5]

Where a truck is planned and intended to attract children to make purchases from it, equipping the vehicle in such a way that an inadequate mirror reveals to the driver only the central third of the bumper constitutes negligence.[n6]

FOOTNOTES:

n1 Pacific Greyhound Lines v. Alabam Freight Lines, 55 N.M. 357, 233 P.2d 1044, 27 A.L.R.2d 1036 (1951).

n2 Walters v. U S, 110 F. Supp. 631 (D. Guam 1953).

n3 Farr v. Whitney, 260 Mass. 193, 156 N.E. 863 (1927).

n4 Hawley v. Rivolta, 131 Conn. 540, 41 A.2d 104 (1945); Adkins v. Minton, 151 W. Va. 229, 151 S.E.2d 295 (1966).

n5 Rountree v. Fountain, 203 N.C. 381, 166 S.E. 329 (1932).

n6 Menchaca v. Helms Bakeries, Inc., 68 Cal. 2d 535, 67 Cal. Rptr. 775, 439 P.2d 903 (1968).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156

Comment Note. -- Effect of violation of safety equipment statute as establishing negligence in automobile accident litigation, 38 A.L.R.3d 530
Liability for failure to provide motor vehicle with adequate rearview mirror, 27 A.L.R.2d 1040

23 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 746

§ 746 Muffler; use of muffler "cutout"

The defective condition of a motor vehicle's muffler, or the use of a "cutout"device for the muffler, may have a bearing on the question of the driver's negligence, as where the ability of the driver or others in the motor vehicle to hear is affected by such defective condition or the use of the "cutout."[n1] Many jurisdictions have enacted statutes establishing requirements for mufflers,[n2] the violation of which, by reason of the inadequacy of the muffler or the use of a cutout, has been held to constitute negligence per se.[n3] However, where such negligence is relied upon either as a ground for recovery for an injury or as the defense, in such an action, or as negligence by the plaintiff barring or diminishing his or her recovery, there must also appear some causal connection between such violation and the accident.[n4]

Some statutes relating to mufflers provide that a violation of their provisions is not negligence per se but prima facie evidence of negligence only.[n5]

Irrespective of any statute setting forth specifications as to mufflers, where the owner or operator of a motor vehicle has knowledge of the defective condition of the muffler and recognizes the danger of operating the vehicle in that condition, such operation constitutes negligence which will render him or her liable for injuries proximately resulting therefrom.[n6]

FOOTNOTES:

n1 Hines v. Foreman, 243 S.W. 479 (Tex. Comm'n App. 1922).

n2 § 201.

n3 Hines v. Foreman, 243 S.W. 479 (Tex. Comm'n App. 1922).

n4 Hines v. Foreman, 243 S.W. 479 (Tex. Comm'n App. 1922).

n5 Lynghaug v. Payte, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956).

n6 Lynghaug v. Payte, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156
Public regulation requiring mufflers or similar noise-preventing devices on motor vehicles, aircraft, or boats, 49 A.L.R.2d 1202

24 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 747

§ 747 Dimensions and weight of vehicle

The operator of a motor vehicle must take into consideration the dimensions and weight of the vehicle as it affects its operation and the safety of others using the public highways; thus, in the case of a motor vehicle of unusual width, the operator is bound to know the extra space he or she needs to clear vehicles approaching on a narrow way, and he or she should keep as far to the right as possible.[n1] Where the motor vehicle is of unusual length, greater care and caution should be exercised by the driver in making a turn at an intersection.[n2] However, this does not mean that a higher degree of care is required of the operators of ponderous vehicles than of other operators of other types, since the degree of care required of all operators of all types of motor vehicles, other than public carriers, is that of ordinary care, although the size, type, and kind of vehicle are factors which may be taken into consideration as having a direct bearing upon what precautions must be taken to attain the standard of ordinary care required in the circumstances of the particular case.[n3]

The operator of a motor vehicle of unusual weight must take into consideration the weight of the vehicle in connection with his or her speed in approaching a place of danger,[n4] and may be held guilty of negligence in not having his or her vehicle under control so that it can be stopped in time to avoid a collision.[n5] In some jurisdictions, statutes specifically limit the speed of motor vehicles in excess of a specified weight, and the violation of such a statute has been held to be negligence per se.[n6]

Differing views have been expressed as to whether the violation of a regulation imposing size or weight restrictions on motor vehicles constitutes negligence per se, or merely evidence of negligence, where such violation is asserted as a basis for tort liability for injury to another or for damage to private property, the courts apparently applying the rule of the particular jurisdiction respecting the effect of regulatory violations generally.[n7]

FOOTNOTES:

n1 State ex rel. State Highway Commission v. Beaty, 505 S.W.2d 147 (Mo. Ct. App. 1974).

n2 Abel v. Gulf Refining Co., 143 So. 82 (La. Ct. App. 2d Cir. 1932).

n3 Lemons v. Maryland Chicken Processors, Inc., 223 Md. 362, 164 A.2d 703 (1960).

n4 Central Greyhound Lines v. Bonded Freightways, 193 Misc. 320, 82 N.Y.S.2d 671 (Sup 1948).

n5 Van Patten v. Chicago, R.I. & P.R. Co., 251 Iowa 1221, 102 N.W.2d 898 (1960); Kent v. Freeman, 48 Tenn. App. 218, 345 S.W.2d 252 (1960).

n6 Lewis v. Franklin, 161 Cal. App. 2d 177, 326 P.2d 625 (2d Dist. 1958).

n7 Marmor v. Marmor, 409 S.W.2d 526 (Ky. 1966) (evidence of negligence); Byers v. Standard Concrete Products Co., 268 N.C. 518, 151 S.E.2d 38, 21 A.L.R.3d 983 (1966) (jury questions arose whether the operation of the defendant's 20-ton truck on a bridge with 10-ton weight limit was negligence per se).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]156
Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 A.L.R.3d 989

25 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 748

§ 748 Side or clearance lights

The operation of motor vehicles with more than normal width on the public highways without side or clearance lights marking the extreme left side of the body, as required by statute, may constitute negligence rendering the driver liable for injuries proximately resulting therefrom.[n1] The failure to display clearance or side lights may constitute negligence as to a driver who, unaware of the presence of a dark vehicle crossing the road, drives into its side.[n2] Moreover, the failure of a motorist to display clearance or side lights on his or her vehicle as required by statute constitutes negligence which may bar or diminish recovery by such motorist.[n3]

FOOTNOTES:

n1 Dement v. Barnette, 375 So. 2d 202 (La. Ct. App. 2d Cir. 1979), writ denied, 376 So. 2d 1272 (La. 1979) and writ denied, 376 So. 2d 1272 (La. 1979).

n2 Murry v. Salley, 35 So. 2d 820 (La. Ct. App. 2d Cir. 1948).

n3 Labrecque v. American News Co., 115 Vt. 305, 58 A.2d 873 (1948).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 149, 156

26 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 749

§ 749 Objects or load projecting from vehicle; load lights

In the absence of any statutory provision prescribing the manner in which goods are to be loaded on motor vehicles for their transportation along a highway, the fact that they project beyond the side or rear of the vehicle is not ordinarily negligence per se.[n1] However, in operating a motor vehicle on the public highways with objects projecting from the vehicle, the driver is required to exercise that care which a prudent individual would exercise in like circumstances, so as not to cause injury to others.[n2] The failure of the driver of a vehicle so loaded to take into consideration the objects projecting from his or her vehicle while making a turn,[n3] or in swerving[n4] or in passing another traveler,[n5] constitutes actionable negligence.

The failure to display lights at the end of a load which projects from the side[n6] or rear of a vehicle[n7] may constitute negligence which will render the driver liable for injuries proximately resulting therefrom. Statutes have been widely adopted requiring warning devices to be displayed on protruding loads, and a violation of such a statute, according to some courts, constitutes negligence per se,[n8] or, in other courts, an evidence of negligence,[n9] or prima facie evidence of negligence.[n10] Also, even though the operator of a vehicle with a load protruding from its side may have displayed warning devices, such as lights or flags, on the protruding load in compliance with a statute, under certain circumstances the operator may be under a duty to display warning devices in addition to those prescribed by the statute; that is, a minimal compliance with the statute may be insufficient.[n11]

A motorist is not necessarily negligent in failing to observe at nighttime an object projecting from the rear of a vehicle ahead, where such object projects above the rays of his or her headlights.[n12]

Recovery has been permitted against the driver and owner of a truck for damages sustained by the driver of a car when a part of the truck's load struck an overhead railroad bridge and fell upon the car.[n13]

FOOTNOTES:

n1 Ryder's Adm'r v. Hayward, 98 Vt. 106, 126 A. 491, 36 A.L.R. 453 (1924).

n2 Peterson v. Salt River Project Agr. Imp. & Power Dist., 96 Ariz. 1, 391 P.2d 567 (1964).

n3 Callahan v. David M. Oltarsh Iron Works, 112 N.Y.S. 1102 (App. Term 1908).

n4 Denny v. Strauss & Co., 109 N.Y.S. 26 (App. Term 1908).

n5 Boyle v. Bunting Hardware Co., 238 S.W. 155 (Mo. Ct. App. 1922).

n6 Moore v. Nisley, 133 Neb. 474, 275 N.W. 827 (1937).

n7 O'Neal v. Kelly Pipe Co., 76 Cal. App. 2d 577, 173 P.2d 685 (2d Dist. 1946).

n8 Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641, 21 A.L.R.3d 360 (1966).

n9 Hobbs-Western Co. v. Carmical, 192 Ark. 59, 91 S.W.2d 605 (1936); LaFleur v. Poesch, 126 Neb. 263, 252 N.W. 902 (1934).

n10 O'Neal v. Kelly Pipe Co., 76 Cal. App. 2d 577, 173 P.2d 685 (2d Dist. 1946).

n11 Curtis v. Q. R. S. Neon Corp., 147 Cal. App. 2d 186, 305 P.2d 294 (2d Dist. 1956).

n12 Deardorf v. Shell Petroleum Co., 136 Kan. 95, 12 P.2d 1103 (1932).

n13 Williams v. Vinson, 104 Ga. App. 886, 123 S.E.2d 281, 91 A.L.R.2d 889 (1961).

SUPPLEMENT:

Cases

Truck driver and owner of truck could not be liable on motorist's negligence claim arising when wheel fell off truck and struck motorist's car, since driver inspected the wheels properly and could not have detected problem that caused the accident; there was evidence that wheel flew off the truck because the lug nuts on the tires were stripped, and that driver had no way of knowing about the stripped lug nuts, that driver would not have detected the problem during his routine pre-trip inspection of the truck. Drejka v. Hitchens Tire Service Inc., 15 A.3d 1221 (Del. 2010).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115

Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]149, 156, 180
Liability for injury or damage caused by collision with portion of load projecting beyond rear or side of motor vehicle or trailer, 21 A.L.R.3d 371
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 139 (Complaint, petition, or declaration -- Automobile struck by object protruding from truck -- Negligence in loading truck and making turn -- Personal injuries and property damage)

27 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 750

§ 750 Objects or load falling from vehicle

A driver may be liable for damages caused by objects falling from his or her vehicle, under certain circumstances.[n1] Thus, the defendants have been deemed liable under a state statute for damages caused by a defect in the chain used to secure a 10,000-pound spool which became dislodged from the defendants' trailer and struck another vehicle, where the defendants had the responsibility to undertake every precaution to insure that the spool would remain securely fastened during transportation but utilized a chain which proved to be defective and which created an unreasonable risk of injury which was at least partially responsible for the damage that occurred, and where the defendants could not show that the fault of a third party in producing the defect was substantially the cause of the accident.[n2] Likewise, in an action for damages resulting when the plaintiff's car was struck by a load of logs which had fallen from the defendant's truck during a 90-degree turn, the record has been deemed to contain sufficient evidence that the defendant's truck was operated in an unsafe negligent manner because of excessive speed, and while the testimony that the speed was "too fast,"standing alone, would be insufficient to prove negligence, such testimony would be properly admitted when coupled with other evidence of excessive speed.[n3]

FOOTNOTES:

n1 Cervantes v. Skelton, 94 N.M. 402, 611 P.2d 225 (Ct. App. 1980).

n2 Kasperski v. Patterson Services, Inc., 371 So. 2d 1254 (La. Ct. App. 3d Cir. 1979), writ denied, 373 So. 2d 530 (La. 1979).

n3 Cervantes v. Skelton, 94 N.M. 402, 611 P.2d 225 (Ct. App. 1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156, 180

28 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 751

§ 751 Trailer attached to vehicle

A motorist using a vehicle trailer on the public highways is required to exercise reasonable care, both as to the equipment of the trailer and as to the operation of the vehicle to which the equipment is attached.[n1] Such motorist must comply with statutory requirements as to the display of lights upon trailers, and failure to do so constitutes negligence per se and will render him or her liable for injuries proximately resulting from the absence of such lights.[n2] More particularly, a defendant driver's violation of the vehicle and traffic laws by driving with a trailer that has no operational signals or taillights is negligence per se if such violation is the proximate cause of an accident with a motorist occurring when the defendant driver made a left turn without signaling while the motorist was trying to pass the driver.[n3]

The duty owed by a driver includes the duty to know the machine that he or she is operating and the size of the trailer and, thus, to ascertain whether he or she has enough clearance to pass under an obstruction.[n4]

The owner of a motor vehicle to which a trailer is attached is generally held liable for loss or injury proximately by reason of a defect in the trailer fastening or hitch, resulting in the trailer breaking loose and becoming detached from the motor vehicle.[n5] Some statutes require certain safety devices in connection with the use of trailers, and liability for resulting damages may be predicated upon the failure to comply with such requirements.[n6] However, the owner of a motor vehicle with a trailer attached is generally held not liable for loss or injury inflicted by reason of a defect in the trailer fastening or hitch resulting in the trailer breaking loose, where the owner did not have knowledge of such defect, and would not have discovered it by reasonable inspection.[n7]

FOOTNOTES:

n1 Peterson v. Salt River Project Agr. Imp. & Power Dist., 96 Ariz. 1, 391 P.2d 567 (1964); Richard v. Keal Driveaway Co., 3 A.D.2d 636, 158 N.Y.S.2d 65 (3d Dep't 1956).

The owner and operator of a tractor-trailer could pursue a third-party contribution claim against the owner of the trailer portion of the other tractor-trailer involved in the collision, in a personal injury action brought by a passenger, on the theory that the trailer owner was vicariously liable pursuant to the vehicle and traffic law's permissive user provision, even though the injured passenger had not sued the trailer owner and was legally foreclosed from doing so at a later point. Mowczan v. Bacon, 92 N.Y.2d 281, 680 N.Y.S.2d 431, 703 N.E.2d 242 (1998).

As to swinging, swaying, or jackknifing of trailer, see § 752.

n2 Strahan v. Davis, 872 S.W.2d 828 (Tex. App. Waco 1994), writ denied, (Nov. 22, 1994) (defendant was towing trailer that did not have the required two taillights due to failure of one light).

n3 Koziol v. Wright, 26 A.D.3d 793, 809 N.Y.S.2d 350 (4th Dep't 2006) (stating that a defendant's unexcused violation of the vehicle and traffic law constitutes negligence per se).

n4 Theriot v. Bergeron, 939 So. 2d 379 (La. Ct. App. 1st Cir. 2006).

n5 Cheramie v. Brunet, 510 So. 2d 700 (La. Ct. App. 1st Cir. 1987), writ denied, 513 So. 2d 1209 (La. 1987) and writ denied, 513 So. 2d 1215 (La. 1987).

n6 Barango v. E. L. Hedstrom Coal Co., 12 Ill. App. 2d 118, 138 N.E.2d 829 (1st Dist. 1956); Bullock v. Fairburn, 353 So. 2d 759 (Miss. 1977).

n7 Appleyard v. Ray Co., 115 Vt. 519, 66 A.2d 10 (1949).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173

Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]146 to 148, 156, 174(2), 174(4)
Automobiles: Liability for accident arising from escape of trailer, 43 A.L.R.3d 725

29 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 752

§ 752 Swaying or swinging of vehicle or trailer; "jackknifing"

The owner or operator of a motor vehicle may be held liable for injuries or damages resulting from a collision with another vehicle traveling in the same [n1] or opposite direction [n2] and proximately caused by the swinging or swaying of the owner's or operator's vehicle or trailer. [n3] Also, the owner or operator of a motor vehicle may be held liable for damages to property located on or above a sidewalk, resulting from the swaying or swinging of the body of the vehicle over the curb line. [n4]

The question of liability for an accident resulting from the "jackknifing"of trailers or the like, has been discussed in many cases. [n5] A "jackknife"occurs when the trailer swings around and travels ahead of the truck. [n6] In some cases involving collisions between vehicles approaching from opposite directions, the courts have approved submission to the trier of fact of the issue of the primary negligence of the jackknifing vehicle's driver, and have sustained a verdict finding the driver guilty of negligence. [n7] In other cases the driver of the jackknifing vehicle has been held, under the circumstances, not guilty of negligence [n8] or, in instances where the owner of such vehicle was the plaintiff, of negligence which might bar or diminish his or her recovery. [n9] Where the defendant's vehicle was traveling in the same direction as the plaintiff's jackknifing vehicle, although the accident was between the plaintiff's vehicle and a vehicle approaching from the opposite direction, a finding of the plaintiff's negligence has been held not sustained by the evidence. [n10]

In a case involving a collision between a jackknifing vehicle and a parked or standing vehicle, the question of the primary negligence of the driver of the jackknifing vehicle has been held to be one for the jury, [n11] although in another case the court has sustained a verdict finding such driver guilty of negligence which was the proximate cause of the collision. [n12]

In some cases involving a collision between a motorist and a jackknifed vehicle obstructing the highway, the courts have sustained a verdict finding the owner or operator of the jackknifed vehicle guilty of actionable negligence. [n13] However, under the circumstances of several other cases, the owner or operator of the jackknifed vehicle has been held not guilty of negligence. [n14]

FOOTNOTES:

n1 Kopp v. Ryckman, 238 Minn. 342, 57 N.W.2d 31 (1953).

n2 Overman v. Franklin County Oil Co., 238 S.W.2d 342 (Mo. 1951) (where a verdict against the driver of a trailer truck driven at a speed of 50 to 60 m.p.h. over a rough road, for injury to occupants of a car struck after safely passing the tractor section by the trailer bouncing and swaying in rounding a curve, was sustained).

n3 As to cases involving the skidding of the wheels themselves, projecting the entire vehicle or trailer into another vehicle, see § 731.

n4 Shields v. Chevrolet Truck, 195 S.C. 437, 12 S.E.2d 19 (1940).

n5 Sims v. Phillips, 164 Cal. App. 2d 793, 331 P.2d 174 (3d Dist. 1958); McBeth v. Merchants Motor Freight, Inc., 248 Iowa 320, 79 N.W.2d 303 (1956); Bramer v. Ames, 338 Mich. 226, 61 N.W.2d 160, 47 A.L.R.2d 112 (1953).

n6 McBeth v. Merchants Motor Freight, Inc., 248 Iowa 320, 79 N.W.2d 303 (1956).

n7 Bramer v. Ames, 338 Mich. 226, 61 N.W.2d 160, 47 A.L.R.2d 112 (1953); Queen City Coach Co. v. Burrell, 241 N.C. 432, 85 S.E.2d 688 (1955).

n8 Sims v. Phillips, 164 Cal. App. 2d 793, 331 P.2d 174 (3d Dist. 1958).

n9 Merchants Motor Freight v. Downing, 227 F.2d 247 (8th Cir. 1955).

n10 Gay v. U. S. Fidelity & Guar. Co., 76 So. 2d 60 (La. Ct. App. 2d Cir. 1954).

n11 Durham v. McLean Trucking Co., 247 N.C. 204, 100 S.E.2d 348, 68 A.L.R.2d 349 (1957).

n12 McBeth v. Merchants Motor Freight, Inc., 248 Iowa 320, 79 N.W.2d 303 (1956).

n13 Johnson v. Overland Transp. Co., 227 Iowa 487, 288 N.W. 601 (1939); Berndt v. Pacific Transport Co., 38 Wash. 2d 760, 231 P.2d 643 (1951).

n14 Denver-Los Angeles Trucking Co. v. Ward, 114 Colo. 348, 164 P.2d 730 (1945); Rich v. Petersen Truck Lines, 357 Pa. 318, 53 A.2d 725 (1947).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115

Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156
Liability for accident from "jackknifing"of trailers or the like, 68 A.L.R.2d 353
Liability for collision due to swaying or swinging of motor vehicle or trailer, 1 A.L.R.2d 167
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379

30 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
b. Brakes

8 Am Jur 2d Automobiles and Highway Traffic § 753

§ 753 Generally

While the owner of a motor vehicle does not, at common law, owe an absolute duty to other users of the highway to keep his or her brakes in a safe and proper condition, the owner is bound to use reasonable care to see that they are in such condition, and generally, he or she may be held liable for an injury which is shown to have resulted from a failure to exercise such care.[n1] The automobile owner's duty to exercise reasonable care to maintain brakes is nondelegable, as a car with defective brakes poses a grave risk of serious bodily harm or death.[n2]

In a number of cases, the owner or operator of a motor vehicle with defective or inadequate brakes, being used on a public highway, has been held guilty of negligence under the circumstances, so as to render him or her liable for personal injuries proximately resulting from a collision with another moving vehicle,[n3] or a standing or stalled vehicle,[n4] or a building.[n5]

Apart from the view that a violation of a statutory requirement as to brakes constitutes negligence per se,[n6] the mere failure of the brakes to function properly is not conclusive of the negligence of the owner or operator of a motor vehicle,[n7] but only establishes a prima facie case which he or she may defend by showing proper inspection and a sudden failure without warning.[n8] However, the fact that the brakes gave way without warning does not relieve the operator of the motor vehicle of the duty to exercise such care as a reasonably prudent and capable driver would use under the unusual circumstances, or does not absolve the operator from liability for failure to exercise such care, although one placed in a position of sudden emergency or peril other than by his or her own negligence is not held to the same degree of care and prudence as one who has time for thought and reflection.[n9]

Where the owner or operator of a motor vehicle knows the defective condition of his or her brakes, it is the owner/operator's duty to drive cautiously, and at a rate of speed that will enable him or her to bring the vehicle to a stop, in the vehicle's current condition, before reaching a zone of danger.[n10] Driving a motor vehicle with knowledge of the defective condition of the brakes is evidence of negligence.[n11]

The mere fact that the motor vehicle inflicting or sustaining damages in an accident was equipped with defective brakes will subject the owner or operator to liability only if the defect has causal connection with the injury for which the suit is brought.[n12] Accordingly, where there is nothing to indicate that the vehicle could have stopped in time to avoid the collision even if the brakes had been adequate and the vehicle had been traveling within the speed limit, the owner or operator may not be held liable merely because of the defective brakes.[n13]

FOOTNOTES:

n1 Cantrell v. U-Haul Co. of Georgia, Inc., 224 Ga. App. 671, 482 S.E.2d 413 (1997) (a motor vehicle owner who permits another to operate the vehicle when the owner knows or should know that the brakes are defective is liable for injuries proximately caused by the defective brakes).

As to the failure to maintain adequate brakes, causing a parked motor vehicle to start moving, see § 923.

n2 Fremont Comp. Ins. Co. v. Hartnett, 19 Cal. App. 4th 669, 23 Cal. Rptr. 2d 567 (2d Dist. 1993).

n3 Marks v. St. Landry Parish, 308 So. 2d 819 (La. Ct. App. 3d Cir. 1975).

n4 Smith v. Finkel, 130 Conn. 354, 34 A.2d 209 (1943); Swope v. Fallen, 413 S.W.2d 82 (Ky. 1967).

n5 Gangi v. Adley Exp. Co., 318 Mass. 762, 63 N.E.2d 897 (1945).

n6 § 755.

n7 Mann v. Knight, 83 N.C. App. 331, 350 S.E.2d 122 (1986).

n8 Cavallaro v. Williams, 392 F. Supp. 102 (E.D. Pa. 1975); Dubuque Area Chamber of Commerce v. Adams, 225 N.W.2d 147 (Iowa 1975); LaBeau v. Buchanan, 306 Minn. 347, 236 N.W.2d 789 (1975).

n9 Gowins v. Merrell, 1975 OK 135, 541 P.2d 857 (Okla. 1975) (where the defendant had driven a bus for 40 minutes to one hour prior to an accident and the brakes worked properly, and he had no prior warning of any defects in the brakes, the plaintiff was not entitled to a directed verdict on the theory that the defendant was responsible for the brake failure; the issue of whether a reasonably prudent person in the defendant's position would have swerved, or applied the emergency brake, was a question of fact for jury).

n10 Puhr v. Chicago & N.W. Ry. Co., 171 Wis. 154, 176 N.W. 767, 14 A.L.R. 1334 (1920).

n11 Comstock v. General Motors Corp., 358 Mich. 163, 99 N.W.2d 627, 78 A.L.R.2d 449 (1959); Phillips v. Delta Motor Lines, Inc., 235 Miss. 1, 108 So. 2d 409 (1959).

n12 Rawlings v. Young, 591 S.W.2d 34 (Mo. Ct. App. E.D. 1979).

n13 Lively v. Atchley, 36 Tenn. App. 399, 256 S.W.2d 58 (1952); Alvarado v. Tucker, 2 Utah 2d 16, 268 P.2d 986 (1954).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156, 201(3)
Automobiles: liability of owner or operator of motor vehicle for injury, death, or property damage resulting from defective brakes, 40 A.L.R.3d 9
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 407, 408, 890 to 892 (Complaint, petition, or declaration -- Allegation of defective brakes)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1593 to 1597 (Instructions as to defective brakes)

31 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
b. Brakes

8 Am Jur 2d Automobiles and Highway Traffic § 754

§ 754 Defective brakes as negligence barring or diminishing recovery by owner or operator

In an action to recover damages for injuries sustained in a motor vehicle accident, the plaintiff is not barred from recovery, nor is his or her recovery diminished, by reason of the condition of the brakes unless it is established that they were in fact defective.[n1] Where it is established that the plaintiff's brakes were defective, this is an important factor in judging the presence of negligence on the part of the owner or operator.[n2] However, the plaintiff will not be barred from recovering, nor will his or her recovery be diminished, unless it is shown that there is a causal connection between such defective condition and the accident.[n3]

FOOTNOTES:

n1 Menefee v. Raisch Imp. Co., 78 Cal. App. 785, 248 P. 1031 (1st Dist. 1926).

n2 Yance v. Hoskins, 225 Iowa 1108, 281 N.W. 489, 118 A.L.R. 1186 (1938).

n3 Yance v. Hoskins, 225 Iowa 1108, 281 N.W. 489, 118 A.L.R. 1186 (1938).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156, 201(3)

32 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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VI. Civil Liability Arising from Operation of Vehicle
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8 Am Jur 2d Automobiles and Highway Traffic § 755

§ 755 Effect of statutory requirements

In most states, there are statutes setting forth specific requirements as to brakes on motor vehicles.[n1] Before a motorist may be charged with negligence by reason of the violation of a statute relating to brakes, it must, first of all, be established as a fact that there was a violation,[n2] and where the violation of a statute containing specific requirements as to brakes is established, most authorities support the view that such violation constitutes negligence per se.[n3] However, some jurisdictions have held that the failure to comply with such regulations may be excused, the courts stating that the violation of a statute relating to brakes, if without legal excuse, constitutes negligence per se.[n4] Under such a view, where the motorist has done all that can be reasonably expected of a person of ordinary prudence to see that his or her vehicle is in proper condition, and an unforeseen failure of the brakes occurs, the motorist is not usually held guilty of negligence as a matter of law.[n5] One jurisdiction has settled upon a rule that, where a party is in violation of an equipment statute, such party is negligent as a matter of law unless such party introduces evidence from which the trier of fact could find that the party was acting as a reasonably prudent person under the circumstances.[n6]

In some jurisdictions, the violation of a statute relating to brakes is merely evidence of negligence or makes only a prima facie case of negligence.[n7] Thus, a motorist's violation of a statute requiring his or her vehicle to be equipped with adequate brakes in good working order and sufficient to control the vehicle at all times does not conclusively establish negligence on his or her part.[n8] The motorist may defend by showing a proper inspection and a sudden failure of the brakes without warning, thus showing that he or she did not know, and was not chargeable with knowledge, of the defective brakes.[n9] On the other hand, the motorist is not excused from liability where it is in fact shown that the motorist had knowledge of the defective condition of his or her brakes,[n10] or that the motorist would have known of their condition if he or she had made reasonable tests.[n11]

Even though the violation of a statutory requirement as to brakes is deemed to constitute negligence per se, it is also necessary for the plaintiff to establish a causal relation between the statutory violation and the injury of which the plaintiff complains. As in other cases, in order for the violation to constitute actionable negligence, it must have been a proximate cause of the plaintiff's injury.[n12]

FOOTNOTES:

n1 § 199.

n2 Beezley v. Spiva, 313 S.W.2d 691 (Mo. 1958).

n3 Hartford Accident and Indemnity Co. v. J.I. Case Co., 625 F. Supp. 1251 (S.D. Ohio 1985), judgment aff'd, 817 F.2d 756 (6th Cir. 1987) (applying Ohio law); Security Timber and Land Co. v. Reed, 398 So. 2d 174 (La. Ct. App. 3d Cir. 1981); Mann v. Knight, 83 N.C. App. 331, 350 S.E.2d 122 (1986).

n4 Maloney v. Rath, 69 Cal. 2d 442, 71 Cal. Rptr. 897, 445 P.2d 513, 40 A.L.R.3d 1 (1968); Albers v. Ottenbacher, 79 S.D. 637, 116 N.W.2d 529 (1962).

n5 Peters v. Rieck, 257 Iowa 12, 131 N.W.2d 529 (1964).

n6 Freund v. DeBuse, 264 Or. 447, 506 P.2d 491 (1973).

n7 Sothoron v. West, 180 Md. 539, 26 A.2d 16 (1942); Landry v. Hubert, 101 Vt. 111, 141 A. 593, 63 A.L.R. 396 (1928).

n8 Brickell v. Boston & M. Transp. Co., 93 N.H. 140, 36 A.2d 622 (1944).

n9 Darnell v. Nance's Creek Farms, 903 F.2d 1404 (11th Cir. 1990) (applying Alabama law).

n10 Lee v. Zaske, 213 Minn. 244, 6 N.W.2d 793 (1942).

n11 Sothoron v. West, 180 Md. 539, 26 A.2d 16 (1942).

n12 Childers v. Ashburn and Gray, Inc., 398 So. 2d 682 (Ala. 1981); Veal v. Davis, 343 S.W.2d 593 (Ky. 1960).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1

Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 156, 201(3)
Comment Note. -- Effect of violation of safety equipment statute as establishing negligence in automobile accident litigation, 38 A.L.R.3d 530
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1594 (Instruction -- Brakes -- Violation of statute regulating brakes)

33 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
c. Lights

8 Am Jur 2d Automobiles and Highway Traffic § 756

§ 756 Generally

Even in the absence of a statute imposing such a duty, reasonable care requires a motorist driving on the highway at night to have his or her vehicle equipped with lights of some kind to enable the motorist to see where he or she is going and to disclose his or her presence to others exercising due care.[n1] However, in most jurisdictions statutes stipulating, in more or less uniform terms, the illumination required on motor vehicles operated on the highway have been adopted.[n2] In a number of cases, the breach of such statutes or regulations has been held to constitute negligence per se, justifying recovery by a plaintiff injured as a proximate result thereof.[n3] However, in some cases this rule has been qualified by stating that an "unexcused"[n4] or a "deliberate"[n5] violation is negligence per se; in other words, some courts have held that where there is evidence showing that a motorist was not chargeable with fault in failing to comply with lighting regulations, he or she may not be held guilty of negligence as a matter of law.[n6] Other courts have held immaterial the absence of fault on the part of a motorist whose failure to comply with regulations requiring motor vehicle lights to be displayed has caused injury to another, such courts ruling that the regulations impose an absolute duty.[n7]

In some other decisions, a violation of statutes or regulations requiring the display of motor vehicle lights has been held merely evidence of negligence,[n8] or prima facie evidence of negligence.[n9]

As in other cases, in order for the violation of a statutory requirement as to lights to constitute actionable negligence, it must have been a proximate cause of the plaintiff's injury.[n10]

The courts have generally recognized that statutes or regulations relating to the display of lights on motor vehicles impose a duty upon a plaintiff, as well as a defendant, the violation of which, in a proper case, constitutes negligence which may bar or diminish recovery by the plaintiff, and in many cases involving claims of such negligence in connection with the lighting of the plaintiff's moving vehicle, a violation of a lighting statute or regulation has been held as amounting to negligence per se.[n11] However, in some cases, the plaintiff's failure to have his or her vehicle equipped with lights meeting the statutory standard has been held as merely evidence, or prima facie evidence, of negligence which may bar or diminish his or her recovery.[n12]

FOOTNOTES:

n1 Whitney v. Douglas, 1957 OK 29, 307 P.2d 154 (Okla. 1957).

As to the absence or insufficiency of lights on parked or standing vehicles, see §§ 906 to 1006.

n2 § 203.

n3 Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981); Beglau v. Albertus, 272 Or. 170, 536 P.2d 1251 (1975); Jensen v. Beaird, 40 Wash. App. 1, 696 P.2d 612 (Div. 2 1985) (statute which required motorcycle to have headlamp lighted whenever it was in motion on highway).

n4 Grover v. Neibauer, 216 Iowa 631, 247 N.W. 298 (1933); Schwartz v. Fletcher, 238 A.D. 554, 265 N.Y.S. 277 (1st Dep't 1933).

n5 Hatch v. Daniels, 96 Vt. 89, 117 A. 105 (1922).

n6 Nelson v. Signal Oil & Gas Co., 10 Cal. App. 2d 448, 51 P.2d 885 (2d Dist. 1935); Price v. Bailey, 265 Ill. App. 358, 1932 WL 2759 (1st Dist. 1932).

N7 Madison v. Morovitz, 122 Conn. 208, 188 A. 665 (1936).

n8 Monroe v. Vassalotti, 340 Mass. 764, 166 N.E.2d 696 (1960); Claypool v. Mohawk Motor, 155 Ohio St. 8, 44 Ohio Op. 27, 97 N.E.2d 32 (1951).

n9 Walker v. Dickerson, 183 Miss. 642, 184 So. 438 (1938).

n10 Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981).

n11 Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981); Loibl v. Niemi, 214 Or. 172, 327 P.2d 786 (1958).

n12 McKee v. Chase, 73 Idaho 491, 253 P.2d 787 (1953); Doris v. Bradley, 76 Ill. App. 3d 890, 32 Ill. Dec. 406, 395 N.E.2d 636 (5th Dist. 1979).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1

Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 149, 156
Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without, or with improper, clearance, load, or similar auxiliary lights, 62 A.L.R.3d 844
Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without or with improper taillights or rear reflectors, 62 A.L.R.3d 771
Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without front lights, or with improper front lights, 62 A.L.R.3d 560
Comment Note. -- Effect of violation of safety equipment statute as establishing negligence in automobile accident litigation, 38 A.L.R.3d 530
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1241 (Answer -- Driving with insufficient lights -- Violation of statute)

34 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
c. Lights

8 Am Jur 2d Automobiles and Highway Traffic § 757

§ 757 Driving with one or both headlights out

Driving a motor vehicle on the highway with both headlights out, at a time when headlights on vehicles are required, will charge the driver with the duty to take extra precautions to avoid collision with approaching vehicles, and the courts have readily sustained findings of liability where the evidence support the conclusion that a motorist's negligence in failing to have the headlights illuminated caused a collision with an approaching vehicle[n1] or a pedestrian.[n2] The function of headlights as a warning to other motorists, rather than as a means of illumination to the driver, is of special importance in the cases involving intersectional collisions between crossing vehicles, and jury verdicts finding liability against the driver of an unlighted motor vehicle which collided with another motorist upon entering an intersection have been frequently sustained.[n3] The absence of headlights on a following vehicle has been of importance in a actions involving a rear-end collision between motor vehicles traveling in the same direction.[n4]

Operating a vehicle at night with only one headlight functioning is negligence per se.[n5] The operation of a motor vehicle with only one headlight has been successfully predicated as a ground for liability, the contention being that the driver of an approaching vehicle is deceived either as to the nature of the vehicle or as to its position on the highway.[n6]

The same principles are applicable with regard to the negligence of a driver in an action wherein he or she is the plaintiff, and where the plaintiff was operating a motor vehicle with no headlights, or only one headlight, illuminated, at a time when headlights were required, such lack of proper illumination contributed to a collision between vehicles traveling in opposite directions and may bar or diminish his or her recovery.[n7] However, driving, either with both headlights or one headlight out, has been held not to preclude or diminish the plaintiff's recovery where such lack of illumination was not a contributing cause of the collision of which the plaintiff complained.[n8] Likewise, with regard to collisions between vehicles traveling in the same direction[n9] or between vehicles at intersections,[n10] the fact that the plaintiff's vehicle was being driven at the time with the headlights out has been held to justify or require a finding of negligence by the plaintiff; but in other cases involving intersectional collisions, the evidence has been held to justify or require the conclusion that the plaintiff was not negligent in this respect or that any such negligence was not a contributory cause of the collision.[n11]

FOOTNOTES:

n1 Martin Parry Corp. v. Berner, 259 Mich. 621, 244 N.W. 180 (1932).

n2 Campbell v. Burns, 512 So. 2d 1341 (Ala. 1987).

n3 Bize v. Boyer, 402 So. 2d 110 (La. Ct. App. 3d Cir. 1981), writ granted, 406 So. 2d 610 (La. 1981) and judgment aff'd, 408 So. 2d 1309 (La. 1982); Oliver v. Harvey, 31 Wash. App. 279, 640 P.2d 1087 (Div. 1 1982).

n4 Dickman v. Hackney, 149 Neb. 367, 31 N.W.2d 232 (1948).

n5 Hiltgen v Sumrall, 47 F.3d 695 (5th Cir. 1995) (applying Alabama law).

n6 Edwards v. Woods, 342 Mo. 1097, 119 S.W.2d 359 (1938); Schultz v. Winston & Newell Co., 68 N.D. 674, 283 N.W. 69 (1938).

n7 Ruble v. Carr, 244 Iowa 990, 59 N.W.2d 228 (1953) (no headlights burning); Conley v. Fannin, 308 Ky. 534, 215 S.W.2d 122 (1948) (both headlights out).

n8 Robinson v. Thornewill, 112 Cal. App. 498, 297 P. 28 (1st Dist. 1931) (both headlights out); Amey v. Erb, 296 Pa. 561, 146 A. 141 (1929) (one headlight out).

n9 Ratterree v. Bartlett, 238 Kan. 11, 707 P.2d 1063 (1985); Guerin v. Forburger, 161 Neb. 824, 74 N.W.2d 870 (1956).

n10 Bessard v. Marcello, 467 So. 2d 2 (La. Ct. App. 4th Cir. 1985), writ denied, 472 So. 2d 38 (La. 1985) and writ denied, 472 So. 2d 39 (La. 1985) and writ denied, 472 So. 2d 39 (La. 1985) and writ denied, 472 So. 2d 40 (La. 1985).

n11 Denunzio v. Donahue, 204 Ky. 705, 265 S.W. 299 (1924).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203

Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 149, 156
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 804 (Allegation -- Driving on wrong side of road -- Without lights)

35 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
c. Lights

8 Am Jur 2d Automobiles and Highway Traffic § 758

§ 758 Driving with dim or deflected, or parking or cowl, lights

Most statutes or regulations on the subject of motor vehicle headlights set up minimum efficiency standards with which headlights must comply,[n1] and the failure of a motorist to have headlights meeting the statutory standards has been held to constitute negligence.[n2] In actions involving collisions between motorists driving from opposite directions, where the plaintiff seeks to recover because of the defendant's alleged negligence in failing to have headlights complying with statutory standards, it has generally been held that, on conflicting evidence as to brightness of the defendant's lights and the effect of the deficiency, if any, the question of liability should be submitted to the jury.[n3] However, in most of the cases involving rear-end collisions between vehicles moving in the same direction, attempts of the plaintiff to rely upon the dimness of the following vehicle's headlights have been unsuccessful.[n4]

Although drivers of motor vehicles are, under certain circumstances, under a duty to dim or deflect the brilliant beams of their headlights so as to avoid casting a glare into the eyes of an approaching driver,[n5] it does not follow that compliance with this duty excuses the driver from his or her equally important duty not to operate his or her vehicle blindly so as to injure others rightfully using the road.[n6] The charge that a motorist, whose vehicle collided with another vehicle, was negligent in driving with dimmed or deflected headlights has been advanced, with varying degrees of success, in a number of cases.[n7]

Parking or cowl lights have generally been held to be an ineffective substitute for the headlight illumination required by statute, and the operation of a motor vehicle with only the forward illumination afforded by parking or cowl lights has been advanced as a ground for liability in a number of cases involving collisions with other vehicles.[n8] Of course, where, under the circumstances, the parking or side lights supply all the illumination necessary, the absence of headlights cannot be the basis of liability.[n9]

In some cases, the plaintiff has been held negligent, or a finding that the plaintiff was negligent is justified or required, where it appears that the plaintiff was driving his or her vehicle with inadequate, dim, or deflected headlights resulting in a collision with a vehicle proceeding in the opposite direction,[n10] or in the same direction.[n11] or at an intersection.[n12] However, in other cases involving collisions between vehicles proceeding in opposite directions,[n13] or in the same direction,[n14] or at intersections,[n15] the plaintiff has been held not negligent in such respect or that, if the plaintiff was negligent, it was not a contributing cause of the collision.

FOOTNOTES:

n1 § 204.

n2 Norwalk Truck Line Co. v. Kostka, 120 Ind. App. 383, 88 N.E.2d 799 (1949).

n3 Snook v. Long, 241 Iowa 665, 42 N.W.2d 76, 21 A.L.R.2d 1 (1950).

n4 McFall v. Fletcher, 138 Tex. 93, 157 S.W.2d 131 (1941).

n5 § 253.

n6 Hine v. Leppard, 5 Cal. App. 2d 154, 43 P.2d 595 (2d Dist. 1935).

n7 Short v. Chapman, 261 N.C. 674, 136 S.E.2d 40 (1964); Tietz v. Blaier, 250 Wis. 214, 26 N.W.2d 551 (1947).

n8 Yahnke v. Lange, 168 Wis. 512, 170 N.W. 722 (1919).

n9 Carlton v. Boudar, 118 Va. 521, 88 S.E. 174, 4 A.L.R. 1480 (1916).

n10 Bahakel v. Great Southern Trucking Co., 249 Ala. 363, 31 So. 2d 75 (1947).

n11 Kiddle v. Schnitzer, 167 Or. 316, 114 P.2d 109 (1941), opinion adhered to on reargument, 167 Or. 316, 117 P.2d 983 (1941).

n12 Schrunk v. Hawkins, 133 Or. 160, 289 P. 1073 (1930).

n13 Secor v. Hyde, 10 Ill. App. 2d 493, 135 N.E.2d 185 (2d Dist. 1956).

n14 Baker v. Hemingway Bros. Interstate Trucking Co., 299 Mass. 76, 12 N.E.2d 95 (1937).

n15 Krinke v. Gramer, 187 Minn. 595, 246 N.W. 376 (1933).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115

Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 149, 156
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 897, 898 (Allegation -- Headlights -- Insufficient intensity)

36 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
3. Condition of Vehicle; Equipment
c. Lights

8 Am Jur 2d Automobiles and Highway Traffic § 759

§ 759 Tail or rear lights

The failure of a motorist to display a taillight on his or her motor vehicle,[n1] the obstruction of a vehicle's taillights,[n2] or the failure to display a taillight of the proper color,[n3] may constitute negligence. There is also authority holding that a statute requiring that operators of motor vehicles have working taillights fixes a standard of duty upon operators of motor vehicles as to taillights and a violation of this statute is negligence per se.[n4]

However, the negligent failure of a motorist to display a taillight on his or her motor vehicle renders him or her liable only where this fault is a proximate cause of the accident upon which the suit is brought.[n5]

Observation: In cases involving rear-end collisions, the courts recognize that the absence of a taillight on the defendant's vehicle is not actionable negligence, if it was not a contributory cause of the accident inasmuch as other illumination or reflectors supplied the deficiency of the taillight.[n6] Also where, despite the absence of the taillight, the driver of the following vehicle sees the defendant's vehicle in ample time to avoid the collision, the lack of the taillight does not constitute a proximate cause of the collision.[n7]

Evidence of the absence or inadequacy of the rear lights on the plaintiff's motor vehicle has frequently been successfully advanced as supporting or requiring the conclusion that the plaintiff is chargeable with negligence contributing to a collision with another vehicle approaching from the rear,[n8] although in some cases the claim that negligence on the part of the plaintiff should bar or diminish his or her recovery, has been rejected.[n9] In some cases, it has been found that even though there is evidence that the plaintiff's taillight was not burning properly at the time of a rear-end collision, recovery can still be justified on the theory that the absence of this light was not a contributing cause of the collision[n10] or that the defendant had the last clear chance of avoiding the accident.[n11]

FOOTNOTES:

n1 Webb v. Jordan, 540 So. 2d 977 (La. Ct. App. 2d Cir. 1989); Timmons v. Reed, 569 P.2d 112 (Wyo. 1977).

n2 Harris v. City of Compton, 172 Cal. App. 3d 1, 217 Cal. Rptr. 884 (2d Dist. 1985) (large wooden spools placed by police officer in trunk of police car partially obstructed car's taillights).

n3 Knutson v. Nielsen, 256 Minn. 506, 99 N.W.2d 215 (1959).

n4 Schumm v. State, 866 N.E.2d 781 (Ind. Ct. App. 2007), opinion corrected on reh'g, 868 N.E.2d 1202 (Ind. Ct. App. 2007).

n5 Burr v. Fall River News Co., 75 R.I. 476, 67 A.2d 694 (1949).

n6 Hamel v. Chase Cos., 112 Conn. 286, 152 A. 59 (1930); Trudeau v. Snohomish Auto Freight Co., 1 Wash. 2d 574, 96 P.2d 599 (1939).

n7 Hief v. Roberts Dairy Co., 138 Neb. 885, 296 N.W. 331 (1941).

n8 Fells v. Bowman, 274 So. 2d 109 (Miss. 1973); Partin v. Henderson, 686 S.W.2d 587 (Tenn. Ct. App. 1984).

n9 Maryland Cas. Co. v. Kador, 225 F.2d 120 (5th Cir. 1955); Heffington v. Paul, 152 Cal. App. 2d 235, 313 P.2d 157, 67 A.L.R.2d 113 (3d Dist. 1957).

n10 Wichmann v. United Disposal, Inc., 553 F.2d 1104 (8th Cir. 1977).

n11 Heffington v. Paul, 152 Cal. App. 2d 235, 313 P.2d 157, 67 A.L.R.2d 113 (3d Dist. 1957).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405

Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]148, 149, 156
Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without or with improper taillights or rear reflectors, 62 A.L.R.3d 771
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 899 (Allegation -- Taillights -- Not in operation)

37 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
4. Speed

8 Am Jur 2d Automobiles and Highway Traffic § 760

§ 760 Generally

In most jurisdictions, the speed at which a motor vehicle may be driven is regulated by statute or ordinance.[n1] Even apart from such regulations, a motorist must exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered,[n2] which will enable him or her to keep the vehicle under control and avoid injury to others using the highway.[n3] A driver has the duty to operate his or her vehicle at a speed that is reasonable and prudent under the conditions and potential hazards then existing and having due regard for the weather.[n4] Moreover, the law requires all drivers to push ahead of themselves an imaginary clear stopping distance or assured stopping space or adequate zone within which the driven vehicle can come to a stop, and failure to maintain such a zone is normally the sole proximate cause of injuries and damages resulting from the collision of a vehicle with an object ahead.[n5]

A motorist's duty of reasonable care includes the duty to keep the vehicle under control.[n6] While the mere fact that a motorist was going "fast"at the time of an accident is not proof of negligence in the absence of evidence that such vehicle was not under control,[n7] excessive speed, combined with other circumstances, such as the occurrence of the accident on a hill[n8] or a curve,[n9] or the inability to stop within the range of vision or the assured clear distance ahead,[n10] or the fact that it was a very windy day,[n11] may constitute negligence. What is a reasonable rate of speed under the circumstances is ordinarily a question for the jury.[n12] The mere fact that a motorist was going "slow"at the time of an accident does not necessarily relieve him or her of the charge of negligence, since some circumstances may require an exceedingly slow rate of speed[n13] or may require a motorist to stop altogether.[n14]

While a high rate of speed under the circumstances may be evidence of negligent operation, in order to sustain a judgment it must be found that such excessive speed was a proximate cause of the accident.[n15] Thus, even though a police officer's vehicle was traveling at an unreasonable speed, the estate of the motorist, who was fatally injured in an intersectional collision with a police officer's vehicle, nevertheless had to demonstrate that the unreasonable speed was the proximate cause of the accident.[n16] The rate of speed is regarded as immaterial in determining liability where it was not the proximate cause of the accident.[n17]

In an action to recover damages for injuries sustained in a motor vehicle accident, the negligence of the plaintiff based upon excessive speed in the operation of the vehicle will usually bar or diminish such recovery.[n18] Under some circumstances, the excessive speed of the defendant's vehicle has a bearing on the question of the plaintiff's freedom from negligence.[n19] In most cases, the question whether the plaintiff's speed under the circumstances constituted negligence which might bar or diminish his or her recovery is one for the jury.[n20]

FOOTNOTES:

n1 §§ 263 to 270.

n2 Foster v. ConAgra Poultry Co., 670 So. 2d 471 (La. Ct. App. 3d Cir. 1996), writ denied, 672 So. 2d 674 (La. 1996); McFetters v. McFetters, 98 N.C. App. 187, 390 S.E.2d 348 (1990).

n3 Nunn v. Financial Indem. Co., 694 So. 2d 630 (La. Ct. App. 2d Cir. 1997); Mantz v. Continental Western Ins. Co., 228 Neb. 447, 422 N.W.2d 797 (1988).

The driver of a vehicle that struck a fourth car in a multiple vehicle accident was not liable for negligence in the absence of evidence that he was driving so fast that he was unable to respond to the exigent circumstances when the car that was struck swerved in front of his car. Lewis v. Konan, 39 A.D.3d 319, 835 N.Y.S.2d 40 (1st Dep't 2007).

n4 Carmouche v. Carmouche, 940 So. 2d 761 (La. Ct. App. 3d Cir. 2006).

n5 Department of Highway Safety and Motor Vehicles v. Saleme, 2007 WL 519165 (Fla. Dist. Ct. App. 3d Dist. 2007).

n6 Lino v. Allstate Ins. Co., 937 So. 2d 888 (La. Ct. App. 4th Cir. 2006), writ denied, 942 So. 2d 542 (La. 2006); Granda v. State Farm Mut. Ins. Co., 935 So. 2d 698 (La. Ct. App. 1st Cir. 2006).

n7 Clayton v. McIlrath, 241 Iowa 1162, 44 N.W.2d 741, 27 A.L.R.2d 307 (1950).

n8 § 733.

n9 § 732.

n10 § 764.

n11 Harris v. Varnado, 94 So. 2d 74, 79 A.L.R.2d 204 (La. Ct. App. 1st Cir. 1957).

n12 Michaud v. Gagne, 155 Conn. 406, 232 A.2d 326 (1967).

n13 Salcik v. Tassone, 236 Ill. App. 3d 548, 177 Ill. Dec. 723, 603 N.E.2d 793 (1st Dist. 1992) (a statute requiring the driver to reduce speed at an intersection and to reduce speed to avoid collision imposes a duty even when the driver is driving under maximum speed limit).

n14 Sharpley v. City of Baton Rouge, 665 So. 2d 21 (La. Ct. App. 1st Cir. 1995).

n15 Folino v. Young, 523 Pa. 532, 568 A.2d 171 (1990).

A driver's allegedly excessive speed was not the proximate cause of injuries suffered by a minor who rode his bicycle into the rear passenger side of the driver's automobile, precluding the driver's liability, where it was undisputed that the driver did not see the minor come out of the driveway until immediately before the minor rode into the side of his automobile, and no evidence suggested that, but for the allegedly excessive speed, the driver would have been able to see the minor, brake, swerve, or otherwise avoid the collision. Yoeun v. Steiner, 133 Wash. App. 1032, 2006 WL 1745040 (Div. 2 2006).

n16 Winn v. Posades, 281 Conn. 50, 913 A.2d 407 (2007) (holding that the estate of the motorist did not establish that the officer's conduct in operating his vehicle at a high rate of speed was the legal cause of the motorist's injuries so as to establish the negligence claim).

n17 Theonnes v. Hazen, 37 Wash. App. 644, 681 P.2d 1284 (Div. 1 1984).

n18 Tuhn v. Clark, 241 Iowa 441, 41 N.W.2d 13, 15 A.L.R.2d 903 (1950).

n19 Ohman v. Vandawater, 347 Mich. 112, 78 N.W.2d 628 (1956).

n20 Tuhn v. Clark, 241 Iowa 441, 41 N.W.2d 13, 15 A.L.R.2d 903 (1950).

SUPPLEMENT:

Cases

If a vigilant driver, proceeding at a moderate rate of speed, should be reasonably sure he might safely go forward without stopping, he would not necessarily be negligent in doing so; in such cases, the question of negligence ultimately resolves itself into one of reasonable care under all the circumstances, a question to be resolved by the trier of fact. Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527

Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(.5) to 168(12), 201(2)
West's Key Number Digest, Highways [westkey]177
Admissibility in Evidence, in Civil Action, of Tachograph or Similar Paper or Tape Recording of Speed of Motor Vehicle, Railroad Locomotive, or the Like, 18 A.L.R.6th 613
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 819 to 824 (Allegation -- Unreasonable speed)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1538 to 1551 (Instruction -- Excessive speed)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1552 (Instruction -- Speed -- Failure to show causation)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1553, 1554 (Instruction -- Determination of speed)

38 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
4. Speed

8 Am Jur 2d Automobiles and Highway Traffic § 761

§ 761 Driving within speed limit

A motorist may not be absolved from a charge of negligence in connection with his or her speed at the time of an accident by simply showing that he or she was not exceeding the limit allowed by law.[n1] The posted speed limit does not determine whether a particular speed is reasonable under the circumstances.[n2] The speed of a motor vehicle is deemed excessive if it is found to be unreasonable or imprudent under existing circumstances, even though it may not exceed applicable statutory limits.[n3] Notwithstanding the posted or prescribed speed limit, a motorist still has the common-law duty to exercise ordinary care, and the failure to do so constitutes negligence which will render him or her liable for injuries proximately resulting therefrom.[n4] More particularly, even if the evidence in an automobile collision case indicates that the party was driving within the posted speed limit, a jury may still find the party negligent if it determines that he or she drove at a speed which endangered persons and property under existing conditions.[n5] Accordingly, a driver in the left lane of an interstate highway has been deemed negligent, as a matter of law, with respect to a collision with a vehicle in the right lane, occurring when the driver lost control of the vehicle after his or her car hit a patch of standing water, where the driver admitted that it was raining and the road was wet, that he or she was aware of the dangers of hydroplaning, and did not slow down, but instead maintained a speed near the posted speed limit.[n6]

FOOTNOTES:

n1 Neimiec v. Roels, 244 Ill. App. 3d 275, 185 Ill. Dec. 222, 614 N.E.2d 356 (1st Dist. 1993); French v. Missouri Highway and Transp. Com'n, 908 S.W.2d 146 (Mo. Ct. App. W.D. 1995); Smith v. Brooks, 394 Pa. Super. 327, 575 A.2d 926 (1990) (one need not exceed posted speed limit to be found liable for traveling at an unreasonable speed).

n2 West v. Critzer, 238 Va. 356, 383 S.E.2d 726 (1989).

n3 Harrison v. Seagroves, 250 Neb. 495, 549 N.W.2d 644 (1996).

n4 Lockwood v. Schreimann, 933 S.W.2d 856 (Mo. Ct. App. W.D. 1996);

Guzman v. Guajardo, 761 S.W.2d 506 (Tex. App. Corpus Christi 1988), writ denied, (June 14, 1989).

n5 Lockwood v. Schreimann, 933 S.W.2d 856 (Mo. Ct. App. W.D. 1996).

n6 Tentoni v. Slayden, 2006 WL 3594232 (Miss. Ct. App. 2006), cert. granted, 958 So. 2d 1232 (Miss. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(.5) to 168(3), 201(2)
West's Key Number Digest, Highways [westkey]177

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1550, 1551 (Instruction -- Excessive speed -- Obedience to speed limit as not precluding finding of negligence)

39 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
4. Speed

8 Am Jur 2d Automobiles and Highway Traffic § 762

§ 762 Driving in excess of speed limit

While in some cases, the violation of a statute or ordinance relating to the speed of motor vehicles has been held to be negligence as a matter of law, or negligence per se.[n1] in other cases, the violation of a speed regulation has been held merely prima facie evidence of negligence or some evidence of negligence.[n2] In any case, a motorist is not liable for injuries sustained in an accident occurring while driving in excess of the speed permitted by law, unless excessive speed was a proximate cause of the accident or had some causal connection therewith.[n3]

If the excessive speed was a proximate cause of the accident, the violator is guilty of negligence which will bar or diminish recovery.[n4]

FOOTNOTES:

n1 Burns v. Washington Metropolitan Area Transit Authority, 114 F.3d 219 (D.C. Cir. 1997); Burns v. Benedict, 827 F. Supp. 1545 (D. Kan. 1993) (applying Kansas law); Imel v. Thomas, 585 N.E.2d 712 (Ind. Ct. App. 1992); Folino v. Young, 523 Pa. 532, 568 A.2d 171 (1990).

n2 Wagner v. City of Chicago, 254 Ill. App. 3d 842, 193 Ill. Dec. 676, 626 N.E.2d 1227 (1st Dist. 1993), judgment aff'd, 166 Ill. 2d 144, 209 Ill. Dec. 672, 651 N.E.2d 1120 (1995) (driving in excess of speed limit is sufficient evidence of negligence); Larson v. Kubisiak, 1997 ND 22, 558 N.W.2d 852 (N.D. 1997); Borden, Inc. v. Price, 939 S.W.2d 247 (Tex. App. Amarillo 1997), writ denied, (Sept. 4, 1997) (violation of statute governing speed of vehicles is not negligence per se, since the duties imposed by statute are conditioned upon the jury determining whether the accused acted unreasonably).

n3 Folino v. Young, 523 Pa. 532, 568 A.2d 171 (1990).

n4 O'Mally v. Eagan, 43 Wyo. 233, 2 P.2d 1063, 77 A.L.R. 582 (1931).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings

A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(.5) to 168(2), 201(3)
West's Key Number Digest, Highways [westkey]177
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 818 (Allegation -- Violation of statutory speed limit)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1238 (Answer -- Excessive speed -- As prima facie negligence under statute)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1540 (Instruction -- Excessive speed -- Negligence as matter of law)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1541 (Instruction -- Excessive speed -- Reasonable and proper limit -- Evidence of negligence)

40 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
4. Speed

8 Am Jur 2d Automobiles and Highway Traffic § 763

§ 763 Racing

Racing on a public highway constitutes negligence or willful and wanton misconduct which will render the participants liable for injuries proximately resulting to others therefrom.[n1] Both motorists may be held liable under the rule that where two or more tortfeasors by concurrent acts of negligence which, although disconnected, yet, in combination, inflict injury, all are liable.[n2] In other words, persons participating in a race on a public highway may be held jointly liable for injuries caused during the race by one of the race participants, and liability may be imposed even in the absence of express agreement to race and even where the activity of the defendants fall outside of the technical definition of "racing,"as long as the plaintiff shows that the tortfeasor and the defendant were jointly engaged in committing a tort by using the highway in a manner not consistent with its use by others.[n3]

While two motorists engaged in unlawful racing upon a public highway may be held liable for injuries sustained by a third person as a result thereof, in those jurisdictions wherein negligence on the part of the party seeking recovery is a bar to such recovery, there is no liability as between the participants in the race.[n4] This is so, since, in an action by one of the participants against the other, the fact of racing establishes negligence on the plaintiff's part as a matter of law.[n5]

FOOTNOTES:

n1 Orszulak v. Bujnevicie, 355 Mass. 157, 243 N.E.2d 897 (1969); Harrington v. Collins, 298 N.C. 535, 259 S.E.2d 275 (1979) (willful or wanton conduct).

n2 Bybee v. Shanks, 253 S.W.2d 257 (Ky. 1952); Skipper v. Hartley, 242 S.C. 221, 130 S.E.2d 486, 13 A.L.R.3d 426 (1963).

As to concurrent causes, generally, see § 427.

n3 O'Brien v Mansfield, 941 S.W.2d 582 (Mo. Ct. App. W.D. 1997).

n4 McMicken v. Province, 141 W. Va. 273, 90 S.E.2d 348, 59 A.L.R.2d 470 (1955) (overruled on other grounds by, Bradley v. Appalachian Power Co., 163 W. Va. 332, 256 S.E.2d 879 (1979)).

n5 McMicken v. Province, 141 W. Va. 273, 90 S.E.2d 348, 59 A.L.R.2d 470 (1955) (overruled on other grounds by, Bradley v. Appalachian Power Co., 163 W. Va. 332, 256 S.E.2d 879 (1979)).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(.5) to 168(2), 168(10)
West's Key Number Digest, Highways [westkey]177
Liability of participant in unauthorized highway race for injury to third person directly caused by other racer, 13 A.L.R.3d 431

Liability as between participants for accident arising from private automobile or other vehicle racing on public street or highway, 59 A.L.R.2d 481

41 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
4. Speed

8 Am Jur 2d Automobiles and Highway Traffic § 764

§ 764 Ability to stop within range of vision, assured clear distance ahead, or radius of lights

A motorist may be found negligent in operating an automobile on a highway at such speed that it cannot be stopped within the range of his or her vision, [n1] or within the assured clear distance ahead. [n2] Independently of statute, when the view of the driver of a motor vehicle is obstructed, whether by reason of a grade or otherwise, the speed of the vehicle should be so reduced that it can be stopped within the distance that the driver can see ahead. [n3]

The rule requiring a motor vehicle to be driven at such a speed as to permit it to be brought to a stop within the range of the driver's vision or within the assured clear distance ahead is applicable at night, as well as in the daytime, thus, it is referred to as the "radius of lights"doctrine. [n4] Under such rule, driving a motor vehicle so fast at night that it cannot be stopped in time to avoid collision with objects within the area lighted by its headlights -- that is, within the "radius"of its lights, constitutes negligence as a matter of law. [n5] The assured clear distance ahead is the limit of the motorist's vision ahead afforded by the vehicle's lights, in the absence of any intermediate discernible obstruction. [n6]

The "assured clear distance ahead"or "radius of lights"rule has been held to apply although the driver's vision has been reduced because of atmospheric conditions [n7] or by a hill or curve, [n8] or because the slippery condition of the highway makes it difficult to stop. [n9]

FOOTNOTES:

n1 Choctaw Maid Farms, Inc. v. Hailey, 822 So. 2d 911 (Miss. 2002); Traphagan v. Mid-America Traffic Marking, 251 Neb. 143, 555 N.W.2d 778 (1996).

n2 Pond v. Leslein, 72 Ohio St. 3d 50, 1995-Ohio-193, 647 N.E.2d 477 (1995); Lockhart v. List, 542 Pa. 141, 665 A.2d 1176 (1995); Springer v. Luptowski, 535 Pa. 332, 635 A.2d 134 (1993).

As to codification of this rule, see § 273.

n3 Henthorn v. M. G. C. Corp., 1 Wis. 2d 180, 83 N.W.2d 759, 79 A.L.R.2d 142 (1957).

n4 Morehouse v. City of Everett, 141 Wash. 399, 252 P. 157, 58 A.L.R. 1482 (1926).

n5 Mantz v. Continental Western Ins. Co., 228 Neb. 447, 422 N.W.2d 797 (1988); Dranzo v. Winterhalter, 395 Pa. Super. 578, 577 A.2d 1349 (1990).

n6 Erdman v. Mestrovich, 155 Ohio St. 85, 44 Ohio Op. 97, 97 N.E.2d 674, 31 A.L.R.2d 1417 (1951).

n7 § 775.

n8 Mickey v. Ayers, 336 Pa. Super. 512, 485 A.2d 1199 (1984).

n9 Burkey v. Royle, 233 Neb. 549, 446 N.W.2d 720 (1989).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(.5) to 168(2), 201(2)
West's Key Number Digest, Highways [westkey]177
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 823 (Allegation -- Unreasonable speed -- Inability to stop within range of clear vision)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1546 (Instruction -- Excessive speed -- Range of vision)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1547 (Instruction -- Excessive speed -- Range of headlights)

42 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
4. Speed

8 Am Jur 2d Automobiles and Highway Traffic § 765

§ 765 Qualification or limitations of rule

The occurrence of a collision does not establish a violation of an "assured clear distance ahead"statute in every case.[n1]

While some courts have announced a hard and fixed rule that driving a motor vehicle at such a rate of speed that it cannot be stopped with the range of the driver's vision, or within the assured clear distance ahead constitutes negligence,[n2] there is authority holding that it is improper to state such a rule, and that each case must be considered in the light of its own peculiar state of facts and circumstances.[n3] The rule should not be that one driving a motor vehicle must, under all circumstances, see any object on the road in front of him or her which comes within the range of his or her vision, and must be able, under all circumstances, to stop the vehicle before striking the object, but the rule means that the motorist must see any object which an ordinarily prudent driver under like circumstances would see.[n4]

The rule does not require one to be able absolutely to stop short of an object appearing in the radius of his or her lights, regardless of existing conditions, but only that one should drive at night at such a speed as to be able ordinarily to stop.[n5] The "assured clear distance ahead"rule simply requires the driver to control the speed of the vehicle so that he or she will be able to stop within the distance of whatever may reasonably be expected to be within the driver's path.[n6]

A driver is deemed not guilty of negligence as a matter of law in striking an object, but rather the question of negligence is for the jury, where the nature of the object or its condition, such as color, dirt, or the like, in relation to the highway affects its immediate visibility,[n7] or where, because of the lights of oncoming traffic, the driver's attention is distracted or his or her vision impaired and the opportunity for immediate discernment is thereby affected.[n8] Moreover, where a motorist unexpectedly comes upon a vehicle standing or parked in the highway,[n9] or a vehicle which is not lighted as required by law,[n10] the motorist is not guilty of negligence as a matter of law, but the question is one of fact for the jury, unless the only reasonable conclusion of which the evidence is susceptible is that the motorist was negligent.[n11] Moreover, the "assured clear distance ahead"rule applies only to objects which are static or essentially static, including vehicles moving in the same direction.[n12]

A motorist is not responsible for noncompliance with the rule where the assured clear distance ahead is suddenly cut down or lessened, through no fault of the motorist, by the entrance of some obstruction within such distance and into his or her path or line of travel, rendering him or her unable, in the exercise of ordinary care, to avoid colliding with it.[n13] Accordingly, if a motorist is proceeding at a lawful and reasonable rate of speed, maintaining a proper lookout, and otherwise obeying the rules of road, he or she will not be held liable for injuries to a child who suddenly darts or dashes into the path of the vehicle from a concealed position in such a way that an accident cannot be avoided.[n14] Likewise, where the driver is confronted with an object that unexpectedly appears within his or her assured clear distance, the "assured clear distance"doctrine which requires a driver to be able to stop and avoid obstructions that fall within his or her vision is negated by the applicability of the sudden-emergency doctrine, since the driver has already mentally cleared distance, and no further duty is imposed.[n15] However, where the motorist discovers the obstruction within the

extreme range of his or her vision, and can stop by acting immediately, but instead inaccurately estimates his or her speed, distance, and ability to stop, and finds stopping impossible, then the motorist cannot claim the benefit of this exception to the "assured clear distance ahead"rule. [n16]

The "radius of lights"rule does not apply to a defendant who swerved into the other lane to avoid a real estate sign in his or her lane, where the defendant was traveling at a safe speed, and both headlights on the defendant's automobile were functioning properly. [n17]

FOOTNOTES:

n1 Athey v. Bingham, 1991 OK 82, 823 P.2d 347 (Okla. 1991).

n2 § 764.

n3 Murphy v. Hawthorne, 117 Or. 319, 244 P. 79, 44 A.L.R. 1397 (1926).

n4 Morehouse v. City of Everett, 141 Wash. 399, 252 P. 157, 58 A.L.R. 1482 (1926).

n5 O'Connor v. Black, 80 Idaho 96, 326 P.2d 376 (1958).

n6 Lockhart v. List, 542 Pa. 141, 665 A.2d 1176 (1995).

n7 Pickett v. Travelers Indem. Co., 283 F.2d 835 (7th Cir. 1960); Traphagan v. Mid-America Traffic Marking, 251 Neb. 143, 555 N.W.2d 778 (1996).

n8 Pickett v. Travelers Indem. Co., 283 F.2d 835 (7th Cir. 1960); Haight v. Nelson, 157 Neb. 341, 59 N.W.2d 576, 42 A.L.R.2d 1 (1953).

n9 Knaus Truck Lines v. Commercial Freight Lines, 238 Iowa 1356, 29 N.W.2d 204 (1947).

n10 Brave v. Blakely, 250 S.C. 353, 157 S.E.2d 726 (1967).

n11 Schaller v. Bjornstad, 77 N.D. 51, 40 N.W.2d 59 (1949).

n12 Cannon v. Tabor, 434 Pa. Super. 232, 642 A.2d 1108 (1994).

n13 Lostegaard v. Bauer, 78 N.D. 711, 51 N.W.2d 761 (1952).

n14 Scardina v. State Farm Mut. Auto. Ins. Co., 597 So. 2d 1148 (La. Ct. App. 1st Cir. 1992), writ denied, 604 So. 2d 1004 (La. 1992).

n15 Anderson v. Moore, 437 Pa. Super. 642, 650 A.2d 1090 (1994).

n16 King v. Farmers Educational & Co-op. Oil Co., 72 S.D. 280, 33 N.W.2d 333 (1948).

n17 People v. Traughber, 432 Mich. 208, 439 N.W.2d 231 (1989).

As to the "radius of lights rule,"see § 764.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(.5) to 168(2), 201(2)
West's Key Number Digest, Highways [westkey]177
Liability of motorist colliding with person engaged about stalled or disabled vehicle on or near highway, 27 A.L.R.3d 12

Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399

43 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
4. Speed

8 Am Jur 2d Automobiles and Highway Traffic § 766

§ 766 Driving in violation of "slow speed"statute

A number of jurisdictions have enacted so-called "slow speed"statutes which prohibit driving at such slow speed as to create danger, to impede normal traffic movement, or the like.[n1] Such a statute does not establish a speed which makes a violation of the statute to constitute negligence as a matter of law, but rather the question of the negligence of a motorist in violating such a statute is a question of fact, requiring the jury to consider in arriving at its conclusion the speed of the vehicle, the visibility and condition of the highway, and the amount and congestion, if any, of traffic on the highway.[n2]

A reduction in speed of the vehicle by the motorist, due to presence of a herd of bighorn sheep on the roadway ahead of him or her, has been deemed not a breach of the duty not to drive at such slow speed as to impede or block normal and reasonable forward movement of traffic, and, thus the motorist was not negligent when the vehicle was rear-ended by a trailing driver, where the reduction of speed was necessary for the safe operation of the vehicle and, because there were no vehicles behind the motorist when he or she decided to slow down, there was no forward movement of traffic to impede.[n3] Also, the rule against operating a vehicle at a speed below the minimum does not apply to a vehicle entering the highway from an emergency strip, until there has been reasonable opportunity to attain such speed.[n4]

Observation: Operating a corn combine at, or close to, the combine's highest possible speed of 17 or 18 m.p.h. and slowing to eight m.p.h. to make a left turn, although possibly constituting negligence for other reasons, can not have constituted negligence per se for lack of sufficient speed, absent any statutory exclusion of farm machinery from public roads.[n5] Also, absent evidence that the slow speed of the plaintiffs' decedent's vehicle was necessary for its safe operation or that such speed was in compliance with the law, the plaintiffs are deemed to have failed to carry the burden of proving facts that would excuse or justify violation of the "slow speed"statute, where the evidence shows that the decedent was traveling at 10 to 20 m.p.h. when the defendant, traveling in the same direction at 50 to 55 m.p.h., crashed into the rear of the decedent's automobile.[n6]

The questions whether the "slow speed"statute was violated and whether the violation was a proximate cause of the accident have been held to be for the jury where an allegedly slow-moving motorist was struck in the rear by another motorist,[n7] or where a collision resulted when a motorist attempted to pass a slow-moving motorist.[n8] However, the "slow speed"statute has been held not applicable under the circumstances where a motorist collided with another motorist approaching from the opposite direction while the former was attempting to pass an allegedly slow-moving motorist proceeding in the same direction,[n9] or where a motorist collided with another allegedly slow-moving motorist entering an intersection.[n10]

FOOTNOTES:

n1 § 275.

n2 Byrd v. F-S Prestress, Inc., 464 So. 2d 63 (Miss. 1985).

n3 McClintic v. Hesse, 151 P.3d 611 (Colo. Ct. App. 2006), cert. granted, 2007 WL 439058 (Colo. 2007).

n4 Blake v. Continental Southeastern Lines, Inc., 168 Ga. App. 718, 309 S.E.2d 829 (1983).

n5 Lott v. Smith, 156 Ga. App. 826, 275 S.E.2d 720 (1980).

n6 Cheek v. Weiss, 615 S.W.2d 453 (Mo. Ct. App. E.D. 1981).

n7 Morse v. Johnson, 81 Ill. App. 3d 552, 36 Ill. Dec. 813, 401 N.E.2d 654 (3d Dist. 1980); Angell v. Hester, 186 Kan. 43, 348 P.2d 1050 (1960).

n8 Pohlman v. Perry, 122 Ind. App. 222, 103 N.E.2d 911 (1952).

n9 Nash v. Christenson, 241 Minn. 164, 62 N.W.2d 800 (1954).

n10 Satter v. Turner, 251 Minn. 1, 86 N.W.2d 85, 66 A.L.R.2d 1178 (1957).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203

Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(.5) to 168(2), 201(2)
Construction, application, and effect, in civil motor vehicle accident cases, of "slow speed"traffic statutes prohibiting driving at such a slow speed as to create danger, to impede normal traffic movement, or the like, 66 A.L.R.2d 1194

44 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 767

§ 767 Generally

Where the vision of a motorist is obstructed for any cause, the law requires that he or she exercise care commensurate with the situation,[n1] which, in some instances, calls for the motorist to stop until the obstruction is removed.[n2] In other instances, the rule of care commensurate with obstructed vision permits the driver to proceed but with the exercise of more caution than is required for driving under normal conditions.[n3] In either case, while the measure of care may vary with the condition creating the obstructed vision, the roadway, and traffic, it should be commensurate with the situation, so as to avoid inflicting injury upon any person who may be using the highway or street while the motorist is unable to see what is before him or her.[n4]

FOOTNOTES:

n1 Kimble v. East Baton Rouge Parish, 673 So. 2d 682 (La. Ct. App. 1st Cir. 1996); Tichenor v. Santillo, 218 N.J. Super. 165, 527 A.2d 78 (App. Div. 1987).

As to obstructions to view at intersections as affecting the rights and duties of motorists, see § 784.

n2 Kimble v. East Baton Rouge Parish, 673 So. 2d 682 (La. Ct. App. 1st Cir. 1996); McKenzie v. Ladd Trucking Co., 214 Neb. 209, 333 N.W.2d 402 (1983); Allen v. Pullen, 82 N.C. App. 61, 345 S.E.2d 469 (1986).

n3 Jefferson County v. Sulzby, 468 So. 2d 112, 57 A.L.R.4th 333 (Ala. 1985); Duffy v. Cortesi, 2 Ill. 2d 511, 119 N.E.2d 241 (1954); Watkins v. Strickland Transp. Co., 90 So. 2d 561 (La. Ct. App. 2d Cir. 1956).

n4 Duffy v. Cortesi, 2 Ill. 2d 511, 119 N.E.2d 241 (1954); Tannenbaum v. Mandell, 51 A.D.2d 593, 378 N.Y.S.2d 468 (2d Dep't 1976).

SUPPLEMENT:

Cases
When a constant condition exists that knowingly blocks or impairs a driver's vision, the decision to continue driving without exercising reasonable diligence is negligence as a matter of law. Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008).

With regard to situation in which a driver's vision is suddenly blocked by some action beyond his or her control, sudden occurrence may create a factual question regarding the reasonableness of the driver's behavior in reacting to the temporary condition. Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
West's Key Number Digest, Highways [westkey]153, 153.5, 154
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 799 to 802 (Allegation of driving when vision obstructed)

45 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 768

§ 768 Unclean windshield

A motorist who drives with the vehicle's windshield so covered with ice or frost,[n1] or dust, dirt, grit, mud, or grime,[n2] as to obscure vision, so that he or she cannot readily perceive the condition of the road and objects thereon, is generally guilty of negligence as a matter of law.

However, a jury could reasonably determine that the driver of a vehicle that rear-ended the plaintiff's vehicle was not negligent in the operation of his or her vehicle, where the evidence indicated that the accident had been caused by debris splashing on the defendant driver's windshield, which became smeared when he or she turned on the wipers in an attempt to clear it, thereby obstructing his or her vision.[n3]

FOOTNOTES:

n1 § 778.

n2 Lacour v. Continental Southern Lines, Inc., 124 So. 2d 588 (La. Ct. App. 1st Cir. 1960) (motorist's windshield splattered by passing vehicle so that he could not see clearly and collided with the rear of a bus); Phoenix Refining Co. v. Walker, 108 S.W.2d 323 (Tex. Civ. App. Beaumont 1937), writ dismissed (the defendant's truck which collided with the plaintiff's automobile coming from the opposite direction was being operated with the windshield in such a dirty, filthy, and greasy condition that the driver's view ahead was practically destroyed).

n3 Weatherly v. Miskle, 655 S.W.2d 842 (Mo. Ct. App. E.D. 1983).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933
Liability for motor vehicle accident where vision of driver is obscured by smoke, dust, atmospheric condition, or unclean windshield, 42 A.L.R.2d 13 (secs. 137 to 154 superseded in part Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933)

46 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
b. Blinding Lights or Glare

8 Am Jur 2d Automobiles and Highway Traffic § 769

§ 769 Generally

In a number of jurisdictions, a situation where a motorist proceeding on the highway has his or her vision interfered with by glaring or dazzling light has been regarded as merely calling for the application of the general rule requiring motorists to operate their vehicles so as to be able to stop within the assured clear distance ahead.[n1] Where this rule applies, the motorist blinded by lights must either stop, if his or her vision is cut off completely, or proceed at such a rate of speed and with such control of the vehicle as to be able to stop in time to avoid any discernible object on the road ahead.[n2] This rule imposes an absolute duty upon a motorist blinded by lights, who is guilty of negligence per se if he or she does not control the speed of the vehicle in order to stop in time to avoid colliding with an obstruction within the range of vision, notwithstanding that the motorist's vision is obscured by blinding lights.[n3]

However, the "assured clear distance ahead"or "range of vision"rule is subject to certain exceptions and qualifications to temper its harshness,[n4] which exceptions and qualifications have been applied in cases involving motorists blinded by the lights of approaching vehicles.[n5] The exceptions to the rule requiring a motorist to be able to stop in time to avoid a collision with an object within the range of his or her vision or the area lighted by his or her lights, notwithstanding the headlights of another vehicle, apply in those instances where the motorist, acting as a reasonable and prudent person, is justified in believing that no danger exists, or where the situation creating the danger is in the nature of a trap.[n6] In particular, the traffic conditions prevailing at the time the motorist is blinded by lights,[n7] including the presence of another motorist immediately behind the blinded motorist,[n8] have been said to be circumstances to be considered in determining whether or not he or she was negligent in failing to stop. Also, the failure of a motorist blinded by lights to stop before colliding with an object on the road ahead may be excused where the blinding lights appeared so suddenly that it was impossible to stop,[n9] or where the object on the road was not discernible.[n10]

Other courts have found the rule requiring a motorist blinded by lights to stop or proceed at his or her peril impracticable under modern circumstances, and have applied instead, not exceptions to or qualifications of that rule, but the more flexible standard of ordinary care under the circumstances, and they hold that a motorist who continues on course when his or her vision is interfered with by other lights may not be held guilty of negligence as a matter of law.[n11] However, the rejection of the strict rule that a motorist continuing ahead when blinded by lights is always guilty of negligence as a matter of law does not mean that a motorist so blinded may, under all circumstances, proceed ahead in the dark and be excused from liability for any injury that he or she may cause. Rather, under the more flexible standard, such a motorist is required to exercise ordinary or reasonable care -- that is, care commensurate with the circumstances.[n12] The speed of the vehicles, congestion of traffic, the condition of the highway, the character of the obstruction, and all the other pertinent facts and circumstances are to be considered.[n13] Accordingly, while there undoubtedly are cases when a motorist should be declared guilty of negligence as a matter of law in failing to stop or to have the vehicle under such control that he or she can stop within the range of vision, when blinded by lights, ordinarily such a question is for the jury.[n14]

FOOTNOTES:

n1 As to the "assured clear distance ahead"rule, see § 764.

n2 Canton Broiler Farms, Inc. v. Warren, 214 So. 2d 671 (Miss. 1968); Beard v. Brown, 616 P.2d 726 (Wyo. 1980).

n3 Beck v. Hooks, 218 N.C. 105, 10 S.E.2d 608 (1940).

n4 § 765.

n5 Great Am. Indem. Co. v. Cormier, 187 F.2d 107 (5th Cir. 1951); Jester v. Bailey, 239 Miss. 384, 123 So. 2d 442 (1960).

n6 Mose v. Insurance Co. of State of Pa., 134 So. 2d 312 (La. Ct. App. 3d Cir. 1961); Pierson v. Jensen, 148 Neb. 849, 29 N.W.2d 625 (1947).

n7 Mississippi Power & Light Co. v. Lembo, 202 Miss. 532, 32 So. 2d 573 (1947).

n8 Farley v. Ventresco, 307 Pa. 441, 161 A. 534 (1932); Steele v. Fuller, 104 Vt. 303, 158 A. 666 (1932).

n9 General Exchange Ins. Corp. v. M. Romano & Son, 190 So. 168 (La. Ct. App. 1st Cir. 1939).

n10 Jester v. Bailey, 239 Miss. 384, 123 So. 2d 442 (1960); Unangst v. Whitehouse, 235 Pa. Super. 458, 344 A.2d 695 (1975).

n11 Cook v. Mason, 133 So. 2d 428 (Fla. Dist. Ct. App. 1st Dist. 1961); Heffner by Heffner v. Schad, 330 Pa. Super. 101, 478 A.2d 1372 (1984).

n12 Schenck v. Thompson, 201 Kan. 608, 443 P.2d 298 (1968); Service Lines, Inc. v. Mitchell, 419 S.W.2d 525 (Ky. 1967).

n13 Powell v. Schofield, 223 Mo. App. 1041, 15 S.W.2d 876 (1929).

n14 Brave v. Blakely, 250 S.C. 353, 157 S.E.2d 726 (1967).

SUPPLEMENT:

Cases

Under the so-called "blinding light rule," where a driver's vision is suddenly blocked by some action beyond his or her control, the driver is not necessarily negligent for something that occurs while the driver is temporarily blinded. Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
Liability or recovery in automobile negligence action as affected by driver's being blinded by lights other than those of a motor vehicle, 64 A.L.R.3d 760
Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 A.L.R.3d 551
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1243 (Answer alleging failure to stop when blinded by lights of oncoming vehicle)

47 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
b. Blinding Lights or Glare

8 Am Jur 2d Automobiles and Highway Traffic § 770

§ 770 Duty and liability of motorist failing to dim lights

The statutes enacted in most jurisdictions require motor vehicles operating on the highways at night to be equipped with a device for dimming or deflecting headlights so as to minimize their interference with the vision of approaching drivers,[n1] and the duty to have a motor vehicle equipped with a dimming device imports a duty to use it when necessary to avoid injury to others.[n2]

A statute providing that no spotlight should be used on any motor vehicle operating on the highways except when so set or adjusted that its rays are projected directly on the road surface at a distance not exceeding 100 feet directly in front of the motor vehicle and to the right of the center of the traveled way has been held not to forbid the use of rear spotlights, the court stating that it merely requires the adjustment of spotlights so as to direct the rays down and to the right of the vehicle.[n3]

The violation of a statute requiring vehicles to be equipped with devices preventing glare from headlights has been held to be negligence per se,[n4] or negligence as a matter of law.[n5] In other cases, the failure to comply with a statute as to the dimming of lights has been held as merely evidence of negligence.[n6]

The duty to dim bright headlights where necessary for the safety of others using the road may exist even in the absence of statute.[n7]

FOOTNOTES:

n1 Petteys v. Leith, 62 S.D. 149, 252 N.W. 18 (1933).

n2 Fender v. Drost, 62 Ga. App. 345, 7 S.E.2d 800 (1940).

n3 Beck v. Fond Du Lac Highway Committee, 231 Wis. 593, 286 N.W. 64 (1939).

n4 Grubbs v. Duskin, 118 Ga. App. 82, 162 S.E.2d 762 (1968); Smith v. New Dixie Lines, Inc., 201 Va. 466, 111 S.E.2d 434 (1959).

n5 Greyhound Corp. v. Hounshell, 351 S.W.2d 64 (Ky. 1961).

n6 Krieger v. Bausch, 377 F.2d 398 (10th Cir. 1967); Riley v. Johnson, 239 Ark. 37, 386 S.W.2d 942 (1965).

n7 Brock v. Robinson, 97 N.H. 334, 88 A.2d 306 (1952).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights, 63 A.L.R.3d 824

48 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
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F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
b. Blinding Lights or Glare

8 Am Jur 2d Automobiles and Highway Traffic § 771

§ 771 Collision with moving vehicle

In actions involving collisions at night between vehicles approaching from opposite directions, one of the factors indicating the existence of negligence or contributory negligence is the blinding of one of the drivers from the bright lights of the other vehicle involved in the collision. In some cases where the issue of liability is submitted to the trier of facts under such circumstances, verdicts finding that the blinded motorist is not chargeable with negligence have been sustained.[n1] However, where a motorist continues ahead when blinded by the lights of the vehicle which he or she eventually collides with, such situation has been held in other cases, under the circumstances, to constitute negligence.[n2]

A common situation in which the blinding of a motorist by the approaching lights of another vehicle is a factor considered, is where the blinded motorist continues on course and collides with the rear of another vehicle which he or she has been following. Under various circumstances indicating that the blinded motorist is at fault in proceeding and colliding with the vehicle ahead of him or her on the road, a jury's conclusion of negligence has been sustained.[n3] Aside from the effect of continuing ahead as constituting negligence which may bar or diminish recovery by the blinded motorist, it may also be relied upon to bar recovery by the blinded motorist on the ground that it was the sole proximate cause of the collision with the vehicle ahead, or an intervening cause insulating any negligence on the part of the motorist ahead.[n4] However, in some cases where an action is brought to recover damages for injuries sustained by a motorist when, blinded by lights, the motorist collides with the rear of a motorist ahead moving in the same direction, a verdict for the former would be sustained, despite the charge that the motorist was negligent in proceeding when he or she could not see.[n5] Also, in some cases where an action is brought by a traveler to recover damages for injuries sustained when struck in the rear by a motorist who was blinded by the lights of an approaching vehicle, the blinded motorist may be held not negligent, under the circumstances.[n6]

The fact that the vision of a motorist colliding with a vehicle approaching from the opposite direction was obscured by the bright headlights of another vehicle has been a factor in a few cases, and a motorist who continues ahead when blinded has been held to be negligent.[n7]

FOOTNOTES:

n1 Scaletta v. Silva, 52 Cal. App. 2d 730, 126 P.2d 898 (3d Dist. 1942); Moan v. Aasen, 225 Minn. 504, 31 N.W.2d 265 (1948).

n2 Schenck v. Thompson, 201 Kan. 608, 443 P.2d 298 (1968); Labrecque v. American News Co., 115 Vt. 305, 58 A.2d 873 (1948).

n3 Flynn v. Kumamoto, 22 Cal. App. 2d 607, 72 P.2d 248 (3d Dist. 1937); Vierling v. Fry, 354 Pa. 66, 46 A.2d 473 (1946).

n4 Burr v. Fall River News Co., 75 R.I. 476, 67 A.2d 694 (1949); Stotts v. Love, 184 S.W.2d 308 (Tex. Civ. App. Eastland 1944), writ refused w.o.m., (Jan. 24, 1945).

n5 Cosby v. Flowers, 249 Ala. 227, 30 So. 2d 694 (1947); Brown v. Raymond Bros. Motor Transp., 186 Minn. 321, 243 N.W. 112 (1932).

n6 Mose v. Insurance Co. of State of Pa., 134 So. 2d 312 (La. Ct. App. 3d Cir. 1961); Jester v. Bailey, 239 Miss. 384, 123 So. 2d 442 (1960).

n7 Thibodeau v. Webster, 312 Mass. 363, 44 N.E.2d 647 (1942); Wells v. O'Keefe, 91 N.H. 299, 18 A.2d 836 (1941).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43

Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)

49 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
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5. Obstruction of Vision
b. Blinding Lights or Glare

8 Am Jur 2d Automobiles and Highway Traffic § 772

§ 772 Collision with parked or standing vehicle

The most common situation involving a charge of negligence predicated on a motorist's proceeding ahead when his or her vision is interfered with by the lights of other cars arises where the blinded driver collides with another vehicle parked in the road ahead. The mere fact that a complaint seeking recovery from the negligent owner or operator of a parked vehicle which the plaintiff collided with alleges that the plaintiff driver failed to see the parked vehicle because of the blinding effect of approaching lights will not render it subject to a demurrer,[n1] or require a peremptory charge of negligence on the part of the plaintiff, which negligence may bar or diminish his or her recovery.[n2] In some cases under such circumstances, verdicts finding the plaintiff free from negligence have been sustained,[n3] although, under the particular circumstances of other cases, the plaintiff has been held chargeable with negligence, as a matter of law, barring or diminishing recovery.[n4] Where a motorist is sued for colliding with a parked or standing vehicle, when blinded by the lights of an approaching vehicle, the question of the motorist's negligence has been held for the jury under varying circumstances.[n5]

Attempts to charge a motorist with negligence as a matter of law where, blinded by the lights of a parked vehicle, he or she continues ahead and collides with that vehicle have been generally unsuccessful, the courts holding that the question, under all the circumstances, including charges that the vehicles displaying the bright lights were improperly parked in other respects, is for the trier of the facts, and sustaining a verdict for the blinded motorist.[n6]

Whether or not one is negligent in parking a vehicle with bright lights on, and whether such negligence, if any, is a contributing cause in an accident with another parked vehicle, has been held to be a jury question.[n7]

FOOTNOTES:

n1 Nielsen v. Watanabe, 90 Utah 401, 62 P.2d 117 (1936).

n2 McBride v. Baggett Transp. Co., 250 Ala. 488, 35 So. 2d 101 (1948); Cook v. Mason, 133 So. 2d 428 (Fla. Dist. Ct. App. 1st Dist. 1961) (whether a driver blinded by the lights of an oncoming car while driving 35 m.p.h. in the rain was guilty of contributory negligence in running into a truck which suddenly backed onto the highway was for the jury).

n3 Hisaw v. Hendrix, 54 N.M. 119, 215 P.2d 598, 22 A.L.R.2d 285 (1950); Moore v. Virginia Transit Co., 188 Va. 493, 50 S.E.2d 268 (1948).

n4 Anastasi v. McAllister, 189 Kan. 390, 369 P.2d 244 (1962); Smiley v. Arrow Spring Bed Co., 138 Ohio St. 81, 20 Ohio Op. 30, 33 N.E.2d 3, 133 A.L.R. 960 (1941).

n5 Service Lines, Inc. v. Mitchell, 419 S.W.2d 525 (Ky. 1967); Capitol Transport Co. v. A. R. Blossman, Inc., 218 La. 1086, 51 So. 2d 795 (1951).

n6 England v. White, 202 Ark. 1155, 155 S.W.2d 576 (1941); Lemonds v. Holmes, 241 Mo. App. 463, 236 S.W.2d 56, 22 A.L.R.2d 418 (1951).

n7 D'Arcangelo v. Burnett, 52 A.D.2d 723, 382 N.Y.S.2d 170 (4th Dep't 1976).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 385 to 390 (Complaint, petition, or declaration -- Defendant's parked vehicle -- Truck parked without lights or flares)

50 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
b. Blinding Lights or Glare

8 Am Jur 2d Automobiles and Highway Traffic § 773

§ 773 Collision with object other than vehicle; blinded driver's vehicle leaving road

The general rules governing the negligence of a motorist who, blinded by approaching lights, collides with obstacles on the road ahead have been applied in a variety of situations where the collision is with an object other than another vehicle,[n1] such as a pole, signal, or tree,[n2] livestock,[n3] a culvert or bridge abutment,[n4] or other object.[n5]

The usual rules as to care required of a motorist blinded by approaching headlights have also been applied in a situation where the injuries complained of arose when the blinded driver went off the road into a ditch.[n6]

FOOTNOTES:

n1 As to liability where blinded motorist strikes a pedestrian, see § 446.

n2 Carroll v. City of Lowell, 321 Mass. 98, 71 N.E.2d 763 (1947) (tree which had fallen across highway); W.U. Tel. Co. v. Perry, 200 Miss. 469, 27 So. 2d 688 (1946) (telephone pole).

n3 Cary v. Klabunde, 12 Wis. 2d 267, 107 N.W.2d 142 (1961).

n4 Beckley v. Vezu, 23 Cal. App. 2d 371, 73 P.2d 296 (4th Dist. 1937) (bridge); Singleton v. Roman, 195 Md. 241, 72 A.2d 705 (1950) (abutment of culvert).

n5 Federated Milk Producer's Ass'n, Inc. v. Statewide Plumbing & Heating Co., 11 Utah 2d 295, 358 P.2d 348 (1961) (windrow of dirt piled on the road by the defendant).

n6 St. Johnsbury Trucking Co. v. Rollins, 145 Me. 217, 74 A.2d 465, 21 A.L.R.2d 88 (1950); Moss v. Christensen-Gardner, Inc., 98 Utah 253, 98 P.2d 363 (1940).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles

A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street, 49 A.L.R.4th 653
Liability of owner of animal for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 29 A.L.R.4th 431
Liability of owner or operator of vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 159

Liability of person, other than owner of animal or owner or operator of motor vehicle, for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 132

51 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
b. Blinding Lights or Glare

8 Am Jur 2d Automobiles and Highway Traffic § 774

§ 774 Lights other than on motor vehicles; glare of sun

Although different considerations may govern the situation where a motorist is blinded by the approaching lights of other vehicles and where the blinding is caused by sunlight or other stationary lights, the courts passing upon the problem have generally held that the same rules applicable to a driver blinded by the lights from another vehicle apply where a driver is blinded by lights of other kinds or sunlight.[n1] In a number of cases, evidence that a motorist blinded by the sun proceeded ahead, causing injury to him- or herself or to another, in or near the road, has been deemed to show as a matter of law, or to justify or require a finding of, negligence.[n2] Similarly, evidence that a motorist blinded by the lights of a locomotive or streetcar,[n3] or street lamps or floodlights,[n4] proceeded ahead, causing injury to himself or another, has been held to justify a finding of negligence.

FOOTNOTES:

n1 Meads v. Deener, 128 Cal. App. 328, 17 P.2d 198 (3d Dist. 1932); Paquin v. St. Johnsbury Trucking Co., 116 Vt. 466, 78 A.2d 683 (1951).

n2 Hartigan v. Robertson, 87 Ill. App. 3d 732, 42 Ill. Dec. 751, 409 N.E.2d 366 (1st Dist. 1980); Wyatt v. Burlington Northern, Inc., 209 Neb. 212, 306 N.W.2d 902 (1981); Toenges v. Schleihauf, 368 Pa. 247, 82 A.2d 15 (1951); Paquin v. St. Johnsbury Trucking Co., 116 Vt. 466, 78 A.2d 683 (1951).

n3 Louisville & I.R. Co. v. Bedford's Adm'r, 203 Ky. 583, 262 S.W. 941 (1924).

n4 Dillon v. City of Winston-Salem, 221 N.C. 512, 20 S.E.2d 845 (1942).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
Liability or recovery in automobile negligence action as affected by driver's being blinded by lights other than those of a motor vehicle, 64 A.L.R.3d 760

52 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
c. Atmospheric or Weather Conditions

8 Am Jur 2d Automobiles and Highway Traffic § 775

§ 775 Generally

A motorist whose vision is obscured by unfavorable atmospheric or weather conditions, such as fog,[n1] rain, mist,[n2] snow, sleet, ice, or frost,[n3] or by cloudy[n4] or other weather conditions, must exercise care commensurate or consistent with the situation.[n5] The existence or presence of snow, fog, rain, mist, or other similar elements which materially impair or wholly destroy visibility are not to be deemed intervening causes, but rather conditions imposing upon motorists the duty to assure the safety of the public by the exercise of a degree of care commensurate with such circumstances.[n6]

The rule that a motorist is negligent as a matter of law, where the motorist drives at such a rate of speed that the vehicle cannot be stopped or turned aside in time to avoid an obstruction discernible within the range of vision ahead, or within the assured clear distance ahead,[n7] is applicable even though the motorist's vision is cut down or reduced by atmospheric or weather conditions.[n8]

FOOTNOTES:

n1 § 776.

n2 § 777.

n3 § 778.

n4 Keller v. Morehead, 247 S.W.2d 218 (Ky. 1952) (cloudy, overcast day);

Davis v. Spindler, 156 Neb. 276, 56 N.W.2d 107 (1952) (dark and cloudy night).

n5 Files v. State, DOTD, 484 So. 2d 746 (La. Ct. App. 1st Cir. 1986) (where the motorist's visibility is impaired because of smoke, mist, dust or other atmospheric conditions, he or she is held to the duty of operating his or her vehicle with an unusually high degree of care); Burgess Brogdon, Inc. v. Lake, 288 S.C. 16, 339 S.E.2d 507 (1986).

n6 Haight v. Nelson, 157 Neb. 341, 59 N.W.2d 576, 42 A.L.R.2d 1 (1953).

n7 § 764.

n8 Mantz v. Continental Western Ins. Co., 228 Neb. 447, 422 N.W.2d 797 (1988); Rich v. Petersen Truck Lines, 357 Pa. 318, 53 A.2d 725 (1947).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606

West's Key Number Digest, Automobiles [westkey]168(8), 168(9)
Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933
Liability for motor vehicle accident where vision of driver is obscured by smoke, dust, atmospheric condition, or unclean windshield, 42 A.L.R.2d 13 (secs. 137 to 154 superseded in part Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933)

53 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
c. Atmospheric or Weather Conditions

8 Am Jur 2d Automobiles and Highway Traffic § 776

§ 776 Fog

Under the well-recognized general rule that a driver of a motor vehicle must exercise reasonable care or ordinary care, the surrounding circumstances are important,[n1] among which is the existence of fog which obscures visibility.[n2] Greater, higher, or more care than under normal conditions is required of a driver traveling through fog limiting visibility.[n3] Clearly, one driving a motor vehicle through fog should maintain a lookout commensurate with such weather condition.[n4]

The rule in some jurisdictions is that, one driving through fog must keep the vehicle under such control and drive at such a speed as will enable him or her in the exercise of ordinary care and skill to avoid a collision.[n5] In other jurisdictions, where fog is at least one factor in interference with the vision of a motorist, the motorist must operate the vehicle at such a speed rate and with such control as to be able to stop in time to avoid an obstruction discernible within the motorist's length of vision ahead or within the assured clear distance ahead.[n6] However, in some cases involving a limitation of the motorist's vision by fog, the "assured clear distance ahead"rule has been held inapplicable where the object on the road is not discernible or distinguishable,[n7] or where an object or person suddenly appears in front of the motorist;[n8] and in some jurisdictions wherein cases have been considered involving the limitation of the vision of a motorist by fog, the "assured clear distance ahead"doctrine has been expressly repudiated.[n9]

Under certain circumstances, a driver who encounters fog may have the duty not only to reduce his or her speed, but to come to a complete stop.[n10] However, this is not necessarily so, and in some cases under the particular circumstances involved, there is no duty to stop despite the presence of fog.[n11]

The rules and principles discussed above have been applied in various factual situations, where the presence of fog limiting visibility was a factor considered, with regard to the negligence of motorists, such as, in cases involving collisions between vehicles proceeding in the same direction,[n12] collisions between vehicles proceeding in opposite directions,[n13] collisions at intersections,[n14] collisions with parked or standing vehicles,[n15] and collisions with pedestrians.[n16]

FOOTNOTES:

n1 § 420

n2 Burgess Brogdon, Inc. v. Lake, 288 S.C. 16, 339 S.E.2d 507 (1986).

n3 Williams v. Tucker, 259 N.C. 214, 130 S.E.2d 306 (1963).

n4 Turnbull v. Byram, 235 Kan. 891, 684 P.2d 429 (1984); Bailey v. Phillips, 592 So. 2d 900 (La. Ct. App. 5th Cir. 1991), writ denied, 594 So. 2d 876 (La. 1992).

n5 Benjamin v. Noonan, 207 Cal. 279, 277 P. 1045 (1929).

n6 Turnbull v. Byram, 235 Kan. 891, 684 P.2d 429 (1984); Burgess Brogdon, Inc. v. Lake, 288 S.C. 16, 339 S.E.2d 507 (1986).

As to the "assured clear distance ahead"rule, see § 764.

n7 Colby Cheese Box Co. v. Dallendorfer, 213 Wis. 331, 251 N.W. 447 (1933).

n8 Erdman v. Mestrovich, 155 Ohio St. 85, 44 Ohio Op. 97, 97 N.E.2d 674, 31 A.L.R.2d 1417 (1951).

n9 Marshall v. Sellers, 188 Md. 508, 53 A.2d 5 (1947); Thompson v. Byers Transp. Co., 362 Mo. 42, 239 S.W.2d 498 (1951).

n10 Bailey v. Phillips, 592 So. 2d 900 (La. Ct. App. 5th Cir. 1991), writ denied, 594 So. 2d 876 (La. 1992).

n11 Bailey v. Phillips, 592 So. 2d 900 (La. Ct. App. 5th Cir. 1991), writ denied, 594 So. 2d 876 (La. 1992); Salera v. Schroeder, 183 Minn. 478, 237 N.W. 180 (1931).

n12 Pardee v. Bituminous Ins. Co., 401 So. 2d 1067 (La. Ct. App. 3d Cir. 1981); Burgess Brogdon, Inc. v. Lake, 288 S.C. 16, 339 S.E.2d 507 (1986).

n13 Ruble v. Carr, 244 Iowa 990, 59 N.W.2d 228 (1953); Pfeiffer v. Transport Leasing, Inc., 282 A.D. 985, 125 N.Y.S.2d 482 (3d Dep't 1953).

n14 Turnbull v. Byram, 235 Kan. 891, 684 P.2d 429 (1984); Oliver v. Harvey, 31 Wash. App. 279, 640 P.2d 1087 (Div. 1 1982).

n15 Fruit Industries, Inc. v. Petty, 268 F.2d 391 (5th Cir. 1959); Burnett v. Yurt, 247 S.W.2d 227 (Ky. 1952).

n16 Finley v. North Assur. Co. of America, 476 So. 2d 837 (La. Ct. App. 2d Cir. 1985).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(8), 168(9)
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 416 (Complaint, petition, or declaration -- Fog on highway -- Rear-end collision -- Plaintiff's automobile pushed into path of approaching vehicle)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 800 (Allegation -- Obstructed vision -- Fog)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 861 (Allegation -- Speeding when visibility poor -- Fog)

54 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
c. Atmospheric or Weather Conditions

8 Am Jur 2d Automobiles and Highway Traffic § 777

§ 777 Rain or mist

A rainy or misty condition obscuring the visibility of a motorist proceeding along the highway is one of the circumstances bearing on his or her exercise of reasonable or ordinary care at such time.[n1] A more or higher or greater care than that under normal conditions is required of a driver traveling through rain or mist limiting visibility.[n2] One driving a motor vehicle through rain or mist should maintain a lookout commensurate with such weather condition.[n3]

The rule in some jurisdictions is that, one driving a motor vehicle through rain or mist must keep the vehicle under such control and drive at such a speed as will enable him or her in the exercise of ordinary care and skill to avoid a collision.[n4] In other jurisdictions, where rain or mist is at least one factor in interfering with the vision of a motorist, the rule is that the motorist must operate the vehicle at such a rate of speed and with such control as to be able to stop or turn aside in time to avoid an obstruction discernible within the motorist's range of vision ahead or within the assured clear distance ahead.[n5] However, in some cases involving a limitation of a motorist's vision by rain or mist, the "assured clear distance ahead"rule has been held inapplicable where the object on the road is not discernible or distinguishable,[n6] or where an object or person suddenly appears in front of the motorist.[n7] Also, in jurisdictions where such cases have been considered, the "assured clear distance ahead"rule has been expressly repudiated.[n8]

Under certain circumstances, the limitation of visibility caused by rain or mist may be such as to impose a duty on the motorist, not merely to reduce speed, but to stop altogether.[n9] Ordinarily, however, there is no duty to stop merely because of rain, and this has been recognized in a number of cases.[n10]

The rules and principles discussed above have been applied in various factual situations, where rain or mist affecting visibility was a factor considered, with regard to the negligence of motorists, such as, in cases involving collisions between vehicles proceeding in the same direction,[n11] collisions between vehicles proceeding in opposite directions,[n12] collisions at intersections,[n13] and collisions with parked or standing vehicles.[n14]

FOOTNOTES:

n1 Brown v. State, 205 Neb. 332, 287 N.W.2d 676 (1980) (rain); Meacham v. Southern Ry. Co., 213 N.C. 609, 197 S.E. 189 (1938) (mist).

n2 Engel v. Davis, 256 Ala. 661, 57 So. 2d 76 (1952); McGaffee v. P.B. Mutrie Motor Transp., 311 Mass. 730, 42 N.E.2d 841 (1942).

n3 New York Cent. Ry. Co. v. Powell, 221 Ind. 321, 47 N.E.2d 615 (1943); Hogue v. Akin Truck Line, 16 So. 2d 366 (La. Ct. App. 2d Cir. 1944).

n4 Kirby v. Swift & Co., 199 Ark. 442, 134 S.W.2d 865 (1939); Fischer v. Keen, 43 Cal. App. 2d 244, 110 P.2d 693 (2d Dist. 1941).

n5 Petroleum Carrier Corp. v. Robbins, 52 So. 2d 666 (Fla. 1951); Schaller v. Bjornstad, 77 N.D. 51, 40 N.W.2d 59 (1949).

As to the "assured clear distance ahead"rule, generally, see § 764.

n6 Haight v. Nelson, 157 Neb. 341, 59 N.W.2d 576, 42 A.L.R.2d 1 (1953).

n7 Moss v. Christensen-Gardner, Inc., 98 Utah 253, 98 P.2d 363 (1940).

n8 Rea Const. Co. v. Robey, 204 Md. 94, 102 A.2d 745 (1954); Langill v. First Nat. Stores, 298 Mass. 559, 11 N.E.2d 593 (1937).

n9 Massey v. Matza, 11 A.D.2d 36, 201 N.Y.S.2d 715 (1st Dep't 1960), judgment aff'd, 13 N.Y.2d 631, 240 N.Y.S.2d 611, 191 N.E.2d 95 (1963).

n10 McCormick v. Sioux City, 243 Iowa 35, 50 N.W.2d 564 (1951); Salter v. Acme Well Point Corp., 116 So. 2d 351 (La. Ct. App. 2d Cir. 1959).

n11 Lilly v. Scott, 1979 OK CIV APP 29, 598 P.2d 279 (Ct. App. Div. 2 1979).

n12 Samples v. Strait, 36 So. 2d 856 (La. Ct. App. 1st Cir. 1948); Bielinski v. Colwell, 242 Minn. 338, 65 N.W.2d 113 (1954).

n13 Jenkins v. Dearie, 405 So. 2d 1141 (La. Ct. App. 1st Cir. 1981).

n14 Silcio v. Haley, 380 So. 2d 670 (La. Ct. App. 4th Cir. 1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(8), 168(9)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 417 (Complaint, petition, or declaration -- Fog and rain on highway -- Against employee driver and employer -- Truck backing up into opposing lane)

55 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
c. Atmospheric or Weather Conditions

8 Am Jur 2d Automobiles and Highway Traffic § 778

§ 778 Snow, sleet, ice, or frost

Where snow, sleet, ice, or frost is a factor in interfering with the vision of a motorist, the motorist must operate the vehicle at such rate of speed and with such control as to be able to stop or turn aside in time to avoid an obstruction discernible within the motorist's range of vision or within the assured clear distance ahead.[n1] However, in some cases involving a limitation of the motorist's vision by such weather conditions, the "assured clear distance ahead"rule has been held inapplicable where the object on the road is not discernible or distinguishable,[n2] or where an object or person suddenly appears in front of the motorist.[n3] Also, in some jurisdictions wherein cases have been considered involving the limitation of the vision of a motorist by snow, sleet, or ice, the "assured clear distance ahead"rule has been expressly repudiated.[n4]

A driver whose vision is reduced or cut off by reason of snow, sleet, or ice may be under a duty to come to a complete stop,[n5] and the failure to do so may be held to constitute negligence as a matter of law.[n6] Thus, a driver whose windshield is so encrusted with snow, ice, or frost as to make it impossible to see is under a duty to stop the car and clear the windshield.[n7] However, under the particular circumstances, a motorist has been held not guilty of negligence as a matter of law in driving when his or her vision was reduced by snow, sleet, or ice.[n8]

The courts have applied the rules and principles discussed above, in cases involving various factual situations, where snow, ice, sleet, or frost affecting visibility was a factor considered, upon the question of negligence, such as, in cases involving collisions between vehicles traveling in the same direction,[n9] collisions between vehicles traveling in opposite directions,[n10] collisions at intersections,[n11] and collisions with parked or standing vehicles.[n12]

FOOTNOTES:

n1 Termuhlen v. Campbell, 71 Ohio App. 285, 26 Ohio Op. 128, 38 Ohio L. Abs. 33, 48 N.E.2d 891 (1st Dist. Hamilton County 1942); Hutchinson v. Follmer Trucking Co., 333 Pa. 424, 5 A.2d 182 (1939).

As to the "assured clear distance ahead"rule, generally, see § 764.

n2 Blowers v. Waterloo, Cedar Falls & Northern Ry. Co., 233 Iowa 258, 8 N.W.2d 751 (1942); German v. City of New Orleans, 3 So. 2d 181 (La. Ct. App., Orleans 1941).

n3 Virginia Ave. Coal Co. v. Bailey, 185 Tenn. 242, 205 S.W.2d 11 (1947).

n4 Baldwin v. Mittry, 61 Idaho 427, 102 P.2d 643 (1940); Brumage v. Blubaugh, 204 Md. 144, 102 A.2d 568 (1954).

n5 Patch v. Boman, 127 Colo. 424, 257 P.2d 418 (1953); Prime, Inc. v. Younglove Const. Co., 227 Neb. 423, 418 N.W.2d 539 (1988).

n6 Patch v. Boman, 127 Colo. 424, 257 P.2d 418 (1953); Schuknecht v. Chicago, M., St. P. & P. R. Co., 74 S.D. 61, 48 N.W.2d 917 (1951).

n7 Patch v. Boman, 127 Colo. 424, 257 P.2d 418 (1953); Paquette v. Consumers Power Co., 316 Mich. 501, 25 N.W.2d 599 (1947) (windshield covered with frost).

n8 Squyres v. Baldwin, 191 La. 249, 185 So. 14 (1938); Thomas v. Thurston Motor Lines, 230 N.C. 122, 52 S.E.2d 377 (1949).

n9 Parr v. Douglas, 253 Wis. 311, 34 N.W.2d 229 (1948); Tyler v. Jensen, 75 Wyo. 249, 295 P.2d 742 (1956).

n10 Dahlin v. Rice Truck Lines, 137 Mont. 430, 352 P.2d 801 (1960); D'Arienzo v. Manderville, 106 A.D.2d 686, 484 N.Y.S.2d 171 (3d Dep't 1984).

n11 Capps v. American Auto Ins. Co., 35 So. 2d 263 (La. Ct. App. 2d Cir. 1948); Johnson v. Mancilman, 241 Minn. 461, 63 N.W.2d 569 (1954).

n12 Weinstein v. Hallas, 140 Conn. 387, 100 A.2d 733 (1953); Doleman v. Burandt, 160 Neb. 745, 71 N.W.2d 521 (1955).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203

Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(9)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 414 (Complaint, petition, or declaration -- Ice and snow on pavement -- Truck following too closely and at excessive speed)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 801, 802 (Allegation -- Obstructed vision -- Windshield covered with snow or frost)

56 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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F. Effect of Particular Circumstances; Place of Injury
5. Obstruction of Vision
c. Atmospheric or Weather Conditions

8 Am Jur 2d Automobiles and Highway Traffic § 779

§ 779 Smoke, dust, or "smog"

Under the rule that a driver of a motor vehicle must exercise reasonable care or ordinary care, the surrounding circumstances are important,[n1] among which are smoke,[n2] dust,[n3] or "smog"[n4] obscuring visibility. As a general rule, greater or higher care, or more care than is necessary under normal conditions, is required of a driver traveling through smoke,[n5] steam,[n6] or dust[n7] limiting visibility, and one driving through smoke or dust must exercise care and caution in keeping a lookout commensurate with the increased danger.[n8]

The rule in some jurisdictions is that, one driving a motor vehicle through smoke or dust must keep the vehicle under such control and drive at such a speed as will enable him or her in the exercise of ordinary care to avoid a collision.[n9] In other jurisdictions, where smoke or dust is a factor in interfering with the vision of a motorist, the motorist must operate the vehicle at such rate of speed and with such control as to be able to stop or turn aside in time to avoid an obstruction discernible within the motorist's range of vision ahead or within the assured clear distance ahead.[n10] However, in some cases involving a limitation of the motorist's vision by smoke or dust, the assured clear distance ahead rule has been held inapplicable where the object on the road is not discernible or distinguishable,[n11] or where an object or person suddenly appears in front of a motorist.[n12]

A driver may be under a duty to come to a complete stop where his or her visibility is impaired from encountering smoke[n13] or dust.[n14]

The courts have applied the rules and principles discussed above in cases involving various factual situations, where smoke, steam, fog, or dust affecting visibility was a factor considered upon the question of negligence, such as, in cases involving collisions between vehicles traveling in the same direction,[n15] collisions between vehicles traveling in opposite directions,[n16] collisions at intersections,[n17] collisions with pedestrians,[n18] and collisions with parked or standing vehicles.[n19]

FOOTNOTES:

n1 § 420.

n2 Peoples Drug Stores v. Windham, 178 Md. 172, 12 A.2d 532 (1940).

n3 Central Const. Co. v. Republican City School Dist. No. 1, 206 Neb. 615, 294 N.W.2d 347 (1980); Blaak v. Davidson, 84 Wash. 2d 882, 529 P.2d 1048 (1975).

n4 Audubon Ins. Co. v. Cunningham, 132 So. 2d 657 (La. Ct. App. 1st Cir. 1961).

n5 French v. Christner, 173 Or. 158, 135 P.2d 464 (1943).

n6 Clark v. City of St. Joseph, 606 S.W.2d 506, 32 A.L.R.4th 927 (Mo. Ct. App. W.D. 1980).

n7 E.P. Barnes & Bro. v. Eastin, 190 Ky. 392, 227 S.W. 578 (1920).

n8 Files v. State, DOTD, 484 So. 2d 746 (La. Ct. App. 1st Cir. 1986).

n9 Bong v. Webster, 217 Ky. 781, 290 S.W. 662 (1927) (smoke); Camp v. Bryant, 171 Va. 390, 199 S.E. 469 (1938) (dust).

n10 Rich v. Petersen Truck Lines, 357 Pa. 318, 53 A.2d 725 (1947); Cook v. Wisconsin Tel. Co., 263 Wis. 56, 56 N.W.2d 494 (1953).

As to the "assured clear distance ahead"rule, generally, see § 764.

n11 Car & General Ins. Corp. v. Cheshire, 159 F.2d 985 (C.C.A. 5th Cir. 1947).

n12 French v. Christner, 173 Or. 158, 135 P.2d 464 (1943).

n13 Broussard v. Saia Motor Freight Line, Inc., 277 So. 2d 488 (La. Ct. App. 1st Cir. 1973), writ refused, 279 So. 2d 688 (La. 1973) (fog and smoke); Lumpkins v. Thompson, 553 S.W.2d 949 (Tex. Civ. App. Amarillo 1977), writ refused n.r.e., (Dec. 7, 1977).

n14 Townsend v. Armstrong, 220 Iowa 396, 260 N.W. 17 (1935).

n15 Ferrara v. McCarter, 539 So. 2d 1247 (La. Ct. App. 4th Cir. 1989), writ denied, 546 So. 2d 176 (La. 1989); Allen v. Pullen, 82 N.C. App. 61, 345 S.E.2d 469 (1986).

n16 Hines v. Leach, 212 Kan. 589, 512 P.2d 103 (1973); Beard v. Brown, 616 P.2d 726 (Wyo. 1980).

n17 Clark v. City of St. Joseph, 606 S.W.2d 506, 32 A.L.R.4th 927 (Mo. Ct. App. W.D. 1980).

n18 Cook v. Wisconsin Tel. Co., 263 Wis. 56, 56 N.W.2d 494 (1953).

n19 Mann v. Anderson, 206 Ga. App. 760, 426 S.E.2d 583 (1992).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(8), 168(9)
Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 692 (Land owner adjacent to highway allowed smoke to drift onto highway -- Operator of vehicle injured when smoke obscured vision -- Collision with tree or pole adjacent to highway)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 799 (Allegation -- Obstructed vision -- Smoke from adjacent property)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1487, 1488 (Instruction -- Driving into dense cloud of smoke)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1606 (Instruction -- Cloud of smoke on highway)

57 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 780

§ 780 Generally

The general rule that the operator of a motor vehicle is required to exercise ordinary or reasonable care for his or her own safety and the safety of others using the public way [n1] applies at street and highway intersections. [n2]

Ordinary or reasonable care in the operation of a motor vehicle at an intersection generally requires more precaution than is necessary when driving elsewhere in a street or highway. [n3] However, the duty is not absolute, since a driver may proceed into the road in the face of oncoming traffic if the driver reasonably believes that such a maneuver can be completed without collision, and a driver turning in an intersection is not required to look in all directions at all times. [n4]

The measure of motorists' care and duty to deal with the danger of uncontrolled intersections is supplemented by their statutory duty to keep a lookout ahead, consistent with the safety of other vehicles and persons who might be using and traveling upon a street or highway. [n5]

Motorists entering intersections are also obligated to look for approaching vehicles and to see those within the radius that denotes the limit of danger. [n6] Thus, an oncoming driver's involvement in an automobile accident, in which a left-turning driver sustained injuries in a collision with the oncoming driver's vehicle, does not amount to negligence, in the absence of a showing that the oncoming driver exceeded the speed limit, improperly changed lanes, or proceeded through the intersection against a red stop light. [n7]

In the absence of a statute or ordinance regulating the manner in which motorists should drive when they meet at an intersection, the rule of the common law applies: each motorist must exercise ordinary or reasonable care to avoid injury to the other -- that is, care commensurate with the circumstances and surrounding conditions. [n8]

The law does not require a person lawfully operating a motor vehicle on a preferred street or highway to turn her head and look to the right and to the left before entering and traversing any non-preferred street intersecting the preferred highway. [n9]

Unless there is no conflict in the inferences that may be drawn from the surrounding facts and circumstances, involving motor vehicle accidents at intersections, it is for the jury to determine whether those involved in the accident were negligent. [n10]

FOOTNOTES:

n1 § 420.

n2 As to what constitutes an "intersection"within the meaning of regulations governing the right of way at intersections, see § 284.

n3 Roberts v. Leahy, 35 Wash. 2d 648, 214 P.2d 673 (1950).

n4 Klein v. Hollings, 992 F.2d 1285 (3d Cir. 1993) (applying Pennsylvania law).

n5 Wasson v. Shoffner, 2006 OK CIV APP 151, 149 P.3d 1085 (Div. 4 2006), cert. denied, (Dec. 4, 2006).

n6 Stauffer v. School Dist. of Tecumseh, 238 Neb. 594, 473 N.W.2d 392, 69 Ed. Law Rep. 554 (1991).

n7 Morton v. Horace Mann Ins. Co., 282 Ga. App. 734, 639 S.E.2d 352 (2006), cert. denied, (Feb. 26, 2007).

n8 Drury v. Palmer, 84 Idaho 558, 375 P.2d 125 (1962).

n9 McDonald v. Lattire, 844 N.E.2d 206 (Ind. Ct. App. 2006) (holding that the northbound motorist had no opportunity to avoid the collision that occurred when the other vehicle ran a stop sign and collided with his vehicle, causing his vehicle to spin into the southbound lane and collide with a southbound motorist, and thus, the northbound motorist was not liable in the southbound motorist's negligence suit).

n10 Weng v. Gill, 52 A.D.2d 923, 383 N.Y.S.2d 84 (2d Dep't 1976), order aff'd, 42 N.Y.2d 927, 397 N.Y.S.2d 1007, 366 N.E.2d 1361 (1977).

SUPPLEMENT:

Cases

Whether southbound driver's testimony regarding how intersectional accident happened was credible was a determination to be made by trier of fact, in eastbound driver's personal injury action. Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008).

As a general rule, a motorist's right to assume that the driver of a vehicle proceeding toward an intersection will obey the law of the road, which requires him to stop before entering the intersection, exists only until he knows or in the exercise of ordinary care should know otherwise. City of Jackson v. Spann, 4 So. 3d 1029 (Miss. 2009).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(1) to 171(14), 208
West's Key Number Digest, Highways [westkey]175

58 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 781

§ 781 Right of way

Motorists approaching an intersection are accorded the status of favored or disfavored drivers in order to facilitate the orderly movement of traffic.[n1] A driver may hold the favored position in an intersection pursuant to a statute or ordinance.[n2] Accordingly, a driver may be given the right of way at an intersection because of his or her position in relation to other drivers,[n3] or because he or she is proceeding on an arterial or through a highway or street,[n4] particularly one protected by traffic signs or signals.[n5]

A driver does not forfeit his or her right of way by driving at an unlawful speed.[n6]

FOOTNOTES:

n1 Roe v. Kornder-Owen, 282 Mont. 287, 937 P.2d 39 (1997).

n2 § 281.

n3 Salazar v. Nemec, 5 Neb. App. 622, 562 N.W.2d 728 (1997), judgment rev'd on other grounds, 253 Neb. 298, 570 N.W.2d 366 (1997).

n4 Musilek v. Stober, 434 N.W.2d 765 (S.D. 1989).

n5 As to the effect of such lights or signals, generally, see §§ 792 to 815.

n6 Burrows v. Jacobsen, 209 Neb. 778, 311 N.W.2d 880 (1981); Cintron v. Milkovich, 611 P.2d 730 (Utah 1980).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings

A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(4), 171(4.1), 208
West's Key Number Digest, Highways [westkey]175

59 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 782

§ 782 Rights and duties of favored driver

A right of way at an intersection is a qualified, rather than absolute, right to proceed through an intersection while exercising due care, in a lawful manner, in preference to another vehicle.[n1] Thus, the fact that a driver holds the right of way does not relieve him or her of the duty to exercise reasonable care not to injure others at the intersection, especially where the driver's lateral view is obstructed by a physical obstacle.[n2] A driver with a right of way has a corresponding duty to use reasonable care to avoid a collision.[n3] The fact that a motorist has the right of way at an intersection does not excuse heedless or reckless conduct on his or her part,[n4] or exempt the driver from the duty of exercising due care, which includes keeping a lookout for motorists in the intersection.[n5] Even an operator of a vehicle having the right of way has a duty to maintain a proper lookout, to remain alert in observing approaching vehicles, and to exercise ordinary care in the control, speed and movements of the his or her vehicle to avoid a collision if by ordinary diligence he or she could see that one is threatened or imminent.[n6]

However, where a driver does have the right of way at an intersection, he or she may assume, in the absence of something to put him or her on notice to the contrary, that nonfavored travelers will yield the right of way and stop or slow down sufficiently to permit the driver to pass in safety.[n7] A driver who has the right-of-way is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield,[n8] and is not required to proceed overly cautiously into an intersection and to be cognizant of everything in plain view.[n9] A favored driver on an arterial highway is entitled to rely heavily upon this right of way, and is entitled to a reasonable reaction time after it becomes apparent, in the exercise of due care, that a disfavored driver will not yield to the right of way.[n10]

In certain situations and under certain circumstances, a driver having the right of way at an intersection may, in the exercise of ordinary care, be required to yield that right of way to another.[n11]

FOOTNOTES:

n1 Wittmer v. Jones, 864 S.W.2d 885 (Ky. 1993); Dolberg v. Paltani, 250 Neb. 297, 549 N.W.2d 635 (1996).

n2 § 784.

n3 Mateiasevici v. Daccordo, 34 A.D.3d 651, 825 N.Y.S.2d 502 (2d Dep't 2006).

n4 Bockstruck v. Jones, 60 Wash. 2d 679, 374 P.2d 996 (1962).

n5 Soto v. U.S., 11 F.3d 15 (1st Cir. 1993); Roe v. Kornder-Owen, 282 Mont. 287, 937 P.2d 39 (1997).

n6 Hite v. Anderson, 284 Ga. App. 156, 643 S.E.2d 550 (2007).

n7 Roe v. Kornder-Owen, 282 Mont. 287, 937 P.2d 39 (1997); Musilek v. Stober, 434 N.W.2d 765 (S.D. 1989).

n8 Mizrahi v. Lam, 40 A.D.3d 594, 836 N.Y.S.2d 200 (2d Dep't 2007); Gergis v. Miccio, 39 A.D.3d 468, 834 N.Y.S.2d 253 (2d Dep't 2007).

A driver who had the right of way was entitled to anticipate that a bicyclist would obey traffic laws requiring him to yield. Rosenberg v. Kotsek, 41 A.D.3d 573, 837 N.Y.S.2d 343 (2d Dep't 2007); Aiello v. City of New York, 32 A.D.3d 361, 820 N.Y.S.2d 579 (1st Dep't 2006).

A driver had the right of way and thus was not liable in a personal injury action brought by the plaintiff who was a passenger in a van involved in a collision with the driver's vehicle, where the operator of the van failed to properly observe and yield to the cross traffic before proceeding into the intersection; the driver was entitled to assume that the operator of the van would obey the traffic laws requiring her to yield. Platt v. Wolman, 29 A.D.3d 663, 816 N.Y.S.2d 121 (2d Dep't 2006).

n9 McDonald v. Lattire, 844 N.E.2d 206 (Ind. Ct. App. 2006).

n10 Sanchez v. Haddix, 95 Wash. 2d 593, 627 P.2d 1312 (1981).

n11 Shams v. Carney, 518 N.W.2d 366 (Iowa 1994); Vender v. Stone, 245 Mont. 428, 802 P.2d 606 (1990).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203

Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(1), 168(6), 170(8), 171(4), 171(4.1), 171(13), 208
West's Key Number Digest, Highways [westkey]175

60 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 783

§ 783 Rights and duties of disfavored driver

A nonfavored driver approaching an intersection has the duty to respect the right of way of a favored driver, and must proceed to the intersection in such a manner as to permit the exercise of the favored driver's right of way without danger of collision.[n1]

A driver who does not have the right of way is not justified in taking close chances, but has the duty to yield if there is a reasonable risk of collision should both vehicles continue on their course.[n2] To be successful, a motorist claiming preemption of an intersection while crossing a favored roadway must show that he or she entered at a time when there was a reasonable opportunity to complete the crossing without endangering, or impeding the passage of, a vehicle on the superior roadway.[n3] More specifically, in order to preempt an intersection, a motorist must show that he or she made lawful entry, at the proper speed, after ascertaining that the oncoming traffic was sufficiently removed to permit a safe passage, and under a bona fide belief and expectation that he or she could negotiate the crossing with safety, and the motorist must show that he or she entered the intersection at the proper speed and sufficiently in advance of the vehicle on the intersecting street to permit him or her to cross without requiring an emergency stop by the other vehicle.[n4]

A driver's failure to yield the right of way, in violation of traffic regulations, constitutes negligence per se.[n5] or negligence as a matter of law.[n6] Also, a driver's failure to see another automobile at an intersection, which automobile is within the limit of danger and in a favored position, constitutes negligence as a matter of law.[n7]

FOOTNOTES:

n1 Greenlee v. Chastain, 112 Ga. App. 813, 146 S.E.2d 378 (1965); Roberts v. Fairchild, 14 Md. App. 612, 287 A.2d 778 (1972).

A driver who was crossing a four-lane road was solely at fault for the accident that occurred when the driver crossed over the median and attempted to cross the last two lanes of the road and made contact with the vehicle of a motorist who was driving in one of the last two lanes, since the driver had the statutory duty to yield so that the motorist could clear the roadway, and the driver did not preempt the intersection. Tremblay v. Allstate Ins. Co., 955 So. 2d 700 (La. Ct. App. 4th Cir. 2007).

n2 Workman v. Stehlik, 238 Neb. 666, 471 N.W.2d 760 (1991).

n3 Archer v. Hurst, 938 So. 2d 741 (La. Ct. App. 1st Cir. 2006).

n4 Archer v. Hurst, 938 So. 2d 741 (La. Ct. App. 1st Cir. 2006).

n5 Washington Metropolitan Area Transit Authority v. Davis, 606 A.2d 165 (D.C. 1992); Weiser v. Dalbo, 184 A.D.2d 935, 585 N.Y.S.2d 124 (3d Dep't 1992).

A driver was negligent per se, and thus was liable for injuries sustained in a motor vehicle accident, where the driver failed to yield the right of way to an oncoming vehicle, which he could have seen by using his senses. McNally v. Corwin, 30 A.D.3d 482, 819 N.Y.S.2d 271 (2d Dep't 2006).

n6 Laino v. Lucchese, 35 A.D.3d 672, 827 N.Y.S.2d 249 (2d Dep't 2006).

n7 Wittmer v. Jones, 864 S.W.2d 885 (Ky. 1993); Remelius v. Ritter, 222 Neb. 734, 386 N.W.2d 860 (1986).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567

Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(4), 171(4.1), 208
West's Key Number Digest, Highways [westkey]175
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 198 (Complaint, petition, or declaration -- Failure to yield right of way -- Vehicles approaching intersection simultaneously)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 199 (Complaint, petition, or declaration -- Failure to stop and yield right of way -- Intoxication -- Negligence per se -- Damage to vehicle)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 239 (Complaint, petition, or declaration -- Improper lookout and failure to yield right of way -- Damage to vehicle -- loss of consortium -- Against employer and employee)

61 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 784

§ 784 Obstruction of view at intersection

The fact that a driver has the right of way at an intersection does not excuse him or her from maintaining a lookout or otherwise exercising due care to avoid a collision,[n1] particularly where the view is obstructed by a physical obstacle.[n2] Thus, a driver's failure to note the dangers at a blind intersection that could result in an accident may properly be the basis of a finding of negligence.[n3]

A driver who has the right of way has the duty to proceed at a reasonable rate of speed, in approaching a blind intersection,[n4] and may have the duty to slow down or stop,[n5] and to sound a warning,[n6] or to turn aside or yield the right of way, if reasonably possible, to avoid a collision.[n7]

It is proper for a motorist who has the right of way at a blind intersection to assume that a nonfavored motorist approaching the intersection will exercise due care and comply with the law,[n8] and will obey stop signs placed there.[n9]

Practice Tip: Whether a driver who has the right of way at a blind intersection is guilty of negligence in his or her manner of entering the intersection is a question for the jury where reasonable minds could differ.[n10]

FOOTNOTES:

n1 § 782.

n2 Schenk v. Yosten, 229 Neb. 691, 428 N.W.2d 510 (1988).

n3 Barajas v. Parker, 165 Neb. 444, 85 N.W.2d 894 (1957).

n4 McPherson v. Leichhardt, 181 Kan. 330, 310 P.2d 941 (1957); Neumann v. Evans, 272 Wis. 579, 76 N.W.2d 322 (1956).

n5 Powers v. Medina, 1 A.D.2d 727, 146 N.Y.S.2d 867 (3d Dep't 1955).

n6 Smith v. Lamb, 220 Iowa 835, 263 N.W. 311 (1935).

n7 Turnbull v. Byram, 235 Kan. 891, 684 P.2d 429 (1984); Schenk v. Yosten, 229 Neb. 691, 428 N.W.2d 510 (1988).

n8 Noyce v. Ross, 360 Mich. 668, 104 N.W.2d 736 (1960).

n9 Neumann v. Bishop, 59 Cal. App. 3d 451, 130 Cal. Rptr. 786 (1st Dist. 1976).

n10 Goodridge v. Davis, 1959 OK 204, 345 P.2d 894 (Okla. 1959).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369,

371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(10), 208
West's Key Number Digest, Highways [westkey]175
Right and duty of motorist on through, favored, or arterial street or highway to proceed where lateral view at intersection is obstructed by physical obstacle, 59 A.L.R.2d 1202
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 799 to 802 (Allegation -- Obstructed vision)

62 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 785

§ 785 Entering intersection the wrong way on one-way street

Entering an intersection at the wrong way on a one-way street may be found to constitute negligence upon which recovery may be predicated, or negligence barring or diminishing recovery,[n1] or conduct not required to be anticipated by the motorist approaching on the intersecting street, with reference to the question of the negligence of the latter.[n2] However, the operator of a motor vehicle in a collision with a vehicle entering an intersection at the wrong way on a one-way street has been denied recovery, where the circumstances and conduct were such that the driver could be found negligent despite the unanticipated, illegal conduct of the other driver.[n3]

FOOTNOTES:

n1 Senger v. Vancouver-Portland Bus Co., 209 Or. 37, 298 P.2d 835, 62 A.L.R.2d 265 (1956).

n2 Hornacek v. Hallenbeck, 185 A.D.2d 561, 586 N.Y.S.2d 426 (3d Dep't 1992).

n3 DuChessi v. D'Alesandro, 265 A.D. 982, 38 N.Y.S.2d 662 (3d Dep't 1942).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(4), 171(4.1), 208
West's Key Number Digest, Highways [westkey]175
Duty and liability of vehicle drivers approaching intersection of one-way street with other street, 62 A.L.R.2d 275

63 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 786

§ 786 Driver's signals indicating intention to turn or stop

A driver has the duty to watch for other drivers' signals in connection with turning or stopping at intersections.[n1] A driver's disregard of such signals has been held sufficient, either alone or in conjunction with other circumstances, to support a finding that such driver is guilty of negligence.[n2]

A driver may place a certain amount of reliance upon the signals that he or she has given indicating an intention to stop or turn at an intersection,[n3] but such reliance does not necessarily preclude a finding that the driver is guilty of negligence.[n4]

A motorist may be found negligent or contributorily negligent for proceeding straight after signaling a turn, notwithstanding a general right-of-way to proceed.[n5]

FOOTNOTES:

n1 Britt Trucking Co. v. Ringgold, 209 Ark. 769, 192 S.W.2d 532 (1946).

n2 Britt Trucking Co. v. Ringgold, 209 Ark. 769, 192 S.W.2d 532 (1946); Scerca v. Philadelphia Transp. Co., 352 Pa. 152, 42 A.2d 593 (1945).

n3 Bergman v. Kansas City Public Service Co., 144 Kan. 27, 58 P.2d 110 (1936).

n4 Felsenfeld v. Chattaway, 266 Mich. 234, 253 N.W. 280 (1934).

n5 Barber v. LaFromboise, 180 Vt. 150, 908 A.2d 436 (2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 171(12), 208

64 of 276 DOCUMENTS

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F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 787

§ 787 Necessity of giving an audible signal

A driver who fails to give an audible signal on approaching an intersection under circumstances where the giving of such a signal appears to be necessary may be found negligent and therefore liable for the resulting damage,[n1] although the plaintiff in such a case may be denied recovery, or recovery may be diminished, if it appears that he or she also negligently failed to give a warning signal on approaching the intersection.[n2] It must appear, however, that the negligence of the defendant or of the plaintiff in failing to give a signal was the proximate cause of the accident.[n3]

Observation: Certain factors have been specifically stressed by the courts in determining the questions of negligence and proximate cause in such cases, including the visibility of the other vehicle,[n4] the existence of obstructions at the intersection,[n5] the existence of a divided highway,[n6] and the driver's knowledge of the presence of the other vehicle.[n7]

FOOTNOTES:

n1 Washington Metropolitan Area Transit Authority v. Jones, 443 A.2d 45 (D.C. 1982); Blizzard v. Bennett, 143 Ga. App. 568, 239 S.E.2d 223 (1977); McCorkle v. United Gas Pipe Line Co., 253 Miss. 169, 175 So. 2d 480 (1965).

n2 Lawson v. Webster, 133 Ind. App. 296, 181 N.E.2d 870 (1962); Rieke v. Brodof, 501 S.W.2d 66 (Mo. Ct. App. 1973).

n3 Barnes v. Vandergrift, 364 Mo. 829, 269 S.W.2d 13 (1954); Bresley v. O'Connor Inc., 163 Neb. 565, 80 N.W.2d 711 (1957).

n4 Harris v. Morris, 259 S.W.2d 469 (Ky. 1953); Dauer's Estate v. Zabel, 19 Mich. App. 198, 172 N.W.2d 701 (1969).

n5 Stelmach v. Saul, 50 S.W.2d 721 (Mo. Ct. App. 1932).

n6 Guillot v. Jones, 67 So. 2d 501 (La. Ct. App., Orleans 1953).

n7 Bresley v. O'Connor Inc., 163 Neb. 565, 80 N.W.2d 711 (1957).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 171(12), 208
Automobiles: duty and liability with respect to giving audible signal at intersection, 21 A.L.R.3d 268

65 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 788

§ 788 Drivers' signals to others to proceed

A driver has no affirmative duty to signal or warn another vehicle or pedestrian whether or not to proceed.[n1] Thus, a driver's signal to a pedestrian or other motorist to proceed has been deemed to be merely a yielding of the right of way.[n2] However, in some instances, the courts have held that an interpretation as an "all clear"is established or supportable,[n3] although in other cases, especially where the signaling driver was not in a position to check for other traffic, the courts have held that such an interpretation is not supportable.[n4] In other words, there are two major views as to the liability of a signaling motorist: one holding that the signal cannot reasonably be interpreted as anything other than a yield of the right of way or a gesture of courtesy, and without more the signaling motorist is not liable as a matter of law; and the second view holding that it is for a jury to determine the significance reasonably attributable to a motorist's hand signal.[n5]

For the courts acknowledging a duty on the part of a driver to exercise reasonable care in signaling, the question then becomes whether this duty has been breached, and while most courts have found a breach of duty, or held such a finding to be supportable,[n6] others have found that a finding of such breach is not supportable.[n7]

FOOTNOTES:

n1 Peka v. Boose, 172 Mich. App. 139, 431 N.W.2d 399 (1988).

n2 Kerfoot v. Waychoff, 501 So. 2d 588 (Fla. 1987); Dawson v. Griffin, 249 Kan. 115, 816 P.2d 374, 14 A.L.R.5th 1000 (1991); Peka v. Boose, 172 Mich. App. 139, 431 N.W.2d 399 (1988); Duval v. Mears, 77 Ohio App. 3d 270, 602 N.E.2d 265 (6th Dist. Lucas County 1991).

n3 Frey v. Woodard, 748 F.2d 173, 40 Fed. R. Serv. 2d 559 (3d Cir. 1984); Cunningham v. National Service Industries, Inc., 174 Ga. App. 832, 331 S.E.2d 899 (1985); Massingale v. Sibley, 449 So. 2d 98 (La. Ct. App. 1st Cir. 1984); Ring v. Poelman, 240 Va. 323, 397 S.E.2d 824 (1990).

n4 Dawson v. Griffin, 249 Kan. 115, 816 P.2d 374, 14 A.L.R.5th 1000 (1991); Lennard v. State Farm Mut. Auto. Ins. Co., 649 So. 2d 1114 (La. Ct. App. 2d Cir. 1995); Williams v. O'Brien, 140 N.H. 595, 669 A.2d 810 (1995); Giron v. Welch, 842 P.2d 863 (Utah 1992).

n5 Askew By Askew v. Zeller, 361 Pa. Super. 35, 521 A.2d 459 (1987) (holding the second view to be the better rule where reasonable minds could differ as to the meaning of a signal).

n6 Perret v. Webster, 498 So. 2d 283 (La. Ct. App. 4th Cir. 1986); Miller v. Watkins, 355 S.W.2d 1, 90 A.L.R.2d 1426 (Mo. 1962); Wulf v. Rebbun, 25 Wis. 2d 499, 131 N.W.2d 303 (1964).

n7 Diaz v. Krob, 264 Ill. App. 3d 97, 201 Ill. Dec. 799, 636 N.E.2d 1231, 92 Ed. Law Rep. 609 (3d Dist. 1994); Duval v. Mears, 77 Ohio App. 3d 270, 602 N.E.2d 265 (6th Dist. Lucas County 1991); Cofield v. Nuckles, 239 Va. 186, 387 S.E.2d 493 (1990).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208
Motorists' liability for signaling other vehicle or pedestrian to proceed, or to pass signaling vehicle, 14 A.L.R.5th 193
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145

66 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 789

§ 789 Reliance

For the element of proximate cause to be established in an action for negligence in signaling, there must be reliance by the signaled driver or pedestrian on the signal to proceed, and the courts have found that there is no such reliance in the cases where the signaled driver or pedestrian admitted that he or she did not rely on the signal,[n1] where he or she looked independently for traffic,[n2] or where he or she hesitated after receiving the signal.[n3]

The signaled driver's reliance in such cases must also be shown to be justifiable.[n4]

FOOTNOTES:

n1 Young v. Edgington, 1992 WL 75189 (Ohio Ct. App. 12th Dist. Brown County 1992); Giron v. Welch, 842 P.2d 863 (Utah 1992); Ring v. Poelman, 240 Va. 323, 397 S.E.2d 824 (1990).

n2 Valdez by Valdez v. Bernard, 123 A.D.2d 351, 506 N.Y.S.2d 363 (2d Dep't 1986); Giron v. Welch, 842 P.2d 863 (Utah 1992).

n3 Dace v. Gilbert, 96 Ill. App. 3d 199, 51 Ill. Dec. 869, 421 N.E.2d 377 (3d Dist. 1981); Ring v. Poelman, 240 Va. 323, 397 S.E.2d 824 (1990).

n4 Gadel v. Prudential Ins. Co., 495 So. 2d 292 (La. 1986); Bell v. Giamarco, 50 Ohio App. 3d 61, 553 N.E.2d 694 (10th Dist. Franklin County 1988).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
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A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 171(13), 208

67 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 790

§ 790 Left turns

Making a left turn into a passing lane or across oncoming traffic is the most dangerous movement a vehicle can make on the highway,[n1] and the driver making such a turn has statutorily imposed duties, as well as duties imposed by the common law.[n2] Before attempting a left turn, a driver should ascertain whether it can be completed safely.[n3] In other words, the driver of a vehicle making such a movement must ascertain if it can be done with reasonable safety before acting,[n4] and must yield the right of way to any vehicle approaching from the opposite direction that is within the intersection or approaching so close as to constitute an immediate hazard.[n5] An oncoming driver is entitled to anticipate that a left-turning driver would obey traffic laws requiring him or her to yield, where the oncoming driver has the right-of-way.[n6]

The duty of reasonable care imposed on a driver turning left includes a duty to look both to the front and to the rear before executing a left turn between intersections, and those observations must be made immediately before turning.[n7] A driver is required to see that which through the proper use of his or her senses he or she should have seen,[n8] and a plaintiff left-turning driver is deemed negligent in failing to see that which, under the circumstances, he or she should have seen, and in crossing in front of an oncoming vehicle when it is hazardous to do so.[n9]

Observation: The fact that a collision occurred soon after a driver started a left turn, or while the turning vehicle was well within the intersection, is often cited by courts as strong evidence that the oncoming vehicle was close enough to constitute an immediate hazard, and that the driver was therefore negligent in making the turn.[n10] However, the fact that a driver turning left in front of another vehicle was well into or through the intersection at the time of the collision does not bar a finding that the oncoming vehicle constituted an immediate hazard, requiring the left-turning driver to yield the right of way.[n11]

A left-turning driver is required to yield to another vehicle legally proceeding into the intersection.[n12] The driver of a vehicle intending to turn to the left may not delegate his or her duty to yield the right of way, where that duty is imposed by statute.[n13]

FOOTNOTES:

n1 Huntwork v. Voss, 247 Neb. 184, 525 N.W.2d 632 (1995); Addair v. Bryant, 168 W. Va. 306, 284 S.E.2d 374 (1981).

n2 Huntwork v. Voss, 247 Neb. 184, 525 N.W.2d 632 (1995).

n3 Harris v. DeBrueys, 926 So. 2d 627 (La. Ct. App. 5th Cir. 2006).

n4 Hood v. Murray, 547 So. 2d 75 (Ala. 1989); Melick v. Schmidt, 251 Neb. 372, 557 N.W.2d 645 (1997).

A truck driver violated his duty as a left-turning motorist to exercise due care, where the driver should have seen the oncoming motor scooter and yielded the right of way to the scooter's operator. Patrick v. State Farm Mut. Auto. Ins. Co., 957 So. 2d 894 (La. Ct. App. 2d Cir. 2007).

n5 Burrows v. Jacobsen, 209 Neb. 778, 311 N.W.2d 880 (1981); Hogan v. Carter, 226 Va. 361, 310 S.E.2d 666 (1983).

The sole proximate cause of the collision between a motorcycle and a vehicle was the vehicle driver's failure, when making a left turn, to yield the right of way to the motorcycle driver, who was not seen by the vehicle driver prior to the accident and who was not shown to have been negligent. Pomietlasz v. Smith, 31 A.D.3d 1173, 818 N.Y.S.2d 709 (4th Dep't 2006).

n6 Spivak v. Erickson, 40 A.D.3d 962, 836 N.Y.S.2d 676 (2d Dep't 2007); Almonte v. Tobias, 36 A.D.3d 636, 829 N.Y.S.2d 153 (2d Dep't 2007).

n7 Melick v. Schmidt, 251 Neb. 372, 557 N.W.2d 645 (1997).

n8 Gergis v. Miccio, 39 A.D.3d 468, 834 N.Y.S.2d 253 (2d Dep't 2007); Laino v. Lucchese, 35 A.D.3d 672, 827 N.Y.S.2d 249 (2d Dep't 2006).

A motorist who made a left turn directly into the path of another vehicle as it legally proceeded with the right of way, in violation of the vehicle and traffic law, and who admitted that he never saw the vehicle prior to making his turn, was negligent as a matter of law in failing to see that which he should have seen through the proper use of his senses, thus precluding the imposition of liability on the operator of the other vehicle. Gabler v. Marly Bldg. Supply Corp., 27 A.D.3d 519, 813 N.Y.S.2d 120 (2d Dep't 2006).

n9 Almonte v. Tobias, 36 A.D.3d 636, 829 N.Y.S.2d 153 (2d Dep't 2007); Berner v. Koegel, 31 A.D.3d 591, 819 N.Y.S.2d 89 (2d Dep't 2006).

The evidence established that a motorist was contributorily negligent based on making a left-hand turn onto the highway in front of an oncoming tractor-trailer truck that had the right-of-way, thereby precluding recovery in the motorist's negligence action against the employer, who owned the tractor-trailer truck, where the driver of a vehicle behind the motorist saw the tractor-trailer truck approaching the intersection, and the motorist did not see the tractor trailer truck before she turned left. Serio v. Merrell, Inc., 941 So. 2d 960 (Ala. 2006).

n10 Feder v. Greco, 240 A.D.2d 364, 658 N.Y.S.2d 111 (2d Dep't 1997); Feder v. Greco, 240 A.D.2d 364, 658 N.Y.S.2d 111 (2d Dep't 1997).

n11 Cintron v. Milkovich, 611 P.2d 730 (Utah 1980).

n12 Berner v. Koegel, 31 A.D.3d 591, 819 N.Y.S.2d 89 (2d Dep't 2006).

n13 Dawson v. Griffin, 249 Kan. 115, 816 P.2d 374, 14 A.L.R.5th 1000 (1991).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]150, 168(6), 170(8), 171(12), 171(13), 208
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405

68 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 791

§ 791 Emergency doctrine

The general rule is that, when the operator of a motor vehicle is suddenly confronted with an emergency through the negligence of another and not through the operator's own negligence, and is compelled to act instantly to avoid a collision or injury, that operator is deemed not guilty of negligence if he or she makes a choice which a person of ordinary prudence placed in such a position might make, even though the operator does not make the wisest choice.[n1] This rule is applicable to accidents at street or highway intersections.[n2] Thus, a driver faced with the sudden emergency caused by an oncoming car turning left without a signal at an intersection may not be found negligent in taking such measures as may seem necessary to avoid a collision, where the driver's acts are such as any prudent driver might have taken under the circumstances.[n3]

FOOTNOTES:

n1 § 424.

n2 Kelly v. Kinsey, 362 So. 2d 402 (Fla. Dist. Ct. App. 1st Dist. 1978) (holding that the existence of an emergency under the evidence presented was a question for the jury).

n3 Silfies v. American Stores Co., 357 Pa. 176, 53 A.2d 610 (1947).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]159, 168(6), 170(8), 208, 225
West's Key Number Digest, Negligence [westkey]291 to 295
Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 A.L.R.2d 65
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399

69 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 792

§ 792 Application of doctrine of last clear chance

The doctrine of last clear chance [n1] has been applied in cases involving intersectional collisions resulting from a driver's disregard of a traffic sign or signal. [n2] However, the doctrine has been held inapplicable and that the plaintiff's negligence in relation to an intersectional collision would operate to bar or diminish his or her recovery, [n3] especially where the plaintiff disregarded a traffic sign or signal. [n4]

The fact that a plaintiff motorist was acting in reliance on a traffic sign or signal at the time of an intersectional collision in which he or she was injured has been taken as tending to render applicable the last-clear-chance doctrine, with the result that his or her negligence, whether or not it consisted of a disregard for a traffic signal, would not necessarily prevent or diminish recovery. [n5] Conversely, the fact that a defendant driver was acting in reliance on a traffic sign or signal at the time of an intersectional collision has sometimes been cited as tending to render inapplicable the last-clear-chance doctrine, with the result that the plaintiff driver's negligence would operate to bar or diminish recovery. [n6]

FOOTNOTES:

n1 § 953.

n2 Brophy v. Weschler, 36 F. Supp. 635 (D. D.C. 1941) (plaintiff drove past stop sign); Melenson v. Howell, 344 Mo. 1137, 130 S.W.2d 555 (1939) (plaintiff may have disregarded red light at an intersection).

n3 Rodabaugh v. Tekus, 39 Cal. 2d 290, 246 P.2d 663 (1952).

n4 Perdue v. Copeland, 220 So. 2d 617 (Fla. 1969); Gessel v. Smith, 1967 OK 246, 435 P.2d 587 (Okla. 1967).

n5 Hangge v. Umbright, 119 S.W.2d 382 (Mo. 1938).

n6 Payne's Adm'r v. Stone, 299 Ky. 704, 187 S.W.2d 267 (1945).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208
West's Key Number Digest, Negligence [westkey]530
Applicability of last clear chance doctrine to intersectional collision between motor vehicles meeting from opposite directions, 20 A.L.R.3d 287

Applicability of last clear chance doctrine to collisions between motor vehicles crossing at intersection, 20 A.L.R.3d 124

70 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 793

§ 793 Yield sign or signal

Although a driver at a yield sign has a higher duty to ascertain whether he or she can safely cross a favored street, the driver on the favored street also has the duty to be an attentive driver.[n1]

The driver of a vehicle traveling on a street protected by a yield sign has the right to rely on the compliance of the driver of a vehicle that is required to yield.[n2] On the other hand, a driver who fails to yield the right of way at a yield sign may be found negligent and may be held liable for, or prevented from recovering, as the case may be, any resulting damages.[n3]

A driver who fails to keep a lookout and therefore runs into a vehicle that is stopped at a yield sign may also be held liable for resulting damages.[n4]

FOOTNOTES:

n1 Hayes v. Covey, 939 So. 2d 630 (La. Ct. App. 3d Cir. 2006).

n2 Romero v. Ciskowski, 137 Ill. App. 3d 529, 92 Ill. Dec. 295, 484 N.E.2d 1150 (1st Dist. 1985); Olson v. Parchen, 249 Mont. 342, 816 P.2d 423 (1991).

n3 Bailey v. Lenord, 625 P.2d 849 (Alaska 1981); Olson v. Parchen, 249 Mont. 342, 816 P.2d 423 (1991).

n4 LeBaron v. Allstate Ins. Co., 572 So. 2d 174 (La. Ct. App. 1st Cir. 1990), writ denied, 575 So. 2d 827 (La. 1991).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings

A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(8), 171(9), 208

71 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 794

§ 794 Generally

A driver entering an intersection with a traffic light or signal in his or her favor is normally entitled to assume that cross traffic will obey the unfavorable light or signal facing it.[n1] However, the right of way under such circumstances is not absolute,[n2] and thus, a driver under such circumstances is not exonerated from using any care whatsoever, and may not proceed blindly into obvious danger or without a thought for others who may be in his or her path.[n3] A favorable traffic light does not absolve a driver from exercising ordinary or reasonable care in operating his or her vehicle across an intersection.[n4] The driver still has the duty of maintaining an adequate lookout on entering the intersection,[n5] which duty normally involves looking to the left as the crossing is entered and to the right when the midline of the intersecting street is reached.[n6] A driver cannot blindly and wantonly enter an intersection, but rather is bound to use such care to avoid collision as an ordinarily prudent motorist would have used under the circumstances.[n7] In other words, when approaching an intersection, a motorist has the duty to observe the traffic and general situation at or in the vicinity of the intersection, and he or she must look in the careful and efficient manner in which a person of ordinary prudence in like circumstances would look in order to ascertain the existing conditions for guidance.[n8] A driver with a green light still has a duty to meet a certain standard of care,[n9] and so even where a vehicle enters an intersection with a green light, a driver may nevertheless be found negligent if he or she fails to use reasonable care when proceeding into the intersection.[n10]

It is the duty of a motorist proceeding across an intersection in obedience to a favorable traffic light to have his or her vehicle under such control as to be able to stop safely upon the appearance of the yellow or amber light.[n11]

The mere fact that a driver is a participant in a funeral procession does not relieve him or her of the obligation to obey a traffic signal, unless it is shown by the pleadings and the evidence that a local ordinance gave him or her this right.[n12]

FOOTNOTES:

n1 § 797.

n2 Higgins v. Johnson, 349 So. 2d 918 (La. Ct. App. 1st Cir. 1977), writ denied, 351 So. 2d 161 (La. 1977) and writ denied, 351 So. 2d 162 (La. 1977).

n3 Youngblood v. Robison, 239 La. 338, 118 So. 2d 431, 2 A.L.R.3d 1 (1960).

As to the right of way at intersections as affected by traffic control lights or signals, generally, see § 288.

n4 U. S. Fire Ins. Co. v. Progressive Cas. Ins. Co., 362 So. 2d 414 (Fla. Dist. Ct. App. 2d Dist. 1978).

n5 Vender v. Stone, 245 Mont. 428, 802 P.2d 606 (1990); Schanaman v. Ramirez, 206 Neb. 212, 292 N.W.2d 39 (1980).

n6 Styskal v. Brickey, 158 Neb. 208, 62 N.W.2d 854 (1954).

n7 Strasburg v. Campbell, 28 A.D.3d 1131, 816 N.Y.S.2d 627 (4th Dep't 2006).

n8 Calise v. Curtin, 900 A.2d 1164 (R.I. 2006).

n9 Calise v. Curtin, 900 A.2d 1164 (R.I. 2006).

n10 Strasburg v. Campbell, 28 A.D.3d 1131, 816 N.Y.S.2d 627 (4th Dep't 2006).

n11 Brockie v. Shadwick, 396 S.W.2d 63 (Ky. 1965); Miller v. Harder, 240 Or. 418, 402 P.2d 84 (1965).

n12 Coleman v. Townsend, 948 So. 2d 369 (La. Ct. App. 2d Cir. 2007), writ denied, 956 So. 2d 620 (La. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1

Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(8), 171(9), 208
Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status, 52 A.L.R.5th 155
Liability for automobile accident, other than direct collision with pedestrian, as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 12
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 211 to 213 (Complaint, petition, or declaration -- Failure to stop at red light)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 238 (Complaint, petition, or declaration -- Improper lookout and failure to stop at red light)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 759, 760 (Allegation -- Traffic signal lights)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 826 to 828 (Allegation -- Failure to stop -- Red light)

72 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 795

§ 795 Negligence as a matter of law

The fact that a driver charged with negligence entered the intersection where the accident occurred with the traffic light in his or her favor operates, or at least tends, to prevent a holding that he or she is guilty of negligence as a matter of law, despite a showing that he or she is guilty of acts or omissions that might otherwise justify that conclusion. [n1]

The fact that a driver entered an intersection with a favorable traffic light has been relied upon by the court as supporting a finding by the trier of the facts that the driver is not guilty of negligence, or as nullifying a finding that he or she was, [n2] or as operating as a matter of law to free the motorist from the charge of negligence. [n3] However, it has also been recognized that a driver is guilty of negligence under the circumstances shown, or, at least, is guilty of conduct from which the trier of the facts could find him or her negligent, despite the fact that he or she approached or entered the intersection with a favorable traffic light. [n4]

FOOTNOTES:

n1 Van Note v. Philadelphia Transp. Co., 353 Pa. 277, 45 A.2d 71 (1946).

n2 Gaspard v. Stutes, 380 So. 2d 201 (La. Ct. App. 3d Cir. 1980).

n3 Wilson v. Koch, 241 Wis. 594, 6 N.W.2d 659 (1942).

n4 Davis v. Dondanville, 107 Ind. App. 665, 26 N.E.2d 568 (1940).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(1), 171(8), 208

73 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 796

§ 796 Yellow lights; lights changing while drivers are in intersection

Upon seeing a yellow light following green on an automatic traffic signal, drivers should stop before the crosswalk on the near side of the intersection, unless such a stop cannot be made safely, in which event the driver may proceed carefully through the intersection as a prudent person would do. [n1]

The fact that a collision occurred is not conclusive that a driver did not act with reasonable caution in proceeding through a yellow light, as the test is whether the driver acted as a reasonable and prudent driver would have acted under the same or similar circumstances. [n2]

A finding that a driver is guilty of negligence may properly be based upon the circumstance that he or she entered a street or highway intersection with a favorable traffic light, but without giving another driver who entered the intersection at a time when the signal was in his or her favor an opportunity to clear the crossing. [n3]

FOOTNOTES:

n1 Eden v. Spaulding, 218 Neb. 799, 359 N.W.2d 758 (1984).

As to laws regarding traffic lights, generally, see § 288.

n2 Collins v. Ringwald, 502 So. 2d 677 (Miss. 1987).

n3 Vender v. Stone, 245 Mont. 428, 802 P.2d 606 (1990).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208

74 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 797

§ 797 Right to assume obedience by other drivers

A driver near or crossing a street or highway intersection has a right to assume, in the absence of any circumstances that would put a reasonable person on notice that such an assumption is unwarranted, that the traffic lights are in proper working order,[n1] and that other drivers will obey them.[n2] More specifically, a driver approaching an intersection with the traffic light in his or her favor may assume that drivers approaching on the intersecting street against the unfavorable light, will come to a stop, or will at least slow down, and yield the right of way, permitting passage over the crossing.[n3] The right to assume that traffic signals will be obeyed is subject to the qualification that the person asserting the right exercises reasonable care at the time that he or she claims reliance upon such an assumption.[n4]

Although a favored driver is liable for an accident in a light-controlled intersection only when, by exercising the slightest degree of care, the driver could have avoided an accident,[n5] such a driver is not excused from the duty of reasonable care.[n6] Thus, the right to assume that a traffic signal will be obeyed does not continue after the driver claiming the right has, or in the exercise of reasonable care should have, become aware that another driver was unable or did not intend to obey the signal.[n7]

FOOTNOTES:

n1 § 799.

n2 Willet v. County of Lancaster, 271 Neb. 570, 713 N.W.2d 483 (2006); Dolberg v. Paltani, 250 Neb. 297, 549 N.W.2d 635 (1996).

n3 Thurman v. Anderson, 693 S.W.2d 806 (Mo. 1985); Dolberg v. Paltani, 250 Neb. 297, 549 N.W.2d 635 (1996).

n4 Youngblood v. Robison, 239 La. 338, 118 So. 2d 431, 2 A.L.R.3d 1 (1960).

n5 Vender v. Stone, 245 Mont. 428, 802 P.2d 606 (1990); Dolberg v. Paltani, 250 Neb. 297, 549 N.W.2d 635 (1996).

n6 Vender v. Stone, 245 Mont. 428, 802 P.2d 606 (1990).

n7 Thurman v. Anderson, 693 S.W.2d 806 (Mo. 1985); Hodnett v. Friend, 232 Va. 447, 352 S.E.2d 338 (1987).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(13), 208

75 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 798

§ 798 Disregard of unfavorable light or signal

The broad doctrine that a driver who enters a street or highway intersection against the direction of a traffic light is guilty, or at least may be found guilty, of negligence has been applied or recognized in cases where a driver disregarded an unfavorable traffic signal and collided with another motorist crossing the intersection. [n1]

Practice Tip: The fact that a driver entered an intersection in spite of a red light in that driver's lane may be established by testimony from a traffic engineer regarding the sequence of the lights, combined with testimony from a witness regarding the color of another light in the intersection. [n2]

The driver of a vehicle which proceeded through an intersection against a red light without stopping, and struck another vehicle, is deemed the sole proximate cause of the accident. [n3]

FOOTNOTES:

n1 Carollo v. Wilson, 345 So. 2d 601 (La. Ct. App. 4th Cir. 1977), writ issued, 349 So. 2d 336 (La. 1977) and judgment aff'd, 353 So. 2d 249 (La. 1977); Fisher v. Thompson, 50 N.C. App. 724, 275 S.E.2d 507 (1981).

A motorist's failure to yield the right of way was the sole proximate cause of the accident between his vehicle and the vehicle in which passengers were riding, where the defendant, who was the driver of the passenger's vehicle, was traveling at or below the speed limit as it was proceeding through an intersection with the green light, and had no time to avoid the accident by braking or changing course. Maleski v. Lenander, 38 A.D.3d 1192, 831 N.Y.S.2d 810 (4th Dep't 2007), leave to appeal denied (N.Y. June 28, 2007).

n2 Salmen v. City of St. Paul, 281 N.W.2d 355 (Minn. 1979).

n3 Ramos v. Triboro Coach Corp., 31 A.D.3d 625, 819 N.Y.S.2d 82 (2d Dep't 2006); Carpio v. Leahy Mechanical Corp., 30 A.D.3d 554, 816 N.Y.S.2d 762 (2d Dep't 2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles

A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(1), 171(9), 201(1.1), 208

76 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 799

§ 799 Defective or inoperative light or signal

A motorist approaching an intersection has the right to assume that the traffic signals are in proper working order, in the absence of any circumstances that would put a reasonable person on notice that such an assumption is unwarranted.[n1] However, where the driver is, or in the exercise of reasonable care should be, aware that a traffic signal is malfunctioning, the driver has a duty to exercise extreme caution in proceeding through the intersection.[n2]

FOOTNOTES:

n1 Foley v. State, 265 A.D. 682, 41 N.Y.S.2d 256 (4th Dep't 1943); Short v. Unsell, 1972 OK 84, 497 P.2d 1060 (Okla. 1972).

n2 Soprano v. State Farm Mut. Auto. Ins. Co., 246 La. 524, 165 So. 2d 308 (1964); Miller v. Montgomery County, 64 Md. App. 202, 494 A.2d 761 (1985).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208

77 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 800

§ 800 Flashing red light

A motorist confronted with a flashing red signal light has the duty, not only to come to a stop, but to exercise such care as is dictated by the existing traffic conditions, conceding the right of way to any approaching vehicle that constitutes an immediate hazard.[n1]

A flashing red light is tantamount to a stop sign insofar as the duty to stop, of a motorist facing such light is concerned,[n2] and insofar as the negligence of a motorist disregarding the light is concerned.[n3] Indeed, the failure of a motor vehicle operator approaching a flashing red light at a highway intersection to stop and yield the right of way constitutes negligence as a matter of law.[n4]

FOOTNOTES:

n1 Great American Ins. Co. v. Turnage, 339 So. 2d 1322 (La. Ct. App. 1st Cir. 1976); Cornias v. Bradley, 254 Md. 479, 255 A.2d 431 (1969).

n2 Brown v. Clancy, 43 A.2d 296 (Mun. Ct. App. D.C. 1945).

n3 Manning v. Pittsburgh Rys. Co., 350 Pa. 402, 39 A.2d 578 (1944).

As to negligence in connection with stop signs at intersections, generally, see §§ 719 to 726.

n4 Jenkins v. Charles County Bd. of Educ., 21 Md. App. 1, 318 A.2d 250 (1974).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208
Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 A.L.R.3d 507
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 214 (Complaint, petition, or declaration -- Failure to stop at blinker light -- By occupant spouse -- Against truck driver and employer)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 215 (Complaint, petition, or declaration -- Failure to stop or yield right-of-way at blinker light -- Intoxicated driver -- Speeding)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 829 (Allegation -- Failure to stop -- Flashing red light)

78 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(2) Traffic Control Lights

8 Am Jur 2d Automobiles and Highway Traffic § 801

§ 801 Flashing yellow light

A flashing yellow light at an intersection is an indication to reasonable persons that the intersection is more dangerous than ordinary intersections, and it also informs drivers that they should exercise a greater degree of care and vigilance when approaching the intersection.[n1] A motorist approaching a flashing yellow caution light is not required to slow down, but rather must proceed "with caution"through the intersection,[n2] and this requirement is satisfied where a driver decelerates before entering the intersection and assumes that vehicles approaching from the other direction will stop in obedience to a flashing red light.[n3]

FOOTNOTES:

n1 Kelly v. City of Bossier City, 945 So. 2d 229 (La. Ct. App. 2d Cir. 2006).

n2 Connell v. Riggins, 944 So. 2d 1174 (Fla. Dist. Ct. App. 1st Dist. 2006).

n3 McMillan v. State Farm Mut. Auto. Ins. Co., 356 So. 2d 1368 (La. 1978); Perigo v. Deegan, 288 Pa. Super. 93, 431 A.2d 303 (1981).

As to flashing red lights at such intersections, see § 800.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations

A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208

79 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(3) Directions from Traffic Officers

8 Am Jur 2d Automobiles and Highway Traffic § 802

§ 802 Generally

While a motorist entering a street intersection upon a signal by, or under the direction of, a police officer at the intersection, has the right to assume, in the absence of any circumstances which would put a reasonable person on notice that such an assumption is unwarranted, that others on or near the crossing will obey the signal or direction,[n1] such a driver does not have an absolute right to continue across irrespective of the movement of other traffic; the favorable signal or direction does not absolve him or her from exercising ordinary care in driving across the intersection.[n2]

The law imposes a duty upon a motor vehicle operator to comply with any lawful order or directive of any police officer invested by law with the authority to direct, control or regulate traffic, irrespective of the instructions or signals of a traffic control device.[n3]

FOOTNOTES:

n1 Youngblood v. Robison, 239 La. 338, 118 So. 2d 431, 2 A.L.R.3d 1 (1960).

n2 Welch v. Canton City Lines, 142 Ohio St. 166, 26 Ohio Op. 390, 50 N.E.2d 343 (1943).

n3 Theriot v. Bergeron, 939 So. 2d 379 (La. Ct. App. 1st Cir. 2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]147, 168(6), 170(8), 171(9), 208

80 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(3) Directions from Traffic Officers

8 Am Jur 2d Automobiles and Highway Traffic § 803

§ 803 Disregard of directions

Where a driver disregards an unfavorable signal or direction of a traffic officer and collides with another driver crossing an intersection at right angles to his or her vehicle, or crashes into the rear of another driver who had stopped in obedience to such signal or direction, the broad doctrine that a driver who enters an intersection against the direction of a police officer is guilty of negligence will apply.[n1]

FOOTNOTES:

n1 Feiss v. Hensch, 28 Ohio App. 42, 5 Ohio L. Abs. 792, 162 N.E. 456 (8th Dist. Cuyahoga County 1927).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115

Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 220 (Complaint, petition, or declaration -- Failure to stop or yield right of way -- On signal by traffic officer)

81 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 804

§ 804 Favored driver's conduct, generally

A motorist approaching an intersection on a highway or street that is protected by stop signs has the right to assume that motorists on intersecting highways and streets will obey the traffic regulations, and come to a stop.[n1] The favored driver still has the duty to exercise ordinary or reasonable care.[n2]

The fact that a driver involved in an intersectional collision was driving on a protected thoroughfare, operates or tends to operate, to prevent a holding that the driver is guilty of negligence as a matter of law, although his or her acts or omission in connection with the accident might otherwise justify that conclusion.[n3] The fact that the driver was on a through highway or street protected by stop signs has sometimes been cited as tending to support a finding that such driver is free from negligence.[n4] However, a driver may be found guilty of negligence even though he or she approached the intersection where the accident occurred along a highway or street protected by stop signs.[n5] In particular, a motorist proceeding on a highway or street protected by stop signs may be found guilty of negligence because of his or her failure to keep a proper lookout for traffic approaching on an intersecting road,[n6] or because he or she approached or entered the intersection at an excessive speed, or without having his or her vehicle under control.[n7]

FOOTNOTES:

n1 § 807.

n2 Paulsen v. Haker, 250 Iowa 532, 95 N.W.2d 47 (1959); Bell v. Crook, 168 Neb. 685, 97 N.W.2d 352, 74 A.L.R.2d 223 (1959).

As to the favored driver's duty to keep a lookout, see § 806.

n3 Rexer v. Carter, 208 Ark. 342, 186 S.W.2d 147 (1945); Shockman v. Union Transfer Co., 220 Minn. 334, 19 N.W.2d 812 (1945).

n4 Bell v. Crook, 168 Neb. 685, 97 N.W.2d 352, 74 A.L.R.2d 223 (1959).

A motorist was not negligent in connection with a collision between the vehicle and a bicyclist, where the vehicle had the right of way and, in violation of the vehicle and traffic law, the bicyclist negligently proceeded across the roadway despite the presence of a stop sign controlling his crossing, and the bicyclist admitted that he entered the roadway despite being unable to see past a bend in the road. Aiello v. City of New York, 32 A.D.3d 361, 820 N.Y.S.2d 579 (1st Dep't 2006).

n5 Lubitz v. Village of Scarsdale, 31 A.D.3d 618, 819 N.Y.S.2d 92 (2d Dep't 2006).

n6 § 806.

n7 § 805.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760,

770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(1), 171(4.1), 171(9), 171(13), 208
Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1558, 1559 (Instruction -- Preference to motorist first entering intersection)

82 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 805

§ 805 Favored driver's speed at intersection

The duty of ordinary care prohibits a driver traveling on a highway or street protected by stop signs from approaching the intersection at an excessive speed,[n1] and a driver may be found guilty of negligence in spite of the fact that he or she approached the intersection on a road protected by stop signs, where the driver approached or entered the intersection at an excessive speed, or without having his or her vehicle under control.[n2] However, a trial court may properly direct a verdict in favor of a defendant driver, notwithstanding the plaintiff's testimony that the defendant was traveling at 70 m.p.h. and failed to reduce his or her speed on approaching the intersection, where the defendant, as a traveler on a preferential highway, had the right to believe that a driver traveling on a road controlled by a stop sign would yield the right of way, since speed alone is not indicative of willful and wanton conduct, and where there is no evidence showing that the defendant's view of the road was obstructed.[n3]

FOOTNOTES:

n1 Hittle v. Jones, 217 Iowa 598, 250 N.W. 689 (1933).

n2 Moss v. Travelers Indem. Co., 351 So. 2d 290 (La. Ct. App. 3d Cir. 1977), writ denied, 353 So. 2d 1036 (La. 1978).

n3 Mantia v. Kaminski, 89 Ill. App. 3d 932, 45 Ill. Dec. 300, 412 N.E.2d 651 (1st Dist. 1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 208

83 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 806

§ 806 Favored driver's duty to keep a lookout

Despite the fact that a driver is on a protected thoroughfare, he or she has the duty to keep a lookout for traffic approaching on the subordinate streets or highways,[n1] and he or she may be found guilty of negligence in failing to keep a proper lookout for traffic approaching on an intersecting road.[n2] The driver's duty to keep a proper lookout is not a duty to see; rather, it is a duty to look with reasonable care and to heed what a reasonable lookout would have revealed.[n3]

A favored driver is not absolutely bound to slow down to ascertain whether drivers on subordinate roads are going to observe the stop signs.[n4]

FOOTNOTES:

n1 Paulsen v. Haker, 250 Iowa 532, 95 N.W.2d 47 (1959).

n2 Badger v. Clayson, 18 Utah 2d 329, 422 P.2d 665 (1967); Underwood v. City of Radford, 217 Va. 891, 234 S.E.2d 253 (1977).

n3 Burroughs v. Keffer, 272 Va. 162, 630 S.E.2d 297 (2006).

n4 Breker v. Rosema, 301 Mich. 685, 4 N.W.2d 57, 141 A.L.R. 867 (1942).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]150, 168(6), 170(8), 171(9), 208

84 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 807

§ 807 Right to assume stop signs will be obeyed

One traveling on a favored street protected by stop signs of which one has knowledge may properly assume, until notice to the contrary, that motorists about to enter from a nonfavored street will come to a complete stop as near the right-of-way line as possible and yield the right-of-way to any vehicle approaching so closely on the favored highway as to constitute an immediate hazard if the driver at the stop sign moves into or across the intersection.[n1] In other words, a driver proceeding along a highway or street protected by stop signs has a right to assume, in the absence of any circumstances that would put a reasonable person on notice that such an assumption is unwarranted, that drivers on subordinate ways will obey the stop signs,and will stop before entering the through highway or street,[n2] and will yield the right of way,[n3] even when it is a "blind"intersection.[n4]

The right to assume that a stop sign will be obeyed does not continue after the driver claiming the right has, or in the exercise of reasonable care should have, become aware that another driver is unable or does not intend to obey the sign;[n5] at that point, the favored driver must use due care not to cause injury to the nonfavored driver.[n6]

FOOTNOTES:

n1 Corcoran v. Lovercheck, 256 Neb. 936, 594 N.W.2d 615 (1999).

n2 Bah v. Continental Cas. Ins. Co., 925 So. 2d 630 (La. Ct. App. 4th Cir. 2006), writ denied, 930 So. 2d 989 (La. 2006); Horton v. Warden, 32 A.D.3d 570, 819 N.Y.S.2d 356 (3d Dep't 2006).

n3 Floyd v. Worobec, 248 Neb. 605, 537 N.W.2d 512 (1995); Horton v. Warden, 32 A.D.3d 570, 819 N.Y.S.2d 356 (3d Dep't 2006).

n4 Bah v. Continental Cas. Ins. Co., 925 So. 2d 630 (La. Ct. App. 4th Cir. 2006), writ denied, 930 So. 2d 989 (La. 2006).

n5 Merrick v. Stansbury, 12 Wash. App. 900, 533 P.2d 136 (Div. 3 1975).

n6 Bell v. Crook, 168 Neb. 685, 97 N.W.2d 352, 74 A.L.R.2d 223 (1959).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 171(13), 208

85 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 808

§ 808 Nonfavored driver's conduct

A driver normally has the duty to stop in obedience to a stop sign protecting a highway or street that he or she is about to enter, [n1] and thereafter to keep a proper lookout for traffic on the favored thoroughfare and to yield the right of way. [n2]

A driver who disregards a stop sign, fails to come to a complete stop before entering a protected highway or street, and is involved in a collision with another driver as a result, generally will be held guilty of negligence, [n3] rendering that driver liable or precluding or diminishing his or her recovery, as the case may be, if such negligence was a proximate cause of the injuries for which the action is brought. [n4]

While it has been held that a driver's failure to stop at a stop sign makes him or her guilty of negligence as a matter of law, [n5] such failure to stop has also been held not to constitute negligence as a matter of law. [n6]

In determining the effect of the disregard of a stop sign upon the question of the violator's negligence, the party relying upon such disregard need not prove that the sign is authorized and maintained by virtue of statutory or administrative authority, and that unless the other party proves a lack of such authority, there is a presumption of due authorization upon which the party asserting the disregard of the sign may rely. [n7]

FOOTNOTES:

n1 § 239.

n2 §§ 809, 810.

n3 Kring v. Jefferson Parish Police Dept., 615 So. 2d 392 (La. Ct. App. 5th Cir. 1993); Young v. Denning, 54 N.C. App. 361, 283 S.E.2d 164 (1981).

n4 Whaley v. U.S., 432 F. Supp. 37 (E.D. Tenn. 1977), judgment aff'd, 598 F.2d 1038 (6th Cir. 1979).

n5 Perez v. Paljevic, 31 A.D.3d 520, 818 N.Y.S.2d 581 (2d Dep't 2006).

As to the violation of a statute or ordinance relating to motor vehicles as negligence per se, generally, see § 724.

n6 Le Bavin v. Suburban Gas Co., 134 N.J.L. 10, 45 A.2d 664 (N.J. Ct. Err. & App. 1946).

n7 McMillan v. Nelson, 149 Fla. 334, 5 So. 2d 867 (1942).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(1), 171(11), 208
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 216 to 218 (Complaint, petition, or declaration -- Failure to stop at stop sign)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 219 (Complaint, petition, or declaration -- Failure to stop or yield right-of-way at stop sign -- Personal injuries -- Damage to automobile)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 830 to 832 (Allegation -- Failure to stop -- Stop sign)

86 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 809

§ 809 Observing the intersection

Before entering an intersection on a road protected by a stop sign, a driver must look for traffic on the favored road in such an intelligent and careful manner as to enable him or her to see what a person exercising ordinary care and caution could see under like circumstances.[n1] Indeed, a motorist has the duty to look both to the right and to the left and to maintain a proper lookout for the motorist's safety and that of others.[n2] As a general rule, a motorist's failure to look, when looking would have been effective in avoiding a collision, constitutes negligence as a matter of law.[n3]

A driver may not relieve him- or herself of a charge of negligence by denying that he or she saw what must have been in plain view;[n4] negligence is established as matter of law if the driver fails to see a vehicle that is favored over him or her and is in plain sight.[n5]

Even though a driver stopped pursuant to the direction of a stop sign, he or she may be found guilty of negligence in failing to keep a proper lookout or make proper observations of traffic conditions before entering the intersection.[n6]

FOOTNOTES:

n1 Crosby v. Sawyer, 291 S.C. 474, 354 S.E.2d 387 (1987).

n2 Malolepszy v. State, 273 Neb. 313, 729 N.W.2d 669 (2007).

n3 Malolepszy v. State, 273 Neb. 313, 729 N.W.2d 669 (2007).

n4 Lollar v. Elliott, 1980 OK CIV APP 25, 612 P.2d 1386 (Ct. App. Div. 2 1980).

n5 Jershin v. Becker, 217 Neb. 645, 351 N.W.2d 48 (1984); Crosby v. Sawyer, 291 S.C. 474, 354 S.E.2d 387 (1987).

n6 Kofahl v. Delgado, 63 Ill. App. 3d 622, 20 Ill. Dec. 429, 380 N.E.2d 407 (5th Dist. 1978).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]150, 168(6), 170(8), 171(1), 171(11), 208

87 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 810

§ 810 Yielding the right of way

Even though a driver stops pursuant to the direction of a stop sign, he or she may properly be found guilty of negligence in failing to yield the right of way to another driver approaching the intersection on the protected way.[n1] Absent any contrary evidence sufficient to raise a triable issue of fact, a plaintiff who established that the defendant either failed to stop at a stop sign or, upon stopping, failed to yield the right of way to the plaintiff's vehicle, was entitled to a judgment on the issue of liability in a personal injury action arising out of the collision of two motor vehicles at a stop sign.[n2] A driver who fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of the governing statute and is negligent as a matter of law.[n3]

FOOTNOTES:

n1 Marcel v. Chief Energy Corp., 38 A.D.3d 502, 832 N.Y.S.2d 61 (2d Dep't 2007).

n2 Odumbo v. Perera, 27 A.D.3d 709, 813 N.Y.S.2d 462 (2d Dep't 2006).

n3 Gergis v. Miccio, 39 A.D.3d 468, 834 N.Y.S.2d 253 (2d Dep't 2007); Marcel v. Chief Energy Corp., 38 A.D.3d 502, 832 N.Y.S.2d 61 (2d Dep't 2007).

A driver, faced with a stop sign at a "T"intersection, negligently entered the intersection without yielding the right of way, and such action was the sole proximate cause of an accident with another motorist, thus warranting imposition of liability in the motorist's personal injury suit. Laino v. Lucchese, 35 A.D.3d 672, 827 N.Y.S.2d 249 (2d Dep't 2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(1), 171(4), 171(4.1), 171(8), 171(11), 208
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1560 (Instructions -- Vehicles on intersecting highways -- Primary duty of driver who does not have right-of-way)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1564 (Instructions -- Vehicles on intersecting highways -- Duty to yield right-of-way under municipal ordinance)

88 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
b. Traffic Control Lights, Signals, or Signs at Intersections
(4) Stop Signs

8 Am Jur 2d Automobiles and Highway Traffic § 811

§ 811 Absence, displacement, or illegibility of stop sign

The general rule, that a motorist proceeding along a main thoroughfare protected by stop signs is entitled to assume that a motorist on an intersecting nonfavored highway or street will stop and yield the right of way, [n1] is not affected because a stop sign that ordinarily would face intersecting traffic has been misplaced, destroyed, or removed. [n2] However, a driver is not entitled to rely upon such an assumption where that driver does not exercise due care while approaching or crossing the intersection with the intersecting unfavored highway or street. [n3]

Where a driver on a secondary street does not know that the intersecting road that he or she is approaching is a through highway, and warning or stop signs have been improperly removed, destroyed, or obliterated, the driver is not guilty of negligence as a matter of law for failing to stop or yield the right of way to traffic on the through highway, at least where he or she was proceeding in the exercise of due care and would have been entitled to the right of way if the intersecting streets had been of equal classification. [n4] However, where the driver does not exercise due care, he or she may be held liable for a collision with a motorist on the arterial or through highway in spite of the absence or illegibility of the stop sign. [n5] Also, where a motorist on a secondary street knows that he or she is approaching an arterial or through highway or street, the absence of a stop sign at the intersection is immaterial with respect to his or her negligence in failing to stop or yield the right of way. [n6]

There may be circumstances that would indicate to a reasonable and prudent person that he or she should stop at an intersection despite the obscuring or partial obscuring of a stop sign. [n7]

Practice Tip: The fact that a driver's view of a stop sign was obstructed or that the sign or marking was obscure, faded, or illegible, is one of the circumstances to be considered by the trier of the facts in determining whether the driver in disregarding it was negligent. [n8]

FOOTNOTES:

n1 § 807.

n2 Walton v. Chevron, U.S.A., Inc., 655 S.W.2d 11 (Ky. Ct. App. 1982).

n3 Poe v. Lawrence, 60 Cal. App. 2d 125, 140 P.2d 136 (2d Dist. 1943).

n4 Daigle v. Hanson, 476 So. 2d 953 (La. Ct. App. 1st Cir. 1985).

n5 Eberhardt v. Forrester, 241 S.C. 399, 128 S.E.2d 687 (1962).

n6 Klinzmann v. Beale, 9 Kan. App. 2d 20, 670 P.2d 67 (1983).

n7 White v. Ohio Dept. of Transp., 56 Ohio St. 3d 39, 564 N.E.2d 462 (1990).

n8 White v. Ohio Dept. of Transp., 56 Ohio St. 3d 39, 564 N.E.2d 462 (1990).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527

Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(9), 208
Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal, 74 A.L.R.2d 242

89 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
c. Emergency Vehicles

8 Am Jur 2d Automobiles and Highway Traffic § 812

§ 812 Generally

In most jurisdictions, the statutes or ordinances exempt authorized emergency vehicles on emergency calls from traffic regulations such as those relating to speed, permit them to proceed past traffic signals and stop signs, [n1] and provide that other motorists must yield the right of way to such vehicles. [n2] Indeed, motorists are not permitted to decide whether they should yield the right of way to a law enforcement vehicle based on their determination as to whether the law enforcement vehicle is responding to an emergency; the duty of the motorist is constant, as long as the motorist is given an audible and visual signal. [n3]

However, the fact that an emergency vehicle on an emergency call is exempt from traffic regulations and is given the right of way over other travelers does not relieve the driver of such vehicle from the duty to drive with due regard for the safety of others using the highway. [n4] The drivers of emergency vehicles do not have the right to enter an intersection in blind reliance on their special right of way, but such drivers have to be alert and on the lookout for other travelers who might attempt to cross the intersection and who are lulled into a sense of security by the thought that they have the right of way. [n5]

Under certain circumstances, drivers of fire department vehicles, police vehicles, or ambulances have been found guilty of negligence in driving through a red light or stop sign into an intersection and colliding with another traveler. [n6] However, where it has been alleged that the driver of a fire department vehicle, police vehicle, or ambulance was careless under the circumstances in driving through a red light or stop sign or signal, the evidence has been held insufficient to support a finding of negligence. [n7] Also, ambulance operators did not breach their duty of due care by not turning off their emergency signals when they came to stop at a red light behind the plaintiffs' automobile, and thus, the operators are not liable for the injuries sustained by the plaintiffs when one plaintiff became frightened as a result of the ambulance's loud horn and siren and drove into the intersection against a red light and collided with a truck. [n8]

The exemptions for emergency vehicles apply only when such vehicles are engaged in an emergency. [n9]

FOOTNOTES:

n1 § 224.

n2 § 298.

n3 Hersh v. Griffith, 284 Ga. App. 15, 643 S.E.2d 309 (2007), cert. denied, (June 4, 2007).

n4 §§ 945, 946.

n5 Lee v. Mitchell Funeral Home Ambulance Service, 606 P.2d 259, 21 A.L.R.4th 154 (Utah 1980).

n6 Clark v. Sterrett, 141 Ind. App. 384, 220 N.E.2d 779 (1966) (fire department vehicle); Jackson v. Rauch, 18 Mich. App. 533, 171 N.W.2d 551 (1969) (police vehicle); Abood v. Hospital Ambulance Service, Inc., 30 N.Y.2d 295, 332 N.Y.S.2d 877, 283 N.E.2d 754 (1972) (ambulance).

n7 Freeman v. Reeves, 241 Ark. 867, 410 S.W.2d 740 (1967) (fire department vehicle); Duff v. Schaefer Ambulance Service, 132 Cal. App. 2d 655, 283 P.2d 91 (2d Dist. 1955) (ambulance); Martin v. Ehlers, 13 Utah 2d 236, 371 P.2d 851 (1962) (police vehicle).

n8 Tucker v. Pilcher, 531 So. 2d 652 (Ala. 1988).

n9 Hamilton v. Town of Palo, 244 N.W.2d 329 (Iowa 1976); Roberts v. Kettelle, 116 R.I. 283, 356 A.2d 207 (1976).

SUPPLEMENT:

Cases

County deputy did not intend to harm motorist, as would violate motorist's substantive due process rights, when deputy proceeded through yellow light at intersection, without activating his emergency lights or siren, and collided with motorist's vehicle as motorist turned left, also on yellow light, which resulted in motorist's ejection from his vehicle and death. Green v. Post, 574 F.3d 1294 (10th Cir. 2009).

County deputy's act of speeding through yellow light at intersection, in response to an official call which, while not an emergency, required a rapid response, did not rise to level of conscience-shocking deliberate indifference, as would violate substantive due process rights of motorist who was killed when his vehicle was struck by deputy's vehicle, even though deputy was negligent. Green v. Post, 574 F.3d 1294 (10th Cir. 2009).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(1) to 171(14), 175(1) to 175(5), 210
Liability of governmental unit or its officers for injury to innocent occupant of moving vehicle, or for damage to such vehicle, as result of police chase, 4 A.L.R.4th 865
Liability for personal injury or property damage from operation of ambulance, 84 A.L.R.2d 121
Liability arising from accidents involving police vehicles, 83 A.L.R.2d 383
Liability for personal injury or damage from operation of fire department vehicle, 82 A.L.R.2d 312
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203

90 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
c. Emergency Vehicles

8 Am Jur 2d Automobiles and Highway Traffic § 813

§ 813 Exceeding speed limit

In most jurisdictions, emergency vehicles on emergency calls are exempted from speed regulations.[n1] Such exemptions remove any prima facie inference of negligence arising from the operation of an emergency vehicle in violation of the speed laws, but it does not relieve the driver of such vehicle from the duty to exercise due care, even while acting in an emergency.[n2] Even in an emergency vehicle with its warning signals on, the driver is required to exercise reasonable care under the particular circumstances, which includes the usual duties to keep a lookout ahead, to drive at a reasonable speed, and to keep the vehicle under such control as to guard against collisions and injuries.[n3]

In a number of cases where a fire department vehicle or ambulance collided with another vehicle at an intersection, the driver of the emergency vehicle has been found to be negligent in driving at an excessive rate of speed under the circumstances.[n4] Also, under the circumstances, the speed at which a fire department vehicle, police vehicle, or ambulance was driven through an intersection has been found not to constitute negligence.[n5]

FOOTNOTES:

n1 § 224.

n2 Henderson v. Watson, 262 S.W.2d 811 (Ky. 1953).

n3 Lee v. Mitchell Funeral Home Ambulance Service, 606 P.2d 259, 21 A.L.R.4th 154 (Utah 1980).

n4 Shearn v. Orlando Funeral Home, 82 So. 2d 866 (Fla. 1955) (ambulance); McLhinney v. Lansdell Corp. of Md., 254 Md. 7, 254 A.2d 177 (1969) (fire department vehicle).

n5 Raynor v. City of Arcata, 11 Cal. 2d 113, 77 P.2d 1054 (1938) (fire department vehicle); Clemens v. Lowe, 100 Ind. App. 645, 196 N.E. 363 (1935) (ambulance); Reilly v. City of Philadelphia, 328 Pa. 563, 195 A. 897 (1938) (police vehicle).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530

A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(6), 170(8), 171(2), 175(2), 175(4), 210

91 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
c. Emergency Vehicles

8 Am Jur 2d Automobiles and Highway Traffic § 814

§ 814 Necessity of warning or signal of approach

In some jurisdictions, regulatory provisions granting emergency vehicles special privileges on the highways also indicate that the driver of such vehicle, when exercising such a privilege, must sound an audible warning or signal or use a flashing light or both.[n1] Such audible and visual signals serve the purposes of alerting the general public of the danger present[n2] or giving a safety warning to other users of the roadway and assisting in clearing a path for the emergency vehicle to travel.[n3] Also, in the case of a police vehicle attempting to stop a law violator, such signals serve to advise the violator to stop his or her vehicle.[n4]

In a number of cases, the evidence has been held sufficient to support a finding that the driver of a fire department vehicle, a police vehicle, or an ambulance was negligent in failing to give a proper warning or to operate a flashing light in approaching an intersection.[n5] In other cases however, the evidence has been held sufficient to support a finding that the driver of a fire department vehicle, police vehicle, or ambulance gave proper warning of his or her approach to an intersection and so is not negligent in this respect.[n6]

FOOTNOTES:

n1 § 224.

n2 Hersh v. Griffith, 284 Ga. App. 15, 643 S.E.2d 309 (2007), cert. denied, (June 4, 2007).

n3 Thornton v. Shore, 233 Kan. 737, 666 P.2d 655 (1983) (rejected on other grounds by, Peak v. Ratliff, 185 W. Va. 548, 408 S.E.2d 300 (1991)).

n4 Thornton v. Shore, 233 Kan. 737, 666 P.2d 655 (1983) (rejected on other grounds by, Peak v. Ratliff, 185 W. Va. 548, 408 S.E.2d 300 (1991)).

n5 Smith v. Bradford, 512 So. 2d 50 (Ala. 1987) (police vehicle); Raynor v. City of Arcata, 11 Cal. 2d 113, 77 P.2d 1054 (1938) (fire department vehicle); Avery v. Gilliam, 97 Nev. 181, 625 P.2d 1166 (1981) (ambulance).

n6 Rogers v. Minneapolis Street Ry. Co., 218 Minn. 454, 16 N.W.2d 516 (1944) (ambulance); Potts v. Laos, 31 Wash. 2d 889, 200 P.2d 505 (1948) (police vehicle); Davis v. Cross, 152 W. Va. 540, 164 S.E.2d 899 (1968) (fire department vehicle).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]151, 168(6), 170(8), 171(2), 175(5), 210

92 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
6. Intersections
c. Emergency Vehicles

8 Am Jur 2d Automobiles and Highway Traffic § 815

§ 815 Failure to yield right of way to emergency vehicle

A driver's disregard of the audible signal of an emergency vehicle in entering an intersection and the driver's failure to yield the right of way to the vehicle may constitute the basis of a finding of negligence.[n1] However, a driver generally has no duty to yield the right of way to an emergency vehicle unless and until an appropriate warning of the approach of such a vehicle has been given,[n2] and he or she may not be held liable for injuries sustained in a collision with an emergency vehicle at an intersection in the absence of such a warning.[n3] In other words, a driver may not be held guilty of negligence as a matter of law for failure to yield the right of way to an emergency vehicle unless it appears from uncontradicted testimony or by necessary inference that he or she had actual or constructive notice of the immediate approach of an emergency vehicle and a reasonable opportunity to yield the right of way.[n4]

FOOTNOTES:

n1 Bull v. Drew, 286 A.D. 1138, 146 N.Y.S.2d 85 (3d Dep't 1955).

n2 § 224.

n3 McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc., 248 N.C. 146, 102 S.E.2d 816 (1958).

n4 McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc., 248 N.C. 146, 102 S.E.2d 816 (1958); Parton v. Weilnau, 169 Ohio St. 145, 8 Ohio Op. 2d 134, 158 N.E.2d 719 (1959).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles

A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]154, 168(6), 170(8), 171(4), 171(4.1), 175(3), 210
Construction and Application of Statutory Provision Requiring Motorists to Yield Right-of-Way to Emergency Vehicle, 87 A.L.R.5th 1

93 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 816

§ 816 Generally; failure to dim lights

In meeting and passing vehicles approaching from the opposite direction, a driver is required to keep to the right, [n1] and to exercise reasonable care under the particular circumstances to avoid a collision. [n2] This requires, when the way is narrow, that the driver slow down or yield the right of way, as the circumstances may indicate. [n3]

Drivers approaching from opposite directions at night generally have the statutory duty to dim their lights when the vehicles are a specified distance apart. [n4] In some jurisdictions, the violation of such a statute has been held to be negligence per se, [n5] while in others, failure to comply with such a statute has been held to be merely evidence of negligence. [n6]

Where there is conflicting evidence as to whether the defendant in fact failed to dim his or her lights, and whether such failure was the proximate cause of the collision, a question is presented for the trier of the facts. [n7]

A driver's failure to dim his or her headlights when meeting another driver at night has been successfully advanced as a basis of liability even though the injury or damage complained of arose from a collision with a vehicle other than the defendant's vehicle. [n8]

A motorist approaching another motorist whose lights are not yet dimmed has the right to assume that the latter will make lawful use of the highway and dim his or her lights. [n9]

FOOTNOTES:

n1 § 252.

n2 Wheaton v. Stuck, 34 Wash. 2d 725, 209 P.2d 377 (1949).

n3 § 817.

n4 § 253.

n5 Greyhound Corp. v. Hounshell, 351 S.W.2d 64 (Ky. 1961).

n6 Ward v. Walker, 206 Ark. 988, 178 S.W.2d 62 (1944).

n7 Red Top Cab & Baggage Co. v. Masilotti, 190 F.2d 668 (5th Cir. 1951).

n8 Ward v. Walker, 206 Ark. 988, 178 S.W.2d 62 (1944).

n9 Artz v. Herrera, 137 Colo. 378, 325 P.2d 927 (1958).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 171(1), 170(4), 207
Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights, 63 A.L.R.3d 824
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 332 (Complaint, petition, or declaration -- Head-on collision -- Wrongful death -- Defendant driver intoxicated)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 334 (Complaint, petition, or declaration -- Head-on collision -- Failure to dim headlights)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 452 (Complaint, petition, or declaration -- Improper traffic lane -- Collision with oncoming vehicle -- Speeding)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 776, 777 (Allegation -- Violating rules of road -- Failure to dim lights for approaching vehicle)

94 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 817

§ 817 Meeting at narrow passages or bridges

Where two drivers approaching from opposite directions meet at a bridge or passage so narrow as to make it impossible or dangerous for both to pass at the same time, the one who first reaches the passage, or who would normally so reach it if both continued at proper speeds, has the right of way, and it is the duty of the other driver to refrain from entering the bridge or passage until the first motorist has safely cleared it.[n1]

In some cases involving collisions between drivers meeting at the approach to a narrow bridge as one was leaving and the other approaching, the evidence has been held to support a finding of causal negligence on the part of the driver leaving the bridge, usually on the ground that he or she was operating at an excessive speed or on the wrong side of the road.[n2] In other cases involving such collisions, the driver approaching the bridge has been held negligent, usually on the ground that, under the circumstances, he or she should have controlled the vehicle so as to give a clear passage to the other driver, who had pre-empted the passageway.[n3]

In cases involving collisions on bridges which, while narrow in the sense that they provide only scanty room for the passage of two vehicles, are not, strictly speaking, one-way bridges, a finding of causal negligence may be based upon evidence that one or the other of the passing vehicles was driven over the center line of the roadway.[n4]

Observation: The fact that a driver who was driving on the right side of a narrow bridge at the time he or she was struck by a driver coming from the opposite direction over the center line of the bridge, was also the first to approach or enter the bridge, has been referred to as a significant factor supporting a finding of negligence on the part of the other driver.[n5] However, despite the fact that one of two motorists meeting on a narrow bridge had driven over the center line of the roadway, it has been held that recovery would be barred or diminished by the other motorist's negligence.[n6]

A bridge that is only wide enough to permit one vehicle to pass at a time clearly has no right or wrong side, so that in cases involving collisions on such bridges, the inquiry is usually as to which of the vehicles involved had the right to pass over the bridge first, a question usually determined by the evidence as to which had first entered or approached the bridge.[n7]

In cases involving meeting at narrow places in a street or road, if one of the approaching drivers has an opportunity to stop at a wide place in the road while the other does not, the driver having such an opportunity might be chargeable with negligence in continuing ahead into the narrow passage.[n8] Findings of negligence have been sustained upon evidence that one or the other of the vehicles meeting on a narrow road failed to yield half of the roadway.[n9]

As in other cases, the mere possession of the right of way at a point where the road has been narrowed by obstructions does not entitle a driver to continue blindly ahead into a collision where he or she can avoid the accident by the exercise of reasonable care.[n10]

FOOTNOTES:

n1 § 295.

n2 Christ v. Spizman, 33 Ala. App. 586, 35 So. 2d 568 (1948).

n3 Ford v. Southwestern Greyhound Lines, 180 F.2d 934 (5th Cir. 1950).

n4 Kelly v. U.S., 127 F. Supp. 201 (N.D. Fla. 1955); Worthington v. McDonald, 246 Iowa 466, 68 N.W.2d 89, 47 A.L.R.2d 135 (1955).

n5 Sturgis v. Hardcastle, 206 Ark. 240, 174 S.W.2d 565 (1943).

n6 Scott v. Nevis, 120 Cal. App. 2d 619, 261 P.2d 797 (3d Dist. 1953).

n7 Cendali v. Barber, 89 Cal. App. 2d Supp. 929, 201 P.2d 88 (App. Dep't Super. Ct. 1948).

n8 Thelen v. Machotka, 268 Wis. 1, 66 N.W.2d 684 (1954).

n9 Marich v. Moe, 4 Wash. 2d 343, 103 P.2d 362 (1940).

n10 Webb v. Batten, 117 W. Va. 644, 187 S.E. 325 (1936).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1

Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 170(1), 170(7), 207
West's Key Number Digest, Highways [westkey]191
Rights, duties, and liability with respect to narrow bridge or passage as between motor vehicles approaching from opposite directions, 47 A.L.R.2d 142

95 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
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8 Am Jur 2d Automobiles and Highway Traffic § 818

§ 818 Generally

When a driver leaves his or her traffic lane and turns into the lane for oncoming traffic, he or she must exercise care to avoid colliding with other drivers, who are traveling where they have a right to travel.[n1] Thus, a driver's failure to drive on the right-hand side of the highway, or to move to the right to give an approaching driver an opportunity to pass, constitutes negligence,[n2] or, at least, is prima facie evidence of negligence.[n3]

The violation of a statute providing that a driver meeting another driver must pass on the right and give at least one-half of the main-traveled portion of the roadway to the other driver[n4] constitutes negligence per se,[n5] which will permit recovery for injuries sustained in an ensuing collision, provided such negligence was the proximate cause of the collision.[n6] Likewise, the violation of a statute requiring a motorist to stay within a single lane constitutes negligence per se and, if the negligence resulting from such violation proximately causes injury, liability would result.[n7]

Observation: The sudden-emergency doctrine does not relieve the driver of a truck, who traveled through the median and into the oncoming traffic after hitting a suicidal pedestrian who jumped in front of his or her truck, of any legal duty toward the driver and owner of the vehicle that collided with the truck; rather, the truck driver has a duty to act as a reasonably careful and prudent driver in attempting to avoid the unusual situation and a duty as to how he or she reacted to it.[n8] On the other hand, a driver's violation of a safety statute, in crossing the center line on a road and striking the oncoming vehicle, may be excused under the sudden-emergency doctrine, such that the driver is not responsible for injuries sustained by the occupants of the oncoming vehicle, where the driver was broadsided by a third vehicle, causing the driver to lose control of his or her vehicle and strike the oncoming vehicle, the second impact happened within seconds of the first impact, and the driver never regained control of his or her vehicle, despite his or her best efforts.[n9]

An injured motorist is not entitled to a jury instruction on negligence per se, based on the defendant driver's alleged violation of a statute prohibiting a person from driving over a median on a divided highway, where the driver did not violate the statute in that he or she lost control of the vehicle while traveling east on the highway, the vehicle hydroplaned, and he or she did not have control of the vehicle at the time the vehicle crossed over the median between the eastbound and westbound lanes of traffic on the divided highway and entered the westbound lanes of traffic, causing the accident.[n10]

A driver who follows another driver too closely, and who swerves to the left in attempting to avoid a collision when the driver in front stops or slows down, and then collides with a driver approaching from the opposite direction, may be held liable for the resulting damages or injuries.[n11]

FOOTNOTES:

n1 Globe Cereal Mills v. Scrivener, 240 F.2d 330 (10th Cir. 1956).

n2 London v. Stewart, 221 Neb. 265, 376 N.W.2d 553 (1985); Morowitz v. Naughton, 150 A.D.2d 536, 541 N.Y.S.2d 122 (2d Dep't 1989).

n3 Interstate Veneer Co. v. Edwards, 191 Va. 107, 60 S.E.2d 4, 23 A.L.R.2d 532 (1950).

n4 § 252.

n5 Turrietta v. Wyche, 54 N.M. 5, 212 P.2d 1041, 15 A.L.R.2d 407 (1949); Hobbs v. Queen City Coach Co., 225 N.C. 323, 34 S.E.2d 211 (1945).

n6 Holmes v. Merson, 285 Mich. 136, 280 N.W. 139 (1938).

n7 Sobczak v. Vorholt, 640 S.E.2d 805 (N.C. Ct. App. 2007).

n8 Vantran Industries, Inc. v. Ryder Truck Rental, Inc., 955 So. 2d 1118 (Fla. Dist. Ct. App. 1st Dist. 2006) (holding that under the "sudden-emergency doctrine,"once the emergency arises, a driver is not negligent, provided he has used due care to avoid meeting such an emergency and, after it arises, he exercises such care as a reasonably prudent and capable driver would use under the unusual circumstances, which is usually a question for the jury).

As to the sudden-emergency doctrine, generally, see § 424.

n9 Hatala v. Craft, 165 Ohio App. 3d 602, 2006-Ohio-789, 847 N.E.2d 501 (7th Dist. Mahoning County 2006).

n10 Wynn v. Kovar, 2007 WL 291116 (Ala. Civ. App. 2007).

n11 Fletcher v. Abbott, 92 Ga. App. 364, 88 S.E.2d 445 (1955).

As to a driver's liability for a collision resulting from his or her failure to follow at a proper distance behind the motorist ahead, generally, see § 829.

SUPPLEMENT:

Cases

Commonwealth's evidence constituted a prima facie showing of reckless or grossly negligent conduct as required by the homicide by vehicle and involuntary manslaughter statutes; Commonwealth offered evidence that defendant and driver of second vehicle were traveling very nearly side by side, perhaps at times over the speed limit, on a wet road, approaching a turn which turn had a caution calling for reduced speed, while trying to outpace each other, that driver of second vehicle lost control of his car because of the race between the two drivers, and that as a consequence, those two cars collided, and that defendant crossed the center of the road into oncoming lane, hitting and killing driver of oncoming vehicle. Com. v. Carroll, 2007 PA Super 340, 936 A.2d 1148 (2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings

A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]159, 168(2), 168(4), 170(1), 170(2), 170(12), 207
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 339 (Complaint, petition, or declaration -- One-way road -- Defendant driving in wrong direction -- Head-on collision -- By spouse for loss of consortium and medical expenses)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 803 to 816 (Allegation -- Operation in improper traffic lane)

96 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
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F. Effect of Particular Circumstances; Place of Injury
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b. Vehicle Approaching in Wrong Lane
(1) Duty and Liability of Driver in Wrong Lane

8 Am Jur 2d Automobiles and Highway Traffic § 819

§ 819 Right to assume approaching vehicle will return to proper lane

A driver who is properly proceeding on his or her own side of the highway, even after seeing a vehicle coming toward him or her in the wrong lane, is generally entitled to assume that the other vehicle will return to its proper lane of traffic, at least until the driver becomes aware, or in the exercise of reasonable care should become aware, that the approaching vehicle cannot or will not do so.[n1] However, a driver proceeding on his or her own side of the highway is still required to exercise reasonable care, and is not entitled to act on the assumption that an approaching vehicle on the wrong side of the highway will turn to the proper side after the basis for that assumption has disappeared, as where it becomes apparent that the vehicle on the wrong side of the highway either will not or cannot turn back to the proper lane.[n2] In other words, the fact that a driver was at all times on the proper side of the highway does not as a matter of law show that he or she was in the exercise of reasonable care at the time of passing a vehicle approaching from the opposite direction.[n3]

FOOTNOTES:

n1 Wessinger v. Overton, 339 So. 2d 1272 (La. Ct. App. 1st Cir. 1976); Rome v. Rome, 307 Minn. 207, 239 N.W.2d 232 (1976).

n2 Coble v. Lacey, 252 Minn. 423, 90 N.W.2d 314 (1958); Turrietta v. Wyche, 54 N.M. 5, 212 P.2d 1041, 15 A.L.R.2d 407 (1949).

n3 Barbieri v. Jennings, 90 N.M. 83, 559 P.2d 1210 (Ct. App. 1976).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 207, 170(1), 170(2)

97 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 820

§ 820 Generally

A driver proceeding in the correct lane who is approached by a vehicle in the wrong lane has a right to assume that the approaching vehicle will return to its proper lane,[n1] and a driver is not required to anticipate that a vehicle approaching him or her from the opposite direction will cross over into his or her lane of traffic.[n2] However, a driver who is driving in his or her proper lane and is approached by a vehicle in the wrong lane may be found guilty of negligence in neglecting to turn to the right or the left, or to stop, to avoid collision with an approaching vehicle.[n3] Also, such a driver may be found guilty of negligence in that, he or she was driving at an excessive rate of speed or did not keep a proper lookout,[n4] or warn the approaching motorist.[n5]

In most cases however, the contention that the driver on the proper side of the highway was negligent in that he or she was driving at an excessive rate of speed,[n6] or failed to keep a proper lookout,[n7] or failed to give warning to the approaching motorist,[n8] has been rejected, or it has been held that any negligence in such respect was not a proximate cause of the collision.

Where a cross-over and a collision occur almost instantaneously, the driver in the proper lane cannot be considered negligently responsible for any part of the accident.[n9]

A driver faced with a vehicle careening across the highway directly into his or her path is not liable for his or her failure to exercise the best judgment or for any errors of judgment on his or her part.[n10]

FOOTNOTES:

n1 § 819.

n2 Williams v. Simpson, 36 A.D.3d 507, 829 N.Y.S.2d 51 (1st Dep't 2007); Gajjar v. Shah, 31 A.D.3d 377, 817 N.Y.S.2d 653 (2d Dep't 2006).

n3 § 823.

n4 Fetsko v. Greyhound Lines, Inc., 497 F.2d 399 (3d Cir. 1974).

n5 Mooney v. Chapdelaine, 90 N.H. 415, 10 A.2d 220 (1939), on reh'g, 11 A.2d 713 (N.H. 1940).

n6 Greene v. Morelli Bros., 463 F.2d 725 (3d Cir. 1972) (applying Pennsylvania law).

n7 Rome v. Rome, 307 Minn. 207, 239 N.W.2d 232 (1976); Boerner v. Lambert's Estate, 9 Wash. App. 145, 510 P.2d 1157 (Div. 1 1973).

n8 Saupe v. Kertz, 523 S.W.2d 826 (Mo. 1975).

n9 Williams v. Simpson, 36 A.D.3d 507, 829 N.Y.S.2d 51 (1st Dep't 2007).

n10 Clough v. Szymanski, 26 A.D.3d 894, 809 N.Y.S.2d 707 (4th Dep't 2006).

SUPPLEMENT:

Cases

A driver is not obligated to anticipate that a vehicle will go out of control and cross the roadway laterally, perpendicular to the flow of traffic on the roadway; such an event constitutes a classic emergency situation implicating the emergency doctrine. Smit v. Phillips, 901 N.Y.S.2d 705 (App. Div. 2d Dep't 2010).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595

Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]159, 168(4), 170(1), 170(2), 170(12), 207
Negligence of motorist as to injury or damage occasioned in avoiding collision with vehicle approaching in wrong lane, 47 A.L.R.2d 119
Negligence of motorist colliding with vehicle approaching in wrong lane, 47 A.L.R.2d 6

98 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 821

§ 821 Emergency doctrine

The widely recognized emergency doctrine -- that a driver who, confronted with a sudden emergency, acts according to his or her best judgment or who, because of want of time to form a judgment, omits to act in the most judicious manner, is not chargeable with negligence if he or she exercised the care a reasonably prudent person would under like circumstances [n1] -- may be applied in a situation where a driver is confronted with another vehicle approaching from the opposite direction on the wrong side of the road so that a collision is imminent unless one or the other changes course. [n2] The fact that a driver, proceeding on the proper side of the road and confronted with another vehicle approaching from the opposite direction in the former's lane of traffic, acts in a calm and deliberate manner, rather than displaying excitement, does not deprive him or her of the benefit of the emergency doctrine. [n3]

A driver is not obligated to anticipate that a vehicle traveling in the opposite direction will cross over into the oncoming lane of traffic, such an event constituting a classic emergency situation, thus implicating the emergency doctrine. [n4] Accordingly, a driver has been held not responsible for any part of a multivehicle accident, where the driver was in the proper lane, two other vehicles collided in front of him or her, and one of those vehicles spun out of control, crossed the double line, and collided with his or her vehicle, the court stating that notwithstanding the driver's anticipatory slow-down, the scenario presented the driver with an emergency situation not of his or her own making. [n5] Likewise, a driver involved in an accident with a motorcyclist who crossed over a double yellow line into a lane of oncoming traffic has been deemed confronted by an emergency situation and to have acted reasonably, thus precluding the imposition of liability in the motorcyclist's personal injury suit, where the evidence established that the driver first observed the motorcyclist when he or she was coming around a curve in the roadway approximately 40 to 50 yards ahead of the driver's vehicle, and once the motorcyclist crossed into the driver's lane of travel, the driver moved his or her vehicle to the right, bringing it to a stop in close proximity to a guardrail. [n6] Also, where a car crossed over three lanes of traffic, including a double-yellow line, into the oncoming traffic in a tractor-trailer's lane, the driver of the tractor-trailer is deemed to have been faced with an emergency situation, and his or her action of staying in his or her own lane and slamming on the brakes was reasonable, regardless of whether he or she could conceivably have swerved the tractor-trailer to avoid a collision. [n7]

Observation: A driver confronted with an emergency situation may still be found to be at fault for the resulting accident where his or her reaction is found to be unreasonable or where the prior tortious conduct of the driver contributed to bringing about the emergency. [n8] In other words, the sudden-emergency doctrine, which prevents liability for the defendant's negligence if the injury resulted from acting in a sudden emergency, does not apply when the sudden emergency was caused, at least in part, by the defendant's negligence in failing to maintain the proper lookout or speed in light of the roadway conditions at the time. [n9]

FOOTNOTES:

n1 § 424.

n2 Beaman v. Sheppard, 35 N.C. App. 73, 239 S.E.2d 864 (1978).

n3 Triestram v. Way, 286 Mich. 13, 281 N.W. 420 (1938).

n4 Marsch v. Catanzaro, 40 A.D.3d 941, 837 N.Y.S.2d 195 (2d Dep't 2007); Gajjar v. Shah, 31 A.D.3d 377, 817 N.Y.S.2d 653 (2d Dep't 2006).

n5 Williams v. Simpson, 36 A.D.3d 507, 829 N.Y.S.2d 51 (1st Dep't 2007).

n6 Bender v. Gross, 33 A.D.3d 417, 822 N.Y.S.2d 275 (1st Dep't 2006).

n7 Gajjar v. Shah, 31 A.D.3d 377, 817 N.Y.S.2d 653 (2d Dep't 2006).

n8 Kizis ex rel. Rivera v. Nehring, 27 A.D.3d 1106, 811 N.Y.S.2d 509 (4th Dep't 2006) (stating that the emergency doctrine did not apply to an accident occurring when a motorist crossed over the center line into the opposing lane of travel to avoid hitting "a large brown what appeared to be a bird"that was either "flying or running"toward her vehicle).

n9 Sobczak v. Vorholt, 640 S.E.2d 805 (N.C. Ct. App. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1

Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]159, 168(4), 170(1), 207, 225
West's Key Number Digest, Negligence [westkey]291 to 295

99 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 822

§ 822 Last clear chance; discovered peril

In actions arising out of a collision between a driver proceeding on the right side of the road and another driver approaching on the wrong side, attempts have occasionally been made to impose liability on the driver who was originally in his or her proper lane of traffic, under the theory that, although the driver on the wrong side is chargeable with initial negligence, the other driver may be guilty of subsequent negligence, which should be regarded as the proximate cause of the accident, under the doctrine of last clear chance or discovered peril, or the humanitarian doctrine.[n1] While it has been held in some cases that there was an issue presented as to the defendant driver's negligence under such a doctrine,[n2] the doctrine has been held inapplicable, under the circumstances in other cases, usually because it could not be said that the plaintiff's negligence in driving on the wrong side of the road had come to an end in time to allow the defendant a "clear"chance to avoid the accident by exercising proper care.[n3]

FOOTNOTES:

n1 As to the application of the last-clear-chance doctrine to motor vehicle accidents, generally, see § 953.

n2 Monday v. Clynes, 212 F.2d 802 (6th Cir. 1954); Short Way Lines v. Thomas, 34 Tenn. App. 641, 241 S.W.2d 875 (1951).

n3 Ippolito v. Brenner, 72 So. 2d 802 (Fla. 1954); Weber v. Aetna Life & Cas. Co., 259 So. 2d 628 (La. Ct. App. 1st Cir. 1972).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 170(1), 207
West's Key Number Digest, Negligence [westkey]530

100 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 823

§ 823 Continuing straight ahead

Usually on the ground that it appears that the reaction time afforded the driver was insufficient to allow him or her to take effective evasive action, a driver confronted with another vehicle coming toward him or her in the wrong lane, has been held, as a matter of law, not chargeable with negligence because he or she merely continued straight ahead[n1] and did not stop[n2] or turn to the right[n3] or the left.[n4] In other cases, the evidence has been held sufficient to support a finding of freedom from negligence on the part of the driver in the proper lane,[n5] as against the charge that he or she was negligent in failing to turn to the right[n6] or the left,[n7] or to stop,[n8] to avoid a collision. In still other cases, the evidence has been held insufficient to hold the driver in the proper lane guilty of negligence, at least as a matter of law,[n9] because he or she failed to turn to the right[n10] or the left,[n11] or to stop,[n12] to avoid a collision.

On the other hand, in certain cases, upon evidence that a driver seeing another vehicle approaching on the wrong side of the road did nothing to avoid a collision but continued ahead in his or her own lane, a jury's verdict finding him or her guilty of negligence would be sustained,[n13] particularly where it is shown that he or she could have avoided the collision by turning to the right[n14] or the left,[n15] or by stopping.[n16]

FOOTNOTES:

n1 Ward v. Valley Steel Products Co., 339 So. 2d 1361 (Miss. 1976).

n2 Henderson v. Henderson, 239 N.C. 487, 80 S.E.2d 383 (1954).

n3 Bisbee v. Ruppert, 306 Minn. 39, 235 N.W.2d 364 (1975).

n4 Howard v. Ringsby Truck Lines, 2 Utah 2d 65, 269 P.2d 295 (1954).

n5 Zancanaro v. Hopper, 79 Ariz. 207, 286 P.2d 205 (1955); Baumler v. Hazelwood, 162 Tex. 361, 347 S.W.2d 560 (1961).

n6 Daigle v. Hess, 270 So. 2d 294 (La. Ct. App. 1st Cir. 1972), writ denied, 272 So. 2d 376 (La. 1973).

n7 Bolduc v. Stein, 94 N.H. 89, 47 A.2d 107 (1946).

n8 Daigle v. Hess, 270 So. 2d 294 (La. Ct. App. 1st Cir. 1972), writ denied, 272 So. 2d 376 (La. 1973).

n9 Walling v. Lingelbach, 65 Ill. 2d 244, 2 Ill. Dec. 363, 357 N.E.2d 530 (1976); Ward v. Valley Steel Products Co., 339 So. 2d 1361 (Miss. 1976).

n10 Beecher v. Stepanian, 170 Kan. 201, 224 P.2d 1017 (1950).

n11 F. B. Walker & Sons, Inc. v. Rose, 223 Miss. 494, 78 So. 2d 592 (1955).

n12 Balano v. Nafziger, 137 Kan. 513, 21 P.2d 896 (1933).

n13 Whitt v. E. I. DuPont de Nemours & Co., 461 F.2d 1152 (6th Cir. 1972) (applying Tennessee law); Tenczar v. Milligan, 47 A.D.2d 773, 365 N.Y.S.2d 272 (3d Dep't 1975).

n14 Bridges v. Vaughan, 521 S.W.2d 363 (Tex. Civ. App. Waco 1975).

n15 Walker v. Lee, 115 S.C. 495, 106 S.E. 682 (1921).

n16 Langner v. Caviness, 238 Iowa 774, 28 N.W.2d 421, 172 A.L.R. 1135 (1947).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1

Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 170(1), 207

101 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 824

§ 824 Turning to the right; failing to go as far right as possible

Consistent with the universal rule, embodied in statutes in most jurisdictions, that drivers meeting from opposite directions should ordinarily turn to the right to pass each other,[n1] a driver proceeding in the proper lane of traffic who turns to the right upon meeting another vehicle approaching on the wrong side of the road is not chargeable with negligence, at least in the absence of special circumstances indicating that he or she could better have avoided the collision by taking some other course.[n2] Upon evidence that a driver cut to his or her right in an attempt to avoid a collision with another vehicle approaching on the wrong side of the road, a jury finding that this conduct is not negligent has been sustained.[n3]

The claim that a driver meeting another vehicle coming on the wrong side of the road and turning right in an attempt to avoid collision is chargeable with negligence in failing to stop before meeting the oncoming vehicle has met with little acceptance, most of the cases holding that at most a jury question is raised by evidence of the failure to stop, and sustaining jury verdicts finding that under the circumstances the failure in this respect is excusable.[n4]

The contention that a driver observing another vehicle approaching in the wrong lane may be found negligent in driving to the right, on the ground that the collision could have been avoided by turning left in a technical violation of the law of the road, has been rejected.[n5]

The contention has sometimes been made that a driver meeting another vehicle coming on the wrong side of the road, who turns to the right to permit the other vehicle to pass, is still chargeable with negligence, in failing to go as far to the right as possible, and such an argument at most have raised a question for the jury, and findings of freedom from negligence in failing to go farther right have been sustained.[n6]

FOOTNOTES:

n1 § 252.

n2 Smith v. Hankins, 250 Ark. 803, 467 S.W.2d 159 (1971); Beaman v. Sheppard, 35 N.C. App. 73, 239 S.E.2d 864 (1978).

n3 Walling v. Lingelbach, 33 Ill. App. 3d 949, 338 N.E.2d 917 (2d Dist. 1975), judgment aff'd, 65 Ill. 2d 244, 2 Ill. Dec. 363, 357 N.E.2d 530 (1976); Boerner v. Lambert's Estate, 9 Wash. App. 145, 510 P.2d 1157 (Div. 1 1973).

A driver acted appropriately and did not breach a duty of care by pulling to the right and coming to a stop or nearly to a stop, rather than pulling to the left and into an on-coming motorist's lane, when the driver saw the on-coming motorist's vehicle sliding out of control from her lane towards his lane. Crowe v. Shaw, 2000 ME 136, 755 A.2d 509 (Me. 2000).

n4 Scaletta v. Silva, 52 Cal. App. 2d 730, 126 P.2d 898 (3d Dist. 1942); Weilbrenner v. Owens, 246 Iowa 580, 68 N.W.2d 293 (1955).

n5 Bardin v. Case, 99 Cal. App. 2d 137, 221 P.2d 292 (2d Dist. 1950); Rossier v. Merrill, 139 Me. 174, 28 A.2d 142 (1942).

n6 Smith v. Wattenburg, 133 Cal. App. 2d 193, 283 P.2d 751 (3d Dist. 1955); Imgrund v. Reff, 243 Minn. 186, 67 N.W.2d 411 (1954).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567

Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 207

102 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 825

§ 825 Turning to the left

Although common-law rules of the road as well as traffic regulations require drivers meeting from opposite directions to turn to the right to permit each other to pass,[n1] the generally prevailing rule is that a driver is not necessarily chargeable with negligence when, in the emergency created by being confronted with a vehicle approaching on the wrong side of the road, he or she turns to the left in an attempt to avoid collision,[n2] rather than turning to the right[n3] or stopping.[n4] The propriety of submitting to the jury the question whether a driver was justified in turning left to avoid a collision with a vehicle approaching on the wrong side of the road has been recognized in some cases in which the courts have sustained verdicts absolving the driver so turning from charges of negligence.[n5]

The evidence supported a jury's implicit findings that the conduct of a second driver was reasonable, where the first driver's car apparently partially spun into the second driver's lane, the second driver swerved to the left (into the first driver's lane) to avoid the spinning car, and the collision occurred when the first driver regained his lane and collided head-on with the second driver.[n6] Moreover, in some cases, the evidence has been held to require as a matter of law the conclusion that a driver meeting a vehicle approaching on the wrong side of the road can not be held negligent in turning to the left.[n7]

However, the particular circumstances under which a driver turns to the left when confronted with a vehicle approaching in his or her lane of traffic, may be such as to support a finding of negligence.[n8] The situation may be such that it is negligent for such a driver not to turn to the right,[n9] or to stop.[n10]

FOOTNOTES:

n1 § 252.

n2 Berghammer v. Smith, 185 N.W.2d 226, 46 A.L.R.3d 865 (Iowa 1971).

n3 Havens v. Havens, 266 Wis. 282, 63 N.W.2d 86, 47 A.L.R.2d 1 (1954).

n4 Dallason v. Buckmeier, 74 Wyo. 125, 284 P.2d 386 (1955).

N5 Bunch v. Frezier, 239 So. 2d 680 (La. Ct. App. 1st Cir. 1970); Graves v. Hart's Bakery, Inc., 241 So. 2d 673 (Miss. 1970).

n6 Brown v. Orndorff, 309 S.C. 320, 422 S.E.2d 151 (Ct. App. 1992).

n7 Nelson v. Hirschbach Motor Line, 239 So. 2d 438 (La. Ct. App. 4th Cir. 1970), writ refused, 256 La. 1158, 241 So. 2d 256 (1970); Fessenden v. Roadway Exp., 46 Mich. App. 276, 208 N.W.2d 78 (1973).

n8 Hill v. Wymer, 208 Kan. 553, 493 P.2d 224 (1972); Pittock v. Gardner, 530 S.W.2d 217 (Mo. 1975).

n9 Hill v. Wymer, 208 Kan. 553, 493 P.2d 224 (1972).

n10 Hubbard v. Conti, 321 Mass. 743, 75 N.E.2d 639 (1947).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43

Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 207
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 267 (Complaint, petition, or declaration -- Swerving back into same traffic lane after beginning left turn)

103 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 826

§ 826 Stopping or attempting to stop

The instinctive reaction of a driver meeting another vehicle approaching on the wrong side of the road is to apply the brakes, and in several cases where it appeared that the driver relied primarily on an attempt to stop, either the driver has been held, as a matter of law, not chargeable with negligence,[n1] or, a finding that the driver was not negligent in doing so has been held justified.[n2] However, an attempt to bring a motor vehicle to a sudden stop upon meeting a vehicle coming on the wrong side of the road may amount to negligence, under particular road or traffic conditions.[n3]

FOOTNOTES:

n1 Scott v. Jansson, 257 Ark. 410, 516 S.W.2d 589 (1974); Boerner v. Lambert's Estate, 9 Wash. App. 145, 510 P.2d 1157 (Div. 1 1973).

n2 Lynch v. Bissell, 99 N.H. 473, 116 A.2d 121 (1955).

n3 Payne v. Vinecore, 40 Wash. 2d 746, 246 P.2d 448 (1952).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 170(5), 207

104 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 827

§ 827 Injury or damage caused in avoiding collision

Where a driver has caused injury in avoiding a collision with a vehicle approaching on the wrong side of the road, it has been recognized that such a driver has a right to act on the assumption that the approaching vehicle would comply with the law and return to the proper side of the road in time to avoid the collision, until, in the exercise of reasonable care, the driver realizes that the other motorist will not or can not do so.[n1]

A finding that the driver acted with reasonable care under the circumstances has been held justified where the driver confronted with a vehicle approaching on the wrong side of the road turned to the right,[n2] or to the left,[n3] or stopped,[n4] or merely continued in his or her own lane of traffic,[n5] and successfully avoided a collision with the approaching vehicle, but in doing so caused injury or damage to him- or herself or some third person. On the other hand, the driver may be found guilty of negligence under the circumstances where the driver confronted with a vehicle approaching on the wrong side of the road turned to the right,[n6] or to the left,[n7] and avoided a collision with the approaching vehicle but caused injury or damage to him- or herself or some third person.

FOOTNOTES:

n1 Sudol v. Gorga, 346 Pa. 463, 31 A.2d 119 (1943).

n2 Roberts v. Whitley, 17 N.C. App. 554, 195 S.E.2d 62 (1973); Berg v. Mengore, 271 Or. 530, 533 P.2d 801 (1975).

n3 Huydts v. Dixon, 199 Colo. 260, 606 P.2d 1303 (1980).

n4 Grantham v. Bulik, 137 Conn. 640, 80 A.2d 515 (1951).

n5 Sudol v. Gorga, 346 Pa. 463, 31 A.2d 119 (1943).

n6 Roberts v. Whitley, 17 N.C. App. 554, 195 S.E.2d 62 (1973).

n7 Fouche v. Masters, 47 Md. App. 11, 420 A.2d 1279 (1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 207

105 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
7. Vehicles Proceeding in Opposite Directions
b. Vehicle Approaching in Wrong Lane
(2) Duty and Liability of Driver in Proper Lane

8 Am Jur 2d Automobiles and Highway Traffic § 828

§ 828 Emergency doctrine

A driver who is approached by a vehicle in the wrong lane and who causes damages while attempting to avoid a collision is entitled to have the question of his or her exercise of due care decided in the light of the emergency doctrine,[n1] unless the driver's own negligence caused or contributed to cause the emergency.[n2] However, the emergency doctrine may not be applicable if the driver in the proper lane had time within which to form a sound judgment -- that is, if there was, in fact, no emergency.[n3]

FOOTNOTES:

n1 Moller v. Lieber, 156 A.D.2d 434, 548 N.Y.S.2d 552 (2d Dep't 1989); Berg v. Mengore, 271 Or. 530, 533 P.2d 801 (1975).

n2 Kisor v. Tulsa Rendering Co., 113 F. Supp. 10 (W.D. Ark. 1953).

n3 Sudol v. Gorga, 346 Pa. 463, 31 A.2d 119 (1943).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]159, 168(4), 207, 225
West's Key Number Digest, Negligence [westkey]291 to 285, 510

106 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 829

§ 829 Generally

The general rule that drivers on public highways or streets must exercise reasonable care in the operation of their vehicles, that is, such care as a person of ordinary prudence would exercise under the same or similar circumstances,[n1] governs the reciprocal rights and duties of drivers proceeding in the same direction.[n2] A lead vehicle has a duty not to stop suddenly or slow down without proper signaling so as to avoid a collision,[n3] and a following motorist is charged with a duty of great care regarding a preceding motorist.[n4] Drivers following other vehicles have a duty to use reasonable care to so regulate their vehicles as to prevent rear-end collisions.[n5] Where the lead driver of a vehicle involved in a rear-end collision is forced to brake and stop suddenly without striking the vehicle in front due to that vehicle coming to a sudden stop, there is no basis for imposing liability on that driver.[n6]

When two cars are traveling in the same direction, the primary duty to avoid a collision rests with the second driver who, in the absence of an emergency or other unusual condition, is negligent as a matter of law if he or she runs into a preceding car.[n7]

When an automobile driver approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle.[n8]

The driver of a forward vehicle has a right superior to that of the following vehicle's driver to use the highway for purposes of turning or leaving.[n9]

Noncompliance with the statutes or ordinances governing the operation of motor vehicles may, in itself, constitute negligence and render the violator liable for consequential damages,[n10] and, even where a driver complies with all the requirements of a statute or ordinance regulating the operation of motor vehicles, he or she may yet be liable for the failure to exercise ordinary care to avoid injury to another traveler in front of or behind him or her on the highway.[n11] Generally, however, a motorist ahead owes no duty to a motorist in the rear except to use the road in the usual way, in keeping with the laws of the road; and until the motorist ahead has been made aware of it, by signal or otherwise, the driver has a right to assume either that there is no other vehicle in the close proximity to the rear or that, being there, the driver to the rear has his or her vehicle under such control as not to interfere with the free use of the road in front of and to the side of him or her in any lawful manner.[n12]

Observation: Any negligence on the motorist's part has been deemed not a proximate cause of the multiple-vehicle chain reaction collision in which his or her vehicle was struck from behind, and thus the motorist was not liable in a personal injury action brought by the operators of the two vehicles behind him or her, where the operator of the vehicle which struck the motorist's vehicle had come to a complete stop before being struck from behind and propelled into the motorist's vehicle.[n13]

A motor vehicle may be an obstruction, justifying the crossing of a solid yellow line in order to pass it, when it is operated on a public road in a manner which can not be generally or reasonably anticipated, taking into account all circumstances and conditions present at such time and place, and thereby hinders or impedes proper travel on such road.[n14]

FOOTNOTES:

n1 § 420.

n2 Rhea v. Daigle, 72 So. 2d 643 (La. Ct. App. 1st Cir. 1954).

n3 Quezada v. Aquino, 38 A.D.3d 873, 833 N.Y.S.2d 169 (2d Dep't 2007); Carhuayano v. J & R Hacking, 28 A.D.3d 413, 813 N.Y.S.2d 162 (2d Dep't 2006).

n4 Easter v. Direct Ins. Co., 957 So. 2d 323 (La. Ct. App. 2d Cir. 2007).

n5 Steffen v. Schwan's Sales Enterprises, Inc., 2006 SD 41, 713 N.W.2d 614 (S.D. 2006).

A driver who asserted that, while traveling 30 miles per hour, he observed a vehicle stop approximately 32-40 feet in front of him, was negligent in rear-ending that vehicle, regardless of his unsubstantiated allegations that the brake lights of the rear-ended vehicle were not in working order, or that the vehicle had stopped suddenly. Francisco v. Schoepfer, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1st Dep't 2006).

n6 Carhuayano v. J & R Hacking, 28 A.D.3d 413, 813 N.Y.S.2d 162 (2d Dep't 2006).

n7 Thomas v. McDonald, 667 So. 2d 594 (Miss. 1995).

n8 Jedrysik v. Panorama Tours, Ltd., 34 A.D.3d 1338, 824 N.Y.S.2d 848 (4th Dep't 2006).

A four-vehicle, rear-end collision did not give rise to a negligence recovery by the driver of the first vehicle against the driver of the second vehicle, where the driver of the first vehicle offered no evidence to show that the second driver's vehicle was moving prior to colliding with the first driver's vehicle, that the second driver operated his vehicle in a way that could have negligently caused the accident at issue, or that the second driver negligently caused the collision before coming to a stop. Havens v. Collard, 2006 WL 574180 (Conn. Super. Ct. 2006).

n9 Wingate Taylor-Maid Transp., Inc. v. Baker, 310 Ark. 731, 840 S.W.2d 179 (1992).

n10 § 724.

n11 Clayton v. McIlrath, 241 Iowa 1162, 44 N.W.2d 741, 27 A.L.R.2d 307 (1950).

n12 Purdes v. Merrill, 268 Minn. 129, 128 N.W.2d 164 (1964).

n13 Hyeon Hee Park v. Hi Taek Kim, 37 A.D.3d 416, 831 N.Y.S.2d 422 (2d Dep't 2007).

The driver of the lead vehicle that came to a sudden stop after hitting a box spring mattress was not liable for damage caused by a fourth car to the rear hitting the third rearward vehicle and causing a chain reaction with stopped cars; the fourth driver's negligence was the sole cause. Petty v. State Farm Mut. Auto. Ins. Co., 952 So. 2d 767 (La. Ct. App. 4th Cir. 2007).

n14 Decatur's Best Taxi Service, Inc. v. Smith, 282 Ga. App. 731, 639 S.E.2d 482 (2006), cert. denied, (Mar. 26, 2007).

SUPPLEMENT:

Cases

The driver of a vehicle following along behind another, and not attempting to pass, has a duty encompassing four interrelated functions: he must have his vehicle under proper control, keep a proper look-out ahead, and commensurate therewith drive at a speed and sufficient distance behind the preceding vehicle so that should the preceding vehicle stop suddenly, he can nevertheless stop his vehicle without colliding with the forward vehicle; however, where there is evidence of an emergency or unusual condition, this operates as a non-rule that presents a jury question as to whether the circumstances rise to the level of emergency or abnormal condition. Jamison v. Barnes, 8 So. 3d 238 (Miss. Ct. App. 2008), cert. denied, 12 So. 3d 531 (Miss. 2009).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(1), 168(5), 168(10.1), 172(1) to 172(15), 209
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 283 to 296 (Complaint, petition, or declaration -- Rear-end Collision -- Plaintiff's stopped or standing vehicle)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 297 to 301 (Complaint, petition, or declaration -- Rear-end Collision -- Defendant's stopped or standing vehicle)

107 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
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8. Vehicles Proceeding in Same Direction
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 830

§ 830 Signaled stops; vehicle stopped at traffic light

A statute imposing upon a driver the duty to signal his or her intention to stop [n1] imposes upon drivers to the rear proceeding in the same direction the duty to watch for and observe such signals. [n2]

A driver approaching an intersection is also required to have his or her vehicle under control so that he or she does not drive into the rear of a vehicle whose driver is obeying traffic signals by waiting for the red light to change. [n3]

An owner and operator of a vehicle which was rear-ended while stopped at a red light has been found not liable to an injured passenger for negligence, where the operator of the second vehicle, immediately after the accident, admitted that the collision occurred when his or her foot slipped off the brake pedal. [n4]

FOOTNOTES:

n1 As to such statutes, generally, see § 279.

n2 Branstetter v. Gerdeman, 364 Mo. 1230, 274 S.W.2d 240 (1955).

As to liability for collision resulting from an unsignaled stop, see §§ 831 to 836.

n3 McNulty v. Cusack, 104 So. 2d 785 (Fla. Dist. Ct. App. 2d Dist. 1958).

n4 Nozine v. Anurag, 38 A.D.3d 631, 831 N.Y.S.2d 511 (2d Dep't 2007).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(4) to 172(7)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 283, 284 (Complaint, petition, or declaration -- Plaintiff's stopped or standing vehicle -- Struck while stopped at traffic light)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 857 (Allegation -- Vehicle struck while stopped for traffic signal)

108 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
b. Sudden or Unsignaled Stop or Slowing of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 831

§ 831 Generally

The duty to give a signal or warning of the intention to stop or slow a motor vehicle on the highway is embodied in statutes in most jurisdictions.[n1] The common-law duty to exercise ordinary care in the operation of a motor vehicle may also require such a signal.[n2]

Under ordinary circumstances, the determination whether ordinary care requires the giving of such a signal is left to the jury as a question of fact.[n3]

An unexcused failure to fulfill the duty to signal the intention to stop or slow a motor vehicle on the highway will, under proper circumstances, support a finding of negligence.[n4] The violation of a statute or ordinance requiring such signaling constitutes negligence per se,[n5] although other cases have treated such a violation as only prima facie evidence of negligence.[n6] In any event, it is clear that, even if a violation of the statute requiring a signal of the intention to stop or slow down is regarded as negligence per se, such negligence will be actionable only where it is a proximate cause of the injuries.[n7]

FOOTNOTES:

n1 § 279.

n2 Union Transp. Co. v. Lamb, 1942 OK 13, 190 Okla. 327, 123 P.2d 660 (1942).

n3 Hildyard v. Western Fasteners, Inc., 33 Colo. App. 396, 522 P.2d 596 (1974).

n4 Maurer v. Harper, 207 Neb. 655, 300 N.W.2d 191 (1981); Shay v. Nixon, 45 N.C. App. 108, 262 S.E.2d 294 (1980).

n5 Dunsmoor v. Cowdrey, 316 Mass. 516, 56 N.E.2d 20 (1944); Conley v. Pearce-Young-Angel Co., 224 N.C. 211, 29 S.E.2d 740 (1944).

n6 Cooper v. Hoeglund, 221 Minn. 446, 22 N.W.2d 450 (1946); Sellers v. American Indus. Transit, 35 Tenn. App. 46, 242 S.W.2d 335 (1951).

n7 Goldman v. Virginia-Carolina Wholesale Co., 317 F.2d 236 (4th Cir. 1963) (applying Virginia law).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(5), 172(5.1), 172(6)
Sudden or unsignaled stop or slowing of motor vehicle as negligence, 29 A.L.R.2d 5

Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225

109 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
b. Sudden or Unsignaled Stop or Slowing of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 832

§ 832 Brakelights

The fact that a stopping driver signaled his or her intention to stop through the use of rear brakelights or flashing stoplights is often cited as a basis for a finding that the driver may not be found negligent for a sudden or unsignaled stop.[n1] This fact has also been held not necessarily to relieve the driver of negligence in stopping suddenly ahead of another vehicle.[n2] However, if the lights do not operate properly, the driver may be found guilty of negligence.[n3]

FOOTNOTES:

n1 Johnson v. Angretti, 364 Pa. 602, 73 A.2d 666 (1950).

n2 Donahue v. Mazzoli, 27 Cal. App. 2d 102, 80 P.2d 743 (1st Dist. 1938); Schroeder v. Rawlings, 344 Mo. 630, 127 S.W.2d 678 (1939).

n3 Hinds v. Warren Transport, Inc., 1994 OK CIV APP 52, 882 P.2d 1099 (Ct. App. Div. 3 1994).

Statutes prohibiting a person from stopping or suddenly decreasing the speed of his or her vehicle without first giving an appropriate signal to the driver of the vehicle immediately to the rear require stop lights on the rear of each vehicle to be brake activated, to be in working order, and to be used. Gronneberg v. Hoffart, 466 N.W.2d 809 (N.D. 1991).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(5), 172(5.1), 172(6)

110 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
b. Sudden or Unsignaled Stop or Slowing of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 833

§ 833 Reason or excuse for stopping or slowing down

Where a vehicle is struck from behind by another, upon coming to a sudden stop because of traffic, the operator of the vehicle may properly be found guilty of negligence in failing to properly signal his or her intention to stop.[n1] However, it has also been held that a verdict absolving the stopping driver of negligence is justified or required, under conflicting evidence as to the relevant circumstances surrounding the collision.[n2]

The presence of a stationary vehicle directly ahead of the vehicle, and the heavy flow of traffic in an adjacent lane, has been held to provide the driver with a lawful reason for stopping, and thus the driver was not liable for injuries sustained by the occupants of the vehicle that struck his or her car from behind, where the collision occurred only 10 seconds after the driver brought his or her vehicle to a stop, and there was no record evidence of mechanical problems with the vehicle.[n3]

A driver may be held guilty of negligence, in coming to a sudden or unsignaled stop to pick up a passenger[n4] or let a passenger off.[n5]

The failure of a motorist to properly signal his or her intention to stop at the scene of an accident, or in order to offer help to some other person on the highway, may be sufficient to charge him or her with negligence.[n6]

FOOTNOTES:

n1 Glosson v. Trollinger, 227 N.C. 84, 40 S.E.2d 606 (1946).

n2 Ellis v. McCubbins, 312 Ky. 837, 229 S.W.2d 992 (1950); Lewis v. Fowler, 22 N.C. App. 199, 206 S.E.2d 329 (1974).

n3 Gregson v. Terry, 35 A.D.3d 358, 827 N.Y.S.2d 181 (2d Dep't 2006).

n4 Mansur v. Josephson, 333 Pa. 467, 5 A.2d 102 (1939).

n5 Seeds v. Chicago Transit Authority, 409 Ill. 566, 101 N.E.2d 84 (1951).

n6 Jaeckel v. Funk, 111 Colo. 179, 138 P.2d 939 (1943); Rossien v. Berry, 305 Mich. 693, 9 N.W.2d 895 (1943).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(5), 172(5.1), 172(6)

111 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
b. Sudden or Unsignaled Stop or Slowing of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 834

§ 834 Sudden emergency

Under the sudden-emergency doctrine, when a following motorist is suddenly confronted with an unanticipated hazard created by a forward vehicle that could not be reasonably avoided, the following driver will be found free from fault for the rear-end accident.[n1] Accordingly, the contention has been raised, with considerable success, that a stopping driver was confronted with an emergency justifying him or her in coming to an abrupt stop without signaling,[n2] such as, where an animal or person suddenly darted across the driver's path,[n3] or where there was a mechanical failure or defect of the vehicle.[n4]

However, where it appears that the emergency requiring the stop was created, in part at least, by the preliminary negligence of the stopping driver, the claim that a sudden or unsignaled stop was justified by an emergency involving other vehicles on the road ahead,[n5] or an animal or person darting into the road,[n6] or a mechanical failure or defect in the vehicle,[n7] has been rejected. The sudden-emergency doctrine is applicable in cases involving rear-end collisions when the defendant's negligent actions are a result of emergency conditions, but not when the defendant's actions prior to the emergency are negligent.[n8]

Observation: There is authority holding that the sudden-emergency doctrine does not apply to vehicles moving in the same direction, nor does it apply when the defendant is responsible for creating the emergency.[n9] More particularly, the sudden-emergency doctrine is not applicable in a personal injury action brought against a driver by a motorist, who stopped suddenly and was rear-ended by the driver's vehicle, given that this case did not present a sudden emergency, but, rather, a sudden occurrence; the driver did not take any action as a result of encountering an emergency, such as swerving into another lane of traffic or running onto the shoulder or median of roadway, and instead, the driver was presented with a sudden occurrence that might have resulted in his or her inability to avoid the collision regardless of his or her previous exercise of ordinary care.[n10]

Where the theory of comparative negligence asserted by a following motorist in an action arising from a rear-end collision is that the driver of the leading vehicle stopped suddenly, the law also requires evidence that the stop was unwarranted, and as such, it is not enough to merely show that the stop in question may have been sudden.[n11]

A driver whose vehicle suddenly decelerates as a result of a mechanical failure, resulting in a collision with a following vehicle, has the heavy burden of proof that he or she had no advance notice of the defect and that he or she used ordinary care to prevent such a mechanical failure.[n12] In any event, notwithstanding any alleged negligence of a driver who came to a sudden or unsignaled stop as a result of traffic conditions ahead, the evidence may justify or require a finding that such conduct can not be regarded as a proximate cause of a rear-end collision.[n13]

FOOTNOTES:

n1 Phipps v. Allstate Ins. Co., 924 So. 2d 1081 (La. Ct. App. 5th Cir. 2006).

n2 Lerwill v. Regent Van & Storage, Inc., 217 Va. 490, 229 S.E.2d 880 (1976).

n3 Clackler v. Barnwell, 83 Ga. App. 515, 64 S.E.2d 384 (1951).

Under the sudden-emergency doctrine, a motorist exercised the same degree of care that a reasonably prudent person would have exercised under circumstances when the motorist reduced her speed on seeing a herd of bighorn sheep in roadway ahead of her, and, thus the motorist was not negligent when her vehicle was rear-ended by a trailing vehicle. McClintic v. Hesse, 151 P.3d 611 (Colo. Ct. App. 2006), cert. granted, 2007 WL 439058 (Colo. 2007).

n4 Adam v. English, 21 So. 2d 633 (La. Ct. App., Orleans 1945).

n5 Sellers v. American Indus. Transit, 35 Tenn. App. 46, 242 S.W.2d 335 (1951).

n6 Sills v. Meyers, 171 Misc. 63, 11 N.Y.S.2d 106 (City Ct. 1939); Austin v. Overton, 222 N.C. 89, 21 S.E.2d 887 (1942).

n7 Certa v. Associated Bldg. Center, Inc., 560 S.W.2d 593 (Mo. Ct. App. 1977).

n8 Jordan v. Sava, Inc., 222 S.W.3d 840 (Tex. App. Houston 1st Dist. 2007), reh'g overruled, (Apr. 12, 2007).

n9 Com. v. Matroni, 2007 PA Super 110, 923 A.2d 444 (2007).

n10 Robinson v. Lansford, 222 S.W.3d 242 (Ky. Ct. App. 2006).

n11 Huntoon v. TCI Cablevision of Colorado, Inc., 969 P.2d 681 (Colo. 1998).

n12 Shelmire v. Linton, 343 So. 2d 301 (La. Ct. App. 1st Cir. 1977).

n13 Szczytko v. Public Service Coordinated Transport, 21 N.J. Super. 258, 91 A.2d 116 (App. Div. 1952).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]159, 172(1), 172(5), 172(5.1), 172(6), 225
Automobiles: liability of motorist for collision as affected by attempts to avoid dog or other small animal in road, 41 A.L.R.3d 1124

112 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
b. Sudden or Unsignaled Stop or Slowing of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 835

§ 835 Traffic signs or signals

In a rear-end collision between drivers, the leading driver who is charged with coming to a sudden or unsignaled stop, may successfully avoid a charge of negligence by showing that the stop was made in response to a traffic sign or signal; under such circumstances, the following as well as the leading driver is charged with the duty to be aware of and obey the traffic sign or signal.[n1] However, a driver who has been struck from the rear by a following vehicle may be charged with negligence in failing to properly signal the stop, despite a claim that it was made in response to a traffic sign or signal,[n2] particularly where the stop was made in an intersection, the stopping driver having already entered the intersection at the time the stop signal came on.[n3]

A driver approaching a yellow light may be justified in proceeding through the intersection when he or she can do so before the light turns red, but such a driver's right to stop is absolute.[n4] Accordingly, where a leading driver stops suddenly at a yellow light, he or she is not, as a matter of law, contributorily negligent with regard to a collision when struck by a following vehicle.[n5]

FOOTNOTES:

n1 Bass v. Stockton, 236 S.W.2d 229 (Tex. Civ. App. San Antonio 1951); Felder v. City of Tacoma, 68 Wash. 2d 726, 415 P.2d 496 (1966).

n2 Bean v. Anderson, 1976 OK 175, 557 P.2d 431 (Okla. 1976); Rhoades v. DeRosier, 14 Wash. App. 946, 546 P.2d 930 (Div. 1 1976).

n3 Hladick v. Williams, 292 Mass. 470, 198 N.E. 662 (1935); Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 147 A.L.R. 945 (1943).

n4 Brummett v. Cyr, 56 Wash. 2d 904, 355 P.2d 994 (1960).

n5 Brummett v. Cyr, 56 Wash. 2d 904, 355 P.2d 994 (1960).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(5), 172(5.1), 172(6)

113 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
b. Sudden or Unsignaled Stop or Slowing of Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 836

§ 836 Damage or injury caused in avoiding stopping vehicle

Where a motorist on the highway has allegedly come to a sudden or unsignaled stop, with the result that the following motorist, whether or not colliding with the first motorist, crosses the road and collides with another approaching from the opposite direction, the contention has been that any negligence of the stopping motorist can not be regarded as a proximate cause of the collision between the other motorists, the courts generally holding that the facts at least raise a jury question whether the leading motorist is concurrently negligent.[n1]

Negligence in bringing a motor vehicle to a sudden or unsignaled stop on the highway ahead of a closely following vehicle has been held to justify or require a finding that the stopping motorist is liable to the following motorists for injuries or damages incurred when two or more of the following motorists collided in attempting to avoid the stopping motorist.[n2] Negligence in bringing a motor vehicle to a sudden or unsignaled stop on the highway ahead of a closely following motorist has also been held, under the particular circumstances, to render the stopping motorist liable for injury or damage resulting when the following vehicle, in order to avoid a collision, was forced to leave the road or to come to a stop itself so suddenly as to injure its occupants.[n3]

FOOTNOTES:

n1 Gore v. Miller, 311 So. 2d 894 (La. Ct. App. 3d Cir. 1975); Daughtry v. Turnage, 295 N.C. 543, 246 S.E.2d 788 (1978).

n2 Clift v. Jordan, 207 Ark. 66, 178 S.W.2d 1009 (1944); Rivkin v. Gouveia, 130 Conn. 378, 34 A.2d 634 (1943).

n3 Harrington v. Fortman, 233 Iowa 92, 8 N.W.2d 713 (1943).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(5) to 172(7)

114 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
c. Failure to Maintain Proper Distance from Vehicle Ahead

8 Am Jur 2d Automobiles and Highway Traffic § 837

§ 837 Generally

While a following motorist may assume that the vehicle ahead is being driven with care and caution, he or she must drive at an appropriate speed and must maintain an interval between the two vehicles as would enable him or her to avoid a collision with the vehicle ahead, under circumstances which should be reasonably anticipated.[n1] A driver is expected to drive at sufficiently safe speed and to maintain enough distance between him- or herself and the cars ahead, so as to avoid collisions with stopped vehicles, taking into account weather and road conditions.[n2] A driver has the duty to another vehicle not to follow too closely with regard to the speed of the other vehicles and to exercise ordinary care to avoid colliding with other vehicles on the roadway.[n3] In other words, a motorist is under a duty to stay at a reasonable and safe distance from the motorist ahead so as to be able to avoid a collision,[n4] although no mathematical formulas can be stated as to the distance which must be maintained in all cases.[n5]

Observation: A driver traveling on a city street carrying a considerable amount of traffic should anticipate that the vehicle ahead may stop or change lanes, and may be required to do so by the slowing or stopping of vehicles making lawful turns.[n6] However, a following driver need not anticipate that a motorist will suddenly stop or slowdown on a highway.[n7]

In a chain-collision situation, whether the injuries to the person in the first car were caused by the concurrent negligence of the operators of the cars following him or her is a question for the jury.[n8]

FOOTNOTES:

n1 Phipps v. Allstate Ins. Co., 924 So. 2d 1081 (La. Ct. App. 5th Cir. 2006).

n2 Francisco v. Schoepfer, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1st Dep't 2006).

n3 Robinson v. Lansford, 222 S.W.3d 242 (Ky. Ct. App. 2006).

n4 Miller v. Cody, 41 Wash. 2d 775, 252 P.2d 303 (1953).

n5 White v. Cenla Ambulance Service, Inc., 375 So. 2d 210 (La. Ct. App. 3d Cir. 1979).

n6 Stanek v. Swierczek, 209 Neb. 357, 307 N.W.2d 807 (1981); Cohen v. Terranella, 112 A.D.2d 264, 491 N.Y.S.2d 711 (2d Dep't 1985).

n7 Peacock v. J.C. Penney Co., Inc., 764 F.2d 1012 (4th Cir. 1985); Maurer v. Harper, 207 Neb. 655, 300 N.W.2d 191 (1981).

n8 Gallo v. Crocker, 321 F.2d 876 (5th Cir. 1963).

SUPPLEMENT:

Cases

Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead. McKinney's Vehicle and Traffic Law § 1129(a). Volpe v. Limoncelli, 902 N.Y.S.2d 152 (App. Div. 2d Dep't 2010).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173

Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(1), 172(1), 172(5) to 172(7)
Driver's failure to maintain proper distance from motor vehicle ahead, 85 A.L.R.2d 613
Tailgating, 22 Am. Jur. Proof of Facts 43
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 860 (Allegation -- Following too closely)

115 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
c. Failure to Maintain Proper Distance from Vehicle Ahead

8 Am Jur 2d Automobiles and Highway Traffic § 838

§ 838 Negligence per se; presumptions

Many jurisdictions have statutes stipulating, either by specific distances or by general terms, that one motorist should not follow another too closely.[n1] The violation of such a statute has been held to constitute negligence per se.[n2] However, absent an adjudication in some prior proceeding of the following motorist's violation of such a statute, a lead motorist cannot rely on the statute to establish negligent conduct on the part of the following motorist who collides with the lead motorist.[n3] Also, such statutes create a presumption of negligence only where one motor vehicle is traveling behind another in the same lane of traffic, and there is evidence that the operator of the rear vehicle failed to maintain a reasonably safe distance between the vehicles, and that such failure has a causal connection to the resulting collision; the statute does not apply simply because a rear-end collision occurs.[n4]

A driver's violation of a statute prohibiting following too closely has also been held to be only prima facie or presumptive evidence of negligence,[n5] or merely evidence of negligence.[n6]

Regardless of statutory violations, a rear-end collision furnishes some evidence that one motorist was following another too closely,[n7] or creates a presumption that the following motorist was negligent,[n8] although it has also been held that no implication that a motorist was following another too closely arises from the mere occurrence of a rear-end collision.[n9]

FOOTNOTES:

n1 § 246.

n2 Aemisegger v. Herman, 215 Mont. 347, 697 P.2d 925 (1985); Burkey v. Royle, 233 Neb. 549, 446 N.W.2d 720 (1989).

n3 King v. Fereday, 739 P.2d 618 (Utah 1987).

n4 Wrinn v. State, 234 Conn. 401, 661 A.2d 1034 (1995).

n5 Winekoff v. Neisner's Automotive Supply, Inc., 12 Mich. App. 51, 162 N.W.2d 341 (1968); Wilson v. Sorge, 256 Minn. 125, 97 N.W.2d 477 (1959).

n6 Grimes v. Haslett, 641 P.2d 813 (Alaska 1982); Larson v. Kubisiak, 1997 ND 22, 558 N.W.2d 852 (N.D. 1997).

n7 Smith v. Rawlins, 253 N.C. 67, 116 S.E.2d 184, 85 A.L.R.2d 609 (1960); Renshaw v. Countess, 289 S.W.2d 621 (Tex. Civ. App. Fort Worth 1956).

n8 Tidwell v. Ocean Systems, Inc., 356 So. 2d 466 (La. Ct. App. 1st Cir. 1977).

n9 Millonig v. Bakken, 112 Wis. 2d 445, 334 N.W.2d 80 (1983).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(2), 172(5) to 172(7)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 302 to 314 (Complaint, petition, or declaration -- Moving vehicle struck by following vehicle)

116 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
c. Failure to Maintain Proper Distance from Vehicle Ahead

8 Am Jur 2d Automobiles and Highway Traffic § 839

§ 839 Collision with stopped vehicle

In some cases where a stopped vehicle has been struck by a following vehicle, causing damage to the stopped vehicle or injury to the operator, the evidence has been held sufficient to support a finding that the operator of the following vehicle was negligent in failing to keep a lookout[n1] or in following too closely.[n2] Such holdings are based on the rationale that if the following motorist had been following at a safe distance, he or she would have been able to stop before colliding with a vehicle that stopped in front of him or her.[n3] Indeed, drivers should anticipate that vehicles on city streets are often required to make sudden stops or to reduce speed.[n4]

Observation: A statute prohibiting following too closely may not be applicable to a collision involving a vehicle that is rear-ended while waiting at a signal light or sign[n5] or is hit by a second vehicle that was stopped behind it and was pushed into it by a third vehicle.[n6]

A following driver was negligent as a matter of law in colliding with a forward-moving vehicle that had stopped to allow a preceding vehicle to make a right turn, in the absence of evidence that the driver of the forward vehicle was contributorily negligent in stopping his or her vehicle.[n7]

FOOTNOTES:

n1 Somers v. Condlin, 39 A.D.3d 289, 833 N.Y.S.2d 83 (1st Dep't 2007).

A motor vehicle accident was the result of the defendant's negligence, where the plaintiff's vehicle was struck from behind while stopped and the defendant subsequently pleaded guilty to driving while ability is impaired. Pugh v. DeSantis, 37 A.D.3d 1026, 830 N.Y.S.2d 823 (3d Dep't 2007).

n2 Andersen v. Craig, 401 So. 2d 1022 (La. Ct. App. 4th Cir. 1981);

Plaintiffs injured in a nine-car traffic collision failed to establish that the defendant driver caused their injuries, even though the defendant later pled guilty to following too closely, where the plaintiffs did not know who caused the collision that led to their injuries, the evidence showed only that a series of collisions occurred and that the defendant caused one of the collisions, and the defendant denied that she caused any car to collide with the plaintiffs' car. Hudson v. Swain, 282 Ga. App. 718, 639 S.E.2d 319 (2006), cert. denied, (Mar. 26, 2007).

A driver was negligent in striking a stopped vehicle in the rear, even if the driver had applied his brakes and his vehicle skidded into the stopped vehicle due to road conditions. Faul v. Reilly, 29 A.D.3d 626, 816 N.Y.S.2d 502 (2d Dep't 2006).

n3 Hahn v. Russ, 611 P.2d 66 (Alaska 1980); Wallace v. Yarbrough, 155 Ga. App. 184, 270 S.E.2d 357 (1980).

n4 Green v. Plutt, 790 P.2d 1347 (Alaska 1990).

n5 Wrinn v. State, 35 Conn. App. 464, 646 A.2d 869 (1994), judgment aff'd, 234 Conn. 401, 661 A.2d 1034 (1995).

n6 Williamson v. Dawson, 518 So. 2d 47 (Ala. 1987); Wrinn v. State, 35 Conn. App. 464, 646 A.2d 869 (1994), judgment aff'd, 234 Conn. 401, 661 A.2d 1034 (1995).

n7 White v. Miller, 513 So. 2d 600 (Miss. 1987).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(1), 172(1), 172(2), 172(5) to 172(7)

117 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
c. Failure to Maintain Proper Distance from Vehicle Ahead

8 Am Jur 2d Automobiles and Highway Traffic § 840

§ 840 Collision with vehicle slowing down

A motorist who collides with a preceding motorist who is slowing down may be found liable for the injuries or damages sustained in such a collision because of his or her negligence in failing to keep a lookout or following too closely. [n1]

A lead driver's failure to signal his or her intention to turn does not bar or reduce the lead driver's recovery for the following driver's negligence in failing to keep a lookout and following too closely, at least where the lead driver's failure to signal is not a proximate cause of the collision. [n2] However, a following driver's negligence in following too closely or failing to keep a lookout will bar the following driver's recovery for a lead driver's negligence in stopping suddenly or without signaling, where the following driver's actions are the proximate cause of the collision. [n3]

FOOTNOTES:

n1 Lockhart v. O'Hara, 380 F. Supp. 379 (W.D. Ark. 1974); Eubanks v. Brasseal, 310 So. 2d 550 (La. 1975).

n2 Burroughs v. McGinness, 63 Ill. App. 3d 664, 20 Ill. Dec. 360, 380 N.E.2d 37 (5th Dist. 1978).

n3 Koroniotis v. LaPorte Transit, Inc., 397 N.E.2d 656 (Ind. Ct. App. 1979).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations

A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(2), 172(5) to 172(7)

118 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
c. Failure to Maintain Proper Distance from Vehicle Ahead

8 Am Jur 2d Automobiles and Highway Traffic § 841

§ 841 Collision with vehicle turning or deviating from course

When a following vehicle collides with a vehicle ahead that is turning or otherwise deviating from its direction, the following driver may be found negligent in failing to maintain a proper distance from the vehicle ahead.[n1] However, it has also been held that, under such circumstances, the following motorist was not negligent in following too closely,[n2] particularly where the lead vehicle left the following motorist's path and then suddenly re-entered it.[n3]

FOOTNOTES:

n1 Wooten v. Compton, 322 S.W.2d 473 (Ky. 1959); Mart v. Hill, 505 So. 2d 1120 (La. 1987) (a tractor-trailer driver approaching the crest of an overpass at 50 to 55 m.p.h. with 60 feet between his truck and the immediately preceding vehicle was 90% at fault for a rear-end accident with a motorist).

n2 Pittman v. Boiven, 249 Cal. App. 2d 207, 57 Cal. Rptr. 319 (4th Dist. 1967).

n3 Mann v. Gonzales, 100 Idaho 769, 605 P.2d 947 (1980); Pangle v. Joyce, 76 Ohio St. 3d 389, 1996-Ohio-381, 667 N.E.2d 1202 (1996).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(5) to 172(7)

119 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
c. Failure to Maintain Proper Distance from Vehicle Ahead

8 Am Jur 2d Automobiles and Highway Traffic § 842

§ 842 Collision with vehicle moving normally

A driver who collides with a vehicle ahead while the latter is traveling at a normal pace may be found guilty of negligence in following too closely,[n1] particularly where a statute provides that a motorist should not follow another motorist more closely than is reasonable and prudent, having due regard to speed and traffic and the conditions of the highway.[n2]

FOOTNOTES:

n1 Bogart v. Tucker, 164 Conn. 277, 320 A.2d 803 (1973); Rose v. Modern Const. Co., 120 N.Y.S.2d 304 (County Ct. 1953).

n2 Hines v. Fanti, 374 Pa. 254, 97 A.2d 808 (1953).

As to statutory regulation of distances between motorists proceeding in the same direction, see § 246.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]172(1), 172(2), 172(5) to 172(7)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 302 to 314 (Complaint, petition, or declaration -- Rear-end Collision -- Moving vehicle struck by following vehicle)

120 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 843

§ 843 Generally

A motorist is required to exercise ordinary care and skill in overtaking and attempting to pass another vehicle, and the measure of his or her duty in this respect depends on the condition of traffic and other circumstances. [n1]

A motorist should attempt to pass another motorist ahead only when he or she can do so with safety to motorists approaching from the opposite direction, [n2] as well as to the motorist he or she is passing. [n3] A motorist who attempts to change traffic lanes on a multiple-lane highway must ascertain before turning that the maneuver can be made safely without endangering normal overtaking or oncoming traffic. [n4]

Where a statute prohibits passing under certain conditions, a violation of that statute resulting in a collision may constitute negligence per se. [n5] Thus, unexcused violations of a vehicle and traffic law, such as crossing a double yellow line, constitute negligence per se. [n6] However, a truck driver who crossed a broken yellow line to pass another driver's vehicle, although coming out of a curve, is not negligent by virtue of statutory violation, with respect to a collision occurring when the other driver attempted a left turn into a driveway while the truck was passing. [n7]

Observation: Merely driving to the right of the white line is not "driving off the roadway,"for purposes of a statute permitting the driver of a vehicle to overtake and pass another vehicle under conditions permitting such movement in safety, provided that the movement is not made by driving off the roadway. [n8]

Where a motorist attempts to pass a motorist ahead at a time when visibility is limited by atmospheric conditions, and collides with an oncoming motorist, he or she may be held guilty of negligence. [n9]

To render a motorist liable for damages resulting from his or her attempts to pass another vehicle ahead, it must be shown that the failure of the overtaking motorist to observe the duties imposed upon him or her by law was the direct and proximate cause of the damages. [n10] A motorist may be guilty of causal negligence in overtaking and passing another motorist, however, even where there is no physical contact between their vehicles. [n11]

All drivers, including those of large trucks, must exercise reasonable prudence as to following distance, even when preparing to pass. [n12]

FOOTNOTES:

n1 Foster v. Continental Can Corp., 783 F.2d 731 (7th Cir. 1986); Huntwork v. Voss, 247 Neb. 184, 525 N.W.2d 632 (1995).

n2 § 247.

n3 Jacobs v. Safeway Ins. Co., 942 So. 2d 84 (La. Ct. App. 3d Cir. 2006), writ denied, 948 So. 2d 171 (La. 2007) and writ denied, 948 So. 2d 175 (La. 2007).

n4 Easter v. Direct Ins. Co., 957 So. 2d 323 (La. Ct. App. 2d Cir. 2007).

n5 Baldwin v. Degenhardt, 82 N.Y.2d 867, 609 N.Y.S.2d 563, 631 N.E.2d 569 (1993) (statute prohibiting crossing a double solid line while passing).

n6 Hazelton v. D.A. Lajeunesse Bldg. and Remodeling, Inc., 38 A.D.3d 1071, 832 N.Y.S.2d 114 (3d Dep't 2007).

n7 Croom v. Humphrey, 175 N.C. App. 765, 625 S.E.2d 165 (2006), review denied, 360 N.C. 479, 630 S.E.2d 925 (2006).

n8 Bristol v. Knowles, 138 Ohio Misc. 2d 14, 2006-Ohio-3637, 855 N.E.2d 938 (C.P. 2006).

n9 Fruit Industries, Inc. v. Petty, 268 F.2d 391 (5th Cir. 1959).

As to duty and liability in driving where one's vision is obstructed by atmospheric conditions, generally, see § 775.

n10 Robinson v. Butler, 226 Minn. 491, 33 N.W.2d 821, 4 A.L.R.2d 143 (1948).

n11 Peck v. U.S., 172 F.2d 336 (10th Cir. 1949).

n12 Cimarron Feeders, Inc. v. Tri-County Elec. Coop., Inc., 1991 OK 104, 818 P.2d 901 (Okla. 1991).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]147, 168(5), 172(1) to 172(8), 172(10), 209
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 365 to 369 (Complaint, petition, or declaration -- Negligence in passing)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 843 (Allegation -- Improper passing -- General form)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 844 (Allegation -- Attempt to pass in a no-passing zone)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 845 (Allegation -- Attempt to pass without clear view)

121 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 844

§ 844 Assumptions regarding overtaken motorists' conduct

A motorist overtaking and attempting to pass another motorist ahead is generally entitled to assume that the latter will exercise ordinary care, comply with statutory provisions, and permit him or her to pass.[n1] Accordingly, a motorist overtaking another motorist is not required to anticipate that the latter intends to make a turn instead of proceeding ahead, in the absence of some signal or warning of such intention.[n2] Also, an overtaking driver need not anticipate that the motorist being overtaken will suddenly swerve so as to block the way, nor slow or stop so as to cause the passing vehicle to lose control.[n3] However, while an overtaking motorist may assume that the motorist being overtaken will exercise ordinary care and permit him or her to pass, the overtaking motorist is not relieved of the duty to exercise care not to collide with the motorist being overtaken, and if the latter fails to yield the road, the overtaking motorist must reduce his or her speed and, if necessary, stop.[n4]

FOOTNOTES:

n1 Clayton v. McIlrath, 241 Iowa 1162, 44 N.W.2d 741, 27 A.L.R.2d 307 (1950).

n2 § 845.

n3 Morris v. Laaker, 213 Neb. 868, 331 N.W.2d 807 (1983).

n4 Clayton v. McIlrath, 241 Iowa 1162, 44 N.W.2d 741, 27 A.L.R.2d 307 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209

122 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 845

§ 845 Warning or signal of intention to pass

Before a motorist may attempt to pass another motorist proceeding in the same direction, he or she must make known to the motorist ahead his or her presence and desire to pass, where a statute so requires,[n1] or when circumstances require a warning in the exercise of reasonable care.[n2] However, there is no absolute duty to sound one's horn in the process of overtaking a vehicle; rather, the law requires the sounding of a horn when reasonably necessary to insure safe operation.[n3]

Observation: Circumstances under which a driver may be held negligent for not sounding his or her horn before attempting to pass include situations in which the overtaking vehicle intrudes into the lane occupied by the forward vehicle, situations in which the overtaking driver might expect the forward vehicle to meander due to a high wind or the immaturity of the forward driver, and situations in which the forward driver is likely to be surprised by the pass, such as where the overtaking vehicle is passing illegally, or the forward driver is a child, or the overtaking vehicle approaches rapidly from behind.[n4]

When an audible signal or warning is required, it must be timely.[n5]

The requirement that a motorist must signal his or her intention to pass a motorist proceeding in the same direction is particularly important where he or she attempts to pass on the right.[n6]

Whether the failure to give an audible signal when passing constitutes actionable negligence is usually a jury question.[n7]

FOOTNOTES:

n1 § 247.

n2 Clayton v. McIlrath, 241 Iowa 1162, 44 N.W.2d 741, 27 A.L.R.2d 307 (1950).

n3 Lias v. Flowers, 955 So. 2d 337 (Miss. Ct. App. 2006), cert. denied, 956 So. 2d 228 (Miss. 2007).

n4 Campbell v. W. S. Hatch Co., 622 P.2d 944 (Wyo. 1981).

n5 Downs v. Reed, 247 Ark. 588, 446 S.W.2d 657 (1969); Jepsen v. Magill, 243 Or. 34, 411 P.2d 267 (1966).

n6 § 847.

n7 Barrett v. Stephany, 510 S.W.2d 524 (Ky. 1974); Sedlacek v. Ahrens, 165 Mont. 479, 530 P.2d 424 (1974).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760,

770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]151, 168(5), 172(1) to 172(8), 209
Automobiles: duty and liability with respect to giving audible signal before passing, 22 A.L.R.3d 325
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 848, 849 (Allegation -- Failure to signal intention to pass overtaken vehicle -- School bus)

123 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 846

§ 846 Excuse for failure to give

Statutes or ordinances requiring either the operator of an overtaking vehicle to give an audible signal of his or her intention to pass, or the overtaken vehicle to give way to the right on an audible signal, or which contain both requirements, do not apply so as to require the horn on an overtaking vehicle to be sounded when its driver intends to pass a vehicle that is already sufficiently to the right.[n1] Thus, absent special circumstances, it is not necessary to give an audible signal before passing another vehicle on a multi-lane divided road,[n2] especially where the driver being passed is aware that a vehicle is following him or her.[n3]

The requirement of giving an audible signal in passing may be excused under certain other circumstances, such as when the vehicle's presence is announced by the noise it makes.[n4] However, even where the approaching vehicle makes a great deal of noise, it has been held that the overtaking driver still has the duty to give an audible signal.[n5] The giving of an audible signal by a passing driver may also be unnecessary where the driver has given a visual signal with his or her lights,[n6] although there is authority to the contrary.[n7]

An audible signal may also be excused where the presence of the passing vehicle is otherwise known to the driver of the forward vehicle,[n8] although an overtaking driver's failure to give an audible signal has been held to constitute negligence even though the forward driver was aware of the presence of the overtaking car.[n9]

An audible signal may be excused when it is obvious that the giving of an audible signal would have had no effect in so far as preventing the accident is concerned.[n10] However, a contention that the giving of an audible signal before passing would have had no effect has also been rejected.[n11]

FOOTNOTES:

n1 France v. Benter, 256 Iowa 534, 128 N.W.2d 268, 22 A.L.R.3d 313 (1964); Barber v. Sumrall, 206 So. 2d 560 (La. Ct. App. 1st Cir. 1968).

n2 Ketchum v. Hausdorf, 555 S.W.2d 654 (Mo. Ct. App. 1977); Clarke v. Vandermeer, 740 P.2d 921 (Wyo. 1987).

n3 Clarke v. Vandermeer, 740 P.2d 921 (Wyo. 1987).

n4 Globe Indem. Co. v. Cook, 167 So. 115 (La. Ct. App. 2d Cir. 1936).

n5 Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966); Doyle v. Kenoyer, 54 Wash. 2d 911, 345 P.2d 393 (1959).

n6 Goings v. State Farm Mut. Auto. Ins. Co., 158 So. 2d 333 (La. Ct. App. 1st Cir. 1963), writ refused, 245 La. 729, 160 So. 2d 595 (1964).

n7 Emery v. Standard Oil Co., 91 Ohio L. Abs. 193, 188 N.E.2d 175 (Ct. App. 9th Dist. Summit County 1963).

n8 Muhlhauser v. Archie Campbell Const. Co., 160 N.W.2d 524 (N.D. 1968).

n9 Snyder v. Jensen, 281 S.W.2d 802 (Mo. 1955); Doyle v. Kenoyer, 54 Wash. 2d 911, 345 P.2d 393 (1959).

n10 Elliott v. Foster, 216 Ark. 104, 224 S.W.2d 353 (1949); Marrero v. Richard, 98 So. 2d 305 (La. Ct. App. 1st Cir. 1957).

n11 Hinds v. Kircher, 379 S.W.2d 607 (Mo. 1964).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411

Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209

124 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 847

§ 847 Passing on the right

The ordinary traffic regulation requiring motorists to pass to the left of other motorists proceeding in the same direction [n1] is violated by passing on the right where that is not authorized by any exception in the traffic regulation. [n2] Such a violation has been held to be negligence per se, [n3] or, evidence of negligence. [n4] However, in recognition of the fact that passing on the right should be permitted under certain circumstances, the regulations in some jurisdictions specifically provide as to the circumstances under which a motorist may pass on the right another vehicle proceeding in the same direction. [n5]

The violation of a statutory prohibition against passing on the right is not sufficient in itself to constitute actionable negligence, since there must also be a causal connection between the violation of a resulting accident. [n6]

A motorist might, in the exercise of ordinary care, and without incurring liability, pass on the right where the motorist being overtaken has clearly indicated that he or she is going to make a left turn and has left sufficient space to the right to permit the overtaking motorist to pass in safety, [n7] or where there are two or more lanes available for motorists traveling in the same direction, [n8] or where the passing motorist is properly using a designated right-turn lane. [n9]

Where a motorist overtakes and attempts to pass another motorist on the right, both motorists must exercise reasonable care to avoid an accident. [n10]

Whether passing on the right, under circumstances in which such a move is authorized by statute, can be done safely is for the jury to determine from all of the attending facts and circumstances as shown by the evidence. [n11]

Ordinary care generally requires a motorist to signal before attempting to pass a forward motorist on the right, and the failure to do so may be a factor in determining that he or she was responsible, at least in part, for a resulting accident. [n12]

FOOTNOTES:

n1 § 247.

n2 § 251.

n3 Blakeman v. Joyce, 511 S.W.2d 112 (Ky. 1974); Shakley v. Lee, 368 Pa. 476, 84 A.2d 322 (1951).

n4 Cannon v. Bassett, 264 Mass. 383, 162 N.E. 772 (1928).

n5 § 251.

n6 Jones v. Tidwell, 139 So. 2d 57 (La. Ct. App. 2d Cir. 1962).

n7 Jones v. Tidwell, 139 So. 2d 57 (La. Ct. App. 2d Cir. 1962); Westervelt v. Rooker, 4 OHIOST3D 146, 447 N.E.2d 1307 (1983).

n8 Altimari v. Campbell, 56 Ohio App. 2d 253, 10 Ohio Op. 3d 268, 382 N.E.2d 1187 (1st Dist. Hamilton County 1978).

n9 Varner v. Weiss, 887 S.W.2d 659 (Mo. Ct. App. E.D. 1994).

n10 Vogelsang v. Sehlhorst, 194 Md. 413, 71 A.2d 295 (1950); American Creosote Works v. Rose Bros., 211 Miss. 173, 51 So. 2d 220 (1951).

n11 Westervelt v. Rooker, 4 OHIOST3D 146, 447 N.E.2d 1307 (1983).

n12 Ward v. Cruse, 236 N.C. 400, 72 S.E.2d 835, 38 A.L.R.2d 109 (1952).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1

Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209
Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 A.L.R.2d 114
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 279 (Complaint, petition, or declaration -- In federal court -- Diversity of citizenship -- Collision resulting from defendant's passing plaintiff on the right while plaintiff making right-hand turn)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 853 to 855 (Allegation -- Attempt to pass on right)

125 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 848

§ 848 Passing at intersection

In many jurisdictions, statutes or ordinances prohibit motorists from overtaking and passing other motorists at street or highway intersections.[n1] A violation of such a regulation has been held to constitute negligence per se, or negligence as a matter of law.[n2] However, the violation of such a regulation has also been held to be merely prima facie negligence or evidence of negligence, and such a violation does not prevent the trier of fact from finding against the existence of negligence.[n3] In any event, the violation of such a regulation does not establish liability on the part of the violator unless a causal connection between the violation and the ensuring injury is shown.[n4] However, a violation of such a regulation may create liability in negligence even to the occupants of a vehicle that is traveling on a different road than the passing vehicle.[n5]

Observation: The violation of a traffic regulation forbidding a motorist to pass another at an intersection is an important factor in determining that a motorist overtaking and passing another motorist on the right at an intersection is liable for a resulting collision.[n6] However, the circumstances may be such that a motorist overtaking and attempting to pass another motorist on the right at an intersection is not liable for an ensuing accident.[n7]

FOOTNOTES:

n1 § 249.

n2 Reese v. National Sur. Corp., 224 S.C. 489, 80 S.E.2d 47 (1954); Western Packing Co., Inc. v. Visser, 11 Wash. App. 149, 521 P.2d 939 (Div. 3 1974).

n3 Gudath v. Culp Lumber Co., 81 So. 2d 742, 53 A.L.R.2d 846 (Fla. 1955); Borris v. Cox, 245 Minn. 515, 73 N.W.2d 372 (1955).

n4 Parker v. Home Indem. Co. of N. Y., 41 So. 2d 783 (La. Ct. App. 2d Cir. 1949); Howard v. Bingham, 231 N.C. 420, 57 S.E.2d 401 (1950).

n5 Reuille v. Bowers, 409 N.E.2d 1144 (Ind. Ct. App. 1980).

n6 Patin v. State Farm Ins. Co., 395 So. 2d 466 (La. Ct. App. 3d Cir. 1981).

n7 Reuille v. Bowers, 409 N.E.2d 1144 (Ind. Ct. App. 1980) (a motorist may have been justified in violating the passing statute where, while the driver was entering the left lane and beginning to pass the rear car, he realized that the rear car was going faster than the front car, and concluded that it would be difficult to squeeze between the two cars, and was faced with the choice of continuing the passing maneuver, squeezing between the two cars, or aborting the passing maneuver to fall back behind the rear car, and he did not act unreasonably as matter of law in choosing the first alternative).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760,

770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 172(11), 172(15), 209
Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850

126 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 849

§ 849 Passing on hills or curves

In a number of jurisdictions, statutes regulate or forbid passing on hills.[n1] There is authority to the effect that, where a motorist attempts to pass another motorist on a grade or hill, in violation of such a statute, and a collision results, with damage to an oncoming vehicle or its occupants, the violator is at least negligent, if not guilty of willful or wanton misconduct, and hence liable for such damage.[n2] However, the mere violation of such a statute does not render a motorist liable for a collision, or bar or diminish his or her recovery for injuries sustained in an accident, unless the violation was a proximate cause of the accident.[n3]

Statutes also regulate or forbid passing another motorist proceeding in the same direction on a curve when the view is obstructed or obscured at a specified distance ahead.[n4] The violation of such a statute constitutes negligence, rendering the violator liable for injuries sustained in a collision with an oncoming motorist, where the violation is a proximate cause of the collision.[n5]

FOOTNOTES:

n1 § 250.

n2 Petcosky v. Bowman, 197 Va. 240, 89 S.E.2d 4, 60 A.L.R.2d 199 (1955).

n3 Salvitti v. Throppe, 343 Pa. 642, 23 A.2d 445, 138 A.L.R. 842 (1942).

n4 § 250.

n5 American Products Co. v. Villwock, 7 Wash. 2d 246, 109 P.2d 570, 132 A.L.R. 1010 (1941).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles

A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209
Construction and application of statutes regulating or forbidding passing on hill by vehicle, 60 A.L.R.2d 211
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 275 (Complaint, petition, or declaration -- Curve -- Plaintiff's tractor forced into ditch by defendant's tuck passing on curve)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 276 (Complaint, petition, or declaration -- Hill -- Passing on crest -- Failure to ascertain if way ahead was clear -- Plaintiff's approaching vehicle forced into ditch -- Speeding -- Against nonresident)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 846, 847 (Allegation -- Attempt to pass on hill)

127 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 850

§ 850 Cutting back; crowding

It is not necessary to show that there was an actual collision between the two motorists, in order to hold a passing motorist liable for actionable negligence in cutting in too sharply ahead of a motorist being overtaken, since the passing motorist may be held liable for a resulting injury if the return of the passing motorist to the right side of the road forces the overtaken motorist to leave the road to avoid a collision.[n1] If the plaintiff allegedly injured as a result of the defendant's negligence in cutting back too sharply after passing relies on the contention that a collision resulted, he or she cannot ordinarily recover in the absence of evidence to support this theory.[n2]

Where there is conflicting evidence on the issue of whether the defendant's passing vehicle did, in fact, turn back so sharply as to force the overtaken motorist off the road or to lose control of his or her vehicle, this is a question for the jury.[n3]

The act of cutting back so sharply as to collide with the motorist being passed cannot usually be excused on the plea that the passing motorist's action was taken in order to avoid a collision with an approaching motorist or other obstacle on the road ahead,[n4] since a motorist planning to pass on the highway is ordinarily under the duty to make sure that the maneuver can be made safely before undertaking it.[n5]

FOOTNOTES:

n1 Webb v. Hardin, 53 Ariz. 310, 89 P.2d 30 (1939); Wright v. Buckley, 204 Wis. 520, 235 N.W. 417 (1931), amended on other grounds on denial of reh'g, 204 Wis. 520, 236 N.W. 378 (1931).

A truck driver was entirely at fault for an accident in which a motorist was forced off the road when the truck changed lanes from the inside lane to the outside lane, where the motorist was positioned about midway of the truck's trailer when the motorist observed the truck driver's signal light, the truck began a lane change immediately and continued to proceed into the motorist's lane when the motorist blew her horn, and the motorist's automobile would have collided with the truck had the motorist not driven off the road. Mays v. Safeway Ins. Co., 953 So. 2d 843 (La. Ct. App. 2d Cir. 2007), writ denied, 955 So. 2d 1284 (La. 2007).

n2 Kleibor v. Colonial Stores, 159 F.2d 894 (C.C.A. 4th Cir. 1947); Pape v. Sutherland, 310 Ky. 199, 220 S.W.2d 372 (1949).

n3 Prescott v. Martin, 331 So. 2d 240 (Ala. 1976).

n4 Jones v. Miscar, 34 So. 2d 810 (La. Ct. App. 1st Cir. 1948); Padgett v. Missouri Motor Distributing Corp., 177 S.W.2d 490 (Mo. 1944).

n5 § 247.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209
Reciprocal rights, duties, and liabilities where motor vehicle driver, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 A.L.R.2d 232
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 268 (Complaint, petition, or declaration -- Right turn -- By defendant's passing vehicle -- In front of plaintiff's vehicle)

128 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(1) Duties and Liabilities of Overtaking Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 851

§ 851 Where two motorists attempt passing maneuver at same time

Where both of two motorists following a forward motorist traveling in the same direction attempt to pass the forward motorist, neither of the following motorists, merely because of his or her position ahead of or behind the other, has any overriding right to precede the other, but each motorist is under a duty to take reasonable steps by visible or audible signals to inform the other of his or her intention to leave the lane of travel in which he or she has been proceeding, and each is required to exercise reasonable care to watch for possible attempts by the other to pass, and to respect the right of the one who has preempted the passing lane to continue there until the passing maneuver has been completed or abandoned.[n1] Where the third motorist moves first into the passing lane, and then, without observing the position of the third motorist, the second motorist also pulls into the passing lane, causing a collision, the third motorist may be able to recover for the second motorist's negligence, especially where the second motorist did not use his or her turn signal.[n2] Under such circumstances, the second motorist who moved into the passing lane already occupied by the third motorist may not be entitled to recover for resulting injuries.[n3]

However, the third motorist may be held liable where he or she negligently attempts to force a passage around two motorists ahead without signaling his or her intention, or where the second motorist has already moved to the passing lane before the third motorist starts to pass.[n4]

Where the second of three motorists proceeding in the same direction on the highway has moved to the left lane for the purpose of passing the leading motorist, the third motorist, in addition to refraining from attempting to occupy the passing lane simultaneously with the second motorist, may also be under a duty to wait until the passing motorist returns to his or her position behind the lead motorist if circumstances, such as the approach of another motorist from the opposite direction, make the completion of the passing maneuver impossible or inadvisable.[n5]

FOOTNOTES:

n1 Clayton v. McIlrath, 241 Iowa 1162, 44 N.W.2d 741, 27 A.L.R.2d 307 (1950).

n2 Van Loo v. Tompkins County, 36 A.D.2d 998, 321 N.Y.S.2d 15 (3d Dep't 1971).

n3 Shaff v. Baldwin, 107 Cal. App. 2d 81, 236 P.2d 634 (1st Dist. 1951).

n4 Meese v. Goodman, 167 Md. 658, 176 A. 621, 98 A.L.R. 480 (1935).

n5 Consolidated Coach Corporation v. Saunders, 229 Ky. 284, 17 S.W.2d 233 (1929).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209
Rights and liabilities as between drivers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 A.L.R.2d 317

129 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(2) Duties and Liabilities of Overtaken Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 852

§ 852 Generally

Once a motorist becomes aware that a following motorist wishes to pass, he or she is generally required by statute or the rules of the road to give way to the right,[n1] and not to accelerate,[n2] and otherwise to exercise reasonable care not to injure the passing motorist.[n3] However, a motorist being passed is not required to yield the road unless and until the conditions are such as to render passing reasonably safe.[n4] In other words, the measure of duty of a motorist toward a following motorist whom he or she knows is attempting to pass necessarily depends on the condition of traffic and other circumstances.[n5]

Observation: A driver of a leading vehicle is not liable under the concerted action theory for injuries sustained by a passenger in the following vehicle, which occurred when the following vehicle rolled and crashed during an attempt to pass the leading vehicle, although the driver of the leading vehicle allegedly switched back and forth between lanes to prevent the following vehicle from passing, where there is no evidence of an explicit or implicit agreement on the part of both drivers to cooperate or compete in a "passing contest."[n6]

A motorist entering an intersection is entitled to assume that a following motorist will not attempt to overtake and pass in the intersection, where a traffic regulation prohibits such a maneuver.[n7]

Where a motorist is driving in an inner traffic lane, or has indicated that he or she is going to make a left turn, the driver may be held liable for a collision that occurs when he or she suddenly swerves or turns to the right into the path of a motorist passing on the right.[n8]

FOOTNOTES:

n1 § 247.

n2 § 853.

n3 Thompson v. Carney, 52 A.D.2d 977, 383 N.Y.S.2d 111 (3d Dep't 1976).

n4 Dreher v. Divine, 192 N.C. 325, 135 S.E. 29, 47 A.L.R. 696 (1926).

n5 Ironside v. Ironside, 1940 OK 351, 188 Okla. 267, 108 P.2d 157, 134 A.L.R. 621 (1940); England v. Simmons, 728 P.2d 1137 (Wyo. 1986).

n6 Blakeslee v. Wadsworth, 37 A.D.3d 1021, 831 N.Y.S.2d 556 (3d Dep't 2007).

n7 Wilson v. Gurney, 123 Cal. App. 2d 889, 268 P.2d 77 (3d Dist. 1954).

As to passing at intersections, generally, see § 848.

n8 Kentucky Bus Lines v. Wilson, 258 S.W.2d 486 (Ky. 1953).

As to the duty and liability of a motorist passing on the right, generally, see § 847.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173

Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209
Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 856 (Allegation -- Failure to yield right of way -- When overtaken by another vehicle)

130 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(2) Duties and Liabilities of Overtaken Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 853

§ 853 Decreasing or increasing speed

A motorist who is traveling on his or her own side of the road has no duty to slow down upon becoming aware that an overtaking motorist wants to pass,[n1] nor to decrease his or her speed immediately after being passed to restore a safe following distance.[n2] Indeed, a motorist being overtaken by a vehicle about to pass may be negligent in slowing his or her vehicle under certain circumstances, as where such slowing of the vehicle may unreasonably increase the risk of collision.[n3] However, a motorist is under a duty not to increase his or her speed for the purpose of preventing a following motorist from passing,[n4] which duty is imposed by statute in many jurisdictions.[n5]

Where a motorist knows that a following motorist is in the act of passing around him or her, and yet accelerates his or her speed to prevent the following motorist from passing, so that a collision with a third motorist approaching from the opposite direction occurs before the passing motorist can resume his or her place in line, such facts are sufficient to sustain a verdict that the overtaken motorist is negligent, regardless of the negligence of the passing motorist, and that such negligence is a concurrent cause of the accident.[n6] However, a motorist is not negligent in increasing his or her speed at a time when a following motorist is attempting to pass, where he or she has no knowledge of the following motorist's intention to pass.[n7]

FOOTNOTES:

n1 Cowden v. Crippen, 101 Mont. 187, 53 P.2d 98 (1936).

n2 Woods v. Nichols, 416 So. 2d 659 (Miss. 1982).

n3 Arnold v. Aetna Engineering Co., 514 F.2d 1147 (1st Cir. 1975) (applying New Hampshire law).

n4 Ironside v. Ironside, 1940 OK 351, 188 Okla. 267, 108 P.2d 157, 134 A.L.R. 621 (1940).

n5 § 247.

n6 Ironside v. Ironside, 1940 OK 351, 188 Okla. 267, 108 P.2d 157, 134 A.L.R. 621 (1940).

n7 Probst v. Seyer, 353 S.W.2d 798, 91 A.L.R.2d 1252 (Mo. 1962).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209

8 Am Jur 2d Automobiles and Highway Traffic § 853

Duty and liability of overtaken driver with respect to adjusting speed to that of passing vehicle, 91 A.L.R.2d 1260

131 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
d. Overtaking and Passing
(2) Duties and Liabilities of Overtaken Motorists

8 Am Jur 2d Automobiles and Highway Traffic § 854

§ 854 Signaling following motorist to pass or warning of approaching danger

There is a duty to use reasonable care in signaling a following motorist to pass.[n1] A driver may reasonably rely on such a signal where his or her view of the road ahead is blocked by the signaling driver.[n2] However, there is authority to the effect that such a signal is merely an invitation to pass, and does not subject the driver of the overtaken vehicle to liability for negligence.[n3]

A leading motorist is under no duty to give a following motorist any warning of approaching dangers other than those created by the movement of the leading motorist.[n4]

FOOTNOTES:

n1 Shirley Cloak & Dress Co. v. Arnold, 92 Ga. App. 885, 90 S.E.2d 622 (1955); Thelen v. Spilman, 251 Minn. 89, 86 N.W.2d 700, 77 A.L.R.2d 1315 (1957).

n2 Shirley Cloak & Dress Co. v. Arnold, 92 Ga. App. 885, 90 S.E.2d 622 (1955); Thelen v. Spilman, 251 Minn. 89, 86 N.W.2d 700, 77 A.L.R.2d 1315 (1957).

n3 Keating v. Belcher, 384 Pa. 129, 119 A.2d 535 (1956).

n4 Weeks v. Raper, 139 Cal. App. 2d 737, 294 P.2d 178 (3d Dist. 1956); Ondrachek v. Kettner, 256 Minn. 297, 98 N.W.2d 91 (1959).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(5), 172(1) to 172(8), 209
Motorists' liability for signaling other vehicle or pedestrian to proceed, or to pass signaling vehicle, 14 A.L.R.5th 193
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 371 (Complaint, petition, or declaration -- Conduct of overtaken vehicle -- Negligence of truck driver in signaling plaintiff to pass)

132 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
e. Merging of Traffic on Limited-Access Highway with that from Service Road or Ramp

8 Am Jur 2d Automobiles and Highway Traffic § 855

§ 855 Generally; duties of drivers already on highway

Traffic entering a limited-access highway from a service road or ramp is generally controlled by signs requiring that such traffic must yield the right of way to traffic already proceeding upon the limited access highway, and traffic already proceeding upon the limited access highway is generally warned of the approach of traffic from a service road or ramp by signs indicating "merging traffic."A "merging traffic"sign posted along a limited-access highway imposes an additional duty of caution not only on motorists in the lane into which the traffic merges, [n1] but also on other motorists proceeding upon the highway. [n2] A motorist passing at a merging traffic intersection should be on the alert to see that the maneuver can be accomplished in safety before proceeding. [n3]

A driver entering a highway from the shoulder has the primary duty to avoid a collision, even if a rear-end collision results. [n4]

A motorist proceeding on a limited-access highway at a point from which traffic is merging from a service road or ramp may be found to be negligent in failing to reduce his or her speed upon discovering that a vehicle merging from the service road or ramp is going to contest the right of way, [n5] and may also be negligent in failing to turn into empty traffic lanes to his or her left. [n6]

FOOTNOTES:

n1 Dick v. Phillips, 253 La. 366, 218 So. 2d 299, 40 A.L.R.3d 1420 (1969).

n2 Dick v. Phillips, 253 La. 366, 218 So. 2d 299, 40 A.L.R.3d 1420 (1969).

n3 Dick v. Phillips, 253 La. 366, 218 So. 2d 299, 40 A.L.R.3d 1420 (1969).

n4 Robinson v. Flowers, 949 So. 2d 549 (La. Ct. App. 2d Cir. 2007).

n5 Witherspoon v. Donahue, 30 Mich. App. 109, 186 N.W.2d 58 (1971).

n6 Witherspoon v. Donahue, 30 Mich. App. 109, 186 N.W.2d 58 (1971).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]167(1) to 167(4), 172(5.1)

Automobiles: accidents arising from merger of traffic on limited access highway with that from service road or ramp, 40 A.L.R.3d 1429

133 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
8. Vehicles Proceeding in Same Direction
e. Merging of Traffic on Limited-Access Highway with that from Service Road or Ramp

8 Am Jur 2d Automobiles and Highway Traffic § 856

§ 856 Duties of driver entering highway

A vehicle entering a limited-access highway from a service road or ramp, when required by proper signs to yield, may be negligent in entering the highway when a vehicle already upon such limited-access highway is in close proximity, [n1] and, if such negligence is the proximate cause of damage or injury to a motorist proceeding upon the limited access highway, the motorist entering such highway may be liable for such injury or damage even though there was no collision between the two motorists. [n2]

A driver entering a highway from a private drive has the primary duty to avoid a collision, even if a rear-end collision results. [n3]

Observation: The boulevard rule, which imposes a duty upon a driver entering or crossing a highway from another highway or a private roadway to stop and yield the right-of-way to any through traffic on the highway, applies to a driver, attempting to enter a public street from a private parking lot or driveway. [n4]

FOOTNOTES:

n1 Maynor v. Vosburg, 648 So. 2d 411 (La. Ct. App. 2d Cir. 1994), writ denied, 653 So. 2d 590 (La. 1995).

n2 Barbier v. Giglio, 244 So. 2d 866 (La. Ct. App. 1st Cir. 1971).

The evidence supported a jury's allocation of fault between the defendant driver (85%) and an unknown driver of a white car (15%) in an action by the plaintiff truck driver arising from his collision with the defendant's pickup truck as the white car and the defendant entered an interstate freeway from an on-ramp, where the defendant testified that he was following the white car onto the highway when the white car suddenly slowed, that the defendant could have stopped behind the white car, but that he attempted to pass the white car by pulling into the freeway's passing lane directly into the path of the plaintiff's truck. Maynor v. Vosburg, 648 So. 2d 411 (La. Ct. App. 2d Cir. 1994), writ denied, 653 So. 2d 590 (La. 1995).

n3 Robinson v. Flowers, 949 So. 2d 549 (La. Ct. App. 2d Cir. 2007).

n4 Barrett v. Nwaba, 165 Md. App. 281, 885 A.2d 392 (2005) (stating that the purpose of the boulevard rule is to accelerate the flow of traffic over through highways by permitting travelers thereon to proceed within lawful speed limits without interruption).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]167(1) to 167(4), 172(5.1)

134 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
9. Vehicles Backing Up
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 857

§ 857 Generally

A motorist must exercise reasonable care in backing a vehicle, circumstances being the guide as to what constitutes reasonable care.[n1]

Backing without taking precautions necessary under the circumstances constitutes negligence,[n2] and under some circumstances, gross negligence[n3] upon which liability for injuries proximately caused may be predicated.[n4]

Under certain but not all circumstances, a driver has a duty to sound his or her horn while backing.[n5]

FOOTNOTES:

n1 Nelson v. State, 922 So. 2d 447 (Fla. Dist. Ct. App. 2d Dist. 2006).

As to requiring greater, or more than usual, care in backing from private property into public street or highway, see § 862.

n2 Kardasinski v. Koford, 88 N.H. 444, 190 A. 702, 111 A.L.R. 1017 (1937).

n3 Turner v. New Orleans Public Service Inc., 476 So. 2d 800 (La. 1985) (holding that backing a truck without knowing whether it can be done safely is grossly negligent).

n4 Turner v. New Orleans Public Service Inc., 476 So. 2d 800 (La. 1985).

n5 Kresha v. Kresha, 216 Neb. 377, 344 N.W.2d 906 (1984).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings

A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 169, 207
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 862 (Allegation -- Improper backing -- Generally)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 863 (Allegation -- Failure to give warning)

135 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
9. Vehicles Backing Up
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 858

§ 858 Backing within private premises

The driver of a backing vehicle has a high duty of care to determine whether he or she can back his or her vehicle safely, and this principle applies to a determination of negligence when an accident occurs on private premises.[n1] There is also authority holding that in backing a motor vehicle on private premises, a driver must exercise extraordinary care[n2] or at least ordinary care.[n3] A driver who fails to exercise such care may be liable in negligence for damages caused by that failure.[n4]

Observation: A motorist's noncompliance with a workers' compensation regulation requiring reverse warning signals on vehicles with an obstructed view to the rear does not establish the motorist's negligence as a matter of law toward a victim who is injured when such a vehicle backs up and strikes him or her, where the victim is not an employee of the motorist.[n5]

A driver backing a vehicle on private property has a duty to keep at least such a lookout as is reasonably demanded by the circumstances for vehicles or persons who may be endangered by the maneuver,[n6] and to give a warning of his or her intention to back if he or she knows or should know of the presence of anyone behind.[n7]

Reminder: Statutes regulating highway traffic or providing rules of the road may not be applicable to motor vehicles operated on private property.[n8]

FOOTNOTES:

n1 Melancon v. Lafayette Ins. Co., 926 So. 2d 693 (La. Ct. App. 3d Cir. 2006), writ denied, 929 So. 2d 1291 (La. 2006) and writ denied, 929 So. 2d 1293 (La. 2006).

n2 Bush v. Williams, 74 So. 2d 335 (La. Ct. App. 1st Cir. 1954).

n3 Kresha v. Kresha, 216 Neb. 377, 344 N.W.2d 906 (1984).

n4 Ybarra v. Wassenmiller, 206 Neb. 164, 291 N.W.2d 725 (1980).

n5 Shahtout By and Through Shahtout v. Emco Garbage Co., Inc., 298 Or. 598, 695 P.2d 897 (1985).

n6 Dowden v. Trinity Universal Ins. Co., 322 So. 2d 399 (La. Ct. App. 3d Cir. 1975).

n7 Polsfuss v. Price, 272 Wis. 99, 74 N.W.2d 612 (1956).

n8 § 221.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760,

770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 169, 207
Liability for injury or damage occasioned by backing of motor vehicle within private premises, 63 A.L.R.2d 184
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 869 (Allegation -- In yard -- Injury to child)

136 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
9. Vehicles Backing Up
b. Backing on Public Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 859

§ 859 Generally

A driver is not forbidden from backing his or her automobile on the streets or highways, and doing so does not constitute negligence,[n1] but a driver backing a motor vehicle on a public highway must exercise extraordinary care[n2] or at least ordinary or due care,[n3] which includes keeping at least such lookout as is reasonably demanded by the circumstances.[n4] Such a driver also has a duty to give at least that signal or warning of his or her intention reasonably required by the circumstances to anyone who may be affected by this movement, or to give warning of his or her presence in the highway after backing into a position so as to block it.[n5]

Backing up in the right-hand lane must be done with at least that degree of care demanded by the circumstances.[n6]

FOOTNOTES:

n1 Ybarra v. Wassenmiller, 206 Neb. 164, 291 N.W.2d 725 (1980).

n2 Neff v. Texas Mut. Ins. Co., 85 So. 2d 703 (La. Ct. App., Orleans 1956).

n3 Ybarra v. Wassenmiller, 206 Neb. 164, 291 N.W.2d 725 (1980).

n4 Ybarra v. Wassenmiller, 206 Neb. 164, 291 N.W.2d 725 (1980).

n5 Green v. Atlantic Co., 61 So. 2d 185 (Fla. 1952); Clark v. Gilmore, 213 Miss. 590, 57 So. 2d 328 (1952).

n6 Callahan v. A. Wishart & Sons Co., 365 Pa. 498, 76 A.2d 386 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 169, 207
Liability for injury occasioned by backing of motor vehicle in public street or highway, 63 A.L.R.2d 5

137 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
9. Vehicles Backing Up
b. Backing on Public Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 860

§ 860 Collision between backing vehicle and another vehicle

Where a motor vehicle proceeding in the highway or street collides with a motor vehicle backing lengthwise on the highway, the driver of the backing vehicle may be found guilty of negligence,[n1] and the operator of the other vehicle may be found free from negligence.[n2] However, the circumstances may be such that the operator of the following vehicle may be held guilty of negligence, and the operator of the backing vehicle free from negligence.[n3]

Also, recovery by either driver against the other may be barred or diminished if the evidence supports the finding that both are guilty of negligence proximately causing the accident.[n4]

The operator of a following vehicle is entitled to assume that the driver of a vehicle stopped by the road will not violate the law and put him- or herself into a position of peril by backing onto the street.[n5]

FOOTNOTES:

n1 Gray Line, Inc. v. Keaton, 428 A.2d 360 (D.C. 1981); Gammon v. Clark, 25 N.C. App. 670, 214 S.E.2d 250 (1975).

n2 Sheridan v. Epps, 127 Cal. App. 2d 147, 273 P.2d 264 (4th Dist. 1954); State v. Teer, 542 S.W.2d 255 (Tex. Civ. App. Waco 1976), writ refused n.r.e.

n3 Land v. Colletti, 79 So. 2d 641 (La. Ct. App. 1st Cir. 1955).

n4 Scott v. Elwood, 77 Wyo. 428, 317 P.2d 513 (1957).

n5 Sims v. Huntington, 271 Ind. 368, 393 N.E.2d 135 (1979).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 169, 207
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 259 (Complaint, petition, or declaration -- Backing from curb -- Vehicle struck by truck backing and turning in mid-block -- Loss of use of vehicle)

138 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
9. Vehicles Backing Up
b. Backing on Public Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 861

§ 861 Injury or damage other than by collision with backing vehicle

Liability for the negligent backing of a motor vehicle in a public highway or street may arise, not only where the backing vehicle collides with another vehicle using the road,[n1] but also where the backing maneuver causes another vehicle to collide with a third vehicle,[n2] or to swerve off the road or out of course.[n3]

FOOTNOTES:

n1 § 860.

n2 Brady v. Fruehauf Trailer Co., 63 Ga. App. 50, 10 S.E.2d 133 (1940); Atkinson v. Be-Mac Transport, Inc., 595 S.W.2d 26 (Mo. Ct. App. E.D. 1980).

n3 Leinen v. Boettger, 241 Iowa 910, 44 N.W.2d 73 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 169, 207

139 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
9. Vehicles Backing Up
c. Backing from Private Premises onto Public Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 862

§ 862 Generally

Backing a motor vehicle onto a public highway or street from a private property does not in and of itself constitute negligence.[n1] However, more than usual care is required in backing out of a private driveway,[n2] and one backing from a private property onto a public highway must use greater care than would be required of one driving along the highway.[n3]

The operator of a motor vehicle backing onto a public highway or street from a private property is under a duty to yield the right of way in the road or sidewalk to other travelers,[n4] must exercise at least reasonable care commensurate with the circumstances to look out for other users of the road or sidewalk, and must refrain from backing into the public way until he or she confirms that such movement may be made with safety.[n5] Also, one backing a motor vehicle onto a public highway from a private property has the duty to give at least that signal or warning of his or her intention reasonably required by the circumstances to anyone who may be affected by such a movement, or to give warning of his or her presence in the road after backing into it.[n6]

Violations of statutes requiring a motorist to keep a proper lookout, to refrain from unsafe backing of a vehicle, and to yield the right of way to all vehicles approaching on the public highway before entering it, constitute negligence per se.[n7]

FOOTNOTES:

n1 Roy v. United Gas Corp., 163 So. 2d 587 (La. Ct. App. 3d Cir. 1964), writ refused, 246 La. 593, 165 So. 2d 485 (1964).

n2 Brunette v. Bierke, 271 Wis. 190, 72 N.W.2d 702 (1955).

n3 Wright v. State Farm Mut. Auto. Ins. Co., 57 So. 2d 767 (La. Ct. App. 1st Cir. 1952).

n4 § 302.

n5 Sayre v. Andrews, 259 Iowa 930, 146 N.W.2d 336 (1966); Thompson v. Reserve Ins. Co., 323 So. 2d 528 (La. Ct. App. 4th Cir. 1975) (duty to ascertain that street is clear).

n6 Wagner v. Magill, 73 Ohio L. Abs. 42, 136 N.E.2d 449 (Ct. App. 2d Dist. Miami County 1955); Fancher v. Cadwell, 159 Tex. 8, 314 S.W.2d 820 (1958).

n7 Treib v. Kern, 513 N.W.2d 908 (S.D. 1994).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606

West's Key Number Digest, Automobiles [westkey]168(4), 169, 207
Liability for injury occasioned by backing of motor vehicle from private premises into public street or highway, 63 A.L.R.2d 108

140 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
9. Vehicles Backing Up
c. Backing from Private Premises onto Public Highway or Street

8 Am Jur 2d Automobiles and Highway Traffic § 863

§ 863 Collision of backing vehicle with vehicle on highway or street

Where a backing vehicle collides with a vehicle proceeding in its proper lane of travel on the same side of the road from which the backing vehicle emerges, the driver of the backing vehicle has repeatedly,[n1] although not invariably,[n2] been found negligent in the manner with which he or she conducted the maneuver, and the operator of the vehicle proceeding on the street or highway has repeatedly,[n3] although invariably,[n4] been found not negligent in his or her approach to the place of the collision.

FOOTNOTES:

n1 Hicks v. Donoho, 79 Ill. App. 3d 541, 35 Ill. Dec. 304, 399 N.E.2d 138 (5th Dist. 1979); Melerine v. Prine, 317 So. 2d 211 (La. Ct. App. 4th Cir. 1975).

n2 De Windt v. Rouseo, 28 So. 2d 53 (La. Ct. App., Orleans 1946).

n3 Hicks v. Donoho, 79 Ill. App. 3d 541, 35 Ill. Dec. 304, 399 N.E.2d 138 (5th Dist. 1979); Raines v. Yost, 539 S.W.2d 8 (Mo. Ct. App. 1976).

n4 Thompson v. Reserve Ins. Co., 323 So. 2d 528 (La. Ct. App. 4th Cir. 1975).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]168(4), 169, 207

141 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 864

§ 864 Duty of care, generally

The general duty of a motorist to exercise ordinary or reasonable care for the safety of others using the public way [n1] applies to his or her action in turning the vehicle from the course or direction in which he or she has been proceeding. [n2] This duty is two-fold: it requires the turning motorist to give proper signals, [n3] and to make proper observation that the turn can be made safely. [n4] Under appropriate circumstances, this includes a duty to look to the rear before turning. [n5] The motorist must not only exercise such care with respect to other travelers using the same road upon which he or she is proceeding, but must also exercise reasonable care to avoid injury to travelers lawfully using the intersecting way into which he or she makes the turn. [n6]

Where the turning motorist fulfills the requirements of the duty of care under the circumstances presented, the motorist will not be deemed liable when presented with an emergency situation which leads the motorist to collide with another vehicle, person, or property, or where the other motorist or person is negligent in a manner so as to cause the accident. [n7]

FOOTNOTES:

n1 § 420.

n2 Wooten v. Bartholomew, 556 So. 2d 75 (La. Ct. App. 4th Cir. 1989), writ denied, 560 So. 2d 23 (La. 1990); Guillory v. Gulf South Beverages, Inc., 506 So. 2d 181 (La. Ct. App. 5th Cir. 1987).

As to intersections, generally, see §§ 780 to 790.

As to vehicles traveling in the same direction, see §§ 829, 830.

n3 § 875.

n4 Brightman v. Regional Transit Authority, 543 So. 2d 568 (La. Ct. App. 4th Cir. 1989); Guillory v. Gulf South Beverages, Inc., 506 So. 2d 181 (La. Ct. App. 5th Cir. 1987).

n5 Wingate Taylor-Maid Transp., Inc. v. Baker, 310 Ark. 731, 840 S.W.2d 179 (1992); McGowan v. Barry, 210 N.J. Super. 469, 510 A.2d 95 (App. Div. 1986).

n6 Calahan v. Moll, 160 Wis. 523, 152 N.W. 179 (1915).

Evidence established that the truck driver was negligent as a matter of law in causing a collision, with the issue of the oncoming motorist's comparative negligence to be decided by the jury, where the evidence showed that while the truck was turning onto the highway, the truck's trailer was in the opposite lane of the highway for at least 20 seconds in a heavy fog. Choctaw Maid Farms, Inc. v. Hailey, 822 So. 2d 911 (Miss. 2002).

n7 Knickles v. United Cab Co., Inc., 505 So. 2d 114, 39 Ed. Law Rep. 902 (La. Ct. App. 4th Cir. 1987).

As to negligence of the injured person as a defense, see § 947.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 225 (Complaint, petition, or declaration -- Excessive speed of truck attempting right turn -- Incompetent driver -- Defective brakes -- Improper maintenance of truck -- Against city)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 227 (Complaint, petition, or declaration -- Negligence of drivers of towing and towed vehicle in making left turn across highway -- Limited visibility)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 228, 229 (Complaint, petition, or declaration -- Driver attempting left turn -- Struck by speeding vehicle)

142 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 865

§ 865 Effect of statute regulating turning

In some jurisdictions, statutes have been enacted which provide that no person shall turn a vehicle from a direct course upon a highway unless such movement can be made with reasonable safety[n1] and after giving an appropriate signal.[n2] Such a statute does not require a motorist to know that a turn can be made with safety but only that he or she must exercise reasonable care.[n3] The violation of such a statute has been held to constitute evidence of negligence, but not negligence per se.[n4] These same principles apply to so-called "right on red"statutes, which permit a motorist at a traffic signal to turn right after stopping, provided that the motorist yields the right of way to traffic having the green signal.[n5]

Observation: Although a defendant driver's violation of a vehicle and traffic law by turning left from the center lane constitutes negligence per se, such violation does not necessarily lead to the conclusion that the driver's action was the proximate cause of the accident.[n6]

FOOTNOTES:

n1 § 241.

n2 § 242.

n3 § 241.

n4 Church v. Greene, 100 N.C. App. 675, 397 S.E.2d 649 (1990).

As to violation of statutes as negligence generally, see § 724.

As to the effect of such statutes on particular types of turns, see §§ 866 to 874

n5 § 871.

n6 Burghardt v. Cmaylo, 40 A.D.3d 568, 835 N.Y.S.2d 383 (2d Dep't 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208

143 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(1) Left Turns

8 Am Jur 2d Automobiles and Highway Traffic § 866

§ 866 Duty of care

A motorist attempting to make a left turn from a public highway is required to ascertain in advance that the way is clear and that the turn can be made safely and without endangering overtaking or oncoming traffic, and failure to do so constitutes negligence.[n1] A motorist turning left across traffic is required to exercise reasonable care, that is, care commensurate with the situation, and to look for approaching motorists,[n2] and for motorists following, and possibly passing on the left, from the rear.[n3] A left-turn is generally a dangerous maneuver which must not be undertaken until the turning motorist has ascertained that the turn can be made in safety, and the left-turning motorist involved in an accident is burdened with the presumption of liability and the motorist must show that he or she is free of negligence.[n4] Even using the turn signal as provided by law does not satisfy the duty of a motorist making a left turn if the turn cannot be made safely.[n5]

The scope of the duty required of a left-turning motorist extends to vehicles approaching from the opposite direction or overtaking vehicles using the lawfully designated portions of the highway for travel.[n6]

The left-turning motorist has the duty, imposed by statute or the rules of the road, to yield the right of way to motorists approaching from the opposite direction.[n7] The failure to look for approaching motorists before turning left across traffic and to yield the right of way to such motorists constitutes negligence.[n8] Thus, a left-turning driver is deemed negligent in failing to see an oncoming vehicle approaching from the opposite direction and in crossing in its path when it was hazardous to do so.[n9] Likewise, a left-turning eastbound driver is not entitled to recover for the collision with a westbound driver whose vehicle was entirely within the westbound lane at the point of impact, where the left-turning driver failed to yield the right of way to the westbound driver.[n10]

Observation: Even where a left-turning driver enters into the turn under the protection of a green arrow from a traffic signal, the driver may still be found negligent, although entry into the turn under such circumstances will generally establish that the driver was not the sole cause of injuries resulting from a collision with the turning driver.[n11]

A driver making a left turn out of a parking lot may be found to be 100% at fault in a collision with a driver in the left-turn lane, and the driver in the turning lane may be treated as having the right-of-way.[n12]

FOOTNOTES:

n1 Rabalais v. Nash, 926 So. 2d 683 (La. Ct. App. 3d Cir. 2006), writ granted, 933 So. 2d 130 (La. 2006) and rev'd on other grounds, 952 So. 2d 653 (La. 2007).

As to the general duty of a turning motorist to ascertain that the turn may be made safely, see § 864.

n2 Daniels v. Allstate Ins. Co., 469 So. 2d 352 (La. Ct. App. 2d Cir. 1985); McGowan v. Barry, 210 N.J. Super. 469, 510 A.2d 95 (App. Div. 1986).

n3 Kilpatrick v. Alliance Cas. and Reinsurance Co., 663 So. 2d 62 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 406 (La. 1995); McGowan v. Barry, 210 N.J. Super. 469, 510 A.2d 95 (App. Div. 1986).

n4 Reed v. State Farm Mut. Auto. Ins. Co., 929 So. 2d 871 (La. Ct. App. 3d Cir. 2006), writ denied, 940 So. 2d 672 (La. 2006).

As to the burden of proof generally, see § 1102.

n5 Trahan v. Deville, 933 So. 2d 187 (La. Ct. App. 3d Cir. 2006), on reh'g, (July 19, 2006) and writ denied, 942 So. 2d 534 (La. 2006).

n6 Reed v. State Farm Mut. Auto. Ins. Co., 929 So. 2d 871 (La. Ct. App. 3d Cir. 2006), writ denied, 940 So. 2d 672 (La. 2006).

n7 § 285.

n8 Whiddon v. Hutchinson, 668 So. 2d 1368 (La. Ct. App. 1st Cir. 1996), writ denied, 672 So. 2d 923 (La. 1996) and writ denied, 672 So. 2d 923 (La. 1996); Maloney v. Niewender, 27 A.D.3d 426, 812 N.Y.S.2d 585 (2d Dep't 2006).

n9 Maloney v. Niewender, 27 A.D.3d 426, 812 N.Y.S.2d 585 (2d Dep't 2006).

n10 Marmaduke v. Spraker, 34 A.D.3d 1007, 825 N.Y.S.2d 549 (3d Dep't 2006).

n11 Daniels v. Allstate Ins. Co., 469 So. 2d 352 (La. Ct. App. 2d Cir. 1985).

As to negligence of an oncoming driver, see § 881.

As to liability for turning at intersections, generally, see §§ 780 to 790.

n12 Rogers v. Graves, 959 So. 2d 990 (La. Ct. App. 1st Cir. 2007), writ denied, 959 So. 2d 500 (La. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530

Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 325 (Complaint, petition, or declaration -- Left turn -- Improper lookout -- Speeding -- Against corporate owner of truck driven by employee)

144 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(1) Left Turns

8 Am Jur 2d Automobiles and Highway Traffic § 867

§ 867 Effect of regulation as to use of particular lane to turn left

In making a left-hand turn from the right, or outside lane at an intersection, a motorist must, in the exercise of reasonable care, yield the right of way to other traffic proceeding in the same direction along the street or highway.[n1] The duty of care owed by the left-turning motorist is commensurate with the increased risk involved when such a turn is made from the right-hand lane.[n2] A driver may be deemed grossly negligent in attempting to turn left from the right shoulder of a heavily traveled city street thereby blocking both lanes of traffic.[n3]

Traffic regulations generally require a motorist desiring to make a left turn where there is more than one lane of traffic in the direction he or she is proceeding, to approach in the traffic lane nearest to the center of the highway or street.[n4] The violation of such a regulation may constitute actionable negligence,[n5] particularly where the violator also neglects to signal his or her intention to turn left.[n6] However, a motorist is not required to comply with a regulation obliging slowly moving vehicles to keep next to the curb where, by reason of the size of the vehicle he or she is operating, it is impracticable to do so; rather, his or her duty under such circumstances is to approach the intersection for a left-hand turn in the extreme left-hand lane or as nearly therein as reasonably possible.[n7]

FOOTNOTES:

n1 Jones v. Ray, 159 Ga. App. 734, 285 S.E.2d 42 (1981).

n2 Jones v. Ray, 159 Ga. App. 734, 285 S.E.2d 42 (1981); Rudy v. Thompson, 186 N.J. Super. 359, 452 A.2d 702 (App. Div. 1982).

n3 Alexander v. Liberty Mut. Ins. Co., 341 So. 2d 1273 (La. Ct. App. 2d Cir. 1977).

n4 §§ 241, 865.

n5 Taylor v. Bohemia, Inc., 70 Or. App. 143, 688 P.2d 1374 (1984).

As to violation of statutes as negligence, generally, see § 724.

n6 Kouvarakis v. Hawver, 208 Miss. 697, 45 So. 2d 278 (1950).

As to the effect of failure to signal a turn, see § 878.

n7 Asphalt Service Co. v. Thomas, 198 Va. 490, 95 S.E.2d 141 (1956) (large tank truck-tractor).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 874 (Allegation -- Left turn from wrong lane)

145 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(1) Left Turns

8 Am Jur 2d Automobiles and Highway Traffic § 868

§ 868 Turning left between intersections; effect of yellow line or other highway barrier

Apart from statutes, the courts generally recognize the danger frequently present in undertaking to make a left turn between intersections in order to enter a private driveway.[n1] While many courts hold that motorists making such turns must exercise extraordinary precautions, maintain due care, a high degree of care, and the like, the test is what an ordinarily prudent person would do under the same circumstances.[n2] Reasonable care means care commensurate with the apparent danger,[n3] but this does not mean that a motorist is an insurer of the safety of others in making a left turn across traffic for the purpose of entering a private driveway.[n4]

It is not necessarily an act of negligence for a motorist to make a left turn across a yellow or other highway barrier line for the purpose of entering a private driveway,[n5] although he or she may be negligent in getting into the driveway after crossing the barrier line.[n6]

FOOTNOTES:

n1 Green v. Boney, 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370 (1958).

n2 Brooker v. Canny, 103 Ariz. 529, 446 P.2d 929 (1968); Green v. Boney, 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370 (1958).

n3 Green v. Boney, 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370 (1958).

n4 Fisher v. Reilly, 207 Or. 7, 294 P.2d 615 (1956).

n5 Green v. Boney, 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370 (1958).

n6 Wilburn v. Simons, 302 Ky. 752, 196 S.W.2d 356 (1946).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405

146 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(1) Left Turns

8 Am Jur 2d Automobiles and Highway Traffic § 869

§ 869 Cutting corners

Generally, the violation by a motorist of a statute forbidding the cutting of corners in turning into an intersecting street is negligence per se, or at least an element of negligence which may be considered in determining the question of negligence. [n1] Other motorists have the right to assume that a motorist making a left turn will obey the law and not cut the corner. [n2]

Liability for an accident will not be predicated on the cutting of a corner or a short turn where it is not a proximate cause of the accident. [n3]

FOOTNOTES:

n1 Petersen v. Lewis, 2 Cal. 2d 569, 42 P.2d 311 (1935); Mansfield v. Summers, 222 Iowa 837, 270 N.W. 417 (1936).

n2 Boylan v. Whitehouse, 229 A.D. 372, 242 N.Y.S. 11 (4th Dep't 1930).

As to the right generally to assume others will exercise due care, see § 423.

n3 Farmer v. School Dist. No. 214, King County, 171 Wash. 278, 17 P.2d 899, 115 A.L.R. 1171 (1933).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 226 (Complaint, petition, or declaration -- Negligence in cutting corner in making left turn)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 875 (Allegation -- Cutting corner when making left turn)

147 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(2) Other Turns

8 Am Jur 2d Automobiles and Highway Traffic § 870

§ 870 Right turns; effect of statute

A right-turning driver is not negligent in making a wide right turn around another vehicle parked on the street into which the turn is being made, provided that the driver takes the precautions of looking down the street and determining that no vehicles are oncoming.[n1] This is so even where a regulation requires turns to be made as close as possible to the curb, as even a right turn made in the next lane complies with such requirement when the rightmost lane is blocked by other vehicles parked thereon.[n2] However, a driver who turned right crossing the bus stop lane and collided with a driver turning right from the bus stop is deemed at fault for not making a right turn from the bus stop lane, where the city code required right turn from the lane as close as practicable to the curb.[n3] On the other hand, a driver failed to maintain a proper lookout when making a right turn from the bus stop and thus bears some fault for the collision with a driver turning right from the lane adjacent to the bus stop, where the vehicle in the traveling lane was ahead of the vehicle in the bus lane as they both attempted the right turn.[n4]

The failure to observe an oncoming vehicle in the lane into which the right turn is to be made has been deemed a proximate cause of injury to the oncoming driver,[n5] even where the intersection was under construction and oddly angled.[n6]

A right-turning driver is not required to anticipate that another driver will drive in such a manner as to create an emergency situation, as for instance by ignoring street signs.[n7]

A motorist who was involved in an accident is deemed negligent, as a matter of law, in violating traffic laws by turning right from the left lane of an expressway's southbound service roadway onto a street, in disregard of a sign that prohibited turns.[n8] Likewise, a driver whose attempt to make a right turn from a left lane resulted in a collision between his or her automobile and a motorcycle in the right lane has been held negligent notwithstanding his or her testimony that he or she repeatedly checked the right lane to the rear and did not observe the motorcycle at any time.[n9] Also, a motorist is deemed negligent in turning right from the left lane, thereby causing an equipment trailer, being pulled behind a motorist's pickup truck, to strike the plaintiff's vehicle.[n10]

FOOTNOTES:

n1 Nastasi v. Fejka, 556 So. 2d 1307 (La. Ct. App. 5th Cir. 1990); Knickles v. United Cab Co., Inc., 505 So. 2d 114, 39 Ed. Law Rep. 902 (La. Ct. App. 4th Cir. 1987) (as to school bus turning around parked taxi cab).

n2 Boydell v. New Orleans Public Service, Inc., 503 So. 2d 551 (La. Ct. App. 4th Cir. 1987).

n3 Smith v. Vazquez, 933 So. 2d 878 (La. Ct. App. 4th Cir. 2006).

n4 Smith v. Vazquez, 933 So. 2d 878 (La. Ct. App. 4th Cir. 2006) (holding that the drivers were equally at fault for collision when both turned right, one from the bus stop and one from the lane adjacent to bus stop lane).

n5 Nastasi v. Fejka, 556 So. 2d 1307 (La. Ct. App. 5th Cir. 1990).

A turning driver who, while eastbound, allegedly stopped at a stop sign and then continued into the traffic by making a right turn onto the highway, and whose vehicle then collided with the vehicle of a southbound driver, had the duty to stop and make certain that the way was clear before driving through the intersection, and thus, the southbound driver was not liable for injuries sustained by the turning driver, and no apportionment of fault to the southbound driver was warranted. Bah v. Continental Cas. Ins. Co., 925 So. 2d 630 (La. Ct. App. 4th Cir. 2006), writ denied, 930 So. 2d 989 (La. 2006).

n6 Nastasi v. Fejka, 556 So. 2d 1307 (La. Ct. App. 5th Cir. 1990).

n7 Knickles v. United Cab Co., Inc., 505 So. 2d 114, 39 Ed. Law Rep. 902 (La. Ct. App. 4th Cir. 1987).

As to the right generally to assume others will exercise due care, see § 423.

n8 Blangiardo v. Hirsch, 29 A.D.3d 841, 815 N.Y.S.2d 692 (2d Dep't 2006).

n9 Teal v. Allstate Ins. Co., 348 So. 2d 83 (La. Ct. App. 4th Cir. 1977), writ denied, 351 So. 2d 164 (La. 1977).

n10 Tojek v. Root, 34 A.D.3d 1210, 825 N.Y.S.2d 850 (4th Dep't 2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1

Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Motor vehicle accidents involving right turns from lane other than right-hand lane, 7 A.L.R.3d 282
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 268 (Complaint, petition, or declaration -- Right turn -- By defendant's passing vehicle -- In front of plaintiff's vehicle)

148 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(2) Other Turns

8 Am Jur 2d Automobiles and Highway Traffic § 871

§ 871 Turning at intersection controlled by traffic light or signal; turning right when traffic light shows red signal

While it is generally recognized that motorists may turn right or left on a green light or other favorable traffic signal, in the absence of any regulations prohibiting turns at the particular intersection, there is also authority placing upon the motorist intending to turn a greater responsibility for avoiding an accident than is imposed upon the motorist proceeding directly over the crossing.[n1] At the same time, it is the duty of a motorist proceeding across an intersection in obedience to a favorable traffic signal to have his or her vehicle under control in order that he or she may be able to avoid a collision with another motorist turning into his or her course, some cases adding that the required control must be such that the motorist can stop instantly upon the appearance of danger.[n2]

The legal duties of drivers confronting a traffic light at an intersection remain the same as where the light is located at divided highways with enclosed crosswalks and cross-vehicular traffic, such as a supermarket parking lot or drive-in entrance located between intersections.[n3]

While, generally, motorists facing a steady red traffic signal are required to stop and passing through a red light generally constitutes an offense,[n4] some states have adopted statutes permitting traffic facing a steady red signal, to make a right turn under certain conditions and circumstances, while such signal continues a steady red, unless a sign is in place prohibiting such turn, and under such a statute, a motorist has the responsibility to stop, clear the right of way, and yield if necessary before turning right on the red light.[n5] Where a motorist fails to do stop and yield, the motorist may be barred from recovery by such negligence if it was a proximate cause of the accident, despite the negligence of the operator of the other vehicle in attempting to pass a vehicle proceeding in the same direction within a proscribed distance of the intersection.[n6]

FOOTNOTES:

n1 Farina Bros. v. Robinson, 293 Mass. 269, 199 N.E. 730 (1936).

n2 § 795.

n3 Turbert v. Mather Motors, Inc., 165 Conn. 422, 334 A.2d 903 (1973).

n4 § 238.

n5 Weber v. Phoenix Assur. Co. of New York, 273 So. 2d 30 (La. 1973).

Although a bicyclist had rights and duties applicable to motor vehicles using a roadway, a bicyclist had the same right as a pedestrian to use the crosswalk, and thus, a bicyclist had a right-of-way while in the crosswalk and the motorist was obligated to yield to the bicyclist before making a right turn on red light. Nish v. Schaefer, 2006 WY 85, 138 P.3d 1134 (Wyo. 2006).

n6 Weber v. Phoenix Assur. Co. of New York, 273 So. 2d 30 (La. 1973).

As to the effect of statute and a violation of such, see § 865.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208

149 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(2) Other Turns

8 Am Jur 2d Automobiles and Highway Traffic § 872

§ 872 U-turns

In the absence of statute or an ordinance, the law of the road does not prohibit the making of a reverse or U-turn by a motorist on a public highway,[n1] and the mere fact that such a turn is made is no evidence of negligence if care commensurate with the circumstances is exercised by the motorist.[n2] A statute requiring a motorist upon a public highway, before starting, turning, or stopping, to see that such movement can be made in safety, does not prohibit the making of a U-turn unless there is no possibility of an accident, but requires merely that the motorist proceed with such precaution as would satisfy a reasonably prudent person acting under similar circumstances that he or she could make the turn safely.[n3]

If an accident or collision resulting from the negligence of one making an illegal or improper U-turn is, in turn, the proximate or legal cause of damage or injury to one subsequently coming upon the collision, the negligent motorist may incur liability to the motorist subsequently using the highway.[n4] On the other hand, any negligence on the part of a driver who attempted to make a U-turn has been deemed not a proximate cause of an accident in which a passenger in another vehicle was injured, where there was evidence that the vehicle occupied by the passenger successfully stopped and "never hit"the driver's vehicle.[n5]

FOOTNOTES:

n1 § 244.

n2 Troxler v. Bourg Trucking Service, Inc., 464 So. 2d 797 (La. Ct. App. 5th Cir. 1985).

As to the required degree of care, see § 873.

n3 Ruperto v. Thomas, 113 Cal. App. 523, 298 P. 851 (3d Dist. 1931).

As to the effect of statutes regulating turning generally, see § 865.

n4 Wing v. Morse, 300 A.2d 491 (Me. 1973); McFarland v. Helquist, 92 N.M. 557, 591 P.2d 688 (Ct. App. 1979) (although holding that no evidence of negligence existed).

n5 Ali v. Daily Pita Bakeries, Inc., 35 A.D.3d 330, 825 N.Y.S.2d 533 (2d Dep't 2006).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Automobiles: liability for U-turn collisions, 53 A.L.R.4th 849

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 329 (Complaint, petition, or declaration -- Illegal U-turn attempted -- Collision with plaintiff's oncoming vehicle -- Last clear chance)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 873 (Allegation -- Failure to give signal -- U-turn)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1588 (Instruction -- Care required of driver making U-turn)

150 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(2) Other Turns

8 Am Jur 2d Automobiles and Highway Traffic § 873

§ 873 Degree of care

While the degree of care to be exercised in making a U-turn, both at and between intersections, are the same, that is, ordinary care commensurate with the circumstances, ordinary care may require a greater amount of vigilance between intersections than it does at intersections.[n1] However, because a U-turn presents an unusual hazard and the overall risk of harm inherent in that maneuver is high, as a rule of the road, a driver must exercise a higher degree of care than a motorist going directly along the highway, commensurate with the resulting increased danger.[n2] Thus, a motorist driving on a public highway and intending to make a reverse or U-turn must exercise proper care in order that such intended movement may not endanger motorists following from behind and proceeding in the same direction, by keeping a proper lookout, by giving proper signals of his or her intention, and by keeping the vehicle under proper control, and the motorist is under a duty not to attempt to make the turn before ascertaining that there are no motorists approaching from behind within a reasonable distance whose movement may be endangered, and to refrain from making such a turn at places where it is prohibited by statute or ordinance; failure to discharge these duties toward others using the highway may charge him or her with negligence.[n3]

Where multiple vehicles are traveling together, the first of such vehicles has no duty to secure the highway in order that a following vehicle may make a U-turn in safety after the first vehicle has made such a turn itself.[n4]

Where a motorist making a U-turn has fulfilled the requisite elements of the duty of care, liability for a collision with a following, passing, or oncoming vehicle will not be attributed to the turning motorist.[n5]

FOOTNOTES:

n1 Derheim v. N. Fiorito Co., 80 Wash. 2d 161, 492 P.2d 1030 (1972).

As to the duty of care of motorists at intersections, see §§ 780 to 790.

n2 Ambrose v. Cyphers, 29 N.J. 138, 148 A.2d 465 (1959); Condon v. Epstein, 8 Misc. 2d 674, 168 N.Y.S.2d 189 (City Ct. 1957).

n3 Mitchell v. Branch, 45 Haw. 128, 363 P.2d 969 (1961); Crow v. Goins, 427 So. 2d 51, 53 A.L.R.4th 841 (La. Ct. App. 4th Cir. 1983), writ denied, 430 So. 2d 82 (La. 1983); Greenfield v. Dusseault, 60 N.J. Super. 436, 159 A.2d 433 (App. Div. 1960), judgment aff'd, 33 N.J. 78, 161 A.2d 475 (1960).

As to contributory or comparative negligence, generally, see §§ 947, 949.

n4 Mohr v. State Farm Ins. Co., 528 So. 2d 144 (La. 1988).

n5 Franks v. State, 55 A.D.2d 978, 390 N.Y.S.2d 689 (3d Dep't 1977).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760,

770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208

151 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
b. Particular Types of Turns
(2) Other Turns

8 Am Jur 2d Automobiles and Highway Traffic § 874

§ 874 Negligence of approaching driver

A motorist approaching from the opposite direction is under a reciprocal duty toward the one intending to make the U-turn, to have his or her vehicle under control, to reduce its speed, and to be on the lookout and proceed with care and caution to prevent a collision, and the failure to discharge such duty constitutes negligence barring or diminishing his or her recovery.[n1] The colliding motorist may be deemed liable to the motorist making the U-turn under appropriate circumstances.[n2] However, a motorist is not required to anticipate that a motorist ahead will, without any warning, suddenly make a U-turn across his or her path between intersections.[n3]

FOOTNOTES:

n1 Williams v. Cahill, 258 Ill. App. 3d 822, 196 Ill. Dec. 331, 629 N.E.2d 1175, 89 Ed. Law Rep. 922 (3d Dist. 1994); Waterman v. DeFreitas, 284 A.2d 112 (Me. 1971).

As to contributory or comparative negligence, generally, see § 947.

n2 Armstead v. Lounsberry, 129 Minn. 34, 151 N.W. 542 (1915).

n3 Alengi v. Hartford Acc. & Indem. Co., 167 So. 130 (La. Ct. App. 2d Cir. 1936).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208

152 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
c. Necessity and Adequacy of Signals
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 875

§ 875 Duty of care, generally

Aside from any positive regulation in such respect, it is the duty of every motorist to give a signal of his or her intention to turn either left or right,[n1] where the circumstances and conditions are such that care and prudence will require a warning for the protection of other travelers on the highway.[n2] Moreover, in most jurisdictions, motorists are prohibited by statute from making left or right turns at intersections or other places without giving appropriate signals of their intention, at least where other motorists may be affected by such movement,[n3] and their failure to give an adequate signal resulting in a collision with another vehicle generally constitutes actionable negligence.[n4] The signal required to be given by the operator of a turning vehicle is not only for the protection of vehicles in the rear of the turning vehicle but for the protection of all vehicles whose movements may reasonably be affected by the change in direction.[n5] It is generally a question of fact whether or not, under the circumstances, turning from a direct course by a motorist without signaling affected the movement of another motorist.[n6]

FOOTNOTES:

n1 Brightman v. Regional Transit Authority, 543 So. 2d 568 (La. Ct. App. 4th Cir. 1989); Zeiger v. Farmers Co-op Ass'n of York, 212 Neb. 933, 327 N.W.2d 43 (1982).

n2 Brightman v. Regional Transit Authority, 543 So. 2d 568 (La. Ct. App. 4th Cir. 1989); Sass v. Thomas, 90 N.C. App. 719, 370 S.E.2d 73 (1988).

n3 § 242.

n4 § 878.

n5 § 242.

n6 Schutt v. Hull, 193 Or. 18, 236 P.2d 937 (1951).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 271 (Complaint, petition, or declaration -- Left turn -- By defendant's overtaken vehicle -- No turn signal given by defendant -- Driving while intoxicated)

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 280 (Complaint, petition, or declaration -- In federal court -- Diversity of citizenship -- Left turn -- By defendant's overtaken truck -- No turn signal given by defendant)

153 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
c. Necessity and Adequacy of Signals
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 876

§ 876 Adequacy of signal; necessity for other precautions

Turning signals, whether required by statute or otherwise, are deemed to constitute a minimum, rather than a maximum, degree of care. The circumstances and conditions may be such that the reasonable and ordinary care of the prudent person is not satisfied or fulfilled by mere compliance with turning regulations, but require the exercise of more or other care, and whatever precautions ordinary and reasonable care and prudence require for the protection of others must be taken even though not exacted by statutory provisions.[n1] Stated otherwise, in addition to signaling, the burden is on the turning driver to ascertain that the turn can be made safely.[n2]

The giving of a signal for a left or right turn at an intersection has been held not to relieve a motorist from liability for damage resulting from a collision with another vehicle where the signal for the turn was inadequate under the circumstances.[n3]

Similarly, where a motorist intending to make a left turn between intersections gives what is purported to be a signal to show such an intention, but his or her signaling is insufficient to indicate what he or she is about to do, or does not afford another motorist traveling in the same or opposite direction an opportunity to avoid a collision, and an accident results, such purported signal does not relieve the motorist making the turn from liability for the accident, or enable recovery for damage sustained by him or her, or enable him or her to recover damages free from diminution on the ground that he or she gave a signal for a left turn.[n4] Such a situation arises, for example, where a turn signal is obscured with mud or other debris,[n5] or is made at an inadequate distance between the following driver and the turn.[n6]

The statutes in some jurisdictions provide that a signal of intention to turn left or right must be given in sufficient time to give ample warning to other users of the highway who would be affected by such movement.[n7]

FOOTNOTES:

n1 Davenport v. State of Ariz. ex rel. Industrial Com'n of Ariz., 146 Colo. 401, 361 P.2d 973 (1961) (additional duty to check the position of a following bus before turning sharply to the left); Richards v. Begenstos, 237 Iowa 398, 21 N.W.2d 23 (1945).

n2 Columbia Fire Ins. Co. v. Lee, 68 So. 2d 235 (La. Ct. App. 2d Cir. 1953).

n3 Barr v. Matlock, 222 Ark. 260, 258 S.W.2d 540 (1953) (left turn signal); Levy v. Carolina Aluminum Co., 232 N.C. 158, 59 S.E.2d 632 (1950) (right turn signal).

n4 Jones v. Furlong, 121 Ind. App. 279, 97 N.E.2d 369 (1951) (opposite direction); Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951) (same direction).

n5 Viehweg v. Thompson, 103 Idaho 265, 647 P.2d 311 (Ct. App. 1982).

n6 Blankley v. Martin, 101 N.C. App. 175, 398 S.E.2d 606 (1990).

n7 § 242.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208

154 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
c. Necessity and Adequacy of Signals
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 877

§ 877 Effect of variance of turn from signaled direction

Where a motorist has given the proper signal for turning, the fact that he or she may turn slightly in the direction opposite from that to which he or she intends to turn, to better enable the motorist to make the turn, does not constitute negligence, and should not deceive any motorist in the rear.[n1] However, the driver of a left-turning vehicle will be deemed partly at fault where, although using rear-view mirrors to search for passing vehicles, he or she activates the right-turn signal, rather than the left-turn signal.[n2] Also, where a motorist veers to the left as if intending to make a left turn and then makes a right turn without signaling, he or she will be held liable for the ensuing collision with a motorist behind attempting to pass to the right.[n3]

FOOTNOTES:

n1 Dillon v. Carter, 18 Tenn. App. 176, 74 S.W.2d 391 (1933).

n2 Courmier v. Travelers Ins. Co., 486 So. 2d 243 (La. Ct. App. 3d Cir. 1986), writ denied, 489 So. 2d 250 (La. 1986) and writ denied, 489 So. 2d 251 (La. 1986).

n3 § 880.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given, 84 A.L.R.4th 124

155 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
c. Necessity and Adequacy of Signals
(2) Failure to Signal Turn

8 Am Jur 2d Automobiles and Highway Traffic § 878

§ 878 Left turn; at intersection

Generally, the failure of a motorist turning left at an intersection to give a suitable warning of his or her intention constitutes negligence which will render him or her liable for injuries proximately sustained by another motorist proceeding in the same,[n1] or approaching from the opposite,[n2] direction.[n3]

The negligence of a motorist in turning left at an intersection without signaling will bar or diminish recovery for damages sustained in a collision with another motorist proceeding in the same,[n4] or coming from the opposite,[n5] direction, notwithstanding the negligence of the latter,[n6] where the negligence of the former was a concurrent cause of the accident, but the recovery of the motorist is not barred nor diminished because of his or her unsignaled left turn where the failure to signal was not the proximate cause of a collision with a vehicle proceeding in the same direction[n7] or coming from the opposite direction.[n8]

A statute may impose a requirement that a turn signal be given at a certain distance before the turn,[n9] although the failure to comply with the statute does not constitute negligence where the left-turning vehicle has not been on the road for the required distance before making the turn.[n10]

FOOTNOTES:

n1 Hagan v. Knowles, 223 Ark. 590, 267 S.W.2d 514 (1954); Payne v. Zettell, 91 R.I. 228, 162 A.2d 544 (1960).

n2 Moss v. Acuff, 57 N.M. 572, 260 P.2d 1108 (1953).

n3 As to the negligence of the following or approaching driver, see § 881.

n4 Boots v. Potter, 122 Cal. App. 2d 927, 266 P.2d 176, 39 A.L.R.2d 1 (3d Dist. 1954).

n5 Gamache v. Cosco, 147 Me. 333, 87 A.2d 509 (1952); Lanier v. Johnson, 190 Va. 1, 55 S.E.2d 442 (1949).

n6 § 881.

n7 Uribe v. McCorkle, 63 Cal. App. 2d 61, 146 P.2d 22 (4th Dist. 1944); Fischer v. Hawkeye Stages, 240 Iowa 1203, 37 N.W.2d 284 (1949).

n8 Pfeifer v. Yellow Cab Co. of Atlanta, 88 Ga. App. 221, 76 S.E.2d 225 (1953); De Mitchell v. Haas, 337 Ill. App. 653, 86 N.E.2d 159 (2d Dist. 1949).

n9 § 242.

n10 Betchkal v. Willis, 127 Wis. 2d 177, 378 N.W.2d 684 (1985).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567

Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 A.L.R.2d 65
Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 327 (Complaint, petition, or declaration -- Left turn -- At intersection -- Failure to signal)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 871, 872 (Allegation -- Failure to give signal)

156 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
c. Necessity and Adequacy of Signals
(2) Failure to Signal Turn

8 Am Jur 2d Automobiles and Highway Traffic § 879

§ 879 Between intersections

Where one operating a motor vehicle makes a left turn between intersections without having given a proper signal, he or she may be held liable for a collision with another vehicle proceeding in the same or the opposite direction,[n1] if the failure to signal was the sole proximate cause of the collision.[n2]

The negligence of a motorist in turning left between intersections without signaling will bar or diminish recovery for damages sustained in a collision with another vehicle proceeding in the same or the opposite direction, notwithstanding the negligence of the operator of the other vehicle, where the negligence of the motorist making the turn was a concurrent cause of the accident.[n3] However, the motorist is not barred from recovery, nor will his or her recovery be diminished because of his or her unsignaled left turn between intersections where the failure to signal was not the proximate cause of a collision with the other vehicle.[n4]

FOOTNOTES:

n1 Barsch v. Hammond, 110 Colo. 441, 135 P.2d 519 (1943) (opposite direction); Costello v. Schult, 265 Wis. 243, 61 N.W.2d 296 (1953) (same direction).

n2 § 426.

n3 Holt v. Bills, 189 Kan. 14, 366 P.2d 1009 (1961) (opposite direction); Murphy v. Lynch, 313 So. 2d 646 (La. Ct. App. 2d Cir. 1975) (same direction).

n4 Alley v. Klotz, 320 Mich. 521, 31 N.W.2d 816 (1948).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103

157 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
c. Necessity and Adequacy of Signals
(2) Failure to Signal Turn

8 Am Jur 2d Automobiles and Highway Traffic § 880

§ 880 Right turn

The failure of a motorist making a right-hand turn at an intersection or between intersections to give a proper signal of his or her intention to do so, generally constitutes negligence which will render him or her liable for a collision with a motorist behind proximately resulting therefrom.[n1] Where a motorist veers to the left as if intending to make a left turn and then makes a right turn without signaling, he or she will be held liable for the ensuing collision with a motorist behind attempting to pass to the right.[n2]

It is likewise the rule that the negligence of a motorist in failing to signal his or her intention to make a right turn will bar or diminish his or her recovery for injury or damage sustained in a collision with a following vehicle where the collision was proximately caused by the failure to signal for the turn.[n3]

FOOTNOTES:

n1 Leslie v. Alexander, 226 Md. 635, 174 A.2d 775 (1961) (at an intersection); Koerner v. Perrella, 213 Neb. 189, 328 N.W.2d 473 (1982) (between intersections).

n2 Warner v. Pruett, 599 S.W.2d 207 (Mo. Ct. App. E.D. 1980); Enslow v. Helmcke, 26 Wash. App. 101, 611 P.2d 1338 (Div. 1 1980).

As to variance of a turn from the signaled direction, see § 877.

n3 Barton v. Messmore, 122 Cal. App. 2d 813, 265 P.2d 949, 38 A.L.R.2d 138 (2d Dist. 1954); Weber v. Hansen, 241 Iowa 904, 43 N.W.2d 766 (1950).

As to contributory or comparative negligence as barring or diminishing recovery, see §§ 947, 949.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Liability for accident arising from motorist's failure to give signal for right turn, 38 A.L.R.2d 143

158 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
d. Negligence of Following or Approaching Driver

8 Am Jur 2d Automobiles and Highway Traffic § 881

§ 881 Generally

A turning driver has the right to take for granted, in the absence of particular circumstances to the contrary, that other drivers will maintain a proper lookout, drive at a lawful speed, and otherwise exercise due care to avoid a collision with the turning driver.[n1] Motorists nearing an intersection where an approaching motorist is turning left are also required to exercise care commensurate with the situation not to collide with such motorist.[n2]

The relative rights of the turning and approaching motorists depend upon the distance between them and their speed.[n3]

Nevertheless, in many instances, negligence on the part of the following motorist has been asserted without success as a defense in an action to recover for damages arising out of a collision between the defendant's motor vehicle, which turned left without proper signal at an intersection or between intersections, and the plaintiff's following vehicle[n4] or approaching vehicle.[n5] A motorist is not negligent in not anticipating that a motorist ahead of him or her and traveling in the same or opposite direction will turn left at an intersection or between intersections without giving the proper signal, or in assuming that he or she will not turn left without giving such signal.[n6] Moreover, a motorist who is following or approaching another motorist, and is faced with a sudden emergency caused by the other motorist turning left without signaling, cannot be held guilty of negligence as a matter of law because of a possible error of judgment in trying to extricate him- or herself from the danger which threatened him or her due to no fault of his or her own.[n7]

Similarly, a motorist making an unsignaled right turn is not liable if it is found that the cause of the collision was the negligence of the driver of the vehicle to the rear,[n8] and where, notwithstanding the motorist's negligence in failing to signal his or her intended right turn, the motorist in the rear is guilty of negligence which was a concurrent cause of the collision, recovery against the motorist making the unsignaled right turn may be barred or diminished.[n9]

FOOTNOTES:

n1 Smith v. Alexander, 415 So. 2d 1016 (La. Ct. App. 4th Cir. 1982) (as to following drivers); Sass v. Thomas, 90 N.C. App. 719, 370 S.E.2d 73 (1988).

n2 Anderson v. Burkardt, 275 N.Y. 281, 9 N.E.2d 929 (1937).

n3 Anderson v. Burkardt, 275 N.Y. 281, 9 N.E.2d 929 (1937).

n4 Petersen v. Schneider, 153 Neb. 815, 46 N.W.2d 355 (1951), opinion supplemented, 154 Neb. 303, 47 N.W.2d 863 (1951) (between intersections); Tardif v. Hellerstedt, 37 Wash. 2d 940, 226 P.2d 908 (1951) (between intersections).

n5 Witter v. Henry, 181 F.2d 10 (4th Cir. 1950) (applying Virginia law; between intersections); Cleary v. Wolin, 244 Iowa 956, 58 N.W.2d 830 (1953) (at intersection).

As to liability for failure to signal at an intersection, see § 878.

n6 Robson v. Barnett, 241 Iowa 1066, 44 N.W.2d 382 (1950) (same direction); Harris v. McCuiston, 217 Miss. 601, 64 So. 2d 692 (1953) (opposite direction).

n7 Jones v. Furlong, 121 Ind. App. 279, 97 N.E.2d 369 (1951) (approaching motorist); Cartimiglia v. Manuel, 55 So. 2d 620 (La. Ct. App. 1st Cir. 1951) (following motorist).

n8 American Creosote Works v. Rose Bros., 211 Miss. 173, 51 So. 2d 220 (1951); Terrell v. McKnight, 360 Mo. 19, 226 S.W.2d 714 (1950).

As to particular actions constituting negligence of the driver to the rear, see § 882.

n9 Levy v. Carolina Aluminum Co., 232 N.C. 158, 59 S.E.2d 632 (1950).

As to negligence of the injured party as barring or diminishing recovery of damages, see §§ 947, 949.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1

Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208

159 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
d. Negligence of Following or Approaching Driver

8 Am Jur 2d Automobiles and Highway Traffic § 882

§ 882 Particular actions as constituting negligence

Evidence has been found to indicate that a motorist traveling in the same or the opposite direction, whose vehicle collided with that of a motorist ahead, who turned left at an intersection or between intersections without giving an adequate signal, is guilty of negligence barring or diminishing his or her recovery.[n1] Accordingly, where the negligence of the overtaking motorist in attempting to pass the forward motorist at an intersection[n2] or between intersections,[n3] or in failing to give suitable warning of his or her intention to pass,[n4] or in speeding,[n5] was a concurrent cause of a collision between the vehicles, the motorist making a left turn, although without having given a proper signal, is not liable or at least the amount for which he or she is liable would be proportionally diminished. On the other hand, where the proximate cause of such a collision is deemed to be the failure of the forward motorist to signal before making the left-hand turn and not the overtaking motorist's attempt to pass the forward motorist at the intersection,[n6] or to pass without giving warning,[n7] or by speeding,[n8] the motorist making the unsignaled turn is liable for the resulting injury or damage. Moreover, the fact that the plaintiff motorist, who was traveling in the same or opposite direction as the defendant motorist when the latter turned left without proper signal at an intersection, did not actually collide with the defendant motorist, but instead, collided with another motorist or object, or was otherwise involved in an accident in attempting to avoid the collision, does not protect the defendant from liability if his or her negligence in failing to give the requisite signal was the proximate cause of the accident.[n9]

Similarly, a motorist making an unsignaled right turn is not liable if it is found that the cause of the collision was the negligence of the driver of the vehicle to the rear.[n10] Thus, the failure of a motorist to give a signal for a right turn has been held not to render such motorist liable for a collision with a motorist to the rear, where a proximate cause of the accident was the excessive speed at which the following motorist was traveling, or the fact that the following motorist was traveling too closely to the forward motorist,[n11] or attempted to pass him or her on the right.[n12]

FOOTNOTES:

n1 Rose v. Mattingly, 310 Ky. 139, 220 S.W.2d 114 (1949) (motorists traveling in the opposite direction); Dowell, Inc. v. Layton, 1953 OK 187, 261 P.2d 885 (Okla. 1953) (motorists traveling in the same direction).

n2 Walters v. U S, 110 F. Supp. 631 (D. Guam 1953).

n3 Airline Motor Coaches v. Guidry, 241 S.W.2d 203 (Tex. Civ. App. Beaumont 1950), writ refused n.r.e.

n4 Swoboda v. Brown, 129 Ohio St. 512, 2 Ohio Op. 516, 196 N.E. 274 (1935).

n5 Dowell, Inc. v. Layton, 1953 OK 187, 261 P.2d 885 (Okla. 1953).

n6 Hagan v. Knowles, 223 Ark. 590, 267 S.W.2d 514 (1954); Minugh v. Royal Crown Bottling Co., 267 S.W.2d 861 (Tex. Civ. App. San Antonio 1954), writ refused.

n7 Hubbard v. Allen, 168 Kan. 695, 215 P.2d 647 (1950).

n8 Charles v. McPhee, 92 N.H. 111, 26 A.2d 30 (1942).

n9 Thacker v. Hammer, 339 Ill. App. 579, 90 N.E.2d 667 (2d Dist. 1950) (plaintiff traveling in the same direction as the defendant); Silfies v. American Stores Co., 357 Pa. 176, 53 A.2d 610 (1947) (plaintiff traveling in the opposite direction as the defendant).

n10 § 881.

n11 Jones v. King, 211 Ark. 1084, 204 S.W.2d 548 (1947) (nearness); Delaloye v. Kaisershot, 72 N.D. 637, 10 N.W.2d 593 (1943) (speed).

n12 American Creosote Works v. Rose Bros., 211 Miss. 173, 51 So. 2d 220 (1951).

As to duty and liability regarding passing on the right, generally, see § 847.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203

Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208

160 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
10. Turning
d. Negligence of Following or Approaching Driver

8 Am Jur 2d Automobiles and Highway Traffic § 883

§ 883 Disregard by other motorist of turn signal

Where a motorist disregards signals given by another motorist, by his or her extended hand and arm, or by an electrical or mechanical device, indicating an intention to turn, it is sufficient, either alone or in conjunction with other circumstances, to support a finding that such motorist is guilty of negligence.[n1] The fact that the turning motorist's vehicle does not include a working signaling device as required by statute does not excuse the failure of a following motorist to take notice of a visible hand signal given by the motorist ahead.[n2]

FOOTNOTES:

n1 Britt Trucking Co. v. Ringgold, 209 Ark. 769, 192 S.W.2d 532 (1946).

n2 Farmer v. School Dist. No. 214, King County, 171 Wash. 278, 17 P.2d 899, 115 A.L.R. 1171 (1933).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530

Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]169, 171(1), 171(12), 208
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 326 (Complaint, petition, or declaration -- Left turn -- Defendant's attempting to stop for preceding vehicle making left turn -- Failure to observe turn signal)

161 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 884

§ 884 Duty of care, generally

Cases involving collisions with parked cars are controlled by the general rules of negligence law. [n1]

The owner of a motor vehicle or the person in whose custody the motor vehicle is placed, may, in the absence of statute, an ordinance, or a regulation to the contrary, leave it parked or standing in a public street or highway temporarily without being subjected to a charge of negligence, [n2] provided it is left in a proper place, [n3] with proper illumination when necessary, [n4] and reasonable precautions are taken against the movement of the vehicle accidentally [n5] or by the intervention of a third person. [n6]

In thus using the public way, reasonable care must be exercised to avoid injury or damage to other travelers; otherwise the motorist may be held liable for damages proximately resulting from his or her negligence in this respect. [n7] Conversely, the fact of a rear-end collision with a parked vehicle may [n8] or may not constitute negligence per se of the rear vehicle's driver, [n9] but may clearly be evidence of negligence. [n10]

The act of a motorist in parking or allowing his or her vehicle to stand in an improper place may constitute negligence which will render the motorist liable for injury or damage proximately resulting from the act, such as where the vehicle is parked or standing on the traveled portion of a highway [n11] or parked in violation of a parking regulation designed for the protection of the public. [n12]

FOOTNOTES:

n1 Dirickson v. Mings, 1996 OK 2, 910 P.2d 1015 (Okla. 1996).

n2 Laird v. Baxter Health Care Corp., 272 Ill. App. 3d 280, 208 Ill. Dec. 758, 650 N.E.2d 215 (1st Dist. 1994), as modified, (May 22, 1995); Imes v. Koenig, 227 Ill. App. 3d 77, 169 Ill. Dec. 129, 590 N.E.2d 1048 (3d Dist. 1992); Ayoub v. Dufont, 229 A.D.2d 368, 644 N.Y.S.2d 555 (2d Dep't 1996); Horn v. McCurdy, 163 A.D.2d 663, 558 N.Y.S.2d 279 (3d Dep't 1990).

As to definitions of, and distinctions between, the terms "parking"and "standing,"see § 304.

n3 § 312.

n4 § 906.

n5 § 921.

n6 § 922.

n7 Northern Ind. Transit v. Burk, 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950).

n8 Leber v. Hill, 671 F. Supp. 321 (S.D. N.Y. 1987) (applying NY law).

n9 Burns v. Grezeka, 155 Ill. App. 3d 294, 108 Ill. Dec. 288, 508 N.E.2d 449 (2d Dist. 1987).

n10 Burns v. Grezeka, 155 Ill. App. 3d 294, 108 Ill. Dec. 288, 508 N.E.2d 449 (2d Dist. 1987).

n11 § 890.

n12 § 886.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411

Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1) to 173(8), 201(5), 211
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 375 to 378 (Complaint, petition, or declaration -- Plaintiff's parked vehicle -- Struck by passing vehicle)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 379 (Complaint, petition, or declaration -- Plaintiff's parked vehicle -- Struck by police car during chase)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 380 (Complaint, petition, or declaration -- Plaintiff's parked vehicle -- Struck by oncoming vehicle on wrong side of street)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 381 (Complaint, petition, or declaration -- Defendant's parked vehicle -- Unlawfully parked on bridge -- Wrongful death of minor)

162 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 885

§ 885 Particular persons owing duty or to whom duty owed

A police officer stopping a vehicle owes a duty of care to the driver of the stopped vehicle with regard to safety,[n1] and the officer may be held liable for injuries sustained by such driver where the officer forcibly removes the driver from the stopped vehicle without ascertaining whether the vehicle is in "park."[n2]

Observation: A driver whose vehicle is stopped and who is thereafter arrested owes no greater duty to a tow truck operator who has been called to remove the vehicle than to other persons using the highway on which the vehicle was stopped; further, injuries to a tow truck operator are not typically within the type foreseen as stemming from the negligent driving activity which originally caused the driver to be stopped.[n3]

A private citizen whose vehicle has been commandeered by a police officer and who has been directed to park his or her vehicle across a public highway may not be held negligent in creating a roadblock and failing to have his or her vehicle adequately lighted for such use.[n4]

A person whose vehicle is stopped without negligence, and who is hit from behind so as to force his or her vehicle into another vehicle in front of the stopped vehicle, owes no duty to, and is not liable for injuries to, the forward vehicle.[n5]

Where people park their vehicles on a public street in front of private property, the property owner has no common law duty to guard against negligence of the vehicle owners in parking their vehicles improperly on the street, absent proof that some condition of the property has contributed to the injuries suffered.[n6] Moreover, there is no common law duty on motorists to report a traffic obstruction from a vehicle parked on a roadway so as to obstruct traffic, and no liability or duty to remedy or warn attaches to such motorists merely because such a report is made.[n7] However, there may be imposed on law enforcement officials a duty to protect motorists from risk by investigation and warning where a parking violation has been reported.[n8]

Observation: Municipalities and other governmental units or subdivisions may be liable for the action of employees who park or stop a vehicle in a negligent manner since the decision of an employee not to take precautionary measures when negligently leaving a truck parked on a roadway is not within the general immunity of the governmental employer or employee, as it does not involve a decision with respect to policymaking, planning, or enforcement powers, nor a high degree of discretion.[n9]

Although an assisting driver may have no duty to warn others as to the disabled vehicle being assisted,[n10] a driver who brings a replacement vehicle may have a duty to warn others of the presence in the roadway of both the disabled vehicle and the replacement vehicle.[n11]

FOOTNOTES:

n1 As to the duty of the driver of an emergency vehicle such as a police vehicle, see § 946.

n2 Martin v. State Through Louisiana Dept. of Public Safety and Corrections, 597 So. 2d 1092 (La. Ct. App. 2d Cir. 1992).

n3 Bryant v. Glastetter, 32 Cal. App. 4th 770, 38 Cal. Rptr. 2d 291 (4th Dist. 1995).

n4 Kagel v. Brugger, 19 Wis. 2d 1, 119 N.W.2d 394 (1963).

n5 Stringer v. Andrews, 572 So. 2d 832 (La. Ct. App. 4th Cir. 1990).

n6 Milz v. M.J. Meadows, Inc., 234 Ill. App. 3d 281, 175 Ill. Dec. 276, 599 N.E.2d 1290 (1st Dist. 1992); Washington v. State, Dept. of Transp. and Development, 663 So. 2d 47 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 405 (La. 1995); Lawson v. B Four Corp., 888 S.W.2d 31 (Tex. App. Houston 1st Dist. 1994), writ denied, (Mar. 23, 1995).

n7 Hayes v. Parkem Indus. Services, Inc., 598 So. 2d 1194 (La. Ct. App. 3d Cir. 1992), writ granted, 608 So. 2d 154 (La. 1992) and writ dismissed, 610 So. 2d 825 (La. 1993).

n8 Monceaux v. Jennings Rice Drier, Inc., 590 So. 2d 672 (La. Ct. App. 3d Cir. 1991).

As to the necessity and adequacy of precautions, generally, see § 904.

n9 Leach v. Dayton, 98 Ohio App. 3d 467, 648 N.E.2d 895 (2d Dist. Montgomery County 1994).

As to the duty to place warning devices, see § 904.

n10 § 901.

n11 § 904.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379

Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 201(5), 211

163 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
b. Violation of Parking or Standing Statute or Ordinance

8 Am Jur 2d Automobiles and Highway Traffic § 886

§ 886 Generally

Parking or standing a motor vehicle in violation of a statute or ordinance does not necessarily constitute negligence rendering the violator liable for, or precluding or diminishing his or her recovery for damages resulting from a collision with another motor vehicle,[n1] especially where the regulation was not enacted for the protection of the traveling public, as in the case of a regulation prohibiting parking within a specified distance of a hydrant.[n2]

On the other hand, the purpose or nature of a particular regulation of parking or standing may be such as to make a violation of its provisions to constitute negligence, or at least evidence of negligence.[n3] This is so even where the local law enforcement officials have failed to enforce the regulation in the area where the accident occurs.[n4] The violation of such a particular regulation must be the proximate cause of injury or damage to constitute actionable negligence, or serve as the basis of a defense of negligence, so as to bar recovery, or to diminish the amount of any recovery.[n5]

Some statutes impose on motorists a duty to stop for emergency vehicles, such as ambulances and police vehicles, when they display the signals indicating that an emergency is in progress;[n6] the failure to stop has been said to constitute negligence per se.[n7]

Finally, a statute may impose a particular degree of care upon motorists stopping on the highway.[n8]

Observation: A standing or parking statute may not so thoroughly define a driver's negligence so as to preclude an additional claim of breach of the common law duties of care of the driver, and where proof of both types of claims is sufficient, the driver may be deemed liable under either or both theories.[n9]

For a parking or standing statute to provide the basis for a claim of negligence, there must be an actual violation of the statute or regulation, in the absence of which no negligence claim may be founded on the statute or regulation.[n10] Conversely, a statute permitting stopping on a highway for certain specified reasons provides no protection against a claim of negligence where the particular stop is not within the reasons set forth.[n11]

FOOTNOTES:

n1 Conn v. Hillard, 82 A.2d 368, 25 A.L.R.2d 1220 (Mun. Ct. App. D.C. 1951).

n2 Sullivan v. Locastro, 178 A.D.2d 523, 577 N.Y.S.2d 631 (2d Dep't 1991).

n3 Slaton v. Stein, 640 So. 2d 582 (La. Ct. App. 3d Cir. 1994) (and as to risk to injury to pedestrian, may constitute negligence per se); Suhr v. Felter, 589 So. 2d 583 (La. Ct. App. 1st Cir. 1991), writ denied, 590 So. 2d 596 (La. 1992); Sullivan v. Locastro, 178 A.D.2d 523, 577 N.Y.S.2d 631 (2d Dep't 1991); Coronet Ins. Co. v. Richards, 76 Ohio App. 3d 578, 602 N.E.2d 735 (10th Dist. Franklin County 1991).

As to particular types of regulations, see §§ 887 to 889

As to application of such principles to parking on roadways, see §§ 890 to 895.

n4 Kyle v. City of Bogalusa, 506 So. 2d 719 (La. Ct. App. 1st Cir. 1987).

n5 Roddel v. Town of Flora, 580 N.E.2d 255 (Ind. Ct. App. 1991).

As to defenses, generally, see § 947.

n6 § 298.

N7 Roddel v. Town of Flora, 580 N.E.2d 255 (Ind. Ct. App. 1991).

n8 Phillips v. U.S., 743 F. Supp. 681 (E.D. Mo. 1990) (applying Mo law).

n9 Nichols v. Coast Distrib. Sys., 86 Ohio App. 3d 612, 621 N.E.2d 738 (9th Dist. Summit County 1993).

n10 Meister v. Henson, 253 Ill. App. 3d 619, 192 Ill. Dec. 444, 625 N.E.2d 404 (3d Dist. 1993); Sumner v. Sumner, 664 So. 2d 718 (La. Ct. App. 3d Cir. 1995), writ denied, 667 So. 2d 531 (La. 1996); Reid v. Lichinchi, 215 A.D.2d 639, 628 N.Y.S.2d 129 (2d Dep't 1995).

n11 Thomas v. Settle, 247 Va. 15, 439 S.E.2d 360 (1994).

SUPPLEMENT:

Cases

Owner of oversized tractor-trailer was excused from its negligence per se, in negligence action brought by motorist who collided with the tractor-trailer while it was stationary on public road in city, in failing to obtain a permit, from city, to operate the oversized vehicle on the public road; owner exercised reasonable diligence and care in attempting to comply with the law, by obtaining state permit for travel on state roads, owner failed to seek permit for travel on city's public road because city ordinance, which courts later declared void because it conflicted with state law, purported to specifically exempt the road from the permit requirement, and if owner had sought a permit from city, owner would have been told that, because of the ordinance, which had not yet been declared void, city was not issuing permits for oversized vehicles. Marich v. Bob Bennett Constr. Co., 116 Ohio St. 3d 553, 2008-Ohio-92, 880 N.E.2d 906 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations

A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 173(2), 201(5), 211

164 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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11. Parking or Standing
b. Violation of Parking or Standing Statute or Ordinance

8 Am Jur 2d Automobiles and Highway Traffic § 887

§ 887 Parallel parking

In civil actions wherein recovery is sought for injuries to persons or property resulting from the violation of a statute or ordinance requiring that vehicles be parked parallel to and within a certain distance from the curb,[n1] the courts have agreed that the violation constitutes negligence, although they are not in agreement as to whether it constitutes negligence per se, some courts holding that a violation of such a regulation constitutes negligence per se[n2] or prima facie evidence of negligence.[n3] However, there is authority that the violation is merely evidence of negligence.[n4] Regardless of how the violation is characterized, it cannot be made the basis of a recovery for injuries unless the negligence in such respect was a proximate cause of such injuries.[n5]

A defense of negligence consisting of the plaintiff's violation of a statute requiring parallel parking may also fail in an action to recover for injuries sustained by the plaintiff where he or she can show an excuse for his or her violation.[n6]

FOOTNOTES:

n1 § 312.

n2 Washington v. Kemp, 99 Ga. App. 635, 109 S.E.2d 294 (1959); Floyd v. St. Louis Public Service Co., 280 S.W.2d 74 (Mo. 1955).

n3 Northern Ind. Transit v. Burk, 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950).

n4 Sipperly v. San Diego Yellow Cabs, 89 Cal. App. 2d 645, 201 P.2d 543 (4th Dist. 1949); Floyd v. St. Louis Public Service Co., 280 S.W.2d 74 (Mo. 1955).

n5 Northern Ind. Transit v. Burk, 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950); Damrow v. Zauner, 236 Minn. 447, 53 N.W.2d 139 (1952).

n6 Dennis v. Gonzales, 91 Cal. App. 2d 203, 205 P.2d 55 (2d Dist. 1949).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 173(2), 201(5), 211
Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582

165 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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b. Violation of Parking or Standing Statute or Ordinance

8 Am Jur 2d Automobiles and Highway Traffic § 888

§ 888 Double parking

In many jurisdictions double parking is prohibited by statute or ordinance,[n1] and the violation of such regulatory provisions has been held to constitute negligence per se,[n2] although other courts have held such a violation to be merely evidence of negligence.[n3] In either case, the violator may not be held liable for an accident allegedly due to such violation, nor will his or her recovery for injuries sustained in a collision with another vehicle be barred or diminished, unless such violation was the proximate cause of the accident.[n4] Moreover, even though a motorist may have been negligent in double parking his or her vehicle in violation of a prohibitory regulation and such negligence may have been a proximate cause of a resulting collision with another motorist, he or she is not liable for the ensuing damages or, at least, not for all of the ensuing damages, where the other motorist is also guilty of negligence contributing to the accident.[n5]

Observation: A violation of a double parking statute cannot form the basis of a claim of negligence where the violation has terminated and the parking of the vehicle is legal, even though the vehicle remains double parked at the time of the injury, as, for instance, where the statute prohibits double parking unless the vehicle is in the process of loading and unloading passengers, so that a vehicle waiting for passengers to arrive is illegally parked until its passengers arrive and begin boarding.[n6]

FOOTNOTES:

n1 § 317.

n2 White v. Ohio Power Co., 171 Ohio St. 148, 12 Ohio Op. 2d 169, 168 N.E.2d 314 (1960).

n3 Ferrer v. Harris, 55 N.Y.2d 285, 449 N.Y.S.2d 162, 434 N.E.2d 231 (1982), order amended on other grounds, 56 N.Y.2d 737, 451 N.Y.S.2d 740, 436 N.E.2d 1342 (1982); Giordano v. Sheridan Maintenance Corp., 38 A.D.2d 552, 328 N.Y.S.2d 241 (2d Dep't 1971).

n4 Jarosh v. Van Meter, 171 Neb. 61, 105 N.W.2d 531, 82 A.L.R.2d 714 (1960); White v. Ohio Power Co., 171 Ohio St. 148, 12 Ohio Op. 2d 169, 168 N.E.2d 314 (1960); Evans v. General S.S. Corp., 220 Or. 476, 349 P.2d 269 (1960).

n5 Perry v. Public Service Coordinated Transport, 136 N.J.L. 398, 56 A.2d 617 (N.J. Sup. Ct. 1948) (disapproved of on other grounds by, Clark v. Piccillo, 75 N.J. Super. 123, 182 A.2d 381 (App. Div. 1962)); Virginia Ave. Coal Co. v. Bailey, 185 Tenn. 242, 205 S.W.2d 11 (1947).

Generally, as to effect of negligence of an injured party to bar or diminish recovery, see §§ 947, 949.

n6 Ramos v. New York City, 212 A.D.2d 480, 623 N.Y.S.2d 206 (1st Dep't 1995).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606

West's Key Number Digest, Automobiles [westkey]173(1), 173(2), 201(5), 211
Liability of owner or driver of double-parked motor vehicle for ensuing injury, death, or damage, 82 A.L.R.2d 726

166 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
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11. Parking or Standing
b. Violation of Parking or Standing Statute or Ordinance

8 Am Jur 2d Automobiles and Highway Traffic § 889

§ 889 Parking within or near intersection

Statutes or ordinances have been enacted which prohibit parking within intersections or within a specified distance thereof.[n1] The violation of such a prohibitory regulation has been held to constitute negligence as a matter of law,[n2] or, some evidence of negligence.[n3] Liability for an accident involving a motor vehicle parked in violation of such a regulation may not, however, be predicated upon such violation, nor will recovery for an accident involving such unlawfully parked motor vehicle be barred or diminished because of such violation, unless it was a proximate or a contributing cause of the accident.[n4]

FOOTNOTES:

n1 § 312.

n2 Cohn v. Brown, 13 La. App. 604, 128 So. 54 (Orleans 1930), amended on other grounds, 13 La. App. 604, 130 So. 50 (Orleans 1930).

n3 Milbury v. Turner Center System, 274 Mass. 358, 174 N.E. 471, 73 A.L.R. 1070 (1931).

n4 Firemen's Ins. Co. v. G & M Const. Co., 345 So. 2d 208 (La. Ct. App. 3d Cir. 1977), writ refused, 347 So. 2d 249 (La. 1977); Rauh v. Jensen, 161 Mont. 443, 507 P.2d 520 (1973).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1) to 173(4), 201(5), 211
Parking illegally at or near street corner or intersection as affecting liability for motor vehicle accident, 4 A.L.R.3d 324

167 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 890

§ 890 Parking or standing as negligence

In the absence of any regulation to the contrary, the mere stopping of a motor vehicle on a public highway does not of itself constitute negligence so as to render one liable for injuries resulting when another vehicle collides with the stopped vehicle, the right to stop when the occasion demands being an incident to the right to travel.[n1] However, statutes or ordinances in most jurisdictions generally prohibit the parking or standing of a motor vehicle on the paved or traveled portion of a highway outside of municipalities when it is practicable to leave it elsewhere.[n2] The violation of such a regulation charges one with knowledge of the dangers incident thereto,[n3] and has also been held to be some evidence of negligence,[n4] or, negligence per se.[n5] However, most such regulations contain exceptions by which one is permitted to park or stand on the traveled portion of a highway under specified circumstances, such as where it is impracticable to park off the highway, or where the vehicle is disabled.[n6]

Conversely, a motorist who collides with a vehicle stopped illegally in the middle of the highway is not negligent where the parked vehicle is so located that such motorist could not reasonably stop after having an opportunity to observe the parked vehicle.[n7] The colliding motorist is not required to anticipate the presence of illegally parked vehicles on the highway.[n8]

FOOTNOTES:

n1 Suhr v. Felter, 589 So. 2d 583 (La. Ct. App. 1st Cir. 1991), writ denied, 590 So. 2d 596 (La. 1992); Masone v. Westchester County, 229 A.D.2d 657, 644 N.Y.S.2d 604 (3d Dep't 1996).

As to liability for a collision resulting from the parking of a motor vehicle on the wrong side of the highway, see § 902.

n2 § 315.

n3 Capital Motor Lines v. Gillette, 235 Ala. 157, 177 So. 881 (1937).

n4 Filgo v. Crider, 251 Miss. 234, 168 So. 2d 805 (1964).

n5 Storer Communications, Inc. v. Burns, 195 Ga. App. 230, 393 S.E.2d 92 (1990); Poland v. Glenn, 623 So. 2d 227 (La. Ct. App. 2d Cir. 1993), writ denied, 629 So. 2d 1171 (La. 1993).

n6 § 315.

n7 Mitchell v. Doolittle, 429 S.W.2d 862 (Ky. 1968).

N8 Harper v. Dooley, 221 Ga. App. 715, 472 S.E.2d 461 (1996).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369,

371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1) to 173(4), 201(5), 211
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575

168 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 891

§ 891 Duty of care

A motorist parking a vehicle has a duty to the traveling public to abstain from parking illegally[n1] in a manner causing the vehicle to protrude into the traveled portion of the street so as to subject other motorists to an unreasonable risk of harm.[n2] Even where under the circumstances, one may properly park or stand his or her motor vehicle on the traveled portion of a highway, he or she should exercise ordinary care for the safety of others using the highway,[n3] and has a duty to avoid obstructing traffic.[n4] The parked or stopped motorist should employ every reasonable means available to warn other travelers of the presence of the vehicle, especially during periods of darkness or limited visibility,[n5] such as leaving or turning on the lights of the vehicle,[n6] or using flares,[n7] or stationing a person to warn others of the dangerous obstruction.[n8] Conversely, as to a driver approaching a vehicle that is parked or has stopped on the highway, such driver is under a duty to exercise reasonable care so as to avoid a collision,[n9] and this may require the consideration of such similar factors as locality, lighting conditions, visibility, and presence of warning equipment.[n10]

FOOTNOTES:

n1 § 886.

n2 Williams v. Allstate Ins. Co., 599 So. 2d 478 (La. Ct. App. 3d Cir. 1992).

n3 Fisher v. J. H. Sheridan Co., 182 S.C. 316, 189 S.E. 356, 108 A.L.R. 981 (1936).

n4 Huss v. U.S., 738 F. Supp. 1098 (W.D. Mich. 1990) (applying Michigan law).

n5 Harkins v. Somerset Bus Co., 308 Pa. 109, 162 A. 163 (1932); Palmer v. Marceille, 106 Vt. 500, 175 A. 31 (1934).

n6 § 906.

n7 § 916.

n8 § 904.

n9 § 839.

n10 McIntyre v. Saunders, 554 So. 2d 1371 (La. Ct. App. 1st Cir. 1989), writ denied, 558 So. 2d 583 (La. 1990).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to

864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1) to 173(4), 201(5), 211

169 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 892

§ 892 Opportunity to leave highway

When it is necessary for a motorist to stop his or her vehicle along the road, such motorist has the duty, where it is reasonably possible, to drive until he or she finds a space to stop off the traveled portion of the road.[n1] Where there is sufficient space available for stopping off the traveled portion of the highway or there is a driveway or side road near, and the stopping motorist is able to move his or her vehicle into that area, he or she may be charged with negligence in failing to do so.[n2]

FOOTNOTES:

n1 Capital Motor Lines v. Gillette, 235 Ala. 157, 177 So. 881 (1937); Walker v. Kroger Grocery & Baking Co., 214 Wis. 519, 252 N.W. 721, 92 A.L.R. 680 (1934).

n2 Filgo v. Crider, 251 Miss. 234, 168 So. 2d 805 (1964); Hisaw v. Hendrix, 54 N.M. 119, 215 P.2d 598, 22 A.L.R.2d 285 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1) to 173(4), 201(5), 211

170 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 893

§ 893 Topography as factor

The width and condition of the shoulder are relevant factors in determining the negligence of a motorist in stopping his or her vehicle on the traveled portion of a highway where he or she otherwise has a valid excuse for stopping.[n1] Thus, where the road is straight for some distance and visibility is good, a motorist, under such circumstances, generally will not be found negligent in stopping his or her vehicle on the traveled portion of a highway.[n2] However, a motorist under such circumstances, may be found negligent in stopping and leaving his or her vehicle on the traveled portion of the highway where his or her position is hidden from view of other motorists, such as at the end of a curve,[n3] or just over the top of a hill.[n4]

FOOTNOTES:

n1 Booth v. Mary Carter Paint Co., 182 So. 2d 292 (Fla. Dist. Ct. App. 2d Dist. 1966).

n2 Hart v. Stence, 219 Iowa 55, 257 N.W. 434, 97 A.L.R. 535 (1934); Tate v. Hall, 247 Ky. 843, 57 S.W.2d 986 (1933).

n3 Miller v. Douglas, 121 W. Va. 638, 5 S.E.2d 799 (1939).

n4 Mullis v. Pinnacle Flour & Feed Co., 152 S.C. 239, 149 S.E. 329 (1929).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1) to 173(4), 201(5), 211

171 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 894

§ 894 Proximate cause

A parking driver will be held liable for negligence in the parking of a vehicle in the traveled portion of a roadway, in contravention of statute, where the parked vehicle is the cause in fact of the injuries sustained.[n1]

Notwithstanding negligence in parking or standing a motor vehicle on the paved or traveled portion of a highway,[n2] the owner or operator of the vehicle is not liable for damages resulting from a collision with another vehicle, if such negligence was not a proximate cause of the accident,[n3] and recovery of the other motorist may be barred or diminished if he or she has also been guilty of negligence proximately contributing to the accident.[n4] Proximate cause will not be inferred as a matter of law from the violation of a statute prohibiting the stopping or parking of a motor vehicle on the main-traveled portion of the highway.[n5] On the other hand, one who violates such a statute is not relieved from liability for injuries proximately caused thereby even though the negligence of a third person -- that is, a person other than the plaintiff -- may have concurred in proximately causing the injury for which the suit is brought.[n6]

FOOTNOTES:

n1 Williams v. Allstate Ins. Co., 599 So. 2d 478 (La. Ct. App. 3d Cir. 1992).

The actions of workers for the city and city department of transportation in stopping their trucks in the right lane of an expressway to remove graffiti from a wall, allegedly obstructing a motorist's view, were not a proximate cause of a motor vehicle accident, but rather, merely furnished the condition for the occurrence of the accident; the accident was proximately caused solely by the motorist, when he drove his truck from the center lane into the right lane despite his obstructed view. Remy v. City of New York, 36 A.D.3d 602, 828 N.Y.S.2d 451 (2d Dep't 2007), leave to appeal denied, 8 N.Y.3d 813, 836 N.Y.S.2d 553, 868 N.E.2d 236 (2007).

n2 § 890.

n3 Poland v. Glenn, 623 So. 2d 227 (La. Ct. App. 2d Cir. 1993), writ denied, 629 So. 2d 1171 (La. 1993); Princess v. Pohl, 38 A.D.3d 1323, 833 N.Y.S.2d 788 (4th Dep't 2007), leave to appeal denied (N.Y. June 27, 2007); Fermaglich v. Arnone, 36 A.D.3d 584, 828 N.Y.S.2d 171 (2d Dep't 2007) (the location of a delivery truck, even if it was parked in violation of parking regulations, was not a proximate cause of the accident).

A tow truck driver's parking of the truck at the accident scene to tow a disabled vehicle was not one of the causes of the accident, but merely furnished the instrumentality by which the motorist was injured when another car hit the tow truck, causing the tow truck, in turn, to hit the motorist's car, and the negligence of the second car's driver was the sole proximate cause of the motorists' injuries. Guacci v. Ogden Bros. Collision, Inc., 39 A.D.3d 308, 834 N.Y.S.2d 521 (1st Dep't 2007), leave to appeal denied (N.Y. June 28, 2007).

The illegal parking of a bus in a "no standing"area was not a proximate cause of injuries sustained by the driver of another bus when his bus was struck by a vehicle that ran a red light, then collided with the illegally parked bus; the sole proximate cause of the accident was the motorist's failure to stop at the red light, and the location of the illegally parked bus merely furnished the condition or occasion for the occurrence of the event. Gerrity v. Muthana, 28 A.D.3d 1063, 814 N.Y.S.2d 440 (4th Dep't 2006), aff'd, 7 N.Y.3d 834, 824 N.Y.S.2d 206, 857 N.E.2d 527 (2006).

As to proximate cause, generally, see § 426.

n4 § 947.

n5 Poland v. Glenn, 623 So. 2d 227 (La. Ct. App. 2d Cir. 1993), writ denied, 629 So. 2d 1171 (La. 1993).

As to violation of statutes, generally, see §§ 886 to 889.

n6 Grimes v. Gibert, 6 N.C. App. 304, 170 S.E.2d 65 (1969).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575

Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 201(5), 211

172 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
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c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 895

§ 895 Generally

Stopping on the traveled portion of a highway momentarily at a traffic signal,[n1] or until the driver can determine whether it is reasonably safe to turn to the left into a private driveway does not violate a statute prohibiting stopping a motor vehicle on the main-traveled portion of a highway and hence, does not constitute negligence as a matter of law.[n2]

Observation: A statute governing stopping, standing, or parking outside business or residence districts does not apply to a disabled vehicle if it is impossible to avoid stopping on the main traveled portion of the highway.[n3] Also, such a statute does not apply to a rear-end accident in which the lead motorist had stopped on the highway due to congested traffic resulting from a prior accident involving other vehicles, since it is impracticable for a lead motorist to do anything other than stop behind the traffic ahead of him or her.[n4]

A driver is negligent in stopping in the middle of a traveled way to look at a map.[n5]

FOOTNOTES:

n1 Ayoub v. Dufont, 229 A.D.2d 368, 644 N.Y.S.2d 555 (2d Dep't 1996).

n2 Alex v. Jozelich, 248 Minn. 27, 78 N.W.2d 440 (1956).

n3 Lino v. Allstate Ins. Co., 937 So. 2d 888 (La. Ct. App. 4th Cir. 2006), writ denied, 942 So. 2d 542 (La. 2006).

n4 Bates v. Prater, 956 So. 2d 814 (La. Ct. App. 2d Cir. 2007).

n5 Matthews v. Diversified Services, Inc., 540 So. 2d 603 (La. Ct. App. 5th Cir. 1989).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles

A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1) to 173(4), 201(5), 211

173 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 896

§ 896 Stopping for repairs; disabled vehicle

A statute may impose a high degree of care upon motorists stopping on the highway to repair a vehicle. [n1]

Otherwise, the parking or standing of a motor vehicle on the paved or traveled portion of a highway when it is disabled and cannot be moved does not generally come within the inhibition of statutes prohibiting the parking or standing of motor vehicles upon the main-traveled portion of a highway, and is, moreover, expressly excepted under some such statutes. [n2] Accordingly, the fact that a motor vehicle is, out of necessity, temporarily left standing on the traveled portion of a highway does not of itself necessarily constitute actionable negligence nor will it necessarily bar or diminish recovery by the injured party where the vehicle is so disabled as to prevent its immediate removal, [n3] such as where it runs out of gas, [n4] or stalls, [n5] or has a flat tire. [n6]

FOOTNOTES:

n1 Phillips v. U.S., 743 F. Supp. 681 (E.D. Mo. 1990) (applying Missouri law; interpreting "operating"to include repairing of vehicle).

n2 § 316.

n3 Hodges v. Gonzales, 5 Cal. App. 2d 86, 42 P.2d 359 (4th Dist. 1935).

n4 Struppler v. Rexford, 326 Pa. 545, 192 A. 886 (1937).

n5 Brown v. Shiver, 183 Ga. App. 207, 358 S.E.2d 862 (1987); Kounter v. Carleton, 510 So. 2d 1370 (La. Ct. App. 3d Cir. 1987).

n6 Melton v. Crotts, 257 N.C. 121, 125 S.E.2d 396 (1962).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530

A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(7), 201(5), 211
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 402 (Complaint, petition, or declaration -- In federal court -- Diversity of citizenship -- Plaintiff pushing stalled vehicle struck from behind by defendant)

174 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 897

§ 897 Duty of minimal obstruction; prompt removal

While the temporary parking or standing of a motor vehicle on a highway for the purpose of making emergency repairs may be proper,[n1] it nevertheless constitutes a partial obstruction to traffic making normal use of the highway, and it is the duty of the motorist to obstruct traffic as little as conveniently possible and not to endanger others unnecessarily,[n2] and the vehicle should be removed from the highway with such promptness as is reasonable under the circumstances,[n3] otherwise the motorist may be chargeable with negligence.[n4] Even though a motor vehicle standing on the highway is so disabled that it cannot be moved under its own power, a motorist may be charged with negligence if the vehicle can be otherwise removed from the highway and the motorist fails to effect such removal.[n5]

A motorist, as well as persons voluntarily assisting the motorist, may also be held liable for choosing an unreasonable manner of removal, such as the pushing of a disabled, unlit vehicle across an unlit, curved road.[n6]

FOOTNOTES:

n1 § 896.

n2 Descombaz v. Klock, 58 S.D. 173, 235 N.W. 502 (1931), on reh'g, 59 S.D. 461, 240 N.W. 495 (1932).

As to maintaining lights on a disabled vehicle parked on a highway, see § 906.

n3 Ly v. State Through Dept. of Public Safety and Corrections, 633 So. 2d 197 (La. Ct. App. 1st Cir. 1993), writ denied, 634 So. 2d 835 (La. 1994).

n4 Plumb v. Burnham, 151 Neb. 129, 36 N.W.2d 612 (1949).

n5 Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461 (1952); Hisaw v. Hendrix, 54 N.M. 119, 215 P.2d 598, 22 A.L.R.2d 285 (1950).

As to the opportunity of a motorist who is forced to stop along the highway to remove his or her car from the traveled portion, see § 892.

n6 State Farm Mut. Auto. Ins. Co. v. Lanning, 524 So. 2d 7 (La. Ct. App. 1st Cir. 1988).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(7), 201(5), 211

Liability of motorist colliding with person engaged about stalled or disabled vehicle on or near highway, 27 A.L.R.3d 12

175 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 898

§ 898 Stopping on highway when visibility obscured; stopping to clean windshield

A motorist is not guilty of negligence as a matter of law in making a temporary stop on the traveled portion of the highway in order to clean the windshield because his or her vision is obscured, at least where he or she pulls over to the right as far as possible.[n1] Such motorist is not guilty of negligence for pulling off onto the shoulder of the highway, rather than exiting the highway, in order to repair improperly functioning windshield wipers, where the motorist's vision has become obscured by grime and mist from passing vehicles.[n2]

Observation: A motorist may not presume that the course of travel is free from danger where forward visibility is obscured,[n3] and this implies a duty to stop,[n4] or at least take appropriate precautions, such as slowing down.[n5]

There is a conflict of opinion as to stopping on the traveled portion of the highway, one expressing the view that a motorist is not necessarily guilty of negligence where he or she stops on the paved or traveled portion of the highway when his or her vision is obscured by atmospheric conditions.[n6] Indeed, when a motorist's view is obscured, the motorist may be required to stop and to exercise care to see what, by the proper use of his or her senses, might be seen.[n7] Another view has been expressed to the effect that stopping when visibility is obscured is not a hazard that the law requires other drivers to assume.[n8] However, where such stopping on the traveled portion of the highway is not absolutely necessary, the motorist may be chargeable with negligence,[n9] the question usually being one for the jury.[n10]

FOOTNOTES:

n1 Sumner v. Sumner, 664 So. 2d 718 (La. Ct. App. 3d Cir. 1995), writ denied, 667 So. 2d 531 (La. 1996).

n2 Sumner v. Sumner, 664 So. 2d 718 (La. Ct. App. 3d Cir. 1995), writ denied, 667 So. 2d 531 (La. 1996).

n3 Kimble v. East Baton Rouge Parish, 673 So. 2d 682 (La. Ct. App. 1st Cir. 1996).

n4 Sharpley v. City of Baton Rouge, 665 So. 2d 21 (La. Ct. App. 1st Cir. 1995).

n5 Sharpley v. City of Baton Rouge, 665 So. 2d 21 (La. Ct. App. 1st Cir. 1995).

A motorist was not comparatively negligent for failing to stop before entering a heavy cloud of smoke, rather than proceeding so slowly through the cloud that the motorist to the rear struck him. Avery v. Commercial Union Ins. Co., 621 So. 2d 184 (La. Ct. App. 3d Cir. 1993).

n6 Filgo v. Crider, 251 Miss. 234, 168 So. 2d 805 (1964); Lauerman v. Strickler, 141 Pa. Super. 240, 14 A.2d 608 (1940).

As to the circumstances under which a motorist may have the duty to stop when visibility is obscured, generally, see §§ 767, 768.

n7 Pahler v. Daggett, 170 A.D.2d 750, 565 N.Y.S.2d 587 (3d Dep't 1991).

n8 Quick v. Crane, 111 Idaho 759, 727 P.2d 1187 (1986).

n9 Batesole v. Stratford, 505 F.2d 804 (6th Cir. 1974) (applying Ohio law); Kirby v. Kelly, 161 Mont. 66, 504 P.2d 683 (1972).

n10 § 1065.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43

Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(3), 173(4), 201(5), 211

176 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 899

§ 899 Discharging or taking on passengers

A motorist is not necessarily guilty of negligence in stopping on the traveled portion of a highway for the purpose of discharging or taking on passengers,[n1] particularly where such stops are excepted from a statute otherwise prohibiting stops on highways.[n2] However, such a stop may constitute negligence where stopping on the highway violates a statute and there is inadequate clearance and visibility for other traffic.[n3]

FOOTNOTES:

n1 Hochberger v. G. R. Wood, Inc., 124 N.J.L. 518, 12 A.2d 689 (N.J. Ct. Err. & App. 1940).

n2 McLellan v. Threlkeld, 279 Ky. 114, 129 S.W.2d 977 (1939).

n3 Falgout v. Younger, 192 So. 706 (La. Ct. App. 1st Cir. 1939).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(3), 173(4), 201(5), 211

177 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 900

§ 900 Doing business calls or errands

The temporary parking of a motor vehicle on the traveled portion of a highway merely long enough to make a business call has been held not to constitute an unreasonable use of the highway if the stopping motorist does not thereby unreasonably interfere with others.[n1] If the motorist does unreasonably interfere with the use of the highway by others, he or she is chargeable with negligence.[n2]

FOOTNOTES:

n1 Delfosse v. New Franken Oil Co., 201 Wis. 401, 230 N.W. 31 (1930).

n2 Naylor v. Dragoon, 116 Vt. 552, 80 A.2d 600 (1951) (holding that where the plaintiff parked her automobile upon the highway blocking the right-hand lane so that a passenger could go across the highway to perform an errand, and her car was struck in the rear by another automobile two or three minutes later, the plaintiff was guilty of contributory negligence precluding recovery).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(3), 173(4), 201(5), 211

178 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 901

§ 901 Assisting or aiding another motorist

The stopping of a motor vehicle on the traveled portion of a highway for the purpose of rendering aid or assistance to another motorist has been held not in contravention of statutes prohibiting the parking or standing of motor vehicles upon the traveled portion of a highway,[n1] and not necessarily constituting negligence.[n2] The same may be said for persons stopping behind a vehicle involved in an accident to avoid imminent danger to the driver of the vehicle involved in the accident, even though as a result of such stop, following vehicles collide with the stopped vehicle.[n3] However, insofar as such stopping of a motor vehicle is in contravention of an applicable statute, the violator is guilty of negligence as a matter of law.[n4] Also, where it is found that there was no emergency justifying a motorist in stopping his or her vehicle on the traveled portion of the highway, with the purpose of rendering assistance to another motorist, the first motorist is guilty of negligence as a matter of law in so doing.[n5] Similarly, where no emergency justifies a person involved in an accident to stand in the middle of the road, such person will be contributorily negligent if he or she is in turn hit by an oncoming motorist.[n6]

Reminder: Where applicable, a "Good Samaritan"statute may negate any negligence of a motorist stopping on the traveled portion of the roadway to aid another motorist requiring emergency assistance.[n7]

The last-clear-chance doctrine[n8] does not apply to a collision between a plaintiff's vehicle and a defendant's vehicle after the plaintiff had stopped to aid a disabled car where the plaintiff could have extricated him- or herself from peril by taking appropriate safety measures, such as having brought flashlights and an adequate method of pouring gas when called by a friend to come to his or her rescue, and given the circumstances of a dark highway with a lane obstructed by the vehicle with insufficient lighting, as it can not be said that the driver should have discovered the plaintiff's peril nor did he or she have time to avoid the accident when the peril was discovered.[n9]

FOOTNOTES:

n1 § 315.

n2 Meister v. Henson, 253 Ill. App. 3d 619, 192 Ill. Dec. 444, 625 N.E.2d 404 (3d Dist. 1993) (tow truck's use of median to assist disabled vehicle); Mignery v. Gabriel, 2 A.D.2d 218, 154 N.Y.S.2d 85 (3d Dep't 1956), judgment aff'd, 3 N.Y.2d 1001, 169 N.Y.S.2d 913, 147 N.E.2d 480 (1957).

n3 Mack v. Wilkerson, 304 Ark. 114, 801 S.W.2d 26 (1990); Ferrell v. Fireman's Fund Ins. Co., 680 So. 2d 690 (La. Ct. App. 4th Cir. 1996), as amended on reh'g in part, (Oct. 7, 1996) and writ granted, 688 So. 2d 534 (La. 1997) and decision rev'd in part on other grounds, 696 So. 2d 569 (La. 1997).

n4 Jack Cole Co. v. Hoff, 274 S.W.2d 658, 51 A.L.R.2d 1 (Ky. 1954).

n5 Crawford v. Cahalan, 259 Ill. App. 14, 1930 WL 3221 (2d Dist. 1930).

n6 Shaw v. Burton, 104 N.C. App. 113, 408 S.E.2d 199 (1991).

n7 § 944.

n8 § 953.

n9 Bangs v. Government Emp. Ins. Co., 387 So. 2d 1323 (La. Ct. App. 1st Cir. 1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575

Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(2), 173(3), 201(5), 211
West's Key Number Digest, Negligence [westkey]284
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595

179 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 902

§ 902 Parking or standing on wrong side of highway or street

The violation of statutes or rules of the road requiring the parking of motor vehicles on the right-hand side of a highway or street in the direction to which the vehicle faces,[n1] is at least some evidence of negligence,[n2] and may be held to constitute negligence per se[n3] or negligence as a matter of law, particularly where the improper parking or stopping takes place in the nighttime and the headlights are left burning, which has the effect of deceiving motorists approaching from the opposite direction,[n4]

However, the mere fact of stopping a motor vehicle on the wrong side of a highway does not necessarily constitute negligence under all conditions, such as where the vehicle is disabled,[n5] or is preparing to tow another disabled vehicle.[n6]

FOOTNOTES:

n1 § 312.

n2 Kline v. Ash, 188 Kan. 745, 366 P.2d 276 (1961).

n3 Estate of Mathewson v. Decker, 2006-Ohio-2790, 2006 WL 1519687 (Ohio Ct. App. 3d Dist. Union County 2006), appeal not allowed, 111 Ohio St. 3d 1432, 2006-Ohio-5351, 855 N.E.2d 497 (2006).

n4 Canady v. Allen, 239 Ark. 742, 393 S.W.2d 865 (1965).

n5 Venable v. Burton, 1961 OK 132, 363 P.2d 224 (Okla. 1961).

As to disabled vehicles, see § 896.

n6 Vandenack v. Crosby, 275 Wis. 421, 82 N.W.2d 307 (1957).

As to towing a vehicle, see § 932.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14),

172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(2) to 173(4), 201(5), 211

180 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
c. Parking or Standing on Paved or Traveled Portion of Highway
(2) Application to Particular Circumstances

8 Am Jur 2d Automobiles and Highway Traffic § 903

§ 903 As to approaching vehicle

A motorist traveling on the right-hand side of a highway who sees the headlights of another vehicle facing him or her has the right to assume that such vehicle is in motion and will be operated in conformity with the law of the road, and generally, such motorist may not be held guilty of negligence with respect to an accident resulting from his or her attempt to avoid that vehicle.[n1] However, the motorist's negligence with respect to the speed and control of his or her vehicle may bar or diminish his or her recovery for injuries or damages sustained in such a collision,[n2] or may even render him or her primarily liable for damages proximately resulting from such accident.[n3]

The doctrine of last clear chance[n4] has been held inapplicable in the situation presented by the class of cases under consideration.[n5]

FOOTNOTES:

n1 Whitworth v. Riley, 1928 OK 493, 132 Okla. 72, 269 P. 350, 59 A.L.R. 584 (1928).

n2 Macasphalt Corp. v. Murphy, 67 So. 2d 438 (Fla. 1953).

n3 Venable v. Burton, 1961 OK 132, 363 P.2d 224 (Okla. 1961).

n4 § 953.

n5 Batesole v. Stratford, 505 F.2d 804 (6th Cir. 1974) (applying Ohio law); Perez v. Frenda, 18 Ariz. App. 489, 503 P.2d 965 (Div. 2 1972).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(3), 173(4), 201(5), 211
Applicability of last clear chance doctrine to collision between moving and stalled, parked, or standing motor vehicle, 34 A.L.R.3d 570

181 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 904

§ 904 Warning others of presence of vehicle

A vehicle stopping behind other vehicles on the highway waiting for a traffic accident to be cleared is not required to warn the following drivers of the forward conditions.[n1] In contrast, the driver of a disabled vehicle, and the driver of a vehicle who brings a replacement vehicle, each have a duty to warn oncoming traffic that they have blocked a roadway.[n2]

Observation: A school district and a bus company have been held not negligent in designating a school bus stop and stopping the bus in an allegedly dangerous location, which purportedly led to a motorist being rear-ended by another vehicle after he or she stopped behind the school bus, absent evidence that a safer, alternative stop was available, that either the school district or the bus company had the authority to place a warning sign on the roadway, that either had a duty to request the local municipality to do so, that any such request would have actually been granted, or that the presence of a sign might have prevented the accident.[n3]

FOOTNOTES:

n1 § 916.

n2 Hacker v. Quinn Concrete Co., Inc., 857 S.W.2d 402 (Mo. Ct. App. W.D. 1993).

As to persons owing a duty of care with regard to parking or standing vehicles, see §§ 884, 885.

n3 Perry v. Board of Educ. of Rondout Valley Cent. School Dist., 38 A.D.3d 1085, 831 N.Y.S.2d 776, 217 Ed. Law Rep. 920 (3d Dep't 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(4), 173(5), 201(5), 211

182 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(1) In General

8 Am Jur 2d Automobiles and Highway Traffic § 905

§ 905 Stationing guard

In the absence of a requiring statute, a motorist who stops on the highway when his or her vehicle is disabled or for some other valid excuse, is not required to place a guard to notify other travelers of the presence of the stopped vehicle, where the lights required by statute are displayed.[n1] However, a motorist who has stopped his or her vehicle on the highway may, under some circumstances, be guilty of negligence in failing to station a person to give warning of the standing vehicle,[n2] particularly when it is dark or visibility is limited and the lights are not displayed.[n3]

Where a motorist who leaves a vehicle standing on the traveled portion of a highway at night stations a person with a flashlight, at some distance from the vehicle to warn other travelers of the obstruction, this may negative any charge of negligence on the motorist in so parking the vehicle, or in failing to exercise reasonable care to warn others of the presence of the vehicle.[n4] However, the stationing of a guard with a flashlight to warn others of the presence of a vehicle parked on the highway does not necessarily relieve the operator of the vehicle from the charge of negligence if such warning is not adequate under the circumstances.[n5]

FOOTNOTES:

n1 Currier v. Ingram, 75 F.2d 783, 111 A.L.R. 1511 (C.C.A. 1st Cir. 1935) (applying New Hampshire law); Chapin v. Stickel, 173 Wash. 174, 22 P.2d 290 (1933).

n2 Hawkins v. Ivy, 50 Ohio St. 2d 114, 4 Ohio Op. 3d 243, 363 N.E.2d 367 (1977) (leaving disabled vehicle in passing lane of highway); Eagle Trucking Co. v. Texas Bitulithic Co., 619 S.W.2d 598 (Tex. Civ. App. Tyler 1981), writ refused n.r.e., 640 S.W.2d 873 (Tex. 1982) (winch truck on highway).

n3 Goodwin v. Theriot, 165 So. 342 (La. Ct. App. 1st Cir. 1936).

As to darkness or limited visibility as factors, see § 898.

n4 Pisel v. ITT Continental Baking Co., 61 Ohio St. 2d 142, 15 Ohio Op. 3d 175, 399 N.E.2d 1243 (1980).

n5 Body, Fender & Brake Corp. v. Matter, 172 Va. 26, 200 S.E. 589 (1939) (overruled in part on other grounds by, Vanlandingham v. Vanlandingham, 212 Va. 856, 188 S.E.2d 96 (1972)).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

183 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 906

§ 906 Generally; precautions calculated to prevent injury

A stopped, unlighted vehicle upon the highway at night is an unusual obstruction which a following motorist has no reason to anticipate. [n1]

In the absence of an applicable statute imposing upon the owner or operator of a parked or standing motor vehicle the duty to light it at night, such precautions may be enjoined by the common-law duty to exercise reasonable care for the safety of others. [n2] There is generally a duty of care in parking a vehicle to take precautions reasonably calculated to prevent injury, whether by use of lights, flags, guards, or other practical means, and the failure to give such warning may constitute negligence. [n3]

FOOTNOTES:

n1 Evans v. Olinde, 609 So. 2d 299 (La. Ct. App. 3d Cir. 1992), writ denied, 616 So. 2d 697 (La. 1993).

n2 Groves v. Meyers, 35 Wash. 2d 403, 213 P.2d 483 (1950).

n3 Ly v. State Through Dept. of Public Safety and Corrections, 633 So. 2d 197 (La. Ct. App. 1st Cir. 1993), writ denied, 634 So. 2d 835 (La. 1994); Dirickson v. Mings, 1996 OK 2, 910 P.2d 1015 (Okla. 1996).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211
Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 A.L.R.3d 13
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 382 (Complaint, petition, or declaration -- Defendant's parked vehicle -- Truck hidden by crest of hill -- No lights or flares)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 383 (Complaint, petition, or declaration -- Defendant's parked vehicle -- Truck double-parked -- No lights or flares)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 384 (Complaint, petition, or declaration -- Defendant's parked vehicle -- Bus parked without lights)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 385 to 391 (Complaint, petition, or declaration -- Defendant's parked vehicle -- Without lights or flares)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 879, 880 (Allegation -- Improper parking -- Stopping on highway at night without lights)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 881 (Allegation -- Improper parking -- Truck stopped on highway at night without lights or flares)

184 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 907

§ 907 Effect of statutory violation

Statutes or ordinances have been enacted which impose specific duties with respect to the display of lights upon parked or standing vehicles,[n1] and a mere compliance with such statutory provisions as to lights does not necessarily preclude a finding of failure to comply with the common-law duty in this respect.[n2]

In those cases involving a charge of negligence in failing to properly light a parked or standing vehicle, it has been stated that a violation of the statutes requiring lights under the circumstances constitutes negligence per se.[n3] There is authority stating that the rule means that an unexcused violation of such a statute is negligence, or negligence per se,[n4] and also other authority to the effect that the failure to comply with a statute requiring lights to be displayed on a motor vehicle parked on a highway at night imposes absolute liability, regardless of fault, as to anyone injured or damaged as a result of the absence of lights.[n5] Other courts hold that such a violation is merely evidence[n6] or prima facie evidence of negligence.[n7]

FOOTNOTES:

n1 § 206.

n2 Dirickson v. Mings, 1996 OK 2, 910 P.2d 1015 (Okla. 1996).

n3 Knutson v. Nielsen, 256 Minn. 506, 99 N.W.2d 215 (1959); Williamson v. Varner, 252 N.C. 446, 114 S.E.2d 92 (1960).

n4 Williams v. Pelican Creamery, 30 So. 2d 574 (La. Ct. App. 1st Cir. 1947).

n5 Gerlot v. Swartz, 212 Ind. 292, 7 N.E.2d 960 (1937); Cotton v. Ship-By-Truck Co., 337 Mo. 270, 85 S.W.2d 80 (1935).

n6 D & D Planting Co. v. Employers Cas. Co., 240 La. 684, 124 So. 2d 908 (1960); Baker v. Bingner, 16 Mich. App. 261, 167 N.W.2d 790 (1969).

n7 Le Clair v. Bruley, 119 Vt. 164, 122 A.2d 742, 67 A.L.R.2d 89 (1956); Smith v. Penn Line Service, Inc., 145 W. Va. 1, 113 S.E.2d 505 (1960).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(2), 173(5), 201(5), 211

185 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 908

§ 908 Proximate cause

Negligence in leaving a motor vehicle parked on or along a highway or street without lights or with insufficient lights does not charge the owner or operator with responsibility for an accident involving such vehicle, unless the negligence in this respect can be said to be a proximate cause of the accident.[n1] The ultimate issue has been whether the proximate cause of the accident was the intervening negligence of a third person.[n2] However, the mere negligent act of so leaving a motor vehicle as to make its presence a peculiarly dangerous obstruction may amount to the proximate cause of an accident, notwithstanding that it may be directly or immediately occasioned by such an intervening act as a collision of two other vehicles or objects.[n3]

FOOTNOTES:

n1 Metz v. Howard, 631 So. 2d 1248 (La. Ct. App. 5th Cir. 1994); Derbeck v. Ward, 178 Mich. App. 38, 443 N.W.2d 812 (1989).

As to proximate cause, generally, see § 426.

n2 Island Express v. Frederick, 35 Del. 569, 171 A. 181 (1934).

n3 Houser v. Persinger, 57 Tenn. App. 401, 419 S.W.2d 179 (1967).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

186 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 909

§ 909 On approaching vehicle

A motorist who fails to exercise ordinary care, that is, care commensurate with the circumstances and surrounding hazards, and collides with a motor vehicle standing on the highway without lights, will be precluded from recovery, or the amount of recovery will be diminished, notwithstanding the negligence of the owner or operator of the parked vehicle.[n1] Where the plaintiff drove into the defendant's motor vehicle which had been left standing on the highway without proper or adequate lights, the contention that there may be no recovery, or only a diminished recovery, because of the inadequacy of the plaintiff's headlights has been presented successfully or held to raise a jury question as to negligence.[n2] The contention that under such circumstances the plaintiff must have been negligent with regard to the lights on his or her own vehicle has been rejected.[n3] There is authority to the effect that even if the evidence required the conclusion that the plaintiff's headlights were inadequate, a verdict in his or her favor may be sustained on the theory that the poor lighting was not a contributing cause of the collision with the standing unlighted vehicle.[n4]

In those jurisdictions wherein the speed of a motorist must be such that he or she can stop in time to avoid an object discernible within the assured clear distance ahead or within the radius of the vehicle's lights,[n5] the fact that a motor vehicle is stopped on the traveled portion of the highway at night without lights is not an excuse for noncompliance with such rule, and where a motorist collides with such vehicle, he or she is guilty of negligence which will bar or diminish recovery.[n6] However, in other such jurisdictions, it has been held that where a motorist unexpectedly comes upon a vehicle standing or parked on the highway, he or she is not guilty of negligence as a matter of law in colliding with such vehicle, but that the question of the motorist's negligence in such regard is for the jury.[n7]

FOOTNOTES:

n1 Tyson v. Ford, 228 N.C. 778, 47 S.E.2d 251 (1948) (where the plaintiff rounded a curve and topped a hill at a high rate of speed and collided with an unlighted truck left standing on the traveled portion of the highway).

n2 Nesbit v. Everette, 227 F.2d 157 (5th Cir. 1955) (applying Florida law); Wing v. A. R. Blossman, Inc., 79 So. 2d 133 (La. Ct. App. 1st Cir. 1955).

n3 Mueller v. State Auto. Ins. Ass'n, 223 Iowa 888, 274 N.W. 106, 113 A.L.R. 1256 (1937); Hardy v. Anderson, 241 Minn. 478, 63 N.W.2d 814 (1954).

n4 Price v. Pearson, 301 Mass. 260, 16 N.E.2d 855 (1938).

n5 § 273.

n6 §§ 764, 765.

n7 §§ 764, 765.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369,

371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

187 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 910

§ 910 Vehicle parked or standing on city streets

The requirements of due care as to lighting a motor vehicle standing on an open highway may vary considerably from the standards as to those standing on the streets of a city, where illumination from street lights or other sources is normally available, and where those moving on the streets may properly be charged with notice of the probable presence of parked vehicles.[n1] Statutory provisions as to lights are frequently inapplicable to motor vehicles within city limits,[n2] although this does not necessarily absolve a motorist parking an unlighted vehicle within city limits from a charge of negligence.[n3] In the absence of a statute or an ordinance expressly exempting motor vehicles parked in the city or certain areas therein from the normal duty to display lights on a motor vehicle parked at night, the failure to do so constitutes negligence,[n4] which may be true even though the vehicle is left on the streets because of mechanical disability.[n5]

Where conditions were such that the other motorist could or should have seen the parked vehicle despite the absence of its rear lights, there may be no proximate causation,[n6] although the absence of lights may still be at least a concurring cause, even though other causes may also have contributed.[n7]

FOOTNOTES:

n1 Boucher v. Groendyke Transport Co., 1945 OK 139, 195 Okla. 483, 160 P.2d 403 (1945).

n2 § 206.

n3 Di Prisco v. Madison Trucking Corp., 277 A.D. 843, 98 N.Y.S.2d 185 (1st Dep't 1950).

n4 Associated Truck Lines v. Velthouse, 227 Ind. 139, 84 N.E.2d 54 (1949); Feaver v. Railway Exp. Agency, 324 Mass. 165, 85 N.E.2d 322 (1949).

n5 Madden v. Berman, 324 Mass. 699, 88 N.E.2d 630 (1949).

n6 Smith v. Penn Line Service, Inc., 145 W. Va. 1, 113 S.E.2d 505 (1960).

n7 Tallman v. Green, 74 Ga. App. 731, 41 S.E.2d 339 (1947).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

188 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 911

§ 911 Forward lights

Statutes requiring lights upon parked vehicles usually stipulate that lights must be displayed to the front as well as to the rear,[n1] and, under certain circumstances, the failure to display headlights may constitute negligence even as to a motorist approaching from the rear.[n2] The absence of headlights on a parked vehicle may also be found to constitute negligence where such absence is found to mislead the operator of a vehicle approaching from the side.[n3]

The cases involving a charge of negligence in failing to display headlights on a parked vehicle have involved a collision with a vehicle approaching from the opposite direction, and in such cases, the negligence in failing to light the vehicle concurs with negligence in the choice of the place where it is left standing.[n4] However, the charge of negligence with respect to inadequate headlights has properly been rejected, either because the evidence justified or required the conclusion that the lights were proper, or because it could be found that the absence of lights was not a contributing cause of the accident.[n5]

FOOTNOTES:

n1 § 206.

n2 Szarapski v. Joaquin, 139 Cal. App. 2d 27, 292 P.2d 959 (4th Dist. 1956).

n3 Kerner v. Surface Transp. Corp. of New York, 262 A.D. 89, 28 N.Y.S.2d 126 (1st Dep't 1941).

n4 St. Johnsbury Trucking Co. v. Rollins, 145 Me. 217, 74 A.2d 465, 21 A.L.R.2d 88 (1950); Le Clair v. Bruley, 119 Vt. 164, 122 A.2d 742, 67 A.L.R.2d 89 (1956).

n5 Barrett v. Nash Finch Co., 228 Minn. 156, 36 N.W.2d 526 (1949).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530

A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

189 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
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11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 912

§ 912 Tail or rear lights

The courts have recognized that leaving a motor vehicle parked or standing on the open highway without displaying the rear lights required by statute [n1] or by the standards of ordinary care constitutes negligence rendering the owner liable to one who, in the exercise of due care, is injured or suffers damage from a collision with another motorist approaching from the rear, because of the absence or insufficiency of the taillights. [n2] However, where the evidence presented a question as to whether or not the defendant's vehicle displayed sufficient rear lights, or whether, under the circumstances, the failure to have such lights charged the defendant with liability, verdicts for the defendant have been held justified or required by the evidence. [n3]

In any event, the fact that a motorist has been negligent in parking a motor vehicle on a highway without adequate lights does not render him or her liable for, or bar him or her from recovering, or diminish his or her recovery of, damages arising from a collision with the vehicle, unless it is established that the absence of lights was a proximate cause of the accident. [n4] Even where there is evidence indicating that the other motorist could or should have seen the parked vehicle in time to stop, the absence of lights have been held at least a contributing proximate cause. [n5] However, it has also been held that even if the plaintiff was found negligent in connection with the rear lights on his or her parked vehicle, the defendant may still be found liable under the doctrine of last clear chance, [n6] or for the reason that he or she should have been able to see and avoid the standing vehicle notwithstanding the absence of lights, so that the negligence of the plaintiff in this respect was not a proximate cause of the accident. [n7]

A motorist who leaves an unlighted motor vehicle parked or standing on the highway may be chargeable with liability to one injured as a result, even though the dark vehicle itself is not involved in a collision, where the injury or damage results as a proximate cause of his or her negligence. [n8]

In addition to the duty to maintain certain lights upon the rear of a motor vehicle as a standard equipment, there may be a further duty to display additional lights upon any part of the vehicle or load which extends an unusual distance to the rear of the body, [n9] and the failure to do so may constitute negligence which will render one liable for injuries or damages sustained when another motorist collides with the unlighted projection. [n10]

FOOTNOTES:

n1 § 206.

n2 Carroll v. Deaton, Inc., 555 So. 2d 140 (Ala. 1989) (negligence per se); Wright v. Covey, 233 Ark. 798, 349 S.W.2d 344, 90 A.L.R.2d 1033 (1961).

n3 Lavigne v. American Cas. Co., 51 So. 2d 408 (La. Ct. App. 1st Cir. 1951); Peoples v. Fulk, 220 N.C. 635, 18 S.E.2d 147 (1942).

n4 Carroll v. Deaton, Inc., 555 So. 2d 140 (Ala. 1989).

n5 Stephenson v. Phoenix Wood & Coal Co., 71 Cal. App. 2d 788, 163 P.2d 457 (4th Dist. 1945).

n6 Faught v. Washam, 365 Mo. 1021, 291 S.W.2d 78 (1956).

As to the last-clear-chance doctrine, see § 953.

n7 Le Mire v. Nelson, 238 Minn. 501, 58 N.W.2d 189 (1953).

n8 Butts v. Ward, 227 Wis. 387, 279 N.W. 6, 116 A.L.R. 1441 (1938).

n9 § 207.

n10 Meyer v. Weimaster, 278 Mich. 370, 270 N.W. 715 (1936); Leonard v. Tatum & Dalton Transfer Co., 218 N.C. 667, 12 S.E.2d 729 (1940).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203

Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

190 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 913

§ 913 Vehicle as disabled as excuse for failure

The fact that a motorist's vehicle left standing on the highway is so disabled that its movement is hampered or made impossible will not excuse the failure to maintain taillights on the vehicle, and it has generally been held that the failure to maintain rear lights on such disabled vehicles constitutes negligence as to one injured as a result.[n1] In a converse situation, evidence that the plaintiff's disabled motor vehicle was left standing on or near the highway without rear lights has in some instances been regarded as justifying a verdict for the defendant in an action for injury or damage sustained when the standing vehicle was struck from behind by another vehicle.[n2]

However, on conflicting evidence as to whether or not the defendant, who had left the disabled vehicle partially blocking the highway, was negligent in failing to provide proper rear lights on the standing vehicle, a verdict for the defendant would be sustained.[n3] The contention is sometimes raised in such cases that any negligence on the part of the defendant in failing to provide rear lights could not have been a proximate cause of the accident, where it appears from the evidence that the standing vehicle was or should have been observed in time to avoid the collision notwithstanding the absence of lights, or that even if proper lights had been displayed the same accident would have resulted.[n4]

FOOTNOTES:

n1 Ringsby Truck Lines v. Hilliar, 121 Colo. 240, 215 P.2d 719 (1950); Planters Wholesale Grocery v. Kincade, 210 Miss. 712, 50 So. 2d 578 (1951).

n2 Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967) (applying North Carolina law); Vascoe v. State Farm Mut. Auto. Ins. Co., 260 So. 2d 161 (La. Ct. App. 2d Cir. 1972).

n3 Bell v. Illinois Farm Supply Co., 334 Ill. App. 216, 78 N.E.2d 838 (2d Dist. 1948); Neal v. Deax, 51 So. 2d 852 (La. Ct. App. 2d Cir. 1951).

n4 Riley v. Motor Exp., 193 Ark. 780, 102 S.W.2d 850 (1937); Harvey v. Knowles Storage & Moving Co., 215 Iowa 35, 244 N.W. 660 (1932).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

191 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 914

§ 914 Failure of lighting system

Where it appears that a motorist has left a motor vehicle parked or standing on a highway because its lighting system has failed en route, and the failure of the lights is not the result of any fault on his or her part, and the motorist is not otherwise negligent in selecting a place to leave the vehicle or for other reasons, he or she may not be held liable, in the absence of an absolute duty to provide lights, for the results of a collision with the unlighted vehicle.[n1] However, the mere fact that a motorist's lights failed while he or she is en route does not excuse him or her from the duty of reasonable care to protect others using the highway,[n2] and in some cases, on conflicting evidence as to the circumstances, the conclusion of the trier of fact that such motorist is negligent where, after the lights failed, he or she allowed the vehicle to stand on the highway where it was struck from the rear by another motorist, has been sustained.[n3] A motorist who leaves a vehicle standing on the highway may be chargeable with negligence as to one who later collides with its unlighted rear end, although on leaving the vehicle the motorist turned on its lights and left them burning, but the lights failed after the motorist left.[n4]

However, there may be justification for not operating the rear lights or any lights, but the intermittent use of flashes, to prevent undue drain on the alternator, where an electrical malfunction affects the entire electrical system of the vehicle.[n5]

FOOTNOTES:

n1 Beach v. Union Brewing Corp., 187 So. 332 (La. Ct. App., Orleans 1939); Woodcock v. Home Mut. Cas. Co., 253 Wis. 178, 33 N.W.2d 202 (1948).

n2 Peckinpaugh v. Engelke, 215 Iowa 1248, 247 N.W. 822 (1933); Merback v. Blanchard, 56 Wyo. 152, 105 P.2d 272 (1940).

n3 Sandidge v. State Through Dept. of Transp. and Development, 626 So. 2d 560 (La. Ct. App. 3d Cir. 1993) (failure of warning beacon not excused where vehicle operators failed to employ other available reflective devices); Silcio v. Haley, 380 So. 2d 670 (La. Ct. App. 4th Cir. 1980) (emergency flashers failed after driver left vehicle).

n4 Ascherman v. Ohio Dept. of Transp., 63 Ohio Misc. 2d 316, 629 N.E.2d 1094 (Ct. Cl. 1992) (holding that the defendant should have known the lights would fail after six hours in extreme cold).

n5 Hamilton v. Luckey, 315 N.W.2d 823 (Iowa Ct. App. 1981).

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West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

192 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(2) Lack or Insufficiency of Lights on Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 915

§ 915 Side or clearance lights

Certain types of vehicles which are over the ordinary length or width are required, under the various statutory rules, and perhaps at common law, to carry, in addition to standard head and taillights, clearance or side lights marking their dimensions.[n1] On conflicting evidence as to whether a motorist had negligently failed to display clearance lights on his or her parked or standing motor vehicle, and as to whether the failure to provide such lights was the proximate cause of an accident, it has generally been held that a question is raised for the trier of fact.[n2] However, the negligence of a driver has been characterized as gross, where such driver's truck stalled on the highway, and he or she permitted it to stand there for a period of over five hours, although it was not equipped with the dimension or marker lights required by statute, and although the lights which were on its rear end were angled away from the highway behind him or her.[n3]

FOOTNOTES:

n1 § 207.

n2 Clardy v. Robinson, 284 S.W.2d 651 (Ky. 1955); Bielke v. Knaack, 207 Wis. 490, 242 N.W. 176 (1932).

n3 Harris Motor Lines v. Green, 184 Va. 984, 37 S.E.2d 4, 171 A.L.R. 359 (1946).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

193 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(3) Flares or Other Warning Devices

8 Am Jur 2d Automobiles and Highway Traffic § 916

§ 916 Generally

Under certain circumstances there may be a common-law duty on a standing vehicle's driver to use flares or similar devices to warn other travelers of the presence on the highway of the standing vehicle.[n1] This common-law duty may be extended to mechanics called upon to repair a vehicle standing in the traveled way.[n2]

In most jurisdictions, statutes have been enacted which impose the duty to place flares on the highway in the vicinity of certain standing vehicles,[n3] for the purpose of protecting life and property on the highways.[n4] Federal regulations also impose a duty of care with regard to the use of warning devices by commercial vehicles, which duty supersedes less stringent state statutes or regulations.[n5] Some courts have held the violation of such a statute to constitute negligence per se,[n6] while others have held the violation to be prima facie evidence of negligence.[n7] Moreover, compliance with such statutory requirements is not necessarily the full measure of a motorist's duty where he or she leaves a vehicle standing on the highway.[n8] Also, despite an attempt to use headlights or emergency flashers as a warning to other drivers, where sufficient time has elapsed for the driver of a parked truck to realize the hazard it poses, the violation of a statute requiring flares or other warning devices is deemed to constitute negligence which may not be excused.[n9]

The fact that the area was desolate, and that the driver did not believe that the use of flares was warranted under the circumstances, are not excuses for the failure to use flares.[n10]

Generally, following vehicles who stop to avoid endangering persons involved in an accident have no duty to place warning devices behind their vehicles to alert other following vehicles to the accident.[n11]

FOOTNOTES:

n1 Lemire v. New Orleans Public Service Inc., 538 So. 2d 1151 (La. Ct. App. 4th Cir. 1989), writ denied, 543 So. 2d 2 (La. 1989) and writ denied, 542 So. 2d 1383 (La. 1989) (barricades around construction equipment); Hacker v. Quinn Concrete Co., Inc., 857 S.W.2d 402 (Mo. Ct. App. W.D. 1993).

n2 Prill v. Hampton, 154 Wis. 2d 667, 453 N.W.2d 909 (Ct. App. 1990).

n3 § 200.

n4 Sumner v. Sumner, 664 So. 2d 718 (La. Ct. App. 3d Cir. 1995), writ denied, 667 So. 2d 531 (La. 1996).

n5 Thurston v. Ballou, 23 Mass. App. Ct. 737, 505 N.E.2d 888 (1987).

n6 Smiddy v. Wedding Party, Inc., 30 Ohio St. 3d 35, 506 N.E.2d 212 (1987); Robinson v. Briggs Transp. Co., 272 Wis. 448, 76 N.W.2d 294 (1956).

n7 Thurston v. Ballou, 23 Mass. App. Ct. 737, 505 N.E.2d 888 (1987); James v. Carnation Co., 278 Or. 65, 562 P.2d 1192 (1977).

n8 Chandler v. Kraner, 117 Ind. App. 538, 73 N.E.2d 490 (1947).

n9 Morris v. Gray, 344 So. 2d 106 (La. Ct. App. 2d Cir. 1977); Smith v. Rorvik, 231 Mont. 85, 751 P.2d 1053 (1988).

n10 Murray v. O & A Exp., Inc., 630 S.W.2d 633 (Tex. 1982).

n11 Mack v. Wilkerson, 304 Ark. 114, 801 S.W.2d 26 (1990); Lirette v. Ott, 562 So. 2d 1067 (La. Ct. App. 4th Cir. 1990), writ denied, 567 So. 2d 612 (La. 1990).

As to the duty to warn following drivers, generally, see § 904.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595

Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(2), 173(5), 201(5), 211
Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares, 67 A.L.R.2d 12
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 383 (Complaint, petition, or declaration -- Defendant's parked vehicle -- Truck double-parked -- No lights or flares -- By husband and wife)

194 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(3) Flares or Other Warning Devices

8 Am Jur 2d Automobiles and Highway Traffic § 917

§ 917 Manner and time of compliance

Where the driver of a vehicle that has stopped on the road employs strobe lights, radial lights, flashers, and a large yellow directional arrow mounted on the vehicle to alert other drivers of the location of the vehicle on the roadway, there is no additional duty to employ cones behind the vehicle to warn oncoming vehicles.[n1]

Where flares are placed around a motor vehicle left standing on the highway, they must generally comply with statutory requirements as to type,[n2] otherwise they may be held not sufficient to relieve one of a charge of negligence predicated upon the failure to comply with statutory requirements as to flares.[n3] Moreover, there must be a compliance with statutory requirements as to the location of the flares,[n4] and there have been successful claims of negligence in failing to comply with these requirements.[n5]

The flare statutes have usually been construed as permitting the operators a reasonable time within which to comply with the statutory requirements,[n6] measured from the time the vehicle cannot be removed from the roadway,[n7] and they have frequently been absolved of liability under such a statute where the evidence justified or required a finding that no sufficient time had elapsed after the vehicle stopped to permit flares to be placed.[n8] However, the claim that an operator may not be charged with the negligent violation of the flare statute because there is no sufficient evidence that he or she had had time to place flares before the collision occurred has been rejected under the circumstances.[n9]

The statutes ordinarily require not only the initial placement of flares but that they be maintained while the vehicle remains on the highway in the dark,[n10] and a driver may be found negligent where after the flares were placed they were permitted to go out.[n11]

Observation: Just as there is no common-law duty to report a vehicle parked on the traveled portion of the roadway,[n12] there is no duty imposed on the driver of a vehicle disabled in a collision to place warning devices to warn of the danger imposed by another vehicle involved in the collision.[n13]

FOOTNOTES:

n1 Minor v. Triborough Bridge and Tunnel Authority, 215 A.D.2d 218, 626 N.Y.S.2d 165 (1st Dep't 1995).

n2 § 200.

n3 Western Production Co. v. Yarbrough, 234 F.2d 889 (5th Cir. 1956).

n4 § 200.

n5 Aetna Cas. & Sur. Co. v. Condict, 417 F. Supp. 63 (S.D. Miss. 1976) (applying Mississippi law).

n6 § 200.

n7 Thomas v. McDonald, 667 So. 2d 594 (Miss. 1995).

n8 Pugh v. S. C. Hutchinson Co., Inc., 565 F.2d 375 (5th Cir. 1978) (applying Miss law); Caperton v. Mast, 85 Cal. App. 2d 157, 192 P.2d 467 (3d Dist. 1948).

n9 Moore v. Bethel, 4 Ill. App. 2d 270, 124 N.E.2d 352 (4th Dist. 1955); MacDonald v. Appleyard, 94 N.H. 362, 53 A.2d 434 (1947).

n10 § 200.

n11 Walters v. Dean, 497 N.E.2d 247 (Ind. Ct. App. 1986).

n12 § 885.

n13 Knoblauch v. DEF Exp. Corp., 86 F.3d 684 (7th Cir. 1996) (applying Illinois law).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1

Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(2), 173(5), 201(5), 211

195 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(3) Flares or Other Warning Devices

8 Am Jur 2d Automobiles and Highway Traffic § 918

§ 918 Common limitations on statutes

The flare statutes are generally applicable only to commercial or other outsized vehicles,[n1] and a motorist may not be charged with negligence merely on the basis of the violation of such a statute where his or her vehicle is not subject to its provisions.[n2] However, the fact that a motorist is under no statutory duty to place flares around the particular motor vehicle when it is left on the highway does not relieve him or her from the duty to exercise reasonable care to protect others using the highway from injury from a collision with the unlighted vehicle by warning them of their peril, and a finding of negligence in leaving the vehicle standing on the highway without flares may be justified.[n3]

Some flare statutes impose the duty of placing flares only where the vehicle, or its lighting system, or in some instances both, are disabled,[n4] and a charge of negligence may be based upon the violation of such a statute.[n5] Where such disability is not shown, a charge of negligence may not be based upon the breach of such a statute,[n6] although where flares are available the failure to use them under the circumstances may constitute common-law negligence.[n7] Some of the statutes require flares to be placed only when the regular lighting system on the vehicle is disabled,[n8] and the view has been expressed to the effect that a finding of such disability is a necessary prerequisite to a finding that the statute has been violated and to the basing of a charge of negligence on such violation.[n9]

The statutes requiring flares to be left placed around standing vehicles ordinarily refer to the situation where the vehicle is left standing on the highway, and frequently exclude from their operation vehicles standing in business or residential areas,[n10] and a charge of negligence may not be predicated upon an alleged violation of such a statute where the vehicle in question was in fact standing in a business or residential section of a city.[n11] However, where flares are relied upon, in the city, as a substitute for lights required to be displayed on the vehicle, the operator may be found negligent in failing to properly maintain the flares.[n12]

Some courts have held that there is no duty to place flares, under a statute otherwise requiring the placing of flares, where the vehicle is standing on the shoulder off the traveled lanes of the highway,[n13] so that a charge of negligence may not be based upon an alleged violation of such a statute where the vehicle in question was standing on the shoulder off the traveled lane.[n14]

The flare statutes generally impose the duty in question only when a vehicle is left standing during the hours of darkness,[n15] and no charge of negligence may be based upon an alleged violation of such a statute where it is established that the accident did not occur during the statutory period.[n16] However, even though a motor vehicle is left standing on a highway at a time other than the statutory period relative to the placing of flares, there may be a common-law duty to place flares where visibility is very limited.[n17]

FOOTNOTES:

n1 § 200.

n2 Anderson v. Robbins Incubator Co., 143 Neb. 40, 8 N.W.2d 446 (1943); Gossett v. Van Egmond, 176 Or. 134, 155 P.2d 304 (1945).

n3 Gutierrez v. Koury, 57 N.M. 741, 263 P.2d 557 (1953).

n4 § 200.

n5 Duncan v. Wiseman Baking Co., 357 S.W.2d 694 (Ky. 1961); Branch v. Whitaker, 294 S.W.2d 948 (Ky. 1956) (overruled in part on other grounds by, Duncan v. Wiseman Baking Co., 357 S.W.2d 694 (Ky. 1961)).

n6 Callison v. Dondero, 51 Cal. App. 2d 403, 124 P.2d 852 (3d Dist. 1942); Rasing v. Healzer, 157 Kan. 516, 142 P.2d 832 (1943).

n7 Callison v. Dondero, 51 Cal. App. 2d 403, 124 P.2d 852 (3d Dist. 1942).

n8 § 200.

n9 Brittain v. Wichita Forwarding Co., 168 Kan. 145, 211 P.2d 77 (1949).

n10 § 200.

n11 Beck v. Azcarate, 50 Cal. App. 2d 264, 122 P.2d 933 (2d Dist. 1942); Boucher v. Groendyke Transport Co., 1945 OK 139, 195 Okla. 483, 160 P.2d 403 (1945).

n12 Associated Truck Lines v. Velthouse, 227 Ind. 139, 84 N.E.2d 54 (1949).

n13 § 200.

n14 Kennedy v. Burnett, 1 Ill. App. 2d 206, 117 N.E.2d 303 (3d Dist. 1954); James v. Carnation Co., 278 Or. 65, 562 P.2d 1192 (1977).

n15 § 200.

n16 Knaus Truck Lines v. Commercial Freight Lines, 238 Iowa 1356, 29 N.W.2d 204 (1947); Daanen v. MacDonald, 254 Wis. 440, 37 N.W.2d 39 (1949).

n17 McCook v. Rebecca-Fabacher, Inc., 10 So. 2d 512 (La. Ct. App. 1st Cir. 1942); Gonyo v. Hewson, 3 A.D.2d 949, 162 N.Y.S.2d 304 (3d Dep't 1957).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(2), 173(5), 201(5), 211

196 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(3) Flares or Other Warning Devices

8 Am Jur 2d Automobiles and Highway Traffic § 919

§ 919 Proximate cause

Any negligence in failing to place flares around a vehicle standing on the highway cannot be treated as a proximate cause of a collision between that vehicle and another, where it is shown that despite the absence of the flares the other driver saw the standing vehicle in time to avoid the collision,[n1] or should have seen the standing vehicle because it was sufficiently illuminated by its own regular lighting,[n2] or by street lights or other roadside lights,[n3] or would have been warned of its presence by flashlights or other types of signals.[n4] In other cases, the contention that negligence in failing to place flares around a standing vehicle can not be treated as a proximate cause of a collision between that vehicle and another, where the other driver saw the standing vehicle in time to avoid the collision,[n5] or should have seen such vehicle because it was sufficiently illuminated by its own regular lighting,[n6] or by street lights or other roadside lights,[n7] or would have been warned of its presence by flashlights or other types of signals,[n8] has been rejected or unsuccessful under the circumstances.

The rule in many jurisdictions that one operating a motor vehicle on the highway must proceed with his or her vehicle under such control that it can be brought to a stop in the assured clear distance ahead[n9] has occasionally been relied upon to support the conclusion that negligence in failing to place flares around a vehicle left standing on the highway at night can not be regarded as the proximate cause of injury immediately caused by an approaching driver's failure to see the standing vehicle sooner, the theory being that the negligent failure to see and avoid the standing vehicle must be regarded as an intervening, insulating cause.[n10] This argument has been rejected however, the courts taking the view that the failure to place flares amounts to continuing negligence which is at least a concurrent cause of the collision.[n11] The courts have sometimes found that the failure to place flares constitutes continuing, concurring negligence, even where the injury or damage complained of was not immediately caused by a collision with the standing vehicle.[n12] The claim that some other act of negligence intervened to insulate that of the driver in failing to place flares has also been rejected.[n13]

FOOTNOTES:

n1 Jilka v. National Mut. Casualty Co. of Tulsa, 152 Kan. 537, 106 P.2d 665 (1940); Christensen v. Krueger, 66 S.D. 66, 278 N.W. 171 (1938).

n2 Barnett v. U.S., 78 F. Supp. 186 (N.D. Fla. 1948); Denver-Los Angeles Trucking Co. v. Ward, 114 Colo. 348, 164 P.2d 730 (1945).

n3 Buresh v. George, 149 Neb. 340, 31 N.W.2d 106 (1948).

n4 Mouton v. Pacific Indem. Co., 102 So. 2d 563 (La. Ct. App. 1st Cir. 1958); Pleinis v. Wilson Storage & Transfer Co., 75 S.D. 397, 66 N.W.2d 68 (1954).

n5 Comiskey v. Engel, 339 Ill. App. 309, 89 N.E.2d 845 (2d Dist. 1950).

n6 Champieux v. Miller, 255 S.W.2d 794 (Mo. 1953); Coins v. Washington Motor Coach Co., 34 Wash. 2d 1, 208 P.2d 143 (1949).

n7 Grantham v. Watson Bros. Transp. Co., 142 Neb. 362, 6 N.W.2d 372 (1942); Beyer v. White, 22 N.J. Super. 137, 91 A.2d 606 (App. Div. 1952).

n8 Prewitt v. Rutherford, 238 Iowa 1321, 30 N.W.2d 141 (1947); Vandenack v. Crosby, 6 Wis. 2d 292, 94 N.W.2d 621 (1959).

n9 § 273.

n10 Godwin v. Nixon, 236 N.C. 632, 74 S.E.2d 24 (1953).

n11 U.S. v. First-Citizens Bank & Trust Co., 208 F.2d 280 (4th Cir. 1953); Trefzer v. Stiles, 56 N.M. 296, 243 P.2d 605 (1952) (disapproved of on other grounds by, Hartford Fire Ins. Co. v. Horne, 65 N.M. 440, 338 P.2d 1067 (1959)).

n12 Moore v. Bethel, 4 Ill. App. 2d 270, 124 N.E.2d 352 (4th Dist. 1955); Dreibelbis v. Bennett, 162 Ind. App. 414, 319 N.E.2d 634 (1974).

n13 Johnson v. Larson, 234 Minn. 505, 49 N.W.2d 8 (1951).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1

Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(5), 201(5), 211

197 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(3) Flares or Other Warning Devices

8 Am Jur 2d Automobiles and Highway Traffic § 920

§ 920 Last clear chance doctrine

A motorist has the right to assume that the highway will not be partially blocked by a stalled motor truck not lighted or protected by flares as required by law, and is not chargeable with negligence in failing to anticipate another's gross negligence in this regard.[n1] However, under certain circumstances, a jury question as to the applicability of the last-clear-chance doctrine may be presented.[n2] The doctrine of last clear chance does not apply to render the motorist liable for a collision with a stalled truck, where he or she could not see it in time to avoid the collision because of lights from oncoming vehicles.[n3]

FOOTNOTES:

n1 Burns v. Fisher, 132 Mont. 26, 313 P.2d 1044, 67 A.L.R.2d 1 (1957); Harris Motor Lines v. Green, 184 Va. 984, 37 S.E.2d 4, 171 A.L.R. 359 (1946).

n2 Fessenden v. Roadway Exp., 46 Mich. App. 276, 208 N.W.2d 78 (1973).

As to the last-clear-chance doctrine, generally, see § 953.

n3 Landry v. Meligan, 245 So. 2d 782 (La. Ct. App. 3d Cir. 1971); Burns v. Fisher, 132 Mont. 26, 313 P.2d 1044, 67 A.L.R.2d 1 (1957).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 173(5), 201(5), 211
West's Key Number Digest, Negligence [westkey]530
Applicability of last clear chance doctrine to collision between moving and stalled, parked, or standing motor vehicle, 34 A.L.R.3d 570

198 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(4) Precautions against Movement of Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 921

§ 921 Generally

Although a motor vehicle is not generally regarded as an inherently dangerous instrumentality,[n1] and a motorist may leave it standing unattended in a public or private place without being chargeable with negligence,[n2] nevertheless, the motorist is under a duty to exercise the ordinary care of a reasonably prudent person to secure it in place,[n3] so that it will not move, apart from any intervention of an external cause not to be anticipated and guarded against.[n4] The degree of care to be exercised corresponds to the risk of movement involved.[n5] If, by reason of the failure to exercise such care, the motor vehicle, without any interference by a third person, gets under way and inflicts injury or damage, the owner or operator may be held liable therefor, provided such negligence is the proximate cause of such injury or damage.[n6]

The selection of a parking place may in itself be an occasion of negligence, when the motor vehicle is left where there is an undue risk that it will accidentally start up.[n7] When a motorist elects to park in a place involving risk that the vehicle may be moved without outside interference, a correspondingly greater degree of care to secure it in place is exacted of him or her.[n8]

The length of time before a parked motor vehicle starts up may be a significant factor in determining whether there was negligence in parking it, in that, the fact that it starts up almost immediately is indicative of negligence.[n9] Conversely, the fact that it remains safely in place for a considerable length of time may justify the inference that some factor other than the operator's original negligence was the cause of its eventual movement.[n10]

FOOTNOTES:

n1 § 403.

n2 Bolio v. Scholting, 152 Neb. 588, 41 N.W.2d 913 (1950).

n3 Estridge v. Estridge, 333 S.W.2d 758 (Ky. 1960).

n4 Nance v. Parks, 266 N.C. 206, 146 S.E.2d 24, 15 A.L.R.3d 1377 (1966).

n5 Litos v. Sullivan, 322 Mass. 193, 76 N.E.2d 557 (1947).

n6 Jackson v. Mills-Fox Baking Co., 221 Mich. 64, 190 N.W. 740, 26 A.L.R. 906 (1922); Spanko v. Spitalnick, 101 N.J.L. 5, 127 A. 663 (N.J. Sup. Ct. 1925).

n7 Fone v. Elloian, 297 Mass. 139, 7 N.E.2d 737 (1937).

n8 Litos v. Sullivan, 322 Mass. 193, 76 N.E.2d 557 (1947).

n9 Pelland v. D'Allesandro, 321 Mass. 387, 73 N.E.2d 590 (1947).

n10 Fuller v. Magatti, 231 Mich. 213, 203 N.W. 868 (1925).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43

Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(8), 201(5), 211
Failure of motorist to cramp wheels against curb or turn them away from traffic, or to shut off engine, as causing accidental starting up of parked motor vehicle, 42 A.L.R.3d 1283
Failure to set brakes, or maintain adequate brakes, as causing accidental runaway of parked motor vehicle, 42 A.L.R.3d 1252
Duty and liability of vehicle drivers within parking lot, 62 A.L.R.2d 288

199 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(4) Precautions against Movement of Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 922

§ 922 Shutting off motor and ignition; removing keys

The owner of an automobile is generally under no duty to render the vehicle impossible to be started by another individual,[n1] such as by removing the ignition key.[n2] However, there is authority holding that a motorist is under a duty to exercise ordinary care as to the manner in which he or she leaves a vehicle parked unattended so that it may not be started by a third person.[n3] There is also authority conversely stating that there is no breach of any duty by a driver who stops the vehicle, removes the keys, and locks the vehicle.[n4]

Some jurisdictions have a statute requiring motorists to stop the engine and remove the keys before leaving a car unattended.[n5] The clear purpose of the statute is to prevent theft or unauthorized use of a motor vehicle as well as for the protection and safety of the general public.[n6] A violation of this statute imposing a duty on a driver leaving a vehicle unattended to stop the engine, lock the ignition, remove the key, and set the brake, may constitute evidence of negligence,[n7] but is not negligence per se[n8] although there is some authority to the contrary.[n9]

Whether the violation of such a statute is characterized as negligence per se, or merely as evidence of negligence, recovery may not be based thereon unless such violation was a proximate cause of the injury complained of.[n10]

The act of a motorist in leaving his or her vehicle parked unattended with the motor running has figured as a possible element of negligence, justifying recovery by one injured by the movement of the vehicle.[n11]

So far as a motor vehicle with a standard transmission is concerned, the act of a motorist in leaving his or her parked vehicle with the ignition turned on is closely similar to the act of leaving the motor running, since if the vehicle is placed in gear and forced forward, the engine may start,[n12] and in a few cases the failure to turn off the ignition has figured as an element of negligence.[n13]

The failure to remove keys from the ignition may state a cause for negligence as to subsequent use of the vehicle.[n14] Also, where a key is left by a defendant in the ignition of an unlocked and unattended vehicle that is later involved in a motor vehicle accident involving the plaintiff, the defendant owes the plaintiff a duty when there is an applicable statute or ordinance.[n15]

Observation: Leaving the keys in the ignition, and the vehicle unlocked and unattended, is not by itself a special circumstance that imposes a duty on the owner of a motor vehicle to protect third persons against the possibility that a thief will steal the vehicle and injure them with it.[n16]

FOOTNOTES:

n1 Cwiklinski v. Jennings, 267 Ill. App. 3d 598, 204 Ill. Dec. 491, 641 N.E.2d 921 (1st Dist. 1994); Manchenton v. Auto Leasing Corp., 135 N.H. 298, 605 A.2d 208 (1992).

n2 Manchenton v. Auto Leasing Corp., 135 N.H. 298, 605 A.2d 208 (1992); Williams v. Bill's Custom Fit, Inc., 821 S.W.2d 432 (Tex. App. Waco 1991).

As to a vehicle owner's duty to prevent theft of his or her vehicle, generally, see § 615.

n3 Alberone v. King, 26 Conn. Supp. 98, 213 A.2d 534 (Super. Ct. 1965); Mezyk v. National Repossessions, Inc., 241 Or. 333, 405 P.2d 840 (1965).

n4 Negri v. Liebl, 251 N.J. Super. 296, 598 A.2d 25 (Law Div. 1991); Clay v. Moss, 186 A.D.2d 780, 589 N.Y.S.2d 80 (2d Dep't 1992); Pow v. Black, 182 A.D.2d 484, 582 N.Y.S.2d 186 (1st Dep't 1992); Hartsfield v. McRee Ford, Inc., 893 S.W.2d 148 (Tex. App. Houston 1st Dist. 1995), writ denied, (Aug. 1, 1995) (as to automobile dealership's precautions as to vehicles on lot).

n5 Pile v. City of Brandenburg, 215 S.W.3d 36 (Ky. 2006), as corrected on denial of reh'g, (Mar. 22, 2007) (holding that a police officer violated the statute requiring motorists to stop the engine and remove the keys before leaving a car unattended when he left his police cruiser, with an off-duty officer in the front seat and a handcuffed prisoner in the back-seat, without first stopping the engine or removing the ignition key); Manning by Manning v. Brown, 91 N.Y.2d 116, 667 N.Y.S.2d 336, 689 N.E.2d 1382 (1997) (holding that a vehicle owners did not violate a statute prohibiting any person in charge of a motor vehicle from permitting it to stand unattended without first stopping the engine and removing the key, and thus were not liable for injuries sustained by a passenger in an accident while riding in a stolen vehicle, where the driver of the stolen vehicle testified that she found the keys in the car under a set of papers out of plain view).

n6 Pile v. City of Brandenburg, 215 S.W.3d 36 (Ky. 2006), as corrected on denial of reh'g, (Mar. 22, 2007).

n7 Mackey v. Dorsey, 104 Md. App. 250, 655 A.2d 1333 (1995); McClenahan v. Cooley, 806 S.W.2d 767 (Tenn. 1991).

n8 Mackey v. Dorsey, 104 Md. App. 250, 655 A.2d 1333 (1995); Spurlock v. Alexander, 121 N.C. App. 668, 468 S.E.2d 499 (1996).

n9 Harper v. Epstein, 16 Ill. App. 3d 771, 306 N.E.2d 690 (1st Dist. 1974); Holliday v. Hartford Acc. & Indem. Co., 38 So. 2d 235 (La. Ct. App. 2d Cir. 1949).

n10 Roadway Exp. Inc. v. Piekenbrock, 306 N.W.2d 784 (Iowa 1981); Story Services, Inc. v. Ramirez, 863 S.W.2d 491 (Tex. App. El Paso 1993), writ denied, (Mar. 9, 1994).

n11 Nance v. Parks, 266 N.C. 206, 146 S.E.2d 24, 15 A.L.R.3d 1377 (1966); Story Services, Inc. v. Ramirez, 863 S.W.2d 491 (Tex. App. El Paso 1993), writ denied, (Mar. 9, 1994) (automobile dealership liable for leaving vehicle unattended with keys in ignition).

n12 Ney v. Yellow Cab Co., 2 Ill. 2d 74, 117 N.E.2d 74, 51 A.L.R.2d 624 (1954); Tierney v. New York Dugan Bros., 288 N.Y. 16, 41 N.E.2d 161, 140 A.L.R. 534 (1942).

n13 Weiss v. King, 151 So. 681 (La. Ct. App. 2d Cir. 1934); Maggiore v. Laundry & Dry Cleaning Service, 150 So. 394 (La. Ct. App., Orleans 1933) (electric truck).

n14 Eaton Const. Co. v. Edwards, 617 So. 2d 858 (Fla. Dist. Ct. App. 5th Dist. 1993).

A prisoner's tortious conduct, in stealing a police cruiser in which he was being held and driving it in a reckless manner while intoxicated, was not a superseding or intervening cause of the prisoner's head-on collision with a motorist, resulting in the motorist's death, as would relieve the police officer from liability arising from any negligence by the officer in leaving the keys in the ignition and the cruiser running with the prisoner in the back seat; leaving the key in the vehicle was a negligent act that created the opportunity for the prisoner to escape with the vehicle. Pile v. City of Brandenburg, 215 S.W.3d 36 (Ky. 2006), as corrected on denial of reh'g, (Mar. 22, 2007).

n15 Kozicki v. Dragon, 255 Neb. 248, 583 N.W.2d 336 (1998).

n16 May v. Nine Plus Properties, 143 Cal. App. 4th 1538, 50 Cal. Rptr. 3d 13 (5th Dist. 2006), as modified, (Oct. 19, 2006) and review denied, (Jan. 17, 2007) (stating that absent special circumstances, the owner of a motor vehicle has no duty to protect third persons against the possibility a thief will steal the vehicle and injure them with it).

SUPPLEMENT:

Cases

Generally, a vehicle owner generally does not act negligently simply by leaving the key in the ignition of a parked vehicle; such conduct can result in liability under certain circumstances, however, such as when an owner knows that, on previous occasions when the key remained in the car, an incompetent driver took it on joy rides. Bashlor v. Walker, 303 Ga. App. 478, 693 S.E.2d 858 (2010).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43

Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(8), 201(5), 211
Liability for personal injury or property damage caused by unauthorized use of automobile which has been parked with keys removed from ignition, 70 A.L.R.4th 276
Liability of motorist who left key in ignition for damage or injury caused by stranger operating the vehicle, 45 A.L.R.3d 787
Failure of motorist to cramp wheels against curb or turn them away from traffic, or to shut off engine, as causing accidental starting up of parked motor vehicle, 42 A.L.R.3d 1283
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 678 (Complaint, petition, or declaration -- Keys left in defendant's parked vehicle -- Second defendant stole vehicle and collided with plaintiff's vehicle stopped at intersection)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 679 (Complaint, petition, or declaration -- Keys left in defendant's parked vehicle -- Vehicle stolen by mental patient while vehicle was parked on public property -- Prima facie evidence of negligence by statute)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 878 (Allegation -- Improper parking -- Unattended vehicle with motor running)

200 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(4) Precautions against Movement of Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 923

§ 923 Extra precautions on grade or incline

An increasingly greater degree of care is exacted of a person who parks a motor vehicle on an incline or other place involving a risk that it may start and move without outside interference.[n1] Such a person has the duty generally imposed by statute,[n2] or in the exercise of reasonable care, to set the emergency brake.[n3] The failure to set the emergency brake on a motor vehicle left unattended upon a grade may constitute actionable negligence as to one injured by the resulting movement of the vehicle,[n4] even though the parked vehicle is set in motion by another vehicle striking it, where the setting of the brake would have prevented its movement when struck by the other vehicle.[n5] The plaintiff is not obliged to show that a specific negligent act or omission of the operator of the truck was the cause of its starting and moving backward; the question to be determined is whether or not the driver, when he or she parked the truck in the way described, used the care that an ordinarily prudent person would use under the circumstances then existing.[n6]

FOOTNOTES:

n1 Estridge v. Estridge, 333 S.W.2d 758 (Ky. 1960).

n2 § 313.

n3 Ryan v. Rawls, 260 So. 2d 137 (La. Ct. App. 2d Cir. 1972); Tate v. Bryant, 16 N.C. App. 132, 191 S.E.2d 433 (1972); Gowins v. Merrell, 1975 OK 135, 541 P.2d 857 (Okla. 1975).

n4 Phillips v. U.S., 743 F. Supp. 681 (E.D. Mo. 1990) (applying Mo law).

n5 Waldorf v. Sorbo, 10 A.D.2d 226, 198 N.Y.S.2d 555 (3d Dep't 1960), judgment aff'd, 9 N.Y.2d 703, 213 N.Y.S.2d 85, 173 N.E.2d 806 (1961).

n6 Bolio v. Scholting, 152 Neb. 588, 41 N.W.2d 913 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197

West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(8), 201(5), 211
Failure to set brakes, or maintain adequate brakes, as causing accidental runaway of parked motor vehicle, 42 A.L.R.3d 1252
Automobiles: liability of owner or operator of motor vehicle for injury, death, or property damage resulting from defective brakes, 40 A.L.R.3d 9
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 887 (Allegation -- Releasing plaintiff's automobile from parking place on hill -- Property damage)

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1589 (Instruction -- Duty to set brake when parked)

201 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(4) Precautions against Movement of Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 924

§ 924 Adequacy of brakes; duty to maintain brakes

The failure to maintain adequate brakes in a motor vehicle, as well as the failure to use them, may constitute actionable negligence where, as a result of the failure of the brakes, the parked vehicle starts up, causing injuries.[n1] Statutes requiring motor vehicles to be equipped with adequate brakes[n2] have sometimes been relied upon as creating a duty the breach of which gives rise to a cause of action in favor of a person injured by a motor vehicle which moved from its parking place as a result of such breach.[n3] Even apart from statute, parking a motor vehicle with inadequate brakes, without taking other proper steps to secure it in place, may constitute negligence, actionable to one injured as a result.[n4]

FOOTNOTES:

n1 As to liability for injuries resulting from defective brakes, generally, see §§ 753 to 755.

n2 § 199.

n3 Stevens v. Wood Sawmill, Inc., 426 N.W.2d 13 (S.D. 1988) (violation is negligence as a matter of law).

n4 Green v. Britton, 22 Conn. Supp. 71, 160 A.2d 497 (Super. Ct. 1960); Jones v. Brote, 354 Mass. 129, 235 N.E.2d 779 (1968).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(8), 201(5), 211

202 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(4) Precautions against Movement of Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 925

§ 925 Placing vehicle in gear; turning wheel toward curb

When a motor vehicle is left parked on a grade from which it might reasonably be expected to move if unsecured, the driver, in addition to effectively setting the brakes, may be required to take further precautions, such as putting it in gear.[n1] The cramping of the wheels against the curb is sometimes required by statute,[n2] the violation of which has been held to be negligence per se.[n3] The failure of a motorist who leaves a motor vehicle unattended upon a grade or other place involving risk of movement, to cramp the wheels against the curb or turn them away from traffic, as required by statute,[n4] or even in the absence of statute,[n5] may, in a proper case, constitute at least one element of negligence, actionable as to one injured by the resulting movement of the vehicle.

FOOTNOTES:

n1 Price v. Seidler, 408 S.W.2d 815 (Mo. 1966).

n2 § 313.

n3 Holliday v. Hartford Acc. & Indem. Co., 38 So. 2d 235 (La. Ct. App. 2d Cir. 1949); Farrish v. VanFossen, 212 Va. 815, 188 S.E.2d 201 (1972).

n4 DeMaine v. Brillhart, 224 Pa. Super. 241, 303 A.2d 506 (1973); Farrish v. VanFossen, 212 Va. 815, 188 S.E.2d 201 (1972).

n5 Small v. Tyres, 33 A.D.2d 1055, 308 N.Y.S.2d 730 (2d Dep't 1970); Smith v. Perkins, 5 N.C. App. 120, 168 S.E.2d 14 (1969).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(8), 201(5), 211
Failure of motorist to cramp wheels against curb or turn them away from traffic, or to shut off engine, as causing accidental starting up of parked motor vehicle, 42 A.L.R.3d 1283
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 400 (Complaint, petition, or allegation -- Negligent parking -- Failure to set brakes or turn wheels to curb)

203 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
d. Necessity and Adequacy of Precautions in Parking or Standing Vehicle
(4) Precautions against Movement of Parked or Standing Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 926

§ 926 Negligence of person injured

The question whether one injured by a motor vehicle which has moved from its parking place and runs loose is chargeable with negligence in failing to recognize and avoid the danger, has generally been regarded as a question of fact depending upon the circumstances of the particular case. Since a runaway vehicle is not a peril ordinarily to be anticipated or guarded against, a finding of freedom from negligence which would bar or diminish such person's recovery has been found justified in some cases.[n1] However, under particular circumstances one may be found negligent in failing to foresee and avoid the danger or movement of a parked vehicle.[n2]

FOOTNOTES:

n1 Barnett v. Furst, 99 Cal. App. 2d 767, 222 P.2d 470 (3d Dist. 1950); Pelland v. D'Allesandro, 321 Mass. 387, 73 N.E.2d 590 (1947); Craddock v. Torrence Oil Co., 322 Mich. 510, 34 N.W.2d 51 (1948).

As to contributory or comparative negligence, generally, see § 947.

n2 Bolio v. Scholting, 152 Neb. 588, 41 N.W.2d 913 (1950).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs

West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(8), 201(5), 211
Liability for personal injury or property damage caused by unauthorized use of automobile which has been parked with keys removed from ignition, 70 A.L.R.4th 276
Contributory negligence as defense to action for injury or damage caused by accidental starting up of parked motor vehicle, 43 A.L.R.3d 930

204 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
e. Driving Out from Parked or Standing Position

8 Am Jur 2d Automobiles and Highway Traffic § 927

§ 927 Generally

The operator of a motor vehicle who drives it forward from a parked or standing position is required to exercise reasonable care to avoid collision with other vehicles parked in the vicinity or moving in the traveled portion of the highway or street, as well with persons who have alighted from the vehicle, and must refrain from moving the vehicle until he or she has ascertained that such a movement is consonant with the safety of others.[n1] The operator is under a duty to give others who may be affected by this movement a signal or warning of his or her intention,[n2] which duty is usually imposed by statute.[n3] The duty of a person attempting to enter the highway from the shoulder is like that of a person entering from a private driveway.[n4]

The motorist driving forward from a parked or standing position who fails to keep a proper lookout, for other vehicles parked in the vicinity or moving in the traveled portion of the highway or street, or who otherwise fails to take proper steps to avoid striking them, may be found liable to another who was in the exercise of due care.[n5] However, notwithstanding the duty of one moving a parked motor vehicle forward to yield the right of way to passing motorists, evidence that the plaintiff's vehicle was being so moved at the time it was struck by the defendant's passing vehicle, has been held not to require a finding that the plaintiff was chargeable with negligence barring or diminishing his or her recovery from the negligent defendant, where there is evidence justifying a finding that the defendant acted with reasonable care under the circumstances, or that the defendant's negligence was not a proximate cause of the collision.[n6] Nevertheless, there is no doubt that evidence that the plaintiff was negligent in moving a parked vehicle forward from the curb into traffic will support a finding that he or she was guilty of causative negligence which will bar or diminish his or her recovery from the passing motorist.[n7]

In stating the correlative duties of operators of parked motor vehicles moving forward into traffic, and other users of the roadway, the courts have drawn little distinction between the movement of vehicles from the curb on city streets and the movement from the shoulder of a rural highway into the traffic lane. In a collision between a motor vehicle moving forward from a parking place on the shoulder of the open highway and a passing motor vehicle, evidence as to the failure of the operator of the parked vehicle to maintain a lookout, or to signal movement, or to yield the right of way to the passing vehicle would justify a finding of negligence rendering him or her liable for resulting injuries,[n8] or barring or diminishing recovery for the operator's own injuries.[n9] However, the mere fact that a driver pulled from the shoulder onto the highway and collided with a passing motorist does not require a finding that he or she was negligent, where there is evidence indicating that under the circumstances the driver was not negligent, or that his or her negligence was not a proximate cause of the collision.[n10] Similarly, a driver pulling out onto a highway from the shoulder thereof by a vehicle in daylight hours at a substantial distance ahead of overtaking traffic may not be inferred to be negligent, but there is a suggestion that a rear-end accident subsequently occurring was actually precipitated by the action of the driver behind in failing to see the vehicle ahead of him or her or in failing to stop or to pull out onto either of the other available two lanes.[n11]

FOOTNOTES:

n1 McBride v. Woods, 124 Colo. 384, 238 P.2d 183, 29 A.L.R.2d 101 (1951) (moving vehicle); Rague v. Staten Island Coach Co., 288 N.Y. 206, 42 N.E.2d 488 (1942) (vehicle parked in the vicinity); Irwin v. Mucha, 154 A.D.2d 895, 545 N.Y.S.2d 863 (4th Dep't 1989) (persons).

n2 McBride v. Woods, 124 Colo. 384, 238 P.2d 183, 29 A.L.R.2d 101 (1951).

n3 § 309.

n4 Loveday v. Travelers Ins. Co., 585 So. 2d 597 (La. Ct. App. 3d Cir. 1991), writ denied, 590 So. 2d 65 (La. 1991).

As to entering from private driveway, see § 939.

n5 Ebert v. Newton, 97 Idaho 418, 546 P.2d 64 (1976) (moving vehicle); Johnson v. Enfield, 192 Neb. 191, 219 N.W.2d 451 (1974) (vehicle parked in the vicinity).

n6 Engelman v. Chicago Transit Authority, 338 Ill. App. 129, 86 N.E.2d 890 (1st Dist. 1949).

n7 Capital Transit Co. v. Holloway, 35 A.2d 649 (Mun. Ct. App. D.C. 1944).

As to the effect of negligence by the injured party to bar, or diminish, recovery of damages, see §§ 947, 949.

n8 Saliba v. Allison, 192 Ark. 1021, 96 S.W.2d 443 (1936); Spackman v. Carson, 117 Utah 390, 216 P.2d 640 (1950).

n9 Lollar v. Southern Farm Bureau Cas. Ins. Co., 113 So. 2d 337 (La. Ct. App. 2d Cir. 1959).

n10 Gouzea v. Pacific Greyhound Lines, 74 Cal. App. 2d 794, 169 P.2d 398 (1st Dist. 1946); Hargis v. Noel, 310 Ky. 542, 221 S.W.2d 94 (1949).

n11 Joyce v. Boyer's Estate, 46 A.D.2d 727, 360 N.Y.S.2d 347 (4th Dep't 1974).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225

West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 201(5), 211
Duty and liability of vehicle drivers within parking lot, 62 A.L.R.2d 288
Liability for injury or damage growing out of pulling out of parked motor vehicle, 29 A.L.R.2d 107
Duties and liabilities between owners or drivers of parked or parking vehicles, 25 A.L.R.2d 1224
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 273 (Complaint, petition, or declaration -- Left turn -- Defendant's vehicle moving from parked position -- No turn signal given -- Violation of statutes -- Negligence per se)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 770 (Allegation -- Gross negligence -- Parked vehicle suddenly driven into traffic)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 864 (Allegation -- Backing -- From parked position)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 1213 (Answer -- Negligence of plaintiff operator -- Driving away from curb without giving warning -- Failure to yield right of way)

205 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
e. Driving Out from Parked or Standing Position

8 Am Jur 2d Automobiles and Highway Traffic § 928

§ 928 Backing

The operator of a motor vehicle parked ahead of another motor vehicle, who backs up in leaving the parking space, is under a duty to exercise reasonable care not to collide with the vehicle behind, and the exercise of ordinary care will ordinarily require the backing motorist to keep a lookout behind sufficient to apprise him or her of the presence of other vehicles which may be damaged by his or her movement, and may require the operator to give appropriate warning of the intention to back.[n1] The duty to take care for vehicles which may be occupying space behind a parked vehicle may be imposed even though the vehicle which is being backed is standing on private property in a driveway.[n2] Likewise, backing from a driveway into a street without taking care to observe and avoid other vehicles parked in the street may be found to constitute negligence.[n3] In fact, the violation of a statute concerning backing into traffic may constitute negligence per se.[n4]

The operator of a parked motor vehicle who knows that another vehicle is parked close behind, but deliberately backs toward or into the other vehicle in order to leave the parking space, using excessive force or otherwise failing to exercise due care, may be held liable for resulting injury or damage even though the vehicle behind is improperly parked.[n5] While motorists who park too close to other vehicles in violation of traffic regulations do so at the risk of having their own vehicle damaged accidentally during efforts of the owner of another vehicle to extricate him- or herself, the victim of such a situation must show care in efforts to move the other vehicle and is not entitled to use excessive force.[n6]

A motorist, in backing from a parking space, must, in the exercise of reasonable care, look for others in the traveled portion of the way not only before backing, but during the backward movement.[n7]

FOOTNOTES:

n1 Hinson v. Sparrow, 21 N.C. App. 554, 204 S.E.2d 925 (1974).

As to backing, generally, see §§ 857 to 863.

n2 Brown v. Babcock, 265 A.D. 596, 40 N.Y.S.2d 428 (4th Dep't 1943).

n3 Ralph J. Rimer, Inc. v. Stanz, 122 Ind. App. 178, 101 N.E.2d 428 (1951).

n4 Treib v. Kern, 513 N.W.2d 908 (S.D. 1994).

n5 Conn v. Hillard, 82 A.2d 368, 25 A.L.R.2d 1220 (Mun. Ct. App. D.C. 1951).

n6 Conn v. Hillard, 82 A.2d 368, 25 A.L.R.2d 1220 (Mun. Ct. App. D.C. 1951).

n7 Taulborg v. Andresen, 119 Neb. 273, 228 N.W. 528, 67 A.L.R. 642 (1930).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369,

371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 201(5), 211
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 780 (Allegation -- Pedestrian struck by vehicle while standing in gutter -- Improper backing up of vehicle)

206 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
e. Driving Out from Parked or Standing Position

8 Am Jur 2d Automobiles and Highway Traffic § 929

§ 929 Duty and liability of other parked or passing motorist

The owner of a parked motor vehicle backed into by the vehicle parked ahead generally is not chargeable with negligence as a matter of law, in failing to take steps to avoid injury or damage from this cause, the courts holding under such circumstances that the question of the plaintiff's due care should be submitted to the jury which, in most cases, has failed to find negligence which would bar or diminish recovery.[n1] However, a plaintiff has been deemed negligent, or assumed the risk, where the defendant's backing vehicle struck the plaintiff as the plaintiff was affixing license plates to his or her car while voluntarily crouched between the two parked vehicles for a substantial period of time, and where the defendant entered the vehicle, started the engine, and ran the motor for 15 seconds before backing and striking the plaintiff.[n2]

A motorist proceeding along a highway is under a general duty to keep a reasonable lookout ahead for other vehicles and to keep his or her vehicle under reasonable control so as to avoid collision with other vehicles which may move into the highway in the exercise of reasonable care.[n3] The rule is that, if the road upon which the motorist is traveling is one where other motor vehicles are ordinarily parked, the passing motorist is under a duty to anticipate that some of the parked vehicles may be moving into traffic, and to exercise reasonable care to keep a lookout for and to avoid such vehicles.[n4]

In cases involving a collision between a motorist traveling along the roadway and a motorist pulling out of a parking space, evidence as to the negligence of the passing motorist have raised a question for the jury, and verdicts for the plaintiff have been sustained, against the contention that the passing motorist was negligent with respect to lookout and control of his or her vehicle, and that this negligence, rather than the movement of the parked vehicle, proximately caused the collision, so that the operator of the passing vehicle should be charged with liability.[n5] In cases where it appeared that the operator of the parked motor vehicle was guilty of negligence in moving it into traffic where it was struck by a passing motorist, attempts have been made to charge the passing motorist with liability upon the theory that he or she had the last clear chance to avoid the collision, and the doctrine has been held applicable,[n6] although in other cases, it has been held inapplicable.[n7]

A motorist proceeding along a highway is not required, at his or her peril, to see and avoid such objects as motor vehicles parked at the side of the road which may be driven into the path ahead, and where he or she does collide with a vehicle moving into his or her path from a parked position, the question of the motorist's negligence in failing to keep a proper lookout ahead as barring or diminishing recovery has generally been held one of fact for the jury, and verdicts for the passing motorist have been sustained although it appeared that a more vigilant lookout might have enabled him or her to avoid the collision.[n8] The sudden appearance on the road of a motor vehicle moving from a parking place into the line of traffic frequently presents a situation calling for the application of the emergency doctrine in favor of the passing motorist so that, in determining whether he or she is chargeable with negligence in failing to avoid a collision,

so as to bar or diminish recovery, the motorist is not required to have acted in the most judicious manner, but is held only to the standard of a reasonably prudent person under like circumstances.[n9]

A motorist may be found negligent as against the contention that the negligence of the operator of the parked vehicle was the sole cause of the collision, where the motorist, in attempting to avoid a collision with a motor vehicle which has been parked at the side of the road and which moved into traffic in the path of the motorist, collided with other motorists approaching from the opposite direction.[n10] Also, a motorist may be found chargeable with causative negligence where, in avoiding, or colliding with, a motor vehicle moving from a parking place into the line of traffic, he or she strikes the other vehicle or drives it into another parked motor vehicle.[n11]

FOOTNOTES:

n1 Le Blanc v. Jordy, 10 So. 2d 64 (La. Ct. App., Orleans 1942); Brown v. Babcock, 265 A.D. 596, 40 N.Y.S.2d 428 (4th Dep't 1943).

As to the effect of negligence by the injured party to bar, or diminish, recovery of damages, see §§ 947, 949.

n2 Garcia v. Howard, 200 Neb. 57, 262 N.W.2d 190 (1978).

n3 §§ 421, 422.

n4 Saeger v. Canton City Lines, 78 Ohio App. 211, 33 Ohio Op. 526, 69 N.E.2d 533 (5th Dist. Stark County 1946).

n5 Cedergren v. Hadaway, 91 N.H. 270, 18 A.2d 380 (1941); Greenfield v. Dusseault, 60 N.J. Super. 436, 159 A.2d 433 (App. Div. 1960), judgment aff'd, 33 N.J. 78, 161 A.2d 475 (1960).

n6 J. Foster & Co. v. Wooldridge, 199 Ark. 551, 134 S.W.2d 526 (1939); Selinsky v. Olsen, 38 Cal. 2d 102, 237 P.2d 645 (1951).

n7 Giovannoni v. Union Ice Co., 108 Cal. App. 190, 291 P. 461 (3d Dist. 1930); Van Baast v. Thibaut Feed Mills, 151 So. 226 (La. Ct. App. 1st Cir. 1933).

n8 Mentzer v. Ziron, 118 Conn. 704, 174 A. 260 (1934); Pratt Fruit Co. v. Sparks Bros. Bus Co., 313 Ky. 593, 233 S.W.2d 92 (1950).

n9 Coca Cola Bottling Co. of Blytheville v. Doud, 189 Ark. 986, 76 S.W.2d 87 (1934); Simon v. Ciancio, 475 P.2d 343 (Colo. Ct. App. 1970).

n10 Saeger v. Canton City Lines, 78 Ohio App. 211, 33 Ohio Op. 526, 69 N.E.2d 533 (5th Dist. Stark County 1946).

n11 Rovella v. Small, 270 A.D. 784, 59 N.Y.S.2d 498 (3d Dep't 1946).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles

A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 173(6), 201(5), 211
Liability for injury or damage caused in collision with, or avoiding collision with, open door of parked automobile, 92 A.L.R.2d 1037
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 258 (Complaint, petition, or declaration -- Pulling out from curb parking -- Struck by speeding vehicle -- Damage to vehicle)

207 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
f. Opening Door or Leaving Door Open

8 Am Jur 2d Automobiles and Highway Traffic § 930

§ 930 Generally

An individual who opens the door of a parked vehicle into a traffic lane is held to the same degree of care as one who projects him- or herself physically into a street or highway;[n1] however, in a more recent decision, the reviewing court refused to find any similarity in the two situations, holding that it is for the jury to determine whether the plaintiff is contributorily negligent in slightly opening the left door of his or her parked car without looking first.[n2]

A motorist is bound to make a proper lookout for approaching traffic prior to opening the door of a vehicle into the path of passing traffic, and failure to do so may constitute negligence rendering such motorist liable for resulting damage,[n3] or barring, or diminishing, recovery for injuries or damages to such motorist.[n4] However, opening a door facing the traveled portion of a highway for the purpose of disembarking from the vehicle does not necessarily constitute negligence.[n5]

FOOTNOTES:

n1 Seiler v. Philadelphia Rapid Transit Co., 111 Pa. Super. 69, 169 A. 422 (1933).

n2 Twin City Lines, Inc. v. Houck, 226 Ark. 124, 289 S.W.2d 198 (1956).

n3 Chaney v. Tingley, 174 Ind. App. 191, 366 N.E.2d 707 (1977); Department of Highways v. Smith, 355 So. 2d 1064 (La. Ct. App. 4th Cir. 1978).

Oventrop v. Bi-State Development Agency, 521 S.W.2d 488 (Mo. Ct. App. 1975).

n4 Green v. Frazier, 139 Ind. App. 320, 216 N.E.2d 362 (1966); Westerfield v. Guichard, 233 So. 2d 19 (La. Ct. App. 4th Cir. 1970).

n5 Mississippi Valley Public Service Co. v. Larson, 255 Wis. 115, 38 N.W.2d 19 (1949).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530

A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 201(5), 211
Liability for injury or damage caused in collision with, or avoiding collision with, open door of parked automobile, 92 A.L.R.2d 1037

208 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
11. Parking or Standing
f. Opening Door or Leaving Door Open

8 Am Jur 2d Automobiles and Highway Traffic § 931

§ 931 Liability in particular factual circumstances

Instances in which negligence in opening the door of a parked vehicle on the traffic side of such vehicle[n1] has been alleged or shown, include accidents where the passing vehicle was a bicycle,[n2] a motorcycle,[n3] a pick-up truck,[n4] an automobile,[n5] a streetcar,[n6] a passenger bus,[n7] and a horse-drawn wagon.[n8] Where the plaintiff was threatened by a second defendant who swerved to avoid a suddenly-opened door of the first defendant's parked automobile, which front door was opened in the face of oncoming traffic, the first defendant is deemed negligent, but the second defendant's conduct caused by a sudden emergency created by the first defendant is deemed not to constitute negligence.[n9]

The doctrine of res ipsa loquitur[n10] has been applied in finding a taxicab owner liable for injuries to a prospective passenger who was injured while stooping to attract the attention of the operator of the parked cab and the door was opened in his or her face.[n11]

FOOTNOTES:

n1 § 930.

n2 Karnes v. Ace Cab Co., 287 S.W.2d 378 (Mo. Ct. App. 1956); Krieger v. Oreste, 218 Or. 256, 344 P.2d 541 (1959).

n3 Wallace v. Nelson, 287 Minn. 438, 178 N.W.2d 698 (1970); Evans v. General S.S. Corp., 220 Or. 476, 349 P.2d 269 (1960).

n4 Chaney v. Tingley, 174 Ind. App. 191, 366 N.E.2d 707 (1977).

n5 Green v. Frazier, 139 Ind. App. 320, 216 N.E.2d 362 (1966); Maher v. Alonso, 222 So. 2d 562 (La. Ct. App. 4th Cir. 1969).

n6 Reidel & Fishel v. Philadelphia Rapid Transit Co., 103 Pa. Super. 387, 157 A. 36 (1931).

n7 Oventrop v. Bi-State Development Agency, 521 S.W.2d 488 (Mo. Ct. App. 1975).

n8 Whalen v. Sidney Wanzer & Sons, 343 Ill. App. 486, 99 N.E.2d 583 (1st Dist. 1951).

n9 Mitchell v. Fowler, 295 So. 2d 41 (La. Ct. App. 4th Cir. 1974).

n10 § 1127.

n11 Peterson v. De Luxe Cab Co., 225 Iowa 809, 281 N.W. 737 (1938).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760,

770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]173(1), 201(5), 211

209 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
12. Towing and Pushing

8 Am Jur 2d Automobiles and Highway Traffic § 932

§ 932 Towing, generally

Although the towing of a motor vehicle along a highway or street does not constitute negligence per se,[n1] a towing operation requires the exercise of that care which an ordinarily prudent person would exercise under existing conditions or circumstances, or commensurate with the known or the foreseeable dangers incident to the operation.[n2] Since a towing operation presents, in a sense, an obstruction on the highway, the operation requires the exercise of care which a reasonably prudent person would exercise while engaged in towing, with its known and reasonably foreseeable hazards.[n3] The driver of the towing vehicle must keep a proper lookout with regard to other traffic and the towed vehicle.[n4]

A professional tow truck operator may be held to a different standard of care in carrying out towing operations due to experience and the type of risk involved in the job.[n5]

In those jurisdictions where a vehicle may be deemed a "dangerous instrumentality,"[n6] for the purposes of determining liability, a towed vehicle which is not operating on its own power is not a dangerous instrumentality, but rather a load being hauled by the towing vehicle.[n7]

FOOTNOTES:

n1 Weddle v. Loges, 52 Cal. App. 2d 115, 125 P.2d 914 (1st Dist. 1942); Creamer v. Rude, 37 Ill. App. 2d 148, 185 N.E.2d 345 (4th Dist. 1962).

n2 Pilgrim v. Joyner, 234 Ark. 945, 355 S.W.2d 616 (1962); Turner v. Jentzen, 243 Or. 427, 414 P.2d 316 (1966).

n3 Harry Holder Motor Co. v. Davidson, 243 S.W.2d 926 (Ky. 1951); Scarlette v. Grindstaff, 258 N.C. 159, 128 S.E.2d 221 (1962); R & S Auto Service v. McGill, 1951 OK 373, 205 Okla. 495, 238 P.2d 1089 (1951).

n4 Lyons v. Lange, 447 N.W.2d 407 (Iowa Ct. App. 1989).

n5 Ramos v. Triborough Bridge and Tunnel Authority, 179 A.D.2d 471, 578 N.Y.S.2d 181 (1st Dep't 1992).

n6 § 403.

n7 Cheung v. Ryder Truck Rental, Inc., 595 So. 2d 82 (Fla. Dist. Ct. App. 5th Dist. 1992).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]174(1) to 174(4), 199
Liability for injury incident to towing automobile, 30 A.L.R.2d 1019

210 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
12. Towing and Pushing

8 Am Jur 2d Automobiles and Highway Traffic § 933

§ 933 Particular factual circumstances as negligence

The liability of one towing a vehicle with another may be predicated upon the failure of the person operating the towing vehicle to maintain a safe speed under the circumstances and failure to maintain control of the towing vehicle [n1] or of the towed vehicle. [n2]

The use of a tow connection in the towing of a motor vehicle under circumstances calculated to obscure its presence or make its discovery difficult, without reasonable warning, lighting, or indication of its presence or position, may constitute causal negligence and permit recovery of damages by anyone who, in the exercise of reasonable care, is injured by it. [n3] Conversely, where an automobile rear-ends another automobile being towed by a pickup truck, the drivers of the pickup truck and the towed automobile are not liable for injuries to the other automobile's passenger, where the evidence shows that the towed automobile was operating emergency flasher and the lights of the pickup truck were lit. [n4]

The operator of a towing vehicle may be held guilty of negligence in arranging the towing equipment and in executing the towing operation in such a manner as to permit the towed vehicle to swerve onto the wrong side of the road. [n5]

A driver may be statutorily obligated to use safety chains in connection with a trailer hitch, of sufficient size and strength to prevent parting of the vehicles if the coupling device breaks or becomes disengaged, and the failure to do so constitutes negligence per se. [n6]

Negligence may also be predicated upon the fact that the operator of the towed vehicle did not stay directly behind the towing vehicle, and on the right side of the road, but permitted it to swing across the road onto the wrong side. [n7] A trailer owner may be held strictly liable for a defective trailer hitch and inadequate chains to the extent of injuries caused by the breaking loose of the towed vehicle from the hitch. [n8]

FOOTNOTES:

n1 Averett v. Alexander, 336 So. 2d 227 (La. Ct. App. 1st Cir. 1976).

n2 Glasgow v. Dorn, 220 S.W. 509 (Mo. Ct. App. 1920) (brakes of the towed car are out of order).

n3 Vashaw v. Marquette Public Service Garage, 288 Mich. 363, 284 N.W. 910 (1939); McMillen v. Rogers, 175 Or. 453, 154 P.2d 219 (1944).

n4 Strother v. State Farm Mut. Auto. Ins. Co., 340 So. 2d 321 (La. Ct. App. 1st Cir. 1976), writ denied, 341 So. 2d 1128 (La. 1977).

n5 Gillis v. Farmers Union Oil Co. of Rhame, 186 F. Supp. 331 (D.N.D. 1960) (applying Federal and North Dakota law).

n6 Murry v. Advanced Asphalt Co., 1987 OK CIV APP 88, 751 P.2d 209 (Ct. App. Div. 3 1987).

n7 Rayner v. Ramirez, 159 Cal. App. 2d 372, 324 P.2d 83 (4th Dist. 1958); Hanks v. Landert, 37 Wash. 2d 293, 223 P.2d 443, 30 A.L.R.2d 1012 (1950).

n8 Economy Fire and Cas. Co. v. Goar, 551 So. 2d 957 (Ala. 1989); Galloway v. State Through Dept. of Transp. and Development, 654 So. 2d 1345 (La. 1995).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43

Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]174(1) to 174(4), 199

211 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
12. Towing and Pushing

8 Am Jur 2d Automobiles and Highway Traffic § 934

§ 934 Use of lighting or warning devices

Liability may also be predicated upon, or a jury question may be raised by reason of, the fact that a motor vehicle is being towed without sufficient lights [n1] or warning signs [n2] upon causing another motorist to collide with it. [n3] Conversely, where adequate warnings are present, even if on the towing vehicle but visible to vehicles following the towed vehicle, no negligence on this basis may be deemed to result. [n4]

A vehicle coming to the aid of another vehicle disabled on the traveled portion of the highway does not generally have an obligation to place warning devices to indicate the presence of the disabled vehicle; [n5] this rule applies to tow trucks. [n6]

FOOTNOTES:

n1 Sears v. Beverley, 171 F.2d 659 (4th Cir. 1948); Baker v. Hemingway Bros. Interstate Trucking Co., 299 Mass. 76, 12 N.E.2d 95 (1937).

n2 Gray v. Poplar Grove Planting & Refining Co., Inc., 321 So. 2d 919 (La. Ct. App. 1st Cir. 1975).

n3 As to lighting of parked vehicles, see § 906.

n4 Dawson v. Clark, 564 So. 2d 1291 (La. Ct. App. 2d Cir. 1990), writ denied, 568 So. 2d 1085 (La. 1990).

n5 § 916.

n6 Henderson v. Beckman Texaco, 213 Ill. App. 3d 1054, 157 Ill. Dec. 951, 573 N.E.2d 369 (5th Dist. 1991).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings

A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]174(1) to 174(4), 199

212 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
12. Towing and Pushing

8 Am Jur 2d Automobiles and Highway Traffic § 935

§ 935 Liability for damage to towed vehicle or injury to occupant thereof

In the absence of any agreement to the contrary, the operator of a motor vehicle towing another motor vehicle may be held liable for damaging the towed vehicle because of a failure to exercise ordinary care in executing the towing maneuver.[n1] The liability on the theory of negligence of one of the parties to a towing operation, for damages to the towed vehicle or injury to an occupant thereof, is a question for the jury under the facts developed in individual cases.[n2] The lack of ordinary care may arise where the operator of the towed vehicle, being experienced in such matters, knew that the "hookup"was improper and failed to request a change.[n3]

In actions against third persons for damage to a towed vehicle or injury to an occupant thereof, the specific facts and circumstances have usually been such as to raise questions for the trier of fact as to negligence of either or both parties, and proximate cause, resulting in recovery against such third persons under some circumstances.[n4] However, recovery has been denied or diminished in such cases on the ground or finding that the owner or operator of the towed vehicle is, under the circumstances, guilty of negligence.[n5]

FOOTNOTES:

n1 Weddle v. Loges, 52 Cal. App. 2d 115, 125 P.2d 914 (1st Dist. 1942).

n2 Weisman v. Sauder Chevrolet Co., 402 Pa. 272, 167 A.2d 308 (1961).

n3 Gillis v. Farmers Union Oil Co. of Rhame, 186 F. Supp. 331 (D.N.D. 1960) (applying federal and North Dakota law).

n4 Lafayette Motor Co., Inc. v. Breaux, 330 So. 2d 348 (La. Ct. App. 3d Cir. 1976).

n5 Conner v. Southern Pac. Co., 38 Cal. 2d 633, 241 P.2d 535 (1952).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]174(1) to 174(4), 199

213 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
12. Towing and Pushing

8 Am Jur 2d Automobiles and Highway Traffic § 936

§ 936 Liability for damage to towing vehicle or injury to occupant thereof

Recovery for injuries to or death of the operator or an occupant of a towing vehicle has, under the facts and circumstances of the individual cases, been allowed against some other party to the towing operation.[n1]

Where recovery has been sought for injury to or death of the occupant of, or for damages to, a towing vehicle against one not a party to the towing operation, the evidence has been held sufficient to present a submissible case for the plaintiff.[n2] However, recovery may be barred or diminished where the operator of the towing vehicle failed to exercise requisite care in the operation of such vehicle with respect to speed and braking, so that when he or she stopped at an intersection the vehicle was propelled forward by the towed vehicle and collided with the defendant's vehicle.[n3]

FOOTNOTES:

n1 Williams v. Cooper, 224 Ark. 317, 273 S.W.2d 15 (1954); Ewer v. Johnson, 44 Wash. 2d 746, 270 P.2d 813 (1954).

n2 McNown v. Pacific Freight Lines, 50 Cal. App. 2d 221, 122 P.2d 582 (4th Dist. 1942) (personal injuries); Chattanooga Ice Delivery Co. v. George F. Burnett Co., 24 Tenn. App. 535, 147 S.W.2d 750 (1940) (property damage).

n3 Van Wie v. Hill, 15 Wis. 2d 98, 112 N.W.2d 168 (1961).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations

A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]174(1) to 174(4), 199

214 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
12. Towing and Pushing

8 Am Jur 2d Automobiles and Highway Traffic § 937

§ 937 Negligence of injured person

Recovery based on the negligence of the towing operator[n1] will be barred or diminished where the injured person is guilty of negligence, as where the injured person failed to observe the towline,[n2] or was proceeding at an excessive rate of speed and without maintaining an adequate lookout at the time of the collision.[n3] Where a motorist meets a motor vehicle towing another, such motorist may not be found guilty of negligence merely in failing to anticipate that the towing or the towed vehicle would cross the center line of the road,[n4] or because the motorist does not reduce his or her otherwise lawful rate of speed,[n5] where he or she has no reason to think that an unusual situation fraught with danger exists.

Recovery may not be allowed for injuries to a passenger in a car being towed which swerved and struck a bridge abutment when the towing car suddenly slowed down without prearranged signal, the court noting that the driver of the towed car had an obligation to exercise ordinary care notwithstanding that the first driver failed to signal.[n6]

FOOTNOTES:

n1 § 932.

n2 Richter v. Dahlman & Inbush Co., 179 Wis. 7, 190 N.W. 841, 30 A.L.R. 747 (1922).

n3 Fraley v. J. Calvert's Sons, 266 Mich. 460, 254 N.W. 167 (1934).

n4 Todd v. Nesta, 305 Pa. 280, 157 A. 678 (1931).

n5 Frazier v. F. Strauss & Son, 172 So. 385 (La. Ct. App. 2d Cir. 1937).

n6 Scarlette v. Grindstaff, 258 N.C. 159, 128 S.E.2d 221 (1962).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530

A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]174(1) to 174(4), 199

215 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
12. Towing and Pushing

8 Am Jur 2d Automobiles and Highway Traffic § 938

§ 938 Pushing, generally

Pushing a disabled or stalled motor vehicle along a highway or street requires the exercise of the care which an ordinarily prudent person would use under existing conditions or circumstances, or commensurate with known or foreseeable dangers incident to the operation.[n1] Operating a motor vehicle pushing another vehicle requires a high degree of skill; power must be exercised carefully, the brakes must be used quickly and accurately, steering is more difficult than usual, and the operator of the pushing vehicle is under a duty to know and give the signals required of the operator of a motor vehicle.[n2] While the owner or operator of a motor vehicle pushing another vehicle may properly be found negligent under the circumstances, in connection with the pushing operation,[n3] negligence incident to the pushing of one motor vehicle by another has not been established with respect to the operator of the pushing vehicle.[n4]

Pushing operations are not within the letter or spirit of the general statutory provisions regulating or prohibiting the stopping of motor vehicles or the removal of such vehicles from the highway,[n5] and the operator of a pushing vehicle is not subject to liability or negligence predicated alone upon the violation of such a statute.[n6]

The driver of a motor vehicle which is being pushed along a public highway or street is required to exercise, not the highest degree of care for the safety of others using the way, but ordinary care in such respect,[n7] and the owner of a motor vehicle which is being pushed may be held liable for injuries proximately resulting from failing to exercise such care.[n8]

A passenger in a vehicle pushing another may be chargeable with negligence where he or she actively participates in the operation.[n9]

FOOTNOTES:

n1 Duffy v. Harden, 179 N.W.2d 496 (Iowa 1970); Miller v. Query, 201 Va. 193, 110 S.E.2d 198, 82 A.L.R.2d 912 (1959).

n2 Miller v. Query, 201 Va. 193, 110 S.E.2d 198, 82 A.L.R.2d 912 (1959).

n3 Duffy v. Harden, 179 N.W.2d 496 (Iowa 1970); Gieser v. Hambek, 188 N.W.2d 401 (N.D. 1971).

n4 Wilson v. Rogers, 100 Ga. App. 305, 111 S.E.2d 254 (1959); Miller v. Query, 201 Va. 193, 110 S.E.2d 198, 82 A.L.R.2d 912 (1959).

n5 As to regulations prohibiting the stopping of motor vehicles on a highway, see § 315.

n6 Miller v. Query, 201 Va. 193, 110 S.E.2d 198, 82 A.L.R.2d 912 (1959).

n7 Wilson v. Esch, 346 Ill. App. 466, 105 N.E.2d 313 (3d Dist. 1952); McGrath v. Industrial Piping Co., 340 So. 2d 1037 (La. Ct. App. 1st Cir. 1976).

n8 Boyle v. McGill, 337 Ill. App. 647, 86 N.E.2d 257 (2d Dist. 1949).

n9 King v. Mention, 116 Ga. App. 209, 156 S.E.2d 488 (1967).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493

The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]174(1) to 174(4), 199
Negligence in connection with the pushing of one motor vehicle by another, 82 A.L.R.2d 918

216 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 939

§ 939 Emerging from driveway or private road

The operator of a motor vehicle proceeding upon a public highway is under no duty to anticipate that the driver or operator of another motor vehicle about to enter the highway from a private road or driveway will fail to yield the right of way to all vehicles on the public highway as required by statute,[n1] and, in the absence of anything giving or which should give notice to the contrary, he or she is entitled to assume and to act upon the assumption, even to the last moment, that the driver of the motor vehicle so entering the public highway will, in obedience to the statute, yield the right of way.[n2] However, notwithstanding that the operator of a motor vehicle proceeding along a public highway has the right of way over a motorist entering thereon from a private road or driveway, such operator must use this right in a reasonable manner and it is his or her duty to exercise due care as that term is understood at common law.[n3]

The sudden-emergency doctrine may be invoked wherein the operator of the motor vehicle proceeding along the highway is accountable for the care which an ordinarily prudent person would have exercised in the same emergency, and is not accountable for not choosing the best or safest course.[n4] Also, the emergency doctrine applies to preclude the imposition of liability on the driver of a vehicle struck by a motorist backing his or her car out of an angled parking space, in a personal injury suit brought by the vehicle's passenger, where the driver had the right of way, the motorist backed out without ascertaining whether there was oncoming traffic, and the driver attempted to evade the collision by honking his or her horn, and made a split-second decision to avoid additional dangers posed by either swerving to the left or applying the brakes.[n5] Likewise, the negligence of a minor bicyclist, who was fatally injured when his or her bicycle ran into a car upon exiting the driveway from behind the bushes, outweighed any possible negligence by the car's driver in light of the sudden emergency in which the driver found him- or herself, and thus, the driver is not responsible for the bicyclist's fatal injuries, where the only allegation of negligence was that the driver should have swerved and braked, but the evidence showed that the driver did swerve and applied his brakes, and even if the driver just swerved, that was a reasonable response to the hazard presented and his or her conduct would not, in any event, constitute the greater negligence.[n6]

The operator of a motor vehicle emerging from a private roadway or driveway into a public highway has the duty to exercise due care under the circumstances, keeping in mind the fact that vehicles proceeding along the public highway have the right of way.[n7] Whether the failure of such a motorist to yield the right of way to traffic on the public highway constitutes the proximate cause of an ensuing collision with another motorist proceeding along the highway is generally a question of fact for the jury.[n8]

The owner of private property has no duty to warn oncoming traffic of the emergence of vehicles from its property,[n9] nor to protect vehicles so emerging from the unreasonable and intervening acts of negligent oncoming drivers.[n10]

FOOTNOTES:

n1 § 287.

n2 Varner v. Weiss, 887 S.W.2d 659 (Mo. Ct. App. E.D. 1994).

As to liability for a collision between a motor vehicle backing from private premises into a public highway and another motor vehicle proceeding along the highway, see § 863.

n3 Richardson v. U.S., 835 F. Supp. 1236, 39 Fed. R. Evid. Serv. 1012 (E.D. Wash. 1993) (applying Washington law); Corvers v. Acme Truck Lines, 673 So. 2d 1088 (La. Ct. App. 5th Cir. 1996); Zurich-American Ins. Group v. Ellison, 640 So. 2d 262 (La. Ct. App. 4th Cir. 1993).

n4 Kardasinski v. Koford, 88 N.H. 444, 190 A. 702, 111 A.L.R. 1017 (1937).

As to the sudden-emergency doctrine, generally, see §§ 424, 425.

n5 Ward v. Cox, 38 A.D.3d 313, 831 N.Y.S.2d 406 (1st Dep't 2007).

n6 Estate of Haley ex rel. Haley v. Brown, 370 S.C. 240, 634 S.E.2d 62 (Ct. App. 2006).

n7 Corvers v. Acme Truck Lines, 673 So. 2d 1088 (La. Ct. App. 5th Cir. 1996); Carmen v. Gonzalez, 637 So. 2d 1108 (La. Ct. App. 4th Cir. 1994); Varner v. Weiss, 887 S.W.2d 659 (Mo. Ct. App. E.D. 1994).

n8 Baxter v. Rounsaville, 193 So. 2d 735 (Miss. 1967).

n9 Cruet v. Certain-Teed Corp., 432 Pa. Super. 554, 639 A.2d 478 (1994).

n10 Gordon v. Mobile Greyhound Park, 592 So. 2d 208 (Ala. 1991).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]159, 167
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 254 (Complaint, petition, or declaration -- Private driveway -- Owner-occupant's vehicle forced off highway by automobile speeding from driveway)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 255 to 262 (Complaint, petition, or declaration -- Vehicles entering roadway at place other than intersection)

217 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 940

§ 940 Injury to property abutting highway

The operator of a motor vehicle proceeding along a public highway or street must exercise ordinary care to avoid injury to the property of abutting owners along the highway or street.[n1] Thus, where the operator of a motor vehicle crashed into a building adjoining the highway, recovery may be had for the damage inflicted as a result of his or her negligence.[n2] Moreover, where it is warranted under the circumstances, recovery may be had for damage caused by the burning or explosion of a motor vehicle resulting in injury to property adjacent to the highway.[n3] However, no absolute liability may be imposed upon the operator of a motor vehicle for damage caused to property abutting the highway,[n4] and in order to establish such liability it is necessary to establish causal negligence on his or her part.[n5]

FOOTNOTES:

n1 Schools v. Walker, 187 Va. 619, 47 S.E.2d 418 (1948).

n2 Barret v. Caddo Transfer & Warehouse Co., 165 La. 1075, 116 So. 563, 58 A.L.R. 261 (1928).

n3 Avery v. R.E. Guerin Trucking Co., 304 Mass. 500, 24 N.E.2d 330 (1939).

n4 MacGinnis v. Marlborough & Hudson Gas Co., 220 Mass. 575, 108 N.E. 364 (1915).

n5 Shields v. Chevrolet Truck, 195 S.C. 437, 12 S.E.2d 19 (1940).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles

A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]155
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 670 to 675 (Complaint, petition, or declaration -- Action for damage to property other than motor vehicles)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 672 (Complaint, petition, or declaration -- Residence -- Struck by vehicle -- Operator falling asleep)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 674 (Complaint, petition, or declaration -- Shrubbery, trees, yard, etc. -- Damaged by speeding truck)

218 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 941

§ 941 Distraction of driver's attention

A motorist operating a motor vehicle along a public highway or street is required to maintain a proper lookout for other travelers using the way,[n1] and where such operator permits his or her attention to be distracted, a finding of negligence may be justified.[n2] The distraction of a driver's attention from the operation of a vehicle just prior to an accident presents strong evidence of negligence in most cases.[n3]

FOOTNOTES:

n1 § 422.

n2 Lamke v. Louden, 269 N.W.2d 53 (Minn. 1978).

n3 Lamke v. Louden, 269 N.W.2d 53 (Minn. 1978); Holmes v. McNeil, 356 Mo. 846, 204 S.W.2d 303 (1947).

SUPPLEMENT:

Cases

One work-related cell phone call of less than one minute made by driver while driving his own truck, eight or nine minutes before driver negligently hit and injured pedestrian while traveling on a personal errand of several miles' duration heading neither to nor from a worksite, was insufficient to create respondeat superior liability for employer. Miller v. American Greetings Corp., 161 Cal. App. 4th 1055, 74 Cal. Rptr. 3d 776 (2d Dist. 2008).

Driver who was found 100% at fault in car accident was acting within the course and scope of employment at the time of the accident in his personal vehicle such that his employer was vicariously liable for his negligence; driver was using employer-provided cell phone at the time of accident, he regularly conducted business on such phone and was doing so at the time of the accident, such activity contributed to the accident, and employer did not prohibit employee from using cell phones while driving. Ellender v. Neff Rental, Inc., 965 So. 2d 898 (La. Ct. App. 1st Cir. 2007).

Trial court did not abuse its discretion in a personal injury case arising out of an intersection accident, in admitting into evidence the plaintiff's cell phone billing records to show that she could have been on the phone at the time of the accident, affirmed a judgment in favor of the defendant motorist. As a general matter, a driver's use of a handheld cellular telephone while driving is relevant to the issue of his or her negligence. If the plaintiff were on a handheld cell phone,

that activity could easily have caused her to be distracted in the operation of her car, and it also weakened the credibility of her observations of the traffic light and the intersection. Furthermore, the independent evidence of the plaintiff's negligence was substantial, making any claimed error in the admission of the cell phone proofs inconsequential. Among other things, the proofs reflected that the plaintiff claimed never observing the defendant before impact despite the defendant's contrary observation of the plaintiff, and the proofs also reflected that the defendant was performing a normal routine before the impact while the plaintiff had numerous reasons to be excited, tired, or otherwise distracted from driving. Scianni v. Suriano, 2007 WL 506206 (N.J. Super. Ct. App. Div. 2007).

In an action brought by a motorcyclist against a car driver alleging that driver was negligently using her cellular phone at the time of accident, causing injury, the motorcyclist seeking the car driver's cellular phone records was entitled to the portion of driver's phone records which would disclose calls transmitted or received by her on date of accident, limited to the estimated time of subject accident, given that use of cellular phones while driving was prohibited by law and motorcyclist filed affidavit indicating that immediately prior to the accident he saw driver "with an object in her hand held to her head." Morano v. Slattery Skanska, Inc., 18 Misc. 3d 464, 846 N.Y.S.2d 881 (Sup 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575

Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]146, 204
Civil Liability Arising from Use of Cell Phone While Driving, 36 A.L.R.6th 443
Use of Call Detail Record Evidence in Telecommunications "Phantom Traffic" and Other Litigation, 86 Am. Jur. Proof of Facts 3d 217
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Bamby, Chapter 290: California's Message to Hang Up and Pay Attention, 38 McGeorge L. Rev. 342 (2007)
Kalin, The 411 on Cellular Phone Use: An Analysis of the Legislative Attempts to Regulate Cellular Phone Use by Drivers, 39 Suffolk U.L. Rev. 233 (2005)
Leesfield & Segal, Driving While on the Cell Phone: Punitive Damage Awards Should Come Through Loud and Clear, 36-SUM Brief 58 (2007)
Michael, Automobile Accidents Associated with Cell Phone Use: Can Cell Phone Service Providers and Manufacturers Be Held Liable Under a Theory of Negligence?, 11 Rich. J.L. & Tech. 5 (2005)
Sachs, Danger on the Road: Txt Msgs and Other Driving Distraction, 44-FEB Trial 20 (2008)

219 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 942

§ 942 Driver extending arm from vehicle

The fact that the driver of a motor vehicle has one arm resting on the window sill or hanging out of the window does not, as a rule, constitute contributory negligence as a matter of law, barring the driver from recovery for injuries sustained when his or her arm is struck by a passing vehicle, but rather the question of negligence in this regard is one for the jury.[n1] The extension of the driver's arm beyond the body of the vehicle has been found not to constitute negligence,[n2] particularly where the arm is extended for the purpose of giving a statutory signal.[n3] The fact that the driver whose left arm was resting on the window ledge of the motor vehicle had both hands on the steering wheel has been considered a factor in relieving him or her of the imputation of negligence.[n4]

One driving a motor vehicle with his or her arm extending beyond the body of the vehicle is not absolved from all care for his or her safety, but has the duty to anticipate danger from such position,[n5] and, under the circumstances, the driver may be found guilty of negligence in such respect, barring or diminishing recovery for injuries sustained when his or her arm was struck by a passing vehicle.[n6] Any absolution from negligence in extending one's arm from the side of a motor vehicle to signal an intention to stop, given to a motorist by a statute requiring such signal, does not apply where the arm is held out longer than the few seconds prescribed by the statute, or when starting to go forward, for which no signal is required.[n7]

FOOTNOTES:

n1 Lindenberg v. Needles, 203 Md. 8, 97 A.2d 901, 40 A.L.R.2d 226 (1953); Turrietta v. Wyche, 54 N.M. 5, 212 P.2d 1041, 15 A.L.R.2d 407 (1949).

As to contributory negligence of a passenger in a motor vehicle extending an arm or other portion of his or her body outside the vehicle, see § 587.

n2 Baker v. Boone, 206 Ark. 823, 177 S.W.2d 756 (1944); Turrietta v. Wyche, 54 N.M. 5, 212 P.2d 1041, 15 A.L.R.2d 407 (1949).

n3 Newhouse v. Phillips, 110 N.J.L. 421, 166 A. 482 (N.J. Ct. Err. & App. 1933).

n4 Bowling v. Poe, 286 Ky. 267, 150 S.W.2d 897 (1941); Cutrer v. Jones, 9 So. 2d 859 (La. Ct. App. 1st Cir. 1942).

n5 Gerebenics v. Gaillard, 338 S.W.2d 216 (Ky. 1960).

n6 Lindenberg v. Needles, 203 Md. 8, 97 A.2d 901, 40 A.L.R.2d 226 (1953); Pool v. Gilbert, 199 S.W.2d 798 (Tex. Civ. App. San Antonio 1947), writ refused n.r.e.

n7 Lindenberg v. Needles, 203 Md. 8, 97 A.2d 901, 40 A.L.R.2d 226 (1953).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760,

770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]146, 204
Extension of hand, arm, or other portion of body from motor vehicle as contributory negligence, 40 A.L.R.2d 233

220 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 943

§ 943 Failure to stop and render aid after accident

Generally, a separate cause of action arises for new injuries, or an aggravation of the original injuries, where a motorist flees the scene of an accident without rendering the needed aid to the injured person,[n1] as required by an applicable statute.[n2] The duty to stop and render aid is imposed upon a motorist involved in an accident whether or not he or she is responsible for the accident, and a violation of such rule gives rise to a civil liability if it is a proximate cause of further injury or of death.[n3] The failure to stop and render aid constitutes negligence as a matter of law, in the absence of a legally sufficient excuse or justification.[n4]

FOOTNOTES:

n1 Brooks v. E. J. Willig Truck Transp. Co., 40 Cal. 2d 669, 255 P.2d 802 (1953); Boyer v. Gulf, C. & S. F. Ry. Co., 306 S.W.2d 215, 80 A.L.R.2d 287 (Tex. Civ. App. Houston 1957), writ refused n.r.e.

n2 § 331.

n3 Brooks v. E. J. Willig Truck Transp. Co., 40 Cal. 2d 669, 255 P.2d 802 (1953); Boyer v. Gulf, C. & S. F. Ry. Co., 306 S.W.2d 215, 80 A.L.R.2d 287 (Tex. Civ. App. Houston 1957), writ refused n.r.e.

n4 Brooks v. E. J. Willig Truck Transp. Co., 40 Cal. 2d 669, 255 P.2d 802 (1953).

As to the duty to report or prevent dangerous conditions as negligence, see § 561.

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles

A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]147
Violation of statute requiring one involved in an accident to stop and render aid as affecting civil liability, 80 A.L.R.2d 299

221 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 944

§ 944 Treatment rendered pursuant to "Good Samaritan"statute

Numerous states have adopted "Good Samaritan"statutes whose uniform purpose is to encourage prompt treatment of accident victims at the scene of the accident. Such purpose is sought to be accomplished by affording physicians,[n1] and in some instances laypeople,[n2] immunity from civil liability for negligence in their care and treatment of accident victims, where the facts indicate a pressing necessity for assistance.[n3] However, where there is no emergency or accident, the "Good Samaritan"defense to liability for negligence does not apply,[n4] such as, where the motorist stops in the driving lane of an interstate highway merely to assist another motorist whose vehicle has become disabled due to a flat tire.[n5]

FOOTNOTES:

n1 Colby v. Schwartz, 78 Cal. App. 3d 885, 144 Cal. Rptr. 624 (2d Dist. 1978); Markman v. Kotler, 52 A.D.2d 579, 382 N.Y.S.2d 522 (2d Dep't 1976).

n2 Wallace v. Hall, 145 Ga. App. 610, 244 S.E.2d 129 (1978).

n3 Dahl v. Turner, 80 N.M. 564, 458 P.2d 816, 39 A.L.R.3d 207 (Ct. App. 1969).

n4 McKinney v. Public Service Co. of Indiana, Inc., 597 N.E.2d 1001 (Ind. Ct. App. 1992).

n5 McKinney v. Public Service Co. of Indiana, Inc., 597 N.E.2d 1001 (Ind. Ct. App. 1992).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]147
Liability for negligence of ambulance attendants, emergency medical technicians, and the like, rendering emergency medical care outside hospital, 16 A.L.R.5th 605
Construction and application of "Good Samaritan"statutes, 68 A.L.R.4th 294
Am. Jur. 2d, Negligence §§ 104 to 109

222 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
b. Accident Involving Emergency Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 945

§ 945 Duty of care generally required in operation of emergency vehicle

In most jurisdictions, emergency vehicles, such as police cars, fire department vehicles, and ambulances, are exempted generally from the operation of traffic regulations or rules of the road.[n1] However, this exemption does not relieve these operators from the duty to exercise due care toward other travelers to avoid injury to them or to avoid damage to property on or along the way.[n2] The operator of an emergency vehicle on an emergency call must exercise the care which a reasonably prudent person would exercise in the discharge of official duties of a like nature under like circumstances,[n3] and the failure of the operator of an emergency vehicle to exercise such care renders the operator, or his or her employer, liable for injuries or damages proximately resulting therefrom.[n4] In other words, the operators of emergency vehicles are liable for ordinary negligence, that is, a failure to exercise reasonable care and diligence under the circumstances.[n5]

Operators of emergency vehicles are not held to the same standard of ordinary care as regular motorists,[n6] but the exigencies of an emergency may require the operator of an emergency vehicle to take risks, particularly as to speed of travel, which would be negligence for a traveler under ordinary conditions to take.[n7] Pursuant to this view, an emergency vehicle driver's actions are measured against those of a reasonable person exercising due care under the same emergency circumstances,[n8] taking into consideration the driver's duties and the particular circumstances presented.[n9] To the extent that the driver of an emergency vehicle is held to the standard of care applicable to motorists in general under the common law, like any other driver, the driver of such a vehicle may be deemed negligent for stopping suddenly in the left lane of traffic;[n10] or for pulling into traffic in front of an oncoming vehicle, even though the purpose is to ticket or apprehend the driver of the vehicle;[n11] or for entering an intersection against a red light and without the right of way.[n12]

Observation: The manner that a police officer operates his or her vehicle in responding to an emergency call may not form the basis for civil liability to an injured third party unless the officer acted in reckless disregard for the safety of others.[n13]

FOOTNOTES:

n1 §§ 224, 296.

n2 Neil v. Holyoke St. Ry. Co., 329 Mass. 578, 109 N.E.2d 831 (1952); Kirk v. Magee, 1 A.D.2d 452, 151 N.Y.S.2d 426 (1st Dep't 1956).

n3 McKay v. Hargis, 351 Mich. 409, 88 N.W.2d 456 (1958); Frandeka v. St. Louis Public Service Co., 361 Mo. 245, 234 S.W.2d 540 (1950).

n4 Cassity v. Williams, 373 So. 2d 586 (La. Ct. App. 3d Cir. 1979).

n5 Mayor and City Council of Baltimore v. Hart, 395 Md. 394, 910 A.2d 463 (2006).

n6 Calvert Fire Ins. Co. v. Hall Funeral Home, 68 So. 2d 626 (La. Ct. App. 2d Cir. 1953) (imposing duty to refrain from a reckless disregard of the safety of other motorists and pedestrians); Mayor and City Council of Baltimore v. Hart, 395 Md. 394, 910 A.2d 463 (2006).

n7 Varlaro v. Schultz, 82 N.J. Super. 142, 197 A.2d 16 (App. Div. 1964).

n8 City of LaVista v. Andersen, 240 Neb. 3, 480 N.W.2d 185 (1992); Saarinen v. Kerr, 84 N.Y.2d 494, 620 N.Y.S.2d 297, 644 N.E.2d 988 (1994); Mullane v. City of Amsterdam, 212 A.D.2d 848, 622 N.Y.S.2d 346 (3d Dep't 1995).

n9 Minks v. North Carolina Highway Patrol, 116 N.C. App. 710, 449 S.E.2d 483 (1994).

n10 City of Louisville v. Maresz, 835 S.W.2d 889 (Ky. Ct. App. 1992).

As to stopping, generally, see §§ 831, 884.

n11 Stuart v. Town of Brookline, 412 Mass. 251, 587 N.E.2d 1384 (1992).

n12 Groves v. U.S., 778 F. Supp. 54 (D.D.C. 1991).

n13 Ham v. City of Syracuse, 37 A.D.3d 1050, 829 N.Y.S.2d 770 (4th Dep't 2007), leave to appeal dismissed, 8 N.Y.3d 976, 836 N.Y.S.2d 545, 868 N.E.2d 228 (2007) (a police officer's conduct is in reckless disregard for the safety of others, so that the officer's operation of his or her vehicle in responding to an emergency call may form the basis for civil liability to the injured third party, where the officer has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and has done so with conscious indifference to the outcome).

Police officers had activated sirens and emergency lights during the high-speed pursuit of a motorist, and thus, would be subject to liability for injuries to the motorist when she lost control of the vehicle and was ejected from the vehicle during the rollover, only to the extent that the officers acted with reckless disregard for the safety of others. Brooks v. City of Jennings, 944 So. 2d 768 (La. Ct. App. 3d Cir. 2006).

SUPPLEMENT:

Cases

Police officers who pursued drunken, violent, ax-wielding, fleeing offender did not act with reckless disregard, as would breach statutory duty to drive with due regard for the safety of all persons, and thus city and officers were not liable to widower of motorist who was fatally injured when the vehicle she was driving collided with vehicle being pursued by officers; officers did not have a conscious and unjustifiable disregard of the danger the pursuit caused for other motorists. Robbins v. City of Wichita, 285 Kan. 455, 172 P.3d 1187 (2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]175(1) to 175(5), 210
Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14
Liability for personal injury or property damage from operation of ambulance, 84 A.L.R.2d 121
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 605 (Complaint, petition, or declaration -- Police car -- Responding to ambulance emergency call -- Collision with automobile -- By police officer)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 609 (Complaint, petition, or declaration -- Police car -- In high-speed chase of vehicle -- Multiple police cars from different towns -- By driver of car struck by chased vehicle -- Against towns)

223 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
F. Effect of Particular Circumstances; Place of Injury
13. Other Circumstances
b. Accident Involving Emergency Vehicle

8 Am Jur 2d Automobiles and Highway Traffic § 946

§ 946 Statutory provisions

In some jurisdictions, regulatory provisions granting special highway privileges to operators of emergency vehicles do not wholly exempt them from liability for negligence, but require that such operators exercise at least some degree of care; thus, the operators of emergency vehicles are required to operate them with due regard for the safety of others using the street.[n1] This has been construed to mean that the conduct of emergency vehicle operators should be measured by exactly the same yardstick as that of other drivers, and although the urgency of their missions demands that they respond to calls quickly, and they are within limits relieved from various traffic regulations when giving audible signals, they are bound to exercise reasonable precautions against the extraordinary dangers of the situation that the proper performance of their duties compels them to create, reasonable care being a relative term depending upon the situation of the parties and the degree of care and vigilance reasonably imposed by the circumstances.[n2]

Observation: Where the duty of a driver of an emergency vehicle is defined by statute as the duty to drive with due regard for the safety of all persons using the highway, a person injured in the course of a police chase by a collision between the vehicle being chased and that of the person injured while parked in his or her driveway, may not recover on the basis of a breach of that duty, since such a plaintiff was not using the highway.[n3]

Generally, the operators of emergency vehicles are not relieved from civil liability resulting from the failure to observe traffic regulations unless they are sounding an audible signal,[n4] they are responding to an emergency call,[n5] and the exigencies of the situation are such as to call for the operation of such vehicles in violation of such regulations.[n6] Indeed, the requirement of due regard for the safety of others using the street is not satisfied by merely giving an audible signal.[n7]

The statutory requirement that emergency vehicles be operated with due regard for the safety of others means only that the operator of the emergency vehicle must, by suitable warning, give others a reasonable opportunity to yield the right of way.[n8]

Some statutes imposing upon the operators of emergency vehicles the duty to drive with due regard for the safety of others using the street further stipulate that they are not protected from the consequence of a reckless disregard for the safety of others,[n9] or of their arbitrary exercise of the privileges given them.[n10] The latter provision has been construed to hold the operators of emergency vehicles liable for damages caused by their willful or wanton misconduct.[n11] The giving of an audible warning does not relieve the operator of an emergency vehicle from responsibility for an arbitrary exercise of his or her privileges.[n12]

Even though the violation, by the operator of an emergency vehicle, of a statute governing the operation of such vehicles might be negligence per se, a jury question may still arise as to whether the operator's negligence in violating the statute was the proximate cause of the plaintiff's injuries.[n13]

FOOTNOTES:

n1 Torres v. City of Los Angeles, 58 Cal. 2d 35, 22 Cal. Rptr. 866, 372 P.2d 906 (1962); City of Baltimore v. Fire Ins. Salvage Corps of Baltimore, 219 Md. 75, 148 A.2d 444, 82 A.L.R.2d 306 (1959).

n2 City of Baltimore v. Fire Ins. Salvage Corps of Baltimore, 219 Md. 75, 148 A.2d 444, 82 A.L.R.2d 306 (1959).

n3 Vaquera v. Salas, 810 S.W.2d 456 (Tex. App. San Antonio 1991), writ denied, (July 1, 1992).

n4 Keyser v. Triplett, 322 So. 2d 294 (La. Ct. App. 1st Cir. 1975), writ denied, 325 So. 2d 280 (La. 1976).

n5 Boyle v. Emerson, 17 Wash. App. 101, 561 P.2d 1110 (Div. 1 1977).

n6 Schatz v. Cutler, 395 F. Supp. 271 (D. Vt. 1975) (applying Vermont law).

n7 Torres v. City of Los Angeles, 58 Cal. 2d 35, 22 Cal. Rptr. 866, 372 P.2d 906 (1962); Siburg v. Johnson, 249 Or. 556, 439 P.2d 865 (1968).

n8 State of Wash. v. U.S., 194 F.2d 38 (9th Cir. 1952); Veek v. Tacoma Suburban Lines, Inc., 49 Wash. 2d 584, 304 P.2d 700 (1956).

n9 Baltimore Transit Co. v. Young, 189 Md. 428, 56 A.2d 140 (1947);

Shephard v. City of New York, 39 A.D.3d 842, 835 N.Y.S.2d 297 (2d Dep't 2007).

A police officer's actions were to be judged by the due care standard, rather than by the reckless disregard or gross negligence standard, where the officer was speeding at the time of the collision and did not have his emergency lights or siren activated. Smith v. Municipality of Ferriday, 922 So. 2d 1222 (La. Ct. App. 3d Cir. 2006), writ denied, 937 So. 2d 860 (La. 2006).

A police officer who was driving a patrol vehicle in response to a 911 dispatch regarding a family dispute was engaged in an "emergency operation"of a vehicle within the meaning of the Vehicle and Traffic Law, so that the officer's actions were properly measured under the reckless disregard standard, rather than the ordinary negligence standard, in an action arising from an automobile accident in which he was involved while responding to a dispatch, even though the police department did not treat the call as an emergency call, and the officer did not increase the speed of his vehicle or activate the siren and warning lights while responding. Criscione v. City of New York, 97 N.Y.2d 152, 736 N.Y.S.2d 656, 762 N.E.2d 342 (2001).

n10 Lucas v. City of Los Angeles, 10 Cal. 2d 476, 75 P.2d 599 (1938) (disapproved of on other grounds by, Torres v. City of Los Angeles, 58 Cal. 2d 35, 22 Cal. Rptr. 866, 372 P.2d 906 (1962)).

n11 Kirshenbaum v. City of Chicago, 43 Ill. App. 3d 529, 2 Ill. Dec. 404, 357 N.E.2d 571 (1st Dist. 1976).

n12 Cavagnaro v. City of Napa, 86 Cal. App. 2d 517, 195 P.2d 25 (3d Dist. 1948).

n13 Furr v. Pinoca Volunteer Fire Dept. of Paw Creek Tp., Inc., 53 N.C. App. 458, 281 S.E.2d 174 (1981).

REFERENCE: West's Key Number Digest, Automobiles [westkey]17(4), 146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's Key Number Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's Key Number Digest, Negligence [westkey]284, 291 to 295, 510, 530
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Crossing and Crossings
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]146 to 151, 154 to 157, 159, 161, 167(1) to 167(4), 168(.5) to 168(12), 169, 170(1), 170(2), 170(4), 170(5), 170(7), 170(8), 170(9), 170(12), 171(1) to 171(14), 172(1) to 172(15), 173(1) to 173(8), 174(1) to 174(4), 175(1) to 175(5), 180, 199, 201(1.1), 201(2), 201(3), 201(5), 204, 207 to 211, 222, 225
West's A.L.R. Digest, Highways [westkey]153, 153.5, 154, 175, 177, 188, 191 to 197
West's A.L.R. Digest, Negligence [westkey]284, 291 to 295, 510, 530
Proof of Negligence in a Turning Accident or Jackknifing of a Truck, 66 Am. Jur. Proof of Facts 3d 379
Proof That Driver Was "Operating"Motor Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Governmental Liability for Failure to Maintain Trees near Public Way, 41 Am. Jur. Proof of Facts 3d 109
Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145
Punitive Damages in Motor Vehicle Litigation -- Intoxicated Driver, 18 Am. Jur. Proof of Facts 3d 1
Liability for Sudden Loss of Consciousness while Driving, 17 Am. Jur. Proof of Facts 3d 1
Sleeping Motorist, 16 Am. Jur. Proof of Facts 3d 1
Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Vehicle, 13 Am. Jur. Proof of Facts 3d 405
Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203
Motorist's Negligence in Child "Dart Out"Case, 10 Am. Jur. Proof of Facts 3d 1
Existence of "Sudden Emergency,"8 Am. Jur. Proof of Facts 3d 399
Motorist's Negligence in Striking Person Lying in Road, 50 Am. Jur. Proof of Facts 2d 595
Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127
Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411
Defective Tire, 39 Am. Jur. Proof of Facts 2d 209
Negligent Left Turn of Motor Vehicle, 35 Am. Jur. Proof of Facts 2d 405
Feasibility of Stopping or Parking Vehicle Off Roadway, 26 Am. Jur. Proof of Facts 2d 575
Defective or Improperly Operated Taillights, 22 Am. Jur. Proof of Facts 2d 225
Defective or Improperly Operated Headlights, 22 Am. Jur. Proof of Facts 2d 173
Tailgating, 22 Am. Jur. Proof of Facts 43
Sample Settlement Brochure -- Head-On Collision, 31 Am. Jur. Trials 527
Handling a Rear-End Collision Case, 19 Am. Jur. Trials 567
Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493
The Impaired Driver -- Ascertaining Physical Conditions, 4 Am. Jur. Trials 615
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 139, 198, 199, 211 to 220, 225 to 229, 238, 239, 254 to 262, 267, 268, 271, 273, 275, 276, 279, 280, 283 to 314, 325 to 327, 329, 332, 334, 339, 365 to 369, 371, 375 to 391, 400, 402, 405 to 408, 413, 414, 416, 417, 452, 605, 609, 636, 649, 670 to 675, 678, 679, 692, 759, 760, 770, 776, 777, 780, 783 to 790, 790.1, 790.2, 791, 799 to 816, 818 to 824, 826 to 832, 843 to 849, 853 to 857, 860 to 864, 869, 871 to 875, 878 to 881, 887, 889 to 892, 894 to 899, 1213, 1238, 1241, 1243, 1407, 1487, 1488, 1501 to 1508.1, 1509 to 1512, 1538 to 1554, 1558 to 1560, 1564, 1588, 1589, 1593 to 1597, 1606
West's Key Number Digest, Automobiles [westkey]175(1) to 175(5), 210

224 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
G. Defenses
1. Contributory and Comparative Negligence, Generally
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 947

§ 947 Negligence of injured person as barring recovery

Every operator of a motor vehicle [n1] and every person using the highways and streets for the purpose of travel or transportation must exercise reasonable care for his or her own safety. [n2] The common-law rule that there can be no recovery for injuries where it appears that the person injured is guilty of negligence which was the proximate cause of the accident, or where the injury was the result of the united, mutual, concurring, and contemporaneous negligence of the parties to the transaction is fully applicable, in those jurisdictions adhering to the doctrine, in cases involving injuries by motor vehicles. [n3] Except where the defendant has acted willfully, wantonly, or recklessly, [n4] or in a jurisdiction where the doctrine of comparative negligence is applicable, [n5] the doctrine of contributory negligence precludes recovery by one injured in a motor vehicle accident in an action based upon the defendant's negligence, [n6] where there is any fault on the part of the injured person, even though small in comparison with that of the defendant, [n7] if the negligence of the injured person contributed proximately to the occurrence of the accident [n8] and the defendant did not have the last clear chance to avoid the accident. [n9]

Contributory negligence is negligence contributing to the accident, having a causal connection with it, and but for which the accident would not have happened. [n10] An act or omission that merely increases or adds to the extent of the loss or injury occasioned by another's negligence is not such contributory negligence as will defeat a recovery. [n11] Stated differently, negligence which plays no part in causing the injury complained of, and only has the effect of adding to the damage resulting, is ineffective in barring the action. [n12]

While the violation of a statute regulating traffic constitutes negligence, it does not necessarily follow that such negligence will as a matter of law prevent a recovery by the personal injury plaintiff; there must be a causal connection between the violation of the statute and the injury, otherwise the violation is immaterial, and unless it is shown that the plaintiff's violation was a proximate or concurring cause which contributed directly to his or her injury, he or she is not thereby barred from a recovery. [n13]

Observation: A passenger's active participation in the criminal activity of joyriding is such a serious violation of law that public policy precludes the passenger from maintaining an action against the driver of the stolen vehicle for injuries sustained in an accident. [n14]

FOOTNOTES:

n1 § 420.

n2 Craigmiles v. Egan, 248 Ill. App. 3d 911, 188 Ill. Dec. 672, 618 N.E.2d 1242 (4th Dist. 1993); Uriegas v. Gainsco, 663 So. 2d 162 (La. Ct. App. 3d Cir. 1995), writ denied, 664 So. 2d 458 (La. 1995); Love v. Curry, 104 Md. App. 684, 657 A.2d 796 (1995); Dillard v. Doe, 251 Mont. 379, 824 P.2d 1016 (1992); Fischer v. Hinkle, 1 Neb. App. 100, 488 N.W.2d 39 (1992); Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993); Carson by Meredith v. LeBlanc, 245 Va. 135, 427 S.E.2d 189 (1993).

As to the liabilities of pedestrians, generally, see § 438.

n3 Caciopoli v. Acampora, 30 Conn. App. 327, 620 A.2d 191 (1993); Stauffer v. School Dist. of Tecumseh, 238 Neb. 594, 473 N.W.2d 392, 69 Ed. Law Rep. 554 (1991); Prexta v. Ohio Dept. of Adm. Serv., 61 Ohio Misc. 2d 521, 580 N.E.2d 525 (Ct. Cl. 1990).

Whether the motorist was contributorily negligent when her car rear-ended a tractor-trailer that had stopped on the travel lane of the highway was a question for the jury in the motorist's personal injury action against the tractor-trailer driver and his employer, in view of conflicting evidence regarding whether the tractor-trailer's four-way hazard lights were activated and visible at the time of collision. Hot Shot Express, Inc. v. Brooks, 264 Va. 126, 563 S.E.2d 764 (2002).

n4 § 948.

n5 § 949.

n6 Maxson v. Tomek, 244 A.D. 604, 280 N.Y.S. 319 (4th Dep't 1935).

n7 Condon v. Epstein, 8 Misc. 2d 674, 168 N.Y.S.2d 189 (City Ct. 1957).

n8 § 426.

n9 § 953.

n10 White v. State Farm Mut. Auto. Ins. Co., 222 La. 994, 64 So. 2d 245, 42 A.L.R.2d 338 (1953).

n11 Mahoney v. Beatman, 110 Conn. 184, 147 A. 762, 66 A.L.R. 1121 (1929); Spier v. Barker, 35 N.Y.2d 444, 363 N.Y.S.2d 916, 323 N.E.2d 164, 80 A.L.R.3d 1025 (1974) (rejected on other grounds by, Waterson v. General Motors Corp., 111 N.J. 238, 544 A.2d 357 (1988)).

n12 Mahoney v. Beatman, 110 Conn. 184, 147 A. 762, 66 A.L.R. 1121 (1929).

n13 Estate of Moses ex rel. Moses v. Southwestern Virginia Transit Management Co., Inc., 643 S.E.2d 156 (Va. 2007).

n14 Manning by Manning v. Brown, 91 N.Y.2d 116, 667 N.Y.S.2d 336, 689 N.E.2d 1382 (1997).

REFERENCE: West's Key Number Digest, Automobiles [westkey]158, 202 to 227, 231
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Passengers
A.L.R. Index, Pedestrians
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]158, 202 to 227, 231
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625

The Seatbelt Defense, 35 Am. Jur. Trials 349
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 329, 335, 1229 to 1262, 1265 to 1272, 1282 to 1289, 1293 to 1297, 1363 to 1372, 1374 to 1390, 1452 to 1455
West's Key Number Digest, Automobiles [westkey]202 to 227, 231
Am. Jur. 2d, Negligence §§ 798, 799
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1229 to 1262 (Answer -- Affirmative defense -- Contributory negligence)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1374 to 1386 (Instruction -- Contributory negligence)

225 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
G. Defenses
1. Contributory and Comparative Negligence, Generally
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 948

§ 948 Effect of defendant's willful, wanton, or reckless misconduct, or gross negligence

The general rule of law that negligence of the party asserting a claim constitutes no defense where it appears that the defendant acted willfully, wantonly, or recklessly, is applicable to cases involving motor vehicle accidents in those jurisdictions adhering to the common-law rule of contributory negligence as a bar to recovery by the injured party.[n1] Although more than a mere violation of a traffic rule, or any other act violative of the requirements of a statute or ordinance, is required to constitute willful, wanton, or reckless misconduct in the operation of a motor vehicle,[n2] the violation of a rule of the road or of a traffic statute or ordinance is properly to be taken into consideration in determining whether the conduct of one traveling upon the highway was reckless or wanton.[n3]

Where the plaintiff, knowing of the defendant's willful, wanton, or reckless disregard for the plaintiff's own safety and the danger to him or her thereby created, nevertheless recklessly or willfully exposes him- or herself to such dangers and thereby proximately contributes to cause his or her own injuries, the plaintiff is barred from recovery by reason of contributory negligence.[n4]

FOOTNOTES:

n1 Harrington v. Collins, 298 N.C. 535, 259 S.E.2d 275 (1979); Anderson v. Austin, 115 N.C. App. 134, 443 S.E.2d 737 (1994).

n2 Kuehn v. Jenkins, 251 Iowa 718, 100 N.W.2d 610 (1960).

n3 Carlson v. Johnke, 57 S.D. 544, 234 N.W. 25, 72 A.L.R. 1352 (1931) (overruled in part on other grounds by, Wittstruck v. Lee, 62 S.D. 290, 252 N.W. 874, 92 A.L.R. 1361 (1934)).

As to violation of traffic rule as negligence, see § 724.

n4 Ferguson v. Jongsma, 10 Utah 2d 179, 350 P.2d 404 (1960).

REFERENCE: West's Key Number Digest, Automobiles [westkey]158, 202 to 227, 231
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Passengers
A.L.R. Index, Pedestrians
A.L.R. Index, Reckless Driving

A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]158, 202 to 227, 231
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625
The Seatbelt Defense, 35 Am. Jur. Trials 349
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 329, 335, 1229 to 1262, 1265 to 1272, 1282 to 1289, 1293 to 1297, 1363 to 1372, 1374 to 1390, 1452 to 1455
West's Key Number Digest, Automobiles [westkey]158, 202 to 227

226 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
G. Defenses
1. Contributory and Comparative Negligence, Generally
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 949

§ 949 Negligence of injured party as proportionately diminishing recovery (comparative negligence)

In order to eliminate the rigors of the common-law contributory negligence rule,[n1] many jurisdictions have abrogated the contributory negligence doctrine in favor of a doctrine or rule of comparative negligence providing that, at least in some instances, the negligence of the injured party will not be a complete bar to recovery, but there will be an apportionment of responsibility, or of damages, in accordance with the relative fault of the parties concerned.

Various jurisdictions have, either by statute or judicial decision, adopted the "pure"rule of comparative negligence, which allows an injured party whose negligence is not the sole proximate cause of the injury to recover despite his or her concurrent or contributory negligence, if any, but which requires a diminution of the amount of damages in proportion to the degree of negligence attributable to him or her, and have applied this rule in actions arising out of negligence in the operation of motor vehicles.[n2] Other jurisdictions have adopted an "equal to or greater than"rule of comparative negligence, under which an injured party's contributory negligence is not a bar to recovery if his or her negligence was not as great as that of the defendant, but the damages will be reduced by the degree of his or her negligence compared with that of the defendant. Where adopted, this rule has been applied to actions for negligence in the operation of motor vehicles.[n3] Still other jurisdictions have adopted, with respect to negligence actions generally, and have applied in actions for negligence arising out of the operation of motor vehicles,[n4] a "slight/gross"rule of comparative negligence, under which the contributory negligence of the injured party does not bar his or her recovery when such contributory negligence is slight and the negligence of the defendant is gross in comparison, or when the contributory negligence of the injured party is slight in comparison with that of the defendant, but in such cases the contributory negligence of the injured party is to be considered in the mitigation of damages, or damages must be diminished in proportion to the negligence attributable to the injured party.

Other jurisdictions may have other unique rules which, in those jurisdictions, would be applied to actions for negligence arising out of the operation of motor vehicles.[n5]

Observation: A jury instruction concerning a sudden emergency must state that the existence of an emergency requiring a rapid decision is one factor in the total comparative fault analysis; such an instruction should be included in the instruction on determining the comparative negligence of the parties and should not be a separate instruction.[n6]

FOOTNOTES:

n1 § 947.

n2 Cooper v. U.S., 897 F. Supp. 306 (E.D. Tex. 1995) (applying Texas law); Urcia v. Department of Transp. and Development for State, 638 So. 2d 416 (La. Ct. App. 5th Cir. 1994); Coronet Ins. Co. v. Richards, 76 Ohio App. 3d 578, 602 N.E.2d 735 (10th Dist. Franklin County 1991).

n3 Marier v. Memorial Rescue Service, Inc., 296 Minn. 242, 207 N.W.2d 706 (1973); Howard v. Bachman, 524 S.W.2d 414 (Tex. Civ. App. Eastland 1975).

n4 In re Tichota's Estate, 190 Neb. 775, 212 N.W.2d 557 (1973); Crabb v. Wade, 84 S.D. 93, 167 N.W.2d 546 (1969).

n5 Denton v. Watson, 16 Tenn. App. 451, 65 S.W.2d 196 (1932).

n6 Roth v. Connolly, 203 W. Va. 607, 509 S.E.2d 888 (1998).

REFERENCE: West's Key Number Digest, Automobiles [westkey]158, 202 to 227, 231
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Passengers
A.L.R. Index, Pedestrians
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]158, 202 to 227, 231
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625
The Seatbelt Defense, 35 Am. Jur. Trials 349
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 329, 335, 1229 to 1262, 1265 to 1272, 1282 to 1289, 1293 to 1297, 1363 to 1372, 1374 to 1390, 1452 to 1455
West's Key Number Digest, Automobiles [westkey]202 to 227
Am. Jur. 2d, Negligence §§ 954 to 958, 962 to 964
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1265 to 1272 (Answer -- Affirmative defense -- Comparative negligence)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1387 to 1390 (Instruction -- Comparative negligence)

227 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
G. Defenses
1. Contributory and Comparative Negligence, Generally
b. Particular Conduct as Contributory or Comparative Negligence

8 Am Jur 2d Automobiles and Highway Traffic § 950

§ 950 Failure to use seat belt or other safety equipment

Under the doctrine of contributory negligence, the failure to fasten a seat belt is not such contributory negligence as will bar recovery by the injured party,[n1] although there is also authority to the effect that the failure to fasten an available seat belt presents a factual issue with respect to the contributory negligence of the injured party,[n2] provided such failure was a proximate cause of the injury in question.[n3]

Observation: A statute governing seat belt use may preclude passengers from seeking to establish liability in a personal injury case based upon the claim that the driver was negligent in allowing them to ride unrestrained in the overcrowded back seat of his or her vehicle.[n4]

The courts in jurisdictions adhering to the doctrine of comparative negligence have held that the nonuse of a seat belt is not evidence of comparative negligence.[n5] This rule has in some jurisdictions been established by statute.[n6] However, there are also authorities holding that nonuse may be evidence of comparative negligence.[n7]

The failure to use a child safety seat or similar restraint system has been held relevant to the question whether a plaintiff in an automobile accident case is comparatively negligent.[n8] However, contrary authority also exists,[n9] based on statutes setting forth a contrary rule.[n10]

The failure of a motorcyclist to wear a helmet or other protective equipment may under appropriate circumstances constitute contributory or comparative negligence,[n11] especially where such failure constitutes a violation of a statute.[n12] However, other authority has held that failure to wear safety equipment does not establish contributory or comparative negligence.[n13]

FOOTNOTES:

n1 Hotchkiss v. Preble, 33 Colo. App. 431, 521 P.2d 1278 (1974); Keaton v. Pearson, 292 S.C. 579, 358 S.E.2d 141 (1987).

n2 Truman v. Vargas, 275 Cal. App. 2d 976, 80 Cal. Rptr. 373 (2d Dist. 1969); Tiemeyer v. McIntosh, 176 N.W.2d 819, 49 A.L.R.3d 285 (Iowa 1970).

n3 Statham v. Bush, 253 N.J. Super. 607, 602 A.2d 779 (App. Div. 1992).

n4 Maleski v. Lenander, 38 A.D.3d 1192, 831 N.Y.S.2d 810 (4th Dep't 2007), leave to appeal denied (N.Y. June 28, 2007).

n5 Baker v. Morrison, 309 Ark. 457, 829 S.W.2d 421 (1992); Miller v. Coastal Corp., 635 So. 2d 607 (La. Ct. App. 3d Cir. 1994); Thibeault v. Campbell, 136 N.H. 698, 622 A.2d 212 (1993); Mott v. Sun Country Garden Products, Inc., 120 N.M. 261, 901 P.2d 192 (Ct. App. 1995); Stein v. Penatello, 185 A.D.2d 976, 587 N.Y.S.2d 37 (2d Dep't 1992); Vogel v. Wells, 57 Ohio St. 3d 91, 566 N.E.2d 154 (1991).

n6 Cressy v. Grassmann, 536 N.W.2d 39 (Minn. Ct. App. 1995) (upholding such a statute as a rational exercise of the state's power and not violative of equal protection).

n7 Law v. Superior Court In and For Maricopa County, 157 Ariz. 147, 755 P.2d 1135 (1988); Reese v. Lyons, 193 Ga. App. 548, 388 S.E.2d 369 (1989); Waterson v. General Motors Corp., 111 N.J. 238, 544 A.2d 357 (1988) (holding also that nonuse is not negligence per se even though use is mandated by statute).

Plaintiff's failure to wear seat belt and allegation that such failure was a contributing cause of the plaintiff's injuries ordinarily should be raised as an affirmative defense of comparative negligence. Ridley v. Safety Kleen Corp., 693 So. 2d 934 (Fla. 1996), as clarified on reh'g, (Mar. 27, 1997).

n8 Barnes v. Robison, 712 F. Supp. 873 (D. Kan. 1989).

n9 Potts v. Benjamin, 882 F.2d 1320 (8th Cir. 1989) (applying Arkansas law); Swelbar v. Lahti, 473 N.W.2d 77 (Minn. Ct. App. 1991).

A parent's failure to require his son to be in a child safety seat was not comparative negligence. Lam ex rel. Lam v. State Farm Mut. Auto. Ins. Co., 946 So. 2d 133 (La. 2006).

n10 Grim v. Betz, 372 Pa. Super. 614, 539 A.2d 1365 (1988).

n11 Warfel v. Cheney, 157 Ariz. 424, 758 P.2d 1326, 85 A.L.R.4th 349 (Ct. App. Div. 1 1988).

The statutory 15% cap on the reduction, pursuant to a seat-belt defense in a negligence action, of an automobile driver's or passenger's damages does not apply to helmet negligence, regarding an all-terrain vehicle (ATV) operator's or rider's failure to use a safety helmet. Stehlik v. Rhoads, 2002 WI 73, 253 Wis. 2d 477, 645 N.W.2d 889 (2002).

n12 Green v. Gaydon, 174 Ga. App. 796, 331 S.E.2d 106 (1985).

n13 Dare v. Sobule, 674 P.2d 960 (Colo. 1984); Hukill v. DiGregorio, 136 Ill. App. 3d 1066, 92 Ill. Dec. 64, 484 N.E.2d 795 (2d Dist. 1985); Mayes v. Paxton, 313 S.C. 109, 437 S.E.2d 66 (1993).

REFERENCE: West's Key Number Digest, Automobiles [westkey]158, 202 to 227, 231
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Passengers
A.L.R. Index, Pedestrians
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]158, 202 to 227, 231
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625
The Seatbelt Defense, 35 Am. Jur. Trials 349
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 329, 335, 1229 to 1262, 1265 to 1272, 1282 to 1289, 1293 to 1297, 1363 to 1372, 1374 to 1390, 1452 to 1455
West's Key Number Digest, Automobiles [westkey]202 to 227
Nonuse of seatbelt as reducing amount of damages recoverable, 62 A.L.R.5th 537

Failure to use of misuse of automobile child safety seat or restraint system as affecting recovery for personal injury or death, 46 A.L.R.5th 557
Motorcyclist's failure to wear helmet or other protective equipment as affecting recovery for personal injury or death, 85 A.L.R.4th 365
Automobile occupant's failure to use seat belt as contributory negligence, 92 A.L.R.3d 9
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
The Seatbelt Defense, 35 Am. Jur. Trials 349

228 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
G. Defenses
1. Contributory and Comparative Negligence, Generally
b. Particular Conduct as Contributory or Comparative Negligence

8 Am Jur 2d Automobiles and Highway Traffic § 951

§ 951 Failure to anticipate other motorist's negligence

Generally, a person using a street or highway may properly assume that others also using the street or highway will exercise due care to avoid an accident.[n1] Accordingly, an injured motorist generally cannot be deemed to be contributorily or comparatively negligent merely in failing to anticipate that another driver would act negligently,[n2] at least absent evidence that a reasonable person would have reason to believe that the other driver would act negligently.[n3] A different rule may obtain where the injured motorist knows that another motorist has a propensity to drive negligently, as for example, by routinely backing out of a driveway without looking.[n4]

FOOTNOTES:

n1 § 423.

n2 Harper v. Dooley, 221 Ga. App. 715, 472 S.E.2d 461 (1996); Urban v. Zeigler, 261 Ill. App. 3d 1099, 199 Ill. Dec. 883, 634 N.E.2d 1237 (2d Dist. 1994); Eckel v. O'Keefe, 254 Ill. App. 3d 702, 194 Ill. Dec. 50, 627 N.E.2d 166 (1st Dist. 1993); Olson v. Parchen, 249 Mont. 342, 816 P.2d 423 (1991); Hanover Ins. Co. v. Washburn, 219 A.D.2d 773, 631 N.Y.S.2d 451 (3d Dep't 1995); Junge v. Jerzak, 519 N.W.2d 29 (S.D. 1994).

The trial court erred by submitting the issue of contributory negligence to the jury where all of the evidence tended to show that the plaintiff was proceeding through an intersection pursuant to a green light when she was struck by the defendant's vehicle which violated the red light, and there was no evidence of anything that would have put the plaintiff on notice that the defendant would not obey the traffic light. Cicogna v. Holder, 345 N.C. 488, 480 S.E.2d 636 (1997).

n3 Morgan v. Braasch, 214 Ga. App. 82, 446 S.E.2d 746 (1994).

As to negligence with regard to U-turns, see § 874.

n4 Treib v. Kern, 513 N.W.2d 908 (S.D. 1994).

As to backing, generally, see § 857.

REFERENCE: West's Key Number Digest, Automobiles [westkey]158, 202 to 227, 231
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Passengers

A.L.R. Index, Pedestrians
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]158, 202 to 227, 231
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625
The Seatbelt Defense, 35 Am. Jur. Trials 349
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 329, 335, 1229 to 1262, 1265 to 1272, 1282 to 1289, 1293 to 1297, 1363 to 1372, 1374 to 1390, 1452 to 1455
West's Key Number Digest, Automobiles [westkey]202 to 227

229 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
G. Defenses
2. Assumption of Risk; Last Clear Chance

8 Am Jur 2d Automobiles and Highway Traffic § 952

§ 952 Assumption of risk

While from the facts of particular cases it may be difficult to draw the line between contributory negligence and assumption of risk with respect to motor vehicle accidents, a legal distinction exists.[n1] Contributory negligence is based on carelessness, inadvertence, and unintended events,[n2] and assumption of risk requires an intelligent and deliberate choice to assume a known risk.[n3] The assumption of risk requires knowledge by the plaintiff of a specific defect or dangerous condition caused by the defendant's negligence or lack of due care which the plaintiff could have avoided, but voluntarily and deliberately failed to avoid, thereby assuming the risk of the injuries that he or she sustained, whereas contributory negligence requires evidence only that the plaintiff failed to use the care for his or her own safety which an ordinary, reasonable, and prudent person would use under the existing circumstances.[n4] Thus, a following motorist does not assume the risk that the forward vehicle will turn negligently into the following vehicle while such vehicle is attempting to pass.[n5] However, a person who leans into a vehicle to release the emergency brake without checking whether the car is in gear assumes the risk that the vehicle will run over him or her.[n6]

Observation: Where a statute affirmatively grants a particular motorist the right to claim damages from a vehicular accident, such as the statutory grant to police officers of the right to recover for injuries suffered while on duty, the defense of assumption of the risk may be precluded.[n7]

FOOTNOTES:

n1 Seiler v. Ricci's Towing Services, Inc., 210 A.D.2d 972, 620 N.Y.S.2d 688 (4th Dep't 1994).

n2 § 947.

n3 Ferguson v. Jongsma, 10 Utah 2d 179, 350 P.2d 404 (1960).

n4 Ferguson v. Jongsma, 10 Utah 2d 179, 350 P.2d 404 (1960).

N5 Carter v. Lovelace, 844 P.2d 1288 (Colo. Ct. App. 1992).

As to traffic moving in the same direction, see §§ 829, 830.

n6 Hackel v. Bartell, 207 Ga. App. 563, 428 S.E.2d 584 (1993).

n7 Clark v. DeJohn, 164 Misc. 2d 107, 623 N.Y.S.2d 727 (Sup 1995).

REFERENCE: West's Key Number Digest, Automobiles [westkey]158, 202 to 227, 231
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Passengers
A.L.R. Index, Pedestrians
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]158, 202 to 227, 231
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625
The Seatbelt Defense, 35 Am. Jur. Trials 349
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 329, 335, 1229 to 1262, 1265 to 1272, 1282 to 1289, 1293 to 1297, 1363 to 1372, 1374 to 1390, 1452 to 1455
West's Key Number Digest, Automobiles [westkey]202 to 227
As to the effect of the comparative negligence doctrine on the assumption of the risk doctrine, see Am. Jur. 2d, Negligence §§ 1002 to 1011
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1293 to 1297 (Answer -- Affirmative defense -- Assumption of risk)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1452 to 1455 (Instruction -- Assumption of risk)

230 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VI. Civil Liability Arising from Operation of Vehicle
G. Defenses
2. Assumption of Risk; Last Clear Chance

8 Am Jur 2d Automobiles and Highway Traffic § 953

§ 953 "Last clear chance"doctrine

The "last clear chance"doctrine, which permits a plaintiff in a negligence action to recover notwithstanding his or her own contributory negligence where the defendant had ample opportunity to be aware that the plaintiff was in danger and to avoid injuring him or her,[n1] is applicable to motor vehicle accident cases.[n2] Essentially, the doctrine of last clear chance is but a part of the doctrine of proximate cause;[n3] where the last-clear-chance doctrine applies, the negligence of the plaintiff in creating the situation is remote, so that the negligence of the defendant in not averting the accident after the peril is, or should have been,[n4] discovered, becomes the proximate[n5] and sole efficient cause of the accident.[n6]

The commission of the last or immediate negligent act is said to render antecedent acts of negligence remote and immaterial.[n7] Indeed, the conduct of a motorist who, after discovering and realizing the peril of another in imminent danger of being injured, fails to use ordinary care to avoid inflicting such injury, is very nearly, although not exactly, equivalent to deliberate and intentional misconduct.[n8]

The essence of the last-clear-chance doctrine is that the defendant's negligent acts were a sequence of, rather than concurrent with, the plaintiff's negligence, so that it does not apply where the plaintiff is found not negligent.[n9] The negligence of the injured party is always an essential precedent to the application, against the defendant, of the last-clear-chance doctrine.[n10]

The doctrine does not apply if the defendant's negligence, after discovering the plaintiff in a position of peril, was not the proximate cause of the ensuing accident.[n11]

Observation: Where the boulevard rule, which imposes a duty upon a driver entering or crossing a highway from another highway or a private roadway to stop and yield the right-of-way to any through traffic on the highway, applies, and there is no jury issue regarding the plaintiff's contributory negligence or the doctrine of last clear chance, the only issue for the jury is damages.[n12]

FOOTNOTES:

n1 As to the general requisites and conditions of the doctrine of last clear chance, see Am. Jur. 2d, Negligence §§ 889, 890, 897, 898.

n2 Paz v. Sherwin-Williams, 917 F. Supp. 51 (D.D.C. 1996); District of Columbia v. Huysman, 650 A.2d 1323 (D.C. 1994); Bowden v. Bell, 116 N.C. App. 64, 446 S.E.2d 816 (1994).

n3 Sprinkle v. Davis, 111 F.2d 925, 128 A.L.R. 1101 (C.C.A. 4th Cir. 1940) (applying Virginia law).

n4 Di Sandro v. Griffith, 188 Cal. App. 2d 428, 10 Cal. Rptr. 595 (4th Dist. 1961); Douglas v. Hackney, 133 So. 2d 301 (Fla. 1961); See v. Willett, 58 Wash. 2d 39, 360 P.2d 592 (1961).

n5 Wawner v. Sellic Stone Studio, 74 So. 2d 574 (Fla. 1954).

n6 Shea v. Pilette, 108 Vt. 446, 189 A. 154, 109 A.L.R. 933 (1937).

n7 Girdner v. Union Oil Co. of Cal., 216 Cal. 197, 13 P.2d 915 (1932); Williams v. Sauls, 151 Fla. 270, 9 So. 2d 369 (1942).

n8 Whited v. Powell, 155 Tex. 210, 285 S.W.2d 364 (1956); Waldeck v. Watts, 326 S.W.2d 913 (Tex. Civ. App. San Antonio 1959), writ refused n.r.e.

n9 Daniels v. City and County of San Francisco, 40 Cal. 2d 614, 255 P.2d 785 (1953); May v. Kansas Power & Light Co., 134 Kan. 470, 7 P.2d 108 (1932).

n10 James v. Keene, 133 So. 2d 297 (Fla. 1961) (overruled in part on other grounds by, Perdue v. Copeland, 220 So. 2d 617 (Fla. 1969)).

n11 Armstrong v. West Tex. Rig Co., 339 S.W.2d 69 (Tex. Civ. App. El Paso 1960), writ refused n.r.e., (Dec. 14, 1960).

n12 Barrett v. Nwaba, 165 Md. App. 281, 885 A.2d 392 (2005).

REFERENCE: West's Key Number Digest, Automobiles [westkey]158, 202 to 227, 231
A.L.R. Index, Approaching Vehicles
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Crossing and Crossings
A.L.R. Index, Passengers
A.L.R. Index, Pedestrians
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Stalled or Disabled Vehicles
A.L.R. Index, Standing or Stopped Vehicles
A.L.R. Index, Sudden Stop or Start
A.L.R. Index, Traffic Signals and Signs
West's A.L.R. Digest, Automobiles [westkey]158, 202 to 227, 231
Proof of Seatbelt Defense, 65 Am. Jur. Proof of Facts 3d 1
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625
The Seatbelt Defense, 35 Am. Jur. Trials 349
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 329, 335, 1229 to 1262, 1265 to 1272, 1282 to 1289, 1293 to 1297, 1363 to 1372, 1374 to 1390, 1452 to 1455
West's Key Number Digest, Automobiles [westkey]202 to 227
Sufficiency of evidence to raise last clear chance doctrine in cases of automobile collision with pedestrian or bicyclist -- modern cases, 9 A.L.R.5th 826
Applicability of last clear chance doctrine to collision between moving and stalled, parked, or standing motor vehicle, 34 A.L.R.3d 570
Applicability of last clear chance doctrine to collisions between motor vehicles crossing at intersection, 20 A.L.R.3d 124
Last Clear Chance, 32 Am. Jur. Proof of Facts 2d 625
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 329 (Allegation -- Illegal U-turn attempted -- Collision with plaintiff's oncoming vehicle -- Last clear chance)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 335 (Allegation -- Crest of hill -- Unfavorable road conditions -- Plaintiff's vehicle out of control struck by defendant's vehicle -- Last clear chance)
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1282 to 1289 (Answer -- Affirmative defense -- Last clear chance)

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 1363 to 1372 (Insruction -- Last clear chance)

231 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 954

§ 954 Generally

An indictment or information in a prosecution for a motor vehicle offense must state the essential elements of the offense with which the accused is charged so as to fairly inform the defendant of the charge against which he or she must defend, and enable the defendant to plead an acquittal or conviction in bar of future prosecutions for the same offense [n1]

Offenses involving motor vehicles and their use are frequently charged in traffic tickets and similar simplified charging instruments, and it is generally held that such instruments need not comply with the full panoply of rules applicable to indictments and informations charging more serious offenses. [n2] However, such charging instruments must still fully apprise the defendant of the offense with which he or she is being charged and allow the defendant to defend the matter without any suggestion of surprise or prejudice. [n3] Issuance of a complaint for various traffic violations to a driver at the time of the infractions constitutes service of process upon the driver, because the driver thereby receives actual notice of the violations, and this is so even though the complaints are in the wrong name; since issuance in the wrong name does not alter the personal issuance of process on the driver. [n4] Although the United States Supreme Court has held that clerks of municipal courts qualify as neutral and detached magistrates for federal constitutional purposes, so as to be constitutionally authorized to issue arrest warrants, [n5] at least one state has held that a statute authorizing clerks and deputy clerks to issue arrest warrants for violations of municipal traffic ordinances is violative of state constitutional provisions. [n6]

FOOTNOTES:

n1 U.S. v. Watson, 815 F. Supp. 827 (E.D. Pa. 1993), aff'd, 26 F.3d 124 (3d Cir. 1994); State v. Wells, 585 S.W.2d 267 (Mo. Ct. App. S.D. 1979).

Related References:
As to technical requirements of indictments and informations, generally, see Am. Jur. 2d, Indictments and Informations §§ 84 et seq.

n2 § 956.

n3 State v. Morgan, 393 N.J. Super. 411, 923 A.2d 359 (App. Div. 2007).

n4 State v. Sirvent, 296 N.J. Super. 279, 686 A.2d 1202 (App. Div. 1997).

n5 Am. Jur. 2d, Arrest § 15.

n6 State v. Paulick, 277 Minn. 140, 151 N.W.2d 591 (1967).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]350 to 352
Am. Jur. Pleading and Practice Forms, Criminal Procedure § 105 (Motion to quash, dismiss, or set aside accusatory pleading -- Ground -- Does not state a public offense)
Am. Jur. Pleading and Practice Forms, Criminal Procedure § 106 (Motion to quash, dismiss, or set aside accusatory pleading -- Ground -- Vagueness, indefiniteness, ambiguity, and uncertainty)

232 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 955

§ 955 Charging offense in language of statute

The general rule as to charging a statutory offense[n1] that an indictment or information charging the offense in the language of the statute is sufficient where the statute itself prescribes the elements of, and all the facts necessary to constitute, the offense applies to motor vehicle cases.[n2] The use of the statutory language need not be exact, and where a word not in the statute is substituted for one that is, the indictment is sufficient if the word thus substituted is equivalent to the word used in the statute, or is of a more extensive meaning than the statutory term and includes it.[n3]

When an act or omission by a defendant is statutorily defined, and that definition provides more than one way to commit the act or omission, the state must allege the manner and means it seeks to establish.[n4]

FOOTNOTES:

n1 Am. Jur. 2d, Indictments and Informations §§ 101 et seq.

n2 People v. White, 24 Ill. App. 2d 324, 164 N.E.2d 823, 80 A.L.R.2d 1060 (2d Dist. 1960), judgment aff'd, 21 Ill. 2d 373, 172 N.E.2d 794 (1961); State v. Lantz, 90 W. Va. 738, 111 S.E. 766, 26 A.L.R. 894 (1922).

n3 State v. Friend, 943 S.W.2d 800 (Mo. Ct. App. W.D. 1997); Rincon v. State, 615 S.W.2d 746 (Tex. Crim. App. 1981).

Related References:
As to charging statutory offenses substantially in the statutory language, generally, see Am. Jur. 2d, Indictments and Informations § 104.

n4 Garcia v. State, 747 S.W.2d 379 (Tex. Crim. App. 1988).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide

West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1

233 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 956

§ 956 Charging of traffic infractions other than felonies or misdemeanors

In some jurisdictions, violations of certain traffic rules or regulations which are not misdemeanors or felonies, are denominated traffic infractions.[n1] Prosecutions for such infractions are instituted by the filing of an information or complaint or its equivalent,[n2] which frequently consists of a printed traffic ticket or similar instrument.[n3]

An information or other charging instrument charging a traffic infraction, whether or not on a simplified form, need not state the particular offense with the same exactness or precision that is required in an information charging a felony.[n4] Moreover, it need not contain every element of the offense in its description,[n5] but may charge the essential elements by necessary intendment or implication.[n6] Such an information or other charging instrument will satisfy the legal requirements applicable to charging instruments if it apprises the defendant of the nature of the charge together with a citation of the statute or ordinance involved.[n7]

In some jurisdictions the simplified charging procedure has been made applicable to more serious infractions, such as driving while intoxicated, and has been held to satisfy constitutional requirements concerning adequacy of charging instruments as so applied.[n8]

Under statutes which prohibit issuance of traffic citations other than at the time of the violation for which the citation is issued, failure to issue a citation as required is generally considered a defense to later issuance and prosecution, and the prohibition cannot be avoided by use of a citizen's complaint or citation.[n9] However, it is sometimes held that the purpose of such statutes is to provide a defendant prompt notice of the offense, and that where failure to issue a citation on a timely basis does not deny the defendant notice it may be excused.[n10]

FOOTNOTES:

n1 § 220.

n2 People v. Karnow, 204 Misc. 632, 123 N.Y.S.2d 537 (County Ct. 1953).

n3 People v. Brausam, 83 Ill. App. 2d 354, 227 N.E.2d 533 (2d Dist. 1967); State v. Martin, 387 A.2d 592 (Me. 1978).

n4 State v. Martin, 387 A.2d 592 (Me. 1978); People v. Key, 45 N.Y.2d 111, 408 N.Y.S.2d 16, 379 N.E.2d 1147 (1978).

n5 City of Cleveland v. Austin, 55 Ohio App. 2d 215, 9 Ohio Op. 3d 368, 380 N.E.2d 1357 (8th Dist. Cuyahoga County 1978).

n6 State v. Martin, 387 A.2d 592 (Me. 1978).

n7 People v. Dunskus, 282 Ill. App. 3d 912, 218 Ill. Dec. 306, 668 N.E.2d 1138 (1st Dist. 1996); People v. Howell, 158 Misc. 2d 653, 601 N.Y.S.2d 778 (City Crim. Ct. 1993).

n8 People v. Brausam, 83 Ill. App. 2d 354, 227 N.E.2d 533 (2d Dist. 1967) (describing a class of infractions to which its simplified procedure applied as "quasi-criminal"); State v. Martin, 387 A.2d 592 (Me. 1978); City of Independence v. Beth, 458 S.W.2d 874 (Mo. Ct. App. 1970).

n9 Com. v. Riley, 41 Mass. App. Ct. 234, 669 N.E.2d 778 (1996).

n10 Com. v. Cameron, 416 Mass. 314, 621 N.E.2d 1173 (1993).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1

234 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 957

§ 957 Amendment and supplementation

Amendments of indictments, informations, or complaints are permissible in proper cases.[n1] Amendment is generally permitted where the nature of the offense charged is not altered by the amendment.[n2] In determining whether an amendment alters the offense originally charged, courts examine whether the elements of and defenses to the amended charge differ materially from those of the original charge.[n3]

Amendment or supplementation of an indictment which alters the nature of the charge may be permitted where the amendment does not prejudice the defendant, or the defendant effectively waives the right to complain of the amendment.[n4] An incomplete indictment or information charging an offense relating to a motor vehicle cannot generally be supplemented or pieced out by affidavits in the court,[n5] though that practice is permissible under a simplified charging statute which makes provision for fleshing out a charging instrument with an affidavit when requested by the defendant.[n6]

FOOTNOTES:

n1 State v. Caswell, 551 N.W.2d 252 (Minn. Ct. App. 1996); People v. Easton, 307 N.Y. 336, 121 N.E.2d 357 (1954).

Related References:
As to amendment and supplementation of charging instruments, generally, see Am. Jur. 2d, Indictments and Informations §§ 160 et seq.

n2 People v. Easton, 307 N.Y. 336, 121 N.E.2d 357 (1954); Hopkins v. State, 317 S.C. 7, 451 S.E.2d 389 (1994) (overruled on other grounds by, State v. Gentry on other grounds, 363 S.C. 93, 610 S.E.2d 494 (2005)).

Related References:
As to amendments changing the nature of the offense charged, generally, see Am. Jur. 2d, Indictments and Informations § 168.

n3 State v. Caswell, 551 N.W.2d 252 (Minn. Ct. App. 1996); Com. v. Plybon, 279 Pa. Super. 329, 421 A.2d 224 (1980).

n4 People v. Vanzandt, 287 Ill. App. 3d 836, 223 Ill. Dec. 186, 679 N.E.2d 130 (5th Dist. 1997).

n5 People v. Grogan, 260 N.Y. 138, 183 N.E. 273, 86 A.L.R. 1266 (1932).

n6 People v. Key, 45 N.Y.2d 111, 408 N.Y.S.2d 16, 379 N.E.2d 1147 (1978).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1

235 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 958

§ 958 Speeding; racing

The general rule that an indictment or information must allege each and every element of the offense has been applied to prosecutions for speeding.[n1] Where the offense of speeding can be committed only at particular places or on particular highways or portions thereof, then the place of commission is an essential element of the offense which must be alleged in the indictment.[n2] On the other hand, a charging instrument that simply states that the defendant was traveling a certain speed above the designated lawful rate is insufficient to inform the defendant so that he or she may prepare a defense, and that consequently the defendant is entitled to more particularization about the alleged violation.[n3]

Where the offense of speeding requires, in general, proof that the vehicle's speed was not reasonable and prudent, an information is fatally defective when it fails to allege this essential element, and this is so even if a statute provides that a speed in excess of a posted maximum speed limit is prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful.[n4]

Where a speeding statute is limited by another statute which provides that the driver of an emergency vehicle may extend beyond the speed limit, the state is not required to plead that the limitation was inapplicable in that the defendant was not such a driver.[n5]

A complaint charging a defendant with racing on a public highway need not allege either the speed at which the defendant was traveling or the applicable speed limit, where exceeding the speed limit is not an essential element of the offense.[n6]

FOOTNOTES:

n1 Tollett v. State, 219 S.W.3d 593 (Tex. App. Texarkana 2007), petition for discretionary review refused, (Aug. 22, 2007).

n2 State v. Barlett, 394 S.W.2d 434 (Mo. Ct. App. 1965) (abrogated on other grounds by, State v. King, 851 S.W.2d 800 (Mo. Ct. App. S.D. 1993)).

n3 People v. Gutterson, 93 Misc. 2d 1105, 403 N.Y.S.2d 998 (J. Ct. 1978).

n4 Tollett v. State, 219 S.W.3d 593 (Tex. App. Texarkana 2007), petition for discretionary review refused, (Aug. 22, 2007).

n5 People v. Baur, 102 Misc. 2d 971, 423 N.Y.S.2d 800 (Dist. Ct. 1980).

n6 Com. v. Frye, 357 Pa. Super. 395, 516 A.2d 38 (1986).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]350 to 352.

236 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 959

§ 959 Reckless driving

An indictment or information in a prosecution for reckless driving is sufficient if it identifies the charge against the defendant so that his or her conviction or acquittal will prevent a subsequent charge for the same offense, and if it notifies him or her of the nature and character of the crime charged so that the defendant may prepare a defense.[n1] Like other motor vehicle offenses, reckless driving may be charged in an indictment or information following the statutory language, if the statute is sufficiently definite as to the elements of, or the facts constituting, the offense,[n2] but the use of the statutory language in charging the offense is not sufficient where the statute does not set forth the elements of the offense,[n3] and in such circumstances the indictment or information must state the offense and the acts constituting the offense, including the time and place of commission.[n4]

FOOTNOTES:

n1 People v. Armlin, 6 N.Y.2d 231, 189 N.Y.S.2d 179, 160 N.E.2d 478 (1959); People v. Orlofsky, 70 Misc. 2d 298, 332 N.Y.S.2d 778 (County Ct. 1972).

n2 § 955.

n3 State v. Davis, 16 Ohio Misc. 282, 45 Ohio Op. 2d 347, 241 N.E.2d 750 (C.P. 1968).

n4 People v. Green, 368 Ill. 242, 13 N.E.2d 278, 115 A.L.R. 348 (1938); People v. Grogan, 260 N.Y. 138, 183 N.E. 273, 86 A.L.R. 1266 (1932).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 352

237 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 960

§ 960 Leaving scene of accident

An information charging a motorist with the crime of "hit and run"in the language of the statute and setting forth all the necessary elements of the crime in ordinary, concise, and understandable language, stated facts sufficient to constitute a public offense. [n1]

Where the offense may be committed through the injury of either person or property, the accusatory instrument must specify which was injured, and a charge in the disjunctive is insufficient. [n2]

Insofar as such statutes are not limited in their operation to accidents upon public highways, [n3] an indictment or information charging one with the violation thereof need not allege that the accident occurred on a public highway. [n4] However, such an allegation must be made in the indictment or information where the statute is construed as limited in its operation to accidents occurring upon a public highway. [n5] Where the statutory duty of a motorist is dependent upon an accident resulting in injury or damage to another, the indictment or information must allege the fact of an accident resulting in the injury or damage, [n6] and that the property damage or personal injury involved was caused by a motor vehicle operated by the defendant and was due to his or her culpability, or to the accident. [n7]

Courts in a number of jurisdictions hold that in prosecutions for leaving the scene of an accident, knowledge that an accident occurred is an essential element of the offense, [n8] and must be pled. [n9] Although the allegations in an indictment that the defendant was involved in an automobile accident that resulted in physical injury and "did unlawfully and knowingly fail to remain at the scene of the accident"supported a charge for felony failure to perform the duties of a driver, despite a failure to allege that defendant knew that there were physical injuries involved, [n10] it is has also sometimes been held that in such prosecutions the indictment must allege that the defendant knew or had reason to know that the accident was of such a nature that it could reasonably be expected to involve physical injury or death. [n11]

FOOTNOTES:

n1 People v. Houston, 24 Cal. App. 2d 167, 74 P.2d 515 (4th Dist. 1937).

n2 State v. Webster, 105 N.H. 415, 200 A.2d 856 (1964); People v. Levy, 157 Misc. 2d 941, 599 N.Y.S.2d 898 (Sup 1993).

n3 § 221.

n4 Kennedy v. State, 39 Ala. App. 676, 107 So. 2d 913 (1958); Meadows v. State, 211 Miss. 557, 52 So. 2d 289 (1951).

n5 State v. Smith, 66 Ariz. 376, 189 P.2d 205 (1948); People v. Hoenschle, 132 Cal. App. 387, 22 P.2d 777 (3d Dist. 1933).

n6 State v. Gosselin, 110 Vt. 361, 6 A.2d 14 (1939).

n7 People v. Patrick, 175 Misc. 997, 26 N.Y.S.2d 183 (County Ct. 1941).

n8 State v. Tennant, 173 W. Va. 627, 319 S.E.2d 395 (1984).

n9 People v. Digirolamo, 279 Ill. App. 3d 487, 216 Ill. Dec. 83, 664 N.E.2d 720 (5th Dist. 1996), aff'd, 179 Ill. 2d 24, 227 Ill. Dec. 779, 688 N.E.2d 116 (1997); Com. v. Kauffman, 323 Pa. Super. 363, 470 A.2d 634 (1983); State v. Fearing, 304 N.C. 471, 284 S.E.2d 487 (1981).

n10 State v. Burns, 213 Or. App. 38, 159 P.3d 1208 (2007).

n11 State v. Blevins, 128 Ariz. 64, 623 P.2d 853 (Ct. App. Div. 1 1981).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 352
Necessity and sufficiency of showing, in criminal prosecution under "hit-and-run"statute, accused's knowledge of accident, injury, or damage, 26 A.L.R.5th 1
Applicability of criminal "hit-and-run"statute to accidents occurring on private property, 77 A.L.R.2d 1171

238 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 961

§ 961 Vehicular homicide

Where the basis of the offense of involuntary manslaughter is an unlawful act it is sufficient to allege in the charging instrument the unlawful act with enough particularity to identify it, and then to charge that as a consequence or proximate result thereof the defendant caused the death of the deceased.[n1] In the case of manslaughter committed through gross or culpable negligence while doing a lawful act, the duty which was neglected or improperly performed must generally be charged, as well as the acts of the accused constituting failure to perform or improper performance.[n2] However, it has been held that an indictment or information which charges a defendant with manslaughter in that the defendant carelessly, recklessly, and feloniously, and with culpable negligence operated a motor vehicle on a public highway and thereby killed another, is sufficient without averring in detail the conduct constituting such negligence or recklessness.[n3]

Where a statute provides alternative means by which such an offense may be committed, the indictment must at least set forth the means alleged to have been employed and a causal connection between the defendant's behavior and the death.[n4]

An allegation of causing the death of another by means of the operation of a motor vehicle "with malice aforethought"would properly charge murder, and a murder charge may be predicated upon a homicide resulting from the reckless disregard for the safety of persons as that phrase is used in a reckless driving statute.[n5]

FOOTNOTES:

n1 State v. Yudick, 155 Ohio St. 269, 44 Ohio Op. 269, 98 N.E.2d 415 (1951); Click v. State, 144 Tex. Crim. 468, 164 S.W.2d 664 (1942); State v. Ramos, 159 Wash. 599, 294 P. 223 (1930).

n2 State v. Heitter, 57 Del. 595, 203 A.2d 69, 9 A.L.R.3d 195 (1964); People v. Townsend, 214 Mich. 267, 183 N.W. 177, 16 A.L.R. 902 (1921); Vaughn v. State, 42 Okla. Crim. 376, 276 P. 701 (1929).

n3 Williams v. State, 161 Miss. 406, 137 So. 106 (1931); State v. Millin, 318 Mo. 553, 300 S.W. 694 (1927).

n4 Kevinezz v. State, 265 Ga. 78, 454 S.E.2d 441 (1995); State v. Tang, 77 Wash. App. 644, 893 P.2d 646 (Div. 1 1995).

n5 Foster v. State, 239 Ga. 302, 236 S.E.2d 644 (1977).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 352

239 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 962

§ 962 Assault and battery

In charging a motorist with the striking and injuring of a person, it is sufficient to charge the assault and battery without charging all the details constituting it.[n1] The character and kind of injury inflicted need not be set forth,[n2] nor is it necessary to allege that the injury has not resulted in death to the victim.[n3]

Where an indictment under which the defendant is convicted of aggravated assault with a deadly weapon describes an automobile and the manner of its use in such terms as to indicate that it is a deadly weapon, it is not fatally defective merely because it fails to state expressly that the automobile is a deadly weapon.[n4]

FOOTNOTES:

n1 State v. Coates, 862 S.W.2d 418 (Mo. Ct. App. S.D. 1993).

n2 Curtis v. State, 104 Tex. Crim. 473, 284 S.W. 950 (1926).

n3 Baisden v. State, 125 Tex. Crim. 480, 68 S.W.2d 1044 (1934).

n4 Williamson v. State, 92 Fla. 980, 111 So. 124, 53 A.L.R. 250 (1926).

SUPPLEMENT:

Cases
Any failure of indictments to allege the "deadly weapon" element elevating reckless conduct charges to class B felonies was harmless; indictments alleged that defendant used his car, and no other object, to strike alleged victims, "thereby placing them in danger of serious bodily injury," defendant did not dispute at trial that he struck alleged victims with his car, those individuals were standing with a third individual whom defendant admitted he hit "hard," and any rational grand jury presented with proper indictments would have charged defendant with felony-level reckless conduct under those circumstances. RSA 631:3(2). State v. Euliano, 161 N.H. 601, 20 A.3d 223 (2011).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 352

240 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
b. Driving While Intoxicated or under the Influence of Liquor

8 Am Jur 2d Automobiles and Highway Traffic § 963

§ 963 Generally

A charging instrument charging the offense of driving while in an intoxicated condition or under the influence of intoxicating liquor or drugs must, pursuant to general rules applicable to charging instruments, identify the offense the defendant is accused of committing with sufficient particularity to inform the defendant of the charge against him or her so that the defendant may prepare a defense, and to prevent the defendant being tried again for the same offense in the event of an acquittal.[n1] Such a charging instrument may validly be couched in the language of the statute, if the defendant is sufficiently apprised of the offense charged.[n2]

Where a statute applies only to acts committed upon a public highway, it is generally held that the instrument must allege that the offense was committed on a public highway.[n3] However, at least one court has held that in a simplified charging instrument, naming the road on which the violation allegedly occurred is sufficient, since judicial notice may be taken of the fact that the road was in fact a public highway.[n4] An allegation in a simplified charging instrument that a defendant was found asleep behind the wheel of a stalled car, in the middle of an intersection, with the keys in the vehicle's ignition switch, is sufficient to allege the element of operation.[n5]

An incorrect date on a charging instrument charging the offense of driving while in an intoxicated condition does not necessarily render the charging instrument fatal, especially when other circumstances make the accused aware of the actual date of the offense for which he or she was charged.[n6]

An indictment for driving under the influence of alcohol will not support a conviction for being in actual physical control of an automobile while under the influence, even though both offenses are set forth in the same statute, since the elements of the two offenses are different.[n7]

The fact that a complaint charging a defendant with driving under the influence misstates the culpable mental state required to establish the offense, that is, that the defendant "intentionally"drove or operated a motor vehicle while under the influence, does not require the state to prove that the defendant intended to drive while under the influence, at least when the defendant does not allege that he or she detrimentally relied on this language or that the defendant was otherwise prejudiced by the misstatement, and the instruction given at trial correctly states the culpable mental state as "knowingly."[n8]

A driving under the influence citation indicating an arraignment date without indicating "a.m."or "p.m."and listing an incorrect municipal court address did not render the citation defective, as although the statute imposing criminal penalties was required to be strictly construed in favor of the accused, it should not have been so strict as to override common sense or the statutory purpose, and defendant did not allege, and the record did not reveal, that defendant suffered any prejudice.[n9]

FOOTNOTES:

n1 State v. Martin, 387 A.2d 592 (Me. 1978).

n2 People v. Haney, 95 Ill. App. 2d 1, 238 N.E.2d 110 (1st Dist. 1968).

As to charging offense in language of statute, see § 955.

n3 State v. Conant, 124 Me. 198, 126 A. 838 (1924); Allen v. State, 148 Tex. Crim. 606, 190 S.W.2d 569 (1945).

n4 State v. Martin, 387 A.2d 592 (Me. 1978).

n5 People v. Williams, 161 Misc. 2d 523, 614 N.Y.S.2d 711 (City Crim. Ct. 1994).

n6 Scott v. City of Booneville, 2007 WL 900810 (Miss. Ct. App. 2007).

n7 City of Fargo v. Schwagel, 544 N.W.2d 873 (N.D. 1996).

n8 Lampley v. Municipality of Anchorage, 159 P.3d 515 (Alaska Ct. App. 2007).

n9 Loveless v. City of Booneville, 2007 WL 1599548 (Miss. Ct. App. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 426
Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 52 A.L.R.5th 655

241 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
b. Driving While Intoxicated or under the Influence of Liquor

8 Am Jur 2d Automobiles and Highway Traffic § 964

§ 964 Disclosure of level of offense; pleading prior convictions

Where an accused is charged as a second, third, or fourth driving while intoxicated offender, the information or indictment must allege the prior convictions.[n1] However, there is authority to the contrary in misdemeanor driving-while-intoxicated cases.[n2] Although it is said that the prosecution has a good faith obligation to plead the prior convictions accurately and specifically, it has also been held that an error in pleading a prior conviction does not automatically bar its use under an enhancement provision.[n3]

A complaint that is insufficient to support a conviction for operating a vehicle under the influence of an intoxicant ("DUI") for the second time within five years, on the grounds that it fails to allege the prior conviction, is sufficient to support a conviction for DUI as a first-time offender.[n4]

FOOTNOTES:

n1 State v. Ruggiero, 114 Haw. 227, 160 P.3d 703 (2007); State v. Wiltcher, 956 So. 2d 769 (La. Ct. App. 2d Cir. 2007).

n2 State v. Haddix, 668 So. 2d 1064 (Fla. Dist. Ct. App. 4th Dist. 1996).

n3 State v. Brooks, 656 A.2d 1205 (Me. 1995); Dressler v. State, 107 Nev. 686, 819 P.2d 1288 (1991).

n4 State v. Ruggiero, 114 Haw. 227, 160 P.3d 703 (2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 359.6, 426

242 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
b. Driving While Intoxicated or under the Influence of Liquor

8 Am Jur 2d Automobiles and Highway Traffic § 965

§ 965 Allegation of type of intoxicant used; manner of determining intoxication

Under statutes by which a person can commit the offense of driving while intoxicated (or driving "under the influence") by more than one kind of act or omission, and some courts have held that in charging under such statutes the prosecution must allege the manner and means of intoxication it seeks to establish, by alleging specifically the intoxicant(s) used by the defendant and the definition of intoxication on which it relies.[n1] However, it has also been held that an information charging a defendant with operating a vehicle while intoxicated "and/or"with a blood-alcohol content in excess of the statutory threshold, or otherwise asserting both alternative means, is sufficient to apprise the defendant of the offense with which he or she is being charged, and entitles the prosecution to proceed under either definition.[n2] Furthermore, it has sometimes been held that merely charging the defendant with "DWI"is sufficient, since the state is required to charge the elements of the offense, but not alternative means by which each element was achieved.[n3] Where the charging instrument alleges intoxication as a result of blood-alcohol content in excess of the statutory limit, attachment to the instrument of a properly verified chemical test analysis has been held necessary to satisfy the requirement that the instrument contain allegations of fact which sustain every element of the charge.[n4] However, an information charging a defendant with driving while impaired by drugs was legally sufficient even though the results of the defendant's urine test were not included, since the information was supported by a deposition of the arresting officer, who described his professional training in the identification of drugs and his prior experience in drug arrests, which stated that the officer observed the defendant driving the vehicle, that there was a strong odor of marijuana emanating from inside the vehicle, that a partially burnt marijuana cigarette was recovered from inside the automobile in plain view, and that the defendant had watery and bloodshot eyes and slurred speech, and information also included a field test for a marijuana cigarette found in the vehicle.[n5]

FOOTNOTES:

n1 Com. v. Plybon, 279 Pa. Super. 329, 421 A.2d 224 (1980); State v. Carter, 810 S.W.2d 197 (Tex. Crim. App. 1991).

n2 Medley v. State, 630 So. 2d 163 (Ala. Crim. App. 1993); State v. Johnson, 326 Ark. 189, 931 S.W.2d 760 (1996); State v. Edmondson, 125 Idaho 132, 867 P.2d 1006 (Ct. App. 1994).

n3 State v. Ortiz, 80 Wash. App. 746, 911 P.2d 411 (Div. 2 1996).

n4 People v. Lopez, 170 Misc. 2d 278, 648 N.Y.S.2d 231 (City Crim. Ct. 1996).

n5 People v. Hill, 16 Misc. 3d 176, 834 N.Y.S.2d 840 (City Crim. Ct. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 426

243 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
c. Theft of, and Related Offenses Concerning, Motor Vehicles and Equipment

8 Am Jur 2d Automobiles and Highway Traffic § 966

§ 966 Generally

Indictments or informations for larceny of motor vehicles, or of motor vehicle equipment or accessories should, like indictments or informations for larceny of property generally,[n1] describe the subject of the larceny with reasonable certainty, and the property should be described so as to individualize the transaction to such an extent that the description will enable the court to determine that the property alleged to have been taken is a subject of larceny, and show the jury that the things stolen are those on which the charge is founded.[n2] Even though, in a prosecution for larceny of a motor vehicle, it is advisable to describe the make of the motor vehicle, failure to do so does not render the indictment fatally defective, where the requirement of a description of the vehicle with reasonable certainty is met by a statement of other identifying features.[n3]

An instrument charging tampering with a motor vehicle need not name the owner of the vehicle where the statute does not so require, even where case law antedating the statute imposed such a requirement.[n4]

A complaint charging unauthorized use of a vehicle is defective where it fails to allege nonhearsay facts establishing the defendant's dominion or control over the vehicle, since such dominion or control is an essential element of the offense.[n5]

FOOTNOTES:

n1 Am. Jur. 2d, Larceny §§ 109 et seq.

n2 People v. Graves, 331 Ill. 268, 162 N.E. 839 (1928); Jackson v. State, 173 Miss. 776, 163 So. 381, 100 A.L.R. 789 (1935); State v. Robinson, 106 W. Va. 276, 145 S.E. 383, 62 A.L.R. 351 (1928).

n3 State v. Robinson, 106 W. Va. 276, 145 S.E. 383, 62 A.L.R. 351 (1928).

n4 State v. Bailey, 760 S.W.2d 122 (Mo. 1988).

n5 People v. Velez, 149 Misc. 2d 592, 565 N.Y.S.2d 950 (City Crim. Ct. 1990).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs

A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 352

244 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
A. Initiation of Proceedings; Information, Indictment, or Complaint
2. Particular Offenses
c. Theft of, and Related Offenses Concerning, Motor Vehicles and Equipment

8 Am Jur 2d Automobiles and Highway Traffic § 967

§ 967 Offenses under National Motor Vehicle Theft Act

In a prosecution under the National Motor Vehicle Theft Act for transporting in interstate or foreign commerce a motor vehicle, knowing it to have been stolen,[n1] there must be some allegation of the fact that the motor vehicle had been stolen, although such allegation apparently need not be positive and direct,[n2] nor is it necessary that the particulars of the original theft be stated.[n3] The indictment must contain a sufficient charge to the effect that defendant knew that the vehicle involved had been stolen,[n4] and there must be a specific description of the vehicle sufficient to assure its proper identification.[n5] These allegations concerning the identity of the vehicle need not go into great detail,[n6] and need not contain the correct motor number or serial number of the vehicle.[n7] Although the interstate character of the offense must be alleged,[n8] it is not necessary to charge in the indictment an intent to transport a stolen motor vehicle in interstate commerce[n9] or the method by which the motor vehicle was transported.[n10]

As is the case with respect to prosecutions under the National Motor Vehicle Theft Act's provisions pertaining to the interstate transportation of stolen vehicles, in prosecutions under the Act for receiving, concealing, storing, bartering, selling, or disposing of a motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce,[n11] the indictment must contain an allegation to the effect that the motor vehicle involved had been stolen, although here also it seems not to be essential that such allegation be made directly and positively.[n12] Furthermore, it is not necessary that any particulars of the original theft be alleged.[n13] The indictment must properly identify the motor vehicle involved[n14] and must also show the interstate or foreign character of the offending transaction.[n15]

Discrepancies in the motor number of an automobile or in other references to the vehicle given in the indictment and as revealed by proof have been held not to be fatal variances in a prosecution under the National Motor Vehicle Theft Act.[n16] Discrepancies in referring to the object stolen as a "motor vehicle"in the indictment and as an "automobile"in the judgment of conviction have also been held not to be fatal.[n17]

Violations of both of the above statutes may be joined in a single indictment, charging both a conspiracy to transport, receive, and conceal stolen motor vehicles, and transporting stolen motor vehicles.[n18]

FOOTNOTES:

n1 18 U.S.C.A. § 2312.

As to offense of transporting in interstate or foreign commerce a motor vehicle, knowing it to have been stolen, see § 390.

n2 Robertson v. U.S., 168 F.2d 294 (C.C.A. 5th Cir. 1948); Abraham v. U.S., 15 F.2d 911 (C.C.A. 8th Cir. 1926).

n3 Abraham v. U.S., 15 F.2d 911 (C.C.A. 8th Cir. 1926); Whitaker v. Hitt, 285 F. 797, 27 A.L.R. 951 (App. D.C. 1922).

n4 Brooks v. U.S., 267 U.S. 432, 45 S. Ct. 345, 69 L. Ed. 699, 37 A.L.R. 1407 (1925).

n5 Johnson v. U.S., 239 F.2d 636 (6th Cir. 1956); Alm v. U.S., 238 F.2d 604 (8th Cir. 1956).

n6 Risken v. U.S., 197 F.2d 959 (8th Cir. 1952); Hagan v. U.S., 9 F.2d 562 (C.C.A. 8th Cir. 1925).

n7 Johnson v. U.S., 239 F.2d 636 (6th Cir. 1956); Alm v. U.S., 238 F.2d 604 (8th Cir. 1956).

n8 Aaron v. U.S., 188 F.2d 446 (4th Cir. 1951); Godish v. U.S., 182 F.2d 342 (10th Cir. 1950).

n9 Hughes v. U.S., 4 F.2d 387 (C.C.A. 8th Cir. 1925).

n10 Hagan v. U.S., 9 F.2d 562 (C.C.A. 8th Cir. 1925); Foster v. U.S., 4 F.2d 107 (C.C.A. 9th Cir. 1925).

n11 18 U.S.C.A. § 2313.

As to offense of sale or receipt of stolen vehicles, see § 391.

n12 Wendell v. U.S., 34 F.2d 92 (C.C.A. 4th Cir. 1929).

n13 Heglin v. U.S., 27 F.2d 310 (C.C.A. 8th Cir. 1928); Jones v. U.S., 19 F.2d 316 (C.C.A. 8th Cir. 1927).

n14 Roberson v. U.S., 237 F.2d 536 (5th Cir. 1956).

n15 Hill v. Sanford, 131 F.2d 417 (C.C.A. 5th Cir. 1942).

n16 Johnson v. U.S., 195 F.2d 673 (8th Cir. 1952); U.S. v. Drexel, 56 F.2d 588 (C.C.A. 2d Cir. 1932) (discrepancy characterized by court as trivial).

n17 Risken v. U.S., 197 F.2d 959 (8th Cir. 1952).

n18 U.S. v. Wooldridge, 572 F.2d 1027, 3 Fed. R. Evid. Serv. 158 (5th Cir. 1978).

REFERENCE: West's Key Number Digest, Automobiles [westkey]350 to 352, 359.6, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]350 to 352, 359.6, 426
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 105, 106
West's Key Number Digest, Automobiles [westkey]351.1, 352

245 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 968

§ 968 Right to trial by jury

The right of a defendant in a prosecution for a violation involving a motor vehicle to a trial by jury necessarily may exist under the guaranty of a jury trial in either the federal or applicable state constitution.[n1] Under either constitution, the existence of the right to jury trial will generally depend upon the seriousness of the offense, which is usually determined by the seriousness of the maximum authorized penalty.[n2] Although the term "penalty"does not refer solely to the maximum authorized prison term, the length of the possible term of incarceration receives primary emphasis.[n3] Under this analysis it is settled that a defendant is entitled to a jury trial under the Sixth Amendment to the United States Constitution whenever the offense for which the defendant is charged carries a maximum authorized prison term of greater than six months.[n4] However, the maximum prison term is not by itself determinative of whether the offense is serious or petty for the purposes of the Sixth Amendment right to a jury trial, and an offense carrying a maximum prison term of six months or less does not automatically qualify as a petty offense, but such an offense can be presumed to be petty.[n5] A defendant is entitled to a jury trial with respect to such an offense only upon demonstrating that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a serious one.[n6]

Observation: Though provisions of state constitutions and statutes cannot limit the rights of defendants to jury trials under the Sixth Amendment, they can and in some jurisdictions do provide greater rights to jury trials.[n7]

The conclusion, reached with respect to proceedings not involving motor vehicles, that a defendant charged with two or more offenses, wherein the maximum penalty for any one of them would be less than a six-month imprisonment but the maximum combined penalty would extend a six-month imprisonment is entitled to a trial by jury,[n8] has been applied in at least one jurisdiction to a prosecution arising out of the operation of a motor vehicle.[n9]

FOOTNOTES:

n1 Blanton v. City of North Las Vegas, Nev., 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989); Fisher v. State, 305 Md. 357, 504 A.2d 626 (1985).

Related References:
As to constitutional guaranties of a jury trial in a criminal case, generally, see Am. Jur. 2d, Criminal Law §§ 1070 et seq..

n2 Blanton v. City of North Las Vegas, Nev., 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989); People v. Parker, 192 Misc. 551, 84 N.Y.S.2d 187 (County Ct. 1948).

Related References:
As to the right to a trial by jury for minor offenses and ordinance infractions, generally, see Am. Jur. 2d, Criminal Law § 1073.

n3 Blanton v. City of North Las Vegas, Nev., 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989).

n4 Blanton v. City of North Las Vegas, Nev., 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989).

n5 Blanton v. City of North Las Vegas, Nev., 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989).

n6 Blanton v. City of North Las Vegas, Nev., 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550 (1989).

n7 Fisher v. State, 305 Md. 357, 504 A.2d 626 (1985); State v. Karel, 204 Neb. 573, 284 N.W.2d 12 (1979).

n8 Am. Jur. 2d, Criminal Law § 1073.

n9 State v. Sanchez, 109 N.M. 428, 786 P.2d 42 (1990).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Automobiles [westkey]356(1) to 358
Right to jury trial under Federal Constitution where two or more petty offenses, each having penalty of less than 6 months' imprisonment, have potential aggregate penalty in excess of 6 months when tried together, 26 A.L.R. Fed. 736
Am. Jur. Pleading and Practice Forms, Criminal Procedure § 293 (Demand for jury trial)
Am. Jur. Pleading and Practice Forms, Criminal Procedure § 294 (Demand for jury trial -- Issues of fact)

246 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 969

§ 969 Questions of law and fact

Where there is evidence, but also uncertainty, as to whether the defendant or another person was driving a motor vehicle at the time of the offense charged, the question is one of fact for the jury.[n1] Similarly, where there is conflicting evidence, in a prosecution for driving a motor vehicle while intoxicated or under the influence of intoxicating liquor, as to whether the defendant was intoxicated or under the influence of intoxicating liquor, the issue is for the jury.[n2]

In a prosecution for manslaughter arising out of the unlawful or culpably negligent operation of a motor vehicle, whether the defendant was intoxicated at the time he or she inflicted the fatal injuries,[n3] whether the defendant was culpably negligent,[n4] or whether the defendant's unlawful act contributed to, or was the proximate cause of, the death of the decedent[n5] are ordinarily questions of fact for the jury.

What constitutes reckless driving in general is ordinarily a question of fact.[n6]

FOOTNOTES:

n1 State v. Coomer, 105 Vt. 175, 163 A. 585, 94 A.L.R. 1038 (1933).

n2 Potter v. State, 91 Okla. Crim. 186, 217 P.2d 844, 20 A.L.R.2d 1416 (1950); Hester v. State, 196 Tenn. 680, 270 S.W.2d 321, 47 A.L.R.2d 568 (1954).

n3 State v. Budge, 126 Me. 223, 137 A. 244, 53 A.L.R. 241 (1927); Potter v. State, 91 Okla. Crim. 186, 217 P.2d 844, 20 A.L.R.2d 1416 (1950).

n4 Lipsey v. State, 154 Fla. 32, 16 So. 2d 439 (1944).

n5 State v. Budge, 126 Me. 223, 137 A. 244, 53 A.L.R. 241 (1927).

n6 State v. Call, 236 N.C. 333, 72 S.E.2d 752 (1952); Usary v. State, 172 Tenn. 305, 112 S.W.2d 7, 114 A.L.R. 1401 (1938).

SUPPLEMENT:

Cases

It is up to the jury to determine whether an accused lacked the general intent to drive so as to endanger any person, based on the overt acts taken by the accused in prosecution for driving while intoxicated (DWI); while the operability of the vehicle may be highly relevant to that determination, it is not necessarily dispositive. West's NMSA § 66-8-102(A). State v. Mailman, 2010-NMSC-036, 242 P.3d 269 (N.M. 2010).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Automobiles [westkey]356(1) to 356(15)
What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337

247 of 276 DOCUMENTS

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 970

§ 970 Instructions

In a prosecution for driving with a suspended or revoked license, an instruction which erroneously set forth the culpable mental state as criminal negligence, rather than recklessness, was not harmless, as the jury's decision might well hinge on the erroneous instruction requiring a lesser culpable mental state.[n1] Likewise, in a prosecution for operating a motor vehicle while intoxicated, an instruction that unduly emphasizes certain evidence and invites the jury to violate its obligation to consider all the evidence, and which is also confusing and misleading, is erroneous.[n2]

In a criminal prosecution related to the operation of a vehicle, a trial court is not required to provide a defendant's proposed jury instruction when that instruction is an incorrect statement of the law.[n3] When a defendant does not present any evidence which the finder of fact might consider on a particular defense, such as excuse or impossibility, the defendant is not entitled to an instruction on that defense.[n4] A defendant in a criminal prosecution related to the operation of a vehicle is not entitled to a jury instruction based on the sudden-emergency doctrine, which a civil law principle.[n5]

FOOTNOTES:

n1 Lampley v. Municipality of Anchorage, 159 P.3d 515 (Alaska Ct. App. 2007).

n2 Marks v. State, 864 N.E.2d 408 (Ind. Ct. App. 2007).

n3 Smith v. State, 956 So. 2d 997 (Miss. Ct. App. 2007).

n4 Schumm v. State, 866 N.E.2d 781 (Ind. Ct. App. 2007), opinion corrected on reh'g on other grounds, 868 N.E.2d 1202 (Ind. Ct. App. 2007).

n5 Com. v. Matroni, 2007 PA Super 110, 923 A.2d 444 (2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Automobiles [westkey]357(1) to 357(15)

248 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
1. In General

8 Am Jur 2d Automobiles and Highway Traffic § 971

§ 971 Repeat offenders

Prior driving while intoxicated convictions used by the state in a repeat offender prosecution are elements of the subject offense,[n1] are essential matters of proof at trial,[n2] and the prior convictions must be proved beyond a reasonable doubt.[n3] An official certified copy of the defendant's driver's license record may prove the existence of a defendant's prior driving while intoxicated conviction or convictions.[n4] A prior offense under a similar statute may be established for the purposes of sentencing for driving under the influence (DUI) as a repeat offender without reference to the facts and circumstances of that offense.[n5]

The use of prior, uncounseled convictions for DUI, to increase the degree of a new DUI charge, requires proof of a knowing, voluntary, and intelligent waiver of the right to counsel.[n6] When the prior convictions for DUI are used to increase the degree of a new DUI charge, if the defendant presents a prima-facie showing that the prior convictions were unconstitutional because they were uncounseled and resulted in confinement, the burden shifts to the state to prove that the right to counsel was properly waived.[n7] On the other hand, a defendant's uncounseled conviction for DUI in an Indian tribal court could be used to enhance a state DUI charge to a felony offense as neither the Indian Civil Rights Act nor tribal code extended the right to counsel to the defendant.[n8]

A defendant's prior action of entering into a diversion agreement after an arrest for DUI constitutes a conviction for purposes of determining whether the defendant was a third-time DUI offender and thus guilty of a felony.[n9]

FOOTNOTES:

n1 State v. Brooke, 113 Ohio St. 3d 199, 2007-Ohio-1533, 863 N.E.2d 1024 (2007).

n2 State v. Ruggiero, 114 Haw. 227, 160 P.3d 703 (2007); State v. Wiltcher, 956 So. 2d 769 (La. Ct. App. 2d Cir. 2007).

n3 State v. Ruggiero, 114 Haw. 227, 160 P.3d 703 (2007); State v. Brooke, 113 Ohio St. 3d 199, 2007-Ohio-1533, 863 N.E.2d 1024 (2007).

n4 Flowers v. State, 220 S.W.3d 919 (Tex. Crim. App. 2007).

n5 Stewart v. State, 2007 WL 1519877 (Del. 2007).

n6 State v. Brooke, 113 Ohio St. 3d 199, 2007-Ohio-1533, 863 N.E.2d 1024 (2007).

A defendant's waiver of the right to counsel when he entered a guilty plea to driving under the influence of intoxicants (DUII) was made with an adequate understanding of the risks of self-representation, and thus, the conviction could be used as a predicate to enhance the subsequent DUII offense, even though trial court did not engage in a colloquy to determine whether the defendant substantially appreciated the material risks of self-representation. State v. Forrest, 213 Or. App. 151, 159 P.3d 1286 (2007).

The state's submission of a transcript of the defendant's prior plea and a "waiver of constitutional rights and plea of guilty"form executed by the defendant and his attorney was sufficient to meet the state's initial burden to prove that the trial court informed the defendant of his Boykin rights before his prior guilty plea to driving while intoxicated (DWI), for purposes of supporting the conviction for DWI, second offense. State v. Swaggart, 956 So. 2d 707 (La. Ct. App. 3d Cir. 2007).

n7 State v. Brooke, 113 Ohio St. 3d 199, 2007-Ohio-1533, 863 N.E.2d 1024 (2007).

n8 State v. Walker, 2007 MT 34, 336 Mont. 56, 153 P.3d 614 (2007).

n9 State v. Shaw, 37 Kan. App. 2d 485, 154 P.3d 524 (2007).

SUPPLEMENT:

Cases

The defendant's sentence of three consecutive 77-month terms, which were each within the sentencing guidelines range of 77 to 96 months, for a total sentence of 231 months' imprisonment for three counts of involuntary manslaughter committed in Indian country was not substantively unreasonable; defendant's alcohol-fueled conduct caused the deaths of three individuals, including two children, and his criminal history stretched over 30 years, and many of his dozens of prior offenses were alcohol-related, and in light of that history, district court concluded that a lengthy term of incarceration was necessary to protect the public, and that concurrent sentences within the advisory guideline range did not adequately reflect the seriousness of defendant's offenses. U.S.S.G. § 1B1.1 et seq., 18 U.S.C.A. U.S. v. Fight, 625 F.3d 523 (8th Cir. 2010).

Decision of the United States Supreme Court in *Nichols v. United States*, holding that prosecution is entitled to use an uncounselled misdemeanor conviction, invalid for purposes of imposing imprisonment in a direct proceeding, to impose enhanced imprisonment in a collateral proceeding, was not controlling in case dealing with validity under state constitution of indigent defendant's prior uncounselled misdemeanor convictions for use in enhancing current charge of misdemeanor driving under the influence (DUI) to a felony, where under state law prior uncounselled convictions were elements of charged offense and formed basis of punishment for current offense. State v. Kelly, 999 So. 2d 1029 (Fla. 2008).

State failed to satisfy its burden, following defendant's prima facie showing that he did not validly waive his state constitutional right to counsel in prior misdemeanor prosecutions for driving under the influence (DUI), of proving that defendant was either provided counsel or validly waived that right, where state conceded that defendant did not receive counsel, and then attempted to rely on inaccurate plea forms as creating knowing, intelligent, and voluntary waiver of right to counsel. State v. Kelly, 999 So. 2d 1029 (Fla. 2008).

Defendant could not be charged with driving under the influence (DUI), second offense (DUI second), since he had not been convicted of the earlier DUI charge at the time of his arrest for the second offense, and although Commonwealth could have acted expeditiously to obtain a DUI first conviction for the prior offense prior to prosecuting the subsequent charge, it instead bundled both offenses, and the two cases were handled together on the same day, virtually simultaneously. Com. v. Beard, 2008 WL 820934 (Ky. Ct. App. 2008).

Judgment form that purported to show that defendant pled guilty to an earlier driving while intoxicated (DWI) offense, as required by statute dealing with use of a suspended imposition of sentence to be treated as a conviction and used to enhance punishment, was facially deficient, and thus, could not be used as the sole evidence to enhance his conviction for DWI, where form was blank in the space to mark whether defendant pled guilty or not guilty, and blank in the space to mark whether he was found guilty or not guilty. State v. Craig, 287 S.W.3d 676 (Mo. 2009).

State was not obligated to affirmatively prove that defendant's prior guilty pleas to intoxication related traffic offenses were entered in accord with rules that required courts, before accepting guilty pleas in municipal prosecutions and state prosecutions, to advise defendant of the nature of the charge to which the plea was offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, before those pleas could be used to enhance his sentence for driving while intoxicated (DWI). State v. Craig, 287 S.W.3d 676 (Mo. 2009).

Trial court did not clearly err in concluding that defendant's prior California convictions for driving under the influence (DUI) were counseled, and therefore, convictions were admissible for sentencing enhancement for prior DUI convictions following defendant's conviction for DUI, where judge's minutes from prior convictions stated that defense counsel concurred in defendant's plea, the case print indicated that defendant was represented, and advisement of rights, waiver and plea form contained a signature of defendant's attorney. State v. Garcia, 281 Neb. 1, 792 N.W.2d 882 (2011).

Defendant in prosecution on two counts of driving under the influence of alcohol (DUI) that were charged as fourth-degree felonies based on three prior DUI convictions within the previous six years failed to make prima facie showing that his prior guilty pleas to DUI charges were "uncounseled," and therefore burden did not shift to state to establish that defendant had been represented at time of pleas or had validly waived representation; defendant did not submit evidence, whether testimony, affidavits, or transcripts, to bolster argument that his waiver of counsel at time of prior pleas was constitutionally infirm. State v. Thompson, 121 Ohio St. 3d 250, 2009-Ohio-314, 903 N.E.2d 618 (2009).

For purposes of penalty enhancement in later convictions for driving under the influence of alcohol (DUI), after the defendant presents a prima facie showing that prior convictions were unconstitutional because defendant had not been represented by counsel and had not validly waived right to counsel and that the prior convictions had resulted in confinement, burden shifts to state to prove that right to counsel was properly waived. State v. Thompson, 121 Ohio St. 3d 250, 2009-Ohio-314, 903 N.E.2d 618 (2009).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Automobiles [westkey]359.6

249 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
2. Former Jeopardy
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 972

§ 972 Generally

The plea or defense of former jeopardy is available, where the circumstances warrant, to a defendant charged with a second or subsequent offense relating to the operation of motor vehicles, or charged under motor vehicle and traffic codes.[n1] Whether former jeopardy applies to bar prosecution for a motor vehicle or traffic offense depends on whether the two offenses in question constitute the same offense for purposes of the doctrine.[n2] This is determined, not by whether the offenses were committed at the same time and by the same act,[n3] but upon the identity of the offenses charged and the facts necessary to establish those offenses.[n4] When the facts necessary to convict on the second prosecution would necessarily have convicted on the first, a final judgment on the first prosecution will be a bar to the second, but if the facts which will convict on the second prosecution would not necessarily have convicted on the first, then the first will not be a bar to the second, although the offenses charged may have been committed at the same time and by the same act.[n5] Effectively, two offenses are not the same for double jeopardy purposes when each requires proof of a fact that the other does not.[n6]

When the facts constitute but one offense involving the operation of a motor vehicle, though it may be susceptible of division into parts, an acquittal or conviction for any one of the parts bars any further prosecution based on the whole or a part of the same crime.[n7]

A continuous act of a motorist violative of a state statute, such as driving while under the influence of intoxicating liquor,[n8] reckless driving,[n9] or fleeing and eluding law enforcement officers,[n10] constitutes only one offense against the state, so that a conviction in one political subdivision is a bar to prosecution in another political subdivision. However, there is authority to the effect that where a motorist drives his or her vehicle in excess of the statutory speed limit through two counties, a conviction for speeding in one county is not a bar to a subsequent prosecution for speeding in the other county.[n11]

When the initial and subsequent prosecutions are predicated on separate acts with intervening events the subsequent prosecution does not violate double jeopardy, even if both prosecutions relate to the same motor vehicle.[n12]

Double jeopardy principles prohibited a state from having a second chance to prove the "prior conviction"element in a prosecution for felony driving while under the influence, inasmuch as the prior conviction element of felony driving while under the influence was not a sentence-enhancing provision, but rather, an element of the offense.[n13]

FOOTNOTES:

n1 State v. Francis, 67 N.J. Super. 377, 170 A.2d 476 (App. Div. 1961); State v. Nunnery, 875 S.W.2d 681 (Tenn. Crim. App. 1993).

Related References:
As to former jeopardy, generally, see Am. Jur. 2d, Criminal Law §§ 319 et seq.

n2 Duff v. State, 942 So. 2d 926 (Fla. Dist. Ct. App. 5th Dist. 2006), review denied, 956 So. 2d 457 (Fla. 2007).

The analysis of whether convictions for driving with a suspended license and driving with a revoked license subjected the defendant to multiple punishment of the same offense in violation of the Double Jeopardy Clause was a two step process: the Court of Appeals would first determine whether the charges arose out of the same act or transaction, and then determine whether the crimes charged were the same offense. Jones v. State, 357 Md. 141, 742 A.2d 493 (1999).

n3 As to separate offenses committed at same time and by the same act, see § 975.

n4 Illinois v. Vitale, 447 U.S. 410, 100 S. Ct. 2260, 65 L. Ed. 2d 228 (1980); State v. Nunnery, 875 S.W.2d 681 (Tenn. Crim. App. 1993).

n5 Illinois v. Vitale, 447 U.S. 410, 100 S. Ct. 2260, 65 L. Ed. 2d 228 (1980); State v. Dively, 92 N.J. 573, 458 A.2d 502 (1983).

n6 Robinson v. State, 835 N.E.2d 518 (Ind. Ct. App. 2005); Lay v. Com., 207 S.W.3d 18 (Ky. Ct. App. 2006), review denied, (Dec. 13, 2006); State v. Pineo, 2002 ME 93, 798 A.2d 1093 (Me. 2002).

n7 People v. Trantham, 24 Cal. App. 2d 177, 74 P.2d 851 (4th Dist. 1937); State v. Donley, 85 N.J. Super. 127, 204 A.2d 149 (App. Div. 1964).

Separate convictions for assault for injuries to single victim of car accident based on two subsections of same statute violated prohibition against double jeopardy. Ex parte Robey, 920 So. 2d 1069 (Ala. 2004).

n8 State v. Licari, 132 Conn. 220, 43 A.2d 450 (1945); People v. Brener, 357 Ill. App. 3d 868, 294 Ill. Dec. 280, 830 N.E.2d 692 (2d Dist. 2005); Boyle v. State, 241 Ind. 565, 173 N.E.2d 747 (1961).

n9 State v. Barter, 80 Idaho 552, 335 P.2d 887 (1959); State v. Boucher, 286 Minn. 475, 176 N.W.2d 624 (1970); State v. Willhite, 40 N.J. Super. 405, 123 A.2d 237 (County Ct. 1956).

n10 People v. Batterman, 355 Ill. App. 3d 766, 291 Ill. Dec. 738, 824 N.E.2d 314 (3d Dist. 2005), appeal pending, (May 1, 2005) and appeal denied, 215 Ill. 2d 600, 295 Ill. Dec. 522, 833 N.E.2d 4 (2005).

n11 Hall v. State, 73 Ga. App. 616, 37 S.E.2d 545 (1946).

n12 People v. Dinelli, 217 Ill. 2d 387, 299 Ill. Dec. 236, 841 N.E.2d 968 (2005).

n13 Howell v. State, 115 P.3d 587 (Alaska Ct. App. 2005).

SUPPLEMENT:

Cases
Prosecution of motor vehicle offenses more than three years after the disposition of contemporaneous criminal charges was barred on double jeopardy grounds. More than three years after an indictment for reckless driving was dismissed, the offenses were returned to the court for trial. Since the indictment had been dismissed as a sanction for the State's failure to adhere to its discovery obligation, the state was barred from prosecuting the offenses. State v. Torres, 2009 WL 2579485 (N.J. Super. Ct. App. Div. 2009).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142

A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Double Jeopardy [westkey]142

250 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
2. Former Jeopardy
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 973

§ 973 Attachment of jeopardy; termination of prior proceeding by mistrial

For purposes of applying the former jeopardy protection, jeopardy does not attach until, in a jury trial, the jury is impaneled and sworn, or in a bench trial, the court begins hearing evidence.[n1] Thus, where a statute provides that a prosecution for a traffic violation begins when the prosecutor files the complaint with the court clerk, a system required by court order in which traffic violation complaints are filed directly with the clerk, without the knowledge or consent of the prosecutor, does not constitute proper filing and does not bar subsequent refiling and prosecution of the offenses specified in the complaint.[n2]

Observation: Although generally there will be no issue as to whether jeopardy has attached with respect to a particular offense where the accused was not only tried but also convicted of the offense, a jury verdict has no preclusive effect under the former jeopardy clause until accepted by the court, and thus, a jury is free to deliberate on charges of reckless driving and the lesser included offense of careless driving in any order it wishes.[n3]

The general rule that declaration of a mistrial absent the defendant's request or consent bars reprosecution for the same offense, absent manifest necessity for the mistrial, is applicable to prosecutions involving motor vehicles and their operation.[n4]

FOOTNOTES:

n1 State v. Woodruff, 676 So. 2d 975 (Fla. 1996); State v. Hoyt, 922 S.W.2d 443 (Mo. Ct. App. W.D. 1996) (abrogated on other grounds by, Cox v. Director of Revenue on other grounds, 98 S.W.3d 548 (Mo. 2003)).

n2 State v. Rish, 222 Ga. App. 729, 476 S.E.2d 50 (1996).

n3 Close v. Municipality of Anchorage, 911 P.2d 41 (Alaska Ct. App. 1996).

n4 Foody v. State, 205 Ga. App. 666, 423 S.E.2d 423 (1992); State v. Mounce, 859 S.W.2d 319 (Tenn. 1993).

Related References:
As to effect of mistrial on former jeopardy, see Am. Jur. 2d, Criminal Law §§ 377 et seq.

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142

A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Double Jeopardy [westkey]142

251 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
2. Former Jeopardy
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 974

§ 974 What constitutes second punishment for same offense

Because one of the purposes of the bar of former jeopardy is to protect the accused against the risk of a second punishment for the same offense, questions have from time to time arisen as to what constitutes "punishment"for purposes of the double jeopardy.[n1] In this connection, it has been recognized that the issuance of a probationary driver license in response to failing an alcohol breath test does not constitute punishment.[n2] Likewise, neither revocation[n3] nor administrative suspension[n4] of a driver's license in connection with a conviction for driving while impaired constitutes punishment barred by the former jeopardy rule, and a license restoration fee payable after revocation is similarly viewed.[n5]

An enhanced sentence for driving while impaired under an habitual offender statute also is not barred by the former jeopardy clause.[n6]

Separate convictions on two separate counts do not violate the prohibition against double jeopardy where the trial court merges the convictions for purposes of sentencing, and the defendant therefore receives only one penalty.[n7]

FOOTNOTES:

n1 State v. McClendon, 131 Wash. 2d 853, 935 P.2d 1334 (1997).

n2 State v. McClendon, 131 Wash. 2d 853, 935 P.2d 1334 (1997).

n3 State v. Boyd, 927 S.W.2d 385 (Mo. Ct. App. W.D. 1996).

n4 State v. Zoellner, 920 S.W.2d 132 (Mo. Ct. App. E.D. 1996).

n5 State v. Oliver, 343 N.C. 202, 470 S.E.2d 16 (1996).

n6 Devore v. State, 650 N.E.2d 37 (Ind. Ct. App. 1995), aff'd in part, vacated in part on other grounds, 657 N.E.2d 740 (Ind. 1995).

n7 Com. v. McCoy, 2006 PA Super 33, 895 A.2d 18 (2006).

SUPPLEMENT:

Cases
Offenses of reckless operation of a vehicle and failure to comply with an order or signal of a police officer, with statutory enhancement of causing a substantial risk of serious physical harm to persons or property, did not have identical statutory elements, as would support defendant's claim that convictions for both offenses arising from the same incident violated double jeopardy. State v. Fairbanks, 117 Ohio St. 3d 543, 2008-Ohio-1470, 885 N.E.2d 888 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Double Jeopardy [westkey]142

252 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
2. Former Jeopardy
b. Separate Offenses Committed at Same Time and by Same Act

8 Am Jur 2d Automobiles and Highway Traffic § 975

§ 975 Generally

In accordance with the general test for former jeopardy,[n1] it is generally held that where two offenses committed in the operation of a motor vehicle are separate and distinct, and one is not necessarily included in the other, a prosecution for one does not bar a prosecution for the other, even though both offenses were committed at the same time and by the same act.[n2] This rule has been applied to permit prosecution for --

-- high-speed or wanton fleeing and willful wanton reckless driving.[n3]

-- criminal charge of reckless driving, after a prior conviction for careless driving, a traffic violation.[n4]

-- aggravated assault, aggravated operating under the influence, and driving to endanger.[n5]

-- driving under the influence of liquor and reckless conduct.[n6]

On the other hand, a defendant cannot be convicted for a felony driving offense after the defendant has pleaded guilty to a misdemeanor charge of the same offense.[n7] Furthermore, when a defendant commits a driving offense that contains lesser-included offenses, if the defendant is convicted on a lesser-included offense the defendant cannot subsequently be convicted for the primary offense, at least when neither statute contains an element not required in the other.[n8] Additionally, under double jeopardy principles, a defendant could not be punished twice for convictions for driving with a revoked license and driving with a suspended license arising from a single act of driving, as although the charges were separate offenses, the legislature intended that punishment be tied to the act of driving and only one sentence per driving episode be permitted.[n9] Of course, when certain offenses for which the defendant have been convicted are not lesser-included offenses of another driving offense, the defendant may be prosecuted for the other offense.[n10]

The test for determining whether two traffic offenses are part of a single behavioral incident, within the meaning of a statute prohibiting multiple prosecutions for offenses resulting from a single behavioral incident, is whether they occur at substantially the same time and place and arise out of a continuous and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment.[n11]

Once the events that form the basis of multiple charges occur on the same night, double jeopardy is not violated for multiple prosecutions when the acts leading to the prosecutions occur miles apart.[n12]

Even though a defendant drove under the influence of three different substances, specifically, alcohol, cocaine, and marijuana, he could be sentenced for only one count of driving under the influence, as the offenses merged under the substantive double jeopardy rule, and the fact that the legislature criminalized driving under the combined influence of drugs and alcohol indicated a legislative intent to treat a single act of driving under the influence of multiple substances as a single offense.[n13]

FOOTNOTES:

n1 § 972.

n2 Cruz v. State, 956 So. 2d 1279 (Fla. Dist. Ct. App. 4th Dist. 2007); State v. Colon, 374 N.J. Super. 199, 863 A.2d 1108 (App. Div. 2005); State v. Warner, 342 Or. 361, 153 P.3d 674 (2007).

n3 Cruz v. State, 956 So. 2d 1279 (Fla. Dist. Ct. App. 4th Dist. 2007).

n4 State v. Warner, 342 Or. 361, 153 P.3d 674 (2007).

n5 State v. Pineo, 2002 ME 93, 798 A.2d 1093 (Me. 2002).

n6 State v. Hull, 149 N.H. 706, 827 A.2d 1001 (2003).

n7 Janos v. State, 763 So. 2d 1094 (Fla. Dist. Ct. App. 4th Dist. 1999).

n8 Brown v. Ohio, 432 U.S. 161, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977); State v. Steck, 68 S.W.3d 625 (Mo. Ct. App. S.D. 2002).

n9 Jones v. State, 357 Md. 141, 742 A.2d 493 (1999).

n10 Catron v. State, 76 Ark. App. 12, 61 S.W.3d 861 (2001); People v. Garcia, 338 Ill. App. 3d 317, 273 Ill. Dec. 325, 788 N.E.2d 1201 (5th Dist. 2003).

n11 State v. Meland, 616 N.W.2d 757 (Minn. Ct. App. 2000).

n12 State v. Brumm, 163 S.W.3d 51 (Mo. Ct. App. S.D. 2005).

n13 Taylor v. State, 238 Ga. App. 753, 520 S.E.2d 267 (1999).

SUPPLEMENT:

Cases

Two separate judgments of conviction for driving under the influence of an intoxicant (DUI) and driving with a blood alcohol concentration of.08 percent or more (DUI per se) violated principles of double jeopardy, such that judgments would be modified to merge convictions into single conviction of DUI. U.S.C.A. Const.Amend. 5. State v. Cooper, 336 S.W.3d 522 (Tenn. 2011).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Double Jeopardy [westkey]142
Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 A.L.R.4th 1252

253 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
B. Trial; Former Jeopardy
2. Former Jeopardy
b. Separate Offenses Committed at Same Time and by Same Act

8 Am Jur 2d Automobiles and Highway Traffic § 976

§ 976 Single act causing injury to, or death of, two or more persons

Courts have held that there are as many separate and distinct offenses as there are persons injured or killed by the unlawful operation of a motor vehicle, so that successive prosecutions may be instituted against the person who committed the unlawful act without violating the rule against double or former jeopardy.[n1] Thus, it has been held that a motorist may be tried and convicted upon more than one indictment charging the motorist with manslaughter, where the motorist so operated a vehicle as to cause the death of more than one persons in the same accident.[n2] Furthermore, courts may find that under a particular statute, the legislature intended one unit of prosecution per victim, and thus double jeopardy does not prevent a person from being convicted on multiple counts of reckless endangerment as a result of an automobile accident involving three different people in the person's vehicle.[n3] However, in some jurisdictions it has been held that where two or more persons are injured or killed by a single criminal act in the operation of a motor vehicle, only one offense is committed and an acquittal or conviction of an offense based on the injury or death of one of the persons will be a bar to a prosecution of offenses based on the injury or death of the other persons.[n4] It may be that a statute governing the offense of reckless driving does not provide a distinct offense against each person/individual present or endangered by a single act of reckless driving, and thus double jeopardy prohibits multiple punishments for the same incident of reckless driving, regardless of the number of victims.[n5]

FOOTNOTES:

n1 State v. Miranda, 3 Ariz. App. 550, 416 P.2d 444 (1966); Fleming v. Commonwealth, 284 Ky. 209, 144 S.W.2d 220 (1940); Lawrence v. Com., 181 Va. 582, 26 S.E.2d 54 (1943).

n2 Com. v. Maguire, 313 Mass. 669, 48 N.E.2d 665 (1943); State v. Whitley, 382 S.W.2d 665 (Mo. 1964); State v. Taylor, 185 Wash. 198, 52 P.2d 1252 (1936).

n3 State v. Graham, 153 Wash. 2d 400, 103 P.3d 1238 (2005), as amended, (Feb. 1, 2005).

Charging a defendant with two offenses of failing to stop and render aid arising from a single traffic accident did not offend the Double Jeopardy Clause, as two individuals were in the other car involved in the accident, and the legislature has the power to establish separate and distinct crimes for the failure to render aid to each individual in need of such aid. Ramirez v. State, 90 S.W.3d 884 (Tex. App. San Antonio 2002), petition for discretionary review refused, (Jan. 29, 2003).

n4 Stephenson v. State, 648 N.E.2d 395 (Ind. Ct. App. 1995); Com. v. Constantino, 443 Mass. 521, 822 N.E.2d 1185 (2005).

The Double Jeopardy Clause prohibited convictions of both driving under the influence manslaughter/leaving the scene of an accident with death, and leaving the scene of an accident with injury, even though there were two victims, one of whom died and one of whom was injured. Goldman v. State, 918 So. 2d 442 (Fla. Dist. Ct. App. 4th Dist. 2006).

n5 Steels v. State, 170 S.W.3d 765 (Tex. App. Waco 2005).

REFERENCE: West's Key Number Digest, Automobiles [westkey]356(1) to 358, 359.6
West's Key Number Digest, Double Jeopardy [westkey]142
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Traffic Offenses and Violations
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]356(1) to 358, 359.6
West's A.L.R. Digest, Double Jeopardy [westkey]142
Am. Jur. Pleading and Practice Forms, Criminal Procedure §§ 293, 294
West's Key Number Digest, Double Jeopardy [westkey]142

254 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
1. Speeding

8 Am Jur 2d Automobiles and Highway Traffic § 977

§ 977 Generally

In a speeding prosecution evidence from a speed measuring device must generally be supported by proof of the reliability of the type of device used and of the accuracy of the particular device.[n1] However, evidence which by itself is insufficient to support a conviction may be adequate if corroborated by other evidence.[n2]

Convictions of speeding have been upheld where based upon observation and measurement of the operator's speed from an aircraft.[n3] Furthermore, it has been held that, where calibrated stopwatches were used by airborne officers in determining a defendant's speed, a foundation for the accuracy of the watches of the type required in connection with radar devices is not required.[n4]

Although in a speeding prosecution an officer's testimony as to what the speed limit was in the area in which the officer stopped the defendant's automobile does not create a rebuttable presumption as to what the lawful speed was in the area, such testimony may be sufficient to establish the lawful speed limit when there is no evidence on cross-examination that rebuts the testimony of the officer as to the lawful speed in the area, and the defendant does not introduce any contrary evidence of his or her own.[n5] In such case the state is not then required to prove that fact through the introduction of a certified copy of an ordinance or regulation.[n6]

FOOTNOTES:

n1 State v. Musgrave, 171 N.J. Super. 477, 410 A.2d 64 (App. Div. 1979).

Laser speed detection devices are generally reliable and their results may be admitted into evidence. State v. Williamson, 2007 WL 1438128 (Idaho Ct. App. 2007).

n2 People v. Cunha, 93 Misc. 2d 467, 402 N.Y.S.2d 925 (Dist. Ct. 1978), aff'd, 96 Misc. 2d 522, 409 N.Y.S.2d 387 (App. Term 1978).

n3 People v. Darby, 95 Cal. App. 3d 707, 157 Cal. Rptr. 330 (4th Dist. 1979); State v. Cook, 194 Kan. 495, 399 P.2d 835 (1965); State v. Peters, 9 Ohio App. 2d 343, 38 Ohio Op. 2d 424, 224 N.E.2d 916, 27 A.L.R.3d 1442 (2d Dist. Montgomery County 1965).

n4 People v. Wilson, 97 Ill. App. 3d 505, 53 Ill. Dec. 80, 423 N.E.2d 272 (3d Dist. 1981).

n5 State v. Morgan, 393 N.J. Super. 411, 923 A.2d 359 (App. Div. 2007).

n6 State v. Morgan, 393 N.J. Super. 411, 923 A.2d 359 (App. Div. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(5), 354(5), 355(5)
Automobiles: speeding prosecution based on observation from aircraft, 27 A.L.R.3d 1446
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115

255 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
1. Speeding

8 Am Jur 2d Automobiles and Highway Traffic § 978

§ 978 Opinion of police officer

The opinion of a police officer as to the estimate of speed is normally not admissible unless the officer is properly qualified to testify as an expert.[n1] However, such opinion testimony is admissible where the officer is properly qualified, and has been held sufficient to support conviction where the variance between the estimate and the speed limit is substantial, as well as to support evidence of an untested radar device or an untested speedometer.[n2] The testimony of even a qualified officer may be of little or no probative value if the estimate is made under conditions rendering its reliability doubtful.[n3]

Observation: Where an officer is not appropriately qualified, but the officer's testimony is received without objection, it may be accepted as the opinion of an unqualified witness, and may be considered when the court is satisfied that the officer has the ability to judge such speed and the weight of such testimony is sufficient to satisfy the court beyond a reasonable doubt.[n4]

FOOTNOTES:

n1 People v. Cunha, 93 Misc. 2d 467, 402 N.Y.S.2d 925 (Dist. Ct. 1978), aff'd, 96 Misc. 2d 522, 409 N.Y.S.2d 387 (App. Term 1978).

n2 People v. Cunha, 93 Misc. 2d 467, 402 N.Y.S.2d 925 (Dist. Ct. 1978), aff'd, 96 Misc. 2d 522, 409 N.Y.S.2d 387 (App. Term 1978).

n3 People v. Lacey, 210 N.Y.S.2d 113 (County Ct. 1958).

n4 People v. Cunha, 93 Misc. 2d 467, 402 N.Y.S.2d 925 (Dist. Ct. 1978), aff'd, 96 Misc. 2d 522, 409 N.Y.S.2d 387 (App. Term 1978).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426

Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(5), 354(5), 355(5)

256 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
1. Speeding

8 Am Jur 2d Automobiles and Highway Traffic § 979

§ 979 Speed indicated on officer's speedometer

In a prosecution for violation of the speed laws, it has been held that evidence of the speed indicated on an officer's untested speedometer may be introduced,[n1] though authority to the contrary also exists.[n2] There, is, however, no presumption, in the absence of statute, that a speedometer on a police vehicle is accurate, in the absence of evidence that the instrument has been tested for accuracy within a reasonable period of time,[n3] and it has been held that such evidence, while admissible, is by itself insufficient to sustain a conviction.[n4] The testimony of a police officer can be used to corroborate a reading from an untested speedometer, the prosecution having the burden of proving the qualification of the officer to make such estimate and of showing that the officer had an adequate opportunity to observe the defendant's motor vehicle.[n5]

FOOTNOTES:

n1 State v. Tarquinio, 3 Conn. Cir. Ct. 566, 221 A.2d 595 (App. Div. 1966); People v. Marsellus, 2 N.Y.2d 653, 163 N.Y.S.2d 1, 143 N.E.2d 1 (1957); White v. State, 82 Tex. Crim. 274, 198 S.W. 964 (1917).

n2 State v. Mancino, 115 R.I. 54, 340 A.2d 128 (1975).

n3 City of Spokane v. Knight, 96 Wash. 403, 165 P. 105 (1917).

n4 People v. Page, 32 Misc. 2d 179, 222 N.Y.S.2d 450 (County Ct. 1961).

n5 People v. Heyser, 2 N.Y.2d 390, 161 N.Y.S.2d 36, 141 N.E.2d 553 (1957).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426

Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(5), 354(5), 355(5)
Presumption and burden of proof of accuracy of scientific and mechanical instruments for measuring speed, temperature, time, and the like, 21 A.L.R.2d 1200

257 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
1. Speeding

8 Am Jur 2d Automobiles and Highway Traffic § 980

§ 980 Radar and laser speed detection devices

The general reliability of a stationary radar speedometer as a device for measuring speed of a moving vehicle has been recognized and judicially noticed,[n1] and the courts generally no longer require expert testimony as to its nature or function, or the scientific principles underlying it.[n2]

Courts have concluded that, there being no significant difference between "radar guns"and a conventional stationary detector, the reliability of the class of device was not required to be established, and a conviction could be based upon a radar gun reading where the accuracy of the gun was properly proved.[n3] In other cases the courts have required evidence that the radar gun was in essence a radar speed detector with reliability similar to that of the stationary devices,[n4] Some jurisdictions accept as evidence speed readings taken by radar guns provided the device used is stationary at the time the reading is taken, but refuse to sustain convictions solely on the basis of a reading taken while the device was in motion.[n5] In some jurisdictions statutes provide that the state may establish the reliability of a type of speed measuring device by demonstrating the approval of the device by the state's Department of Transportation or similar agency, and some such statutes further provide that a court may take judicial notice of such approval if published by the agency as required by the statute. In such situations a certificate of accuracy of the particular device is insufficient to establish the reliability of the class of which the device is a member.[n6]

Like radar devices, the general reliability of laser speed detection devices has also been accepted by many courts.[n7] Because the reliability of laser speed detection devices is generally accepted, a court does not err in admitting evidence from such devices in the absence of taking specific judicial notice or the state presenting scientific evidence of the laser's reliability.[n8]

Practice Tip: A defendant in a speeding case who is prosecuted on the basis of electronic speed testing equipment has the right to attack the reliability of the scientific test or equipment and the competence of the operator.[n9]

FOOTNOTES:

n1 Everight v. City of Little Rock, 230 Ark. 695, 326 S.W.2d 796 (1959); People v. Wilson, 97 Ill. App. 3d 505, 53 Ill. Dec. 80, 423 N.E.2d 272 (3d Dist. 1981); Honeycutt v. Com., 408 S.W.2d 421 (Ky. 1966); People v. Dusing, 5 N.Y.2d 126, 181 N.Y.S.2d 493, 155 N.E.2d 393 (1959).

n2 State v. Dantonio, 18 N.J. 570, 115 A.2d 35, 49 A.L.R.2d 460 (1955); People v. Magri, 3 N.Y.2d 562, 170 N.Y.S.2d 335, 147 N.E.2d 728 (1958); City of East Cleveland v. Ferell, 168 Ohio St. 298, 7 Ohio Op. 2d 6, 154 N.E.2d 630 (1958).

n3 People v. Donohoo, 54 Ill. App. 3d 375, 12 Ill. Dec. 49, 369 N.E.2d 546 (5th Dist. 1977).

n4 State v. Boyington, 153 N.J. Super. 252, 379 A.2d 486 (App. Div. 1977); People v. Bellizzi, 108 Misc. 2d 209, 441 N.Y.S.2d 147 (App. Term 1980); State v. Wilcox, 40 Ohio App. 2d 380, 69 Ohio Op. 2d 333, 319 N.E.2d 615 (10th Dist. Franklin County 1974).

n5 State v. Trainer, 79 Ohio Misc. 2d 62, 670 N.E.2d 1378 (Mun. Ct. 1995).

n6 Com. v. Kittelberger, 420 Pa. Super. 104, 616 A.2d 1 (1992).

n7 State v. Williamson, 2007 WL 1438128 (Idaho Ct. App. 2007).

n8 State v. Williamson, 2007 WL 1438128 (Idaho Ct. App. 2007).

n9 Yolman v. State, 388 So. 2d 1038 (Fla. 1980).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(5), 354(5), 355(5)
Proof, by radar or other mechanical or electronic devices, of violation of speed regulations, 47 A.L.R.3d 822

258 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
1. Speeding

8 Am Jur 2d Automobiles and Highway Traffic § 981

§ 981 Accuracy of particular device used

A radar reading by a device the reliability of which is judicially noticed or otherwise established is generally held sufficient in itself to sustain a conviction for speeding,[n1] provided the following preconditions are shown by the prosecution:

.The device used was properly set up and in working order at the time of the alleged violation[n2]

.The accuracy of the device used had been tested by approved methods and recently enough to provide a reasonable assurance of the validity of the reading obtained[n3]

.The officer operating the device was adequately trained in its use[n4]

The accuracy of a particular device, as distinguished from the general reliability of the class of devices of which it is a member, is not a proper subject for judicial notice,[n5] but must be established through evidence.[n6] The requisite preliminary proof can be furnished by testimony of the officers operating the equipment that, within a reasonable time before and/or after taking the reading in question it was tested for accuracy.[n7] However, it is generally held that the test of radar equipment for accuracy by the use of a device, the accuracy of which itself is not established, is not adequate proof of the accuracy of the radar equipment.[n8]

Observation: Because the accuracy of a radar device is always at issue when the prosecution relies on such a device in a speeding prosecution,[n9] denying a defendant the opportunity to cross-examine an expert witness used by the prosecution to establish the accuracy of the device in question is error.[n10]

As with radar devices, when a laser device is used to determine a defendant is driving in excess of the maximum speed limit, the proper use and accuracy of the device in question must be established by the state in order to introduce the evidence at trial.[n11] Therefore, in each speeding prosecution that seeks to introduce laser evidence, the state must prove that the officer was qualified to operate the device, that the unit was properly maintained, and that it was used correctly.[n12]

FOOTNOTES:

n1 People v. Dusing, 5 N.Y.2d 126, 181 N.Y.S.2d 493, 155 N.E.2d 393 (1959).

n2 Fitzwater v. State, 57 Md. App. 274, 469 A.2d 909 (1984); City of Bellevue v. Lightfoot, 75 Wash. App. 214, 877 P.2d 247 (Div. 1 1994).

n3 Everight v. City of Little Rock, 230 Ark. 695, 326 S.W.2d 796 (1959); State v. Moffitt, 48 Del. 210, 100 A.2d 778 (Super. Ct. 1953); State v. Dantonio, 18 N.J. 570, 115 A.2d 35, 49 A.L.R.2d 460 (1955).

n4 State v. Primm, 4 Kan. App. 2d 314, 606 P.2d 112 (1980); State v. Dow, 352 N.W.2d 125 (Minn. Ct. App. 1984).

n5 Honeycutt v. Com., 408 S.W.2d 421 (Ky. 1966); People v. Offermann, 204 Misc. 769, 125 N.Y.S.2d 179 (Sup 1953).

n6 City of Akron v. Gray, 60 Ohio Misc. 68, 14 Ohio Op. 3d 303, 397 N.E.2d 429 (Mun. Ct. 1979).

n7 Fitzwater v. State, 57 Md. App. 274, 469 A.2d 909 (1984); State v. Dow, 352 N.W.2d 125 (Minn. Ct. App. 1984); State v. Moore, 700 S.W.2d 880 (Mo. Ct. App. E.D. 1985).

n8 People v. Walker, 199 Colo. 475, 610 P.2d 496 (1980); State v. Moore, 700 S.W.2d 880 (Mo. Ct. App. E.D. 1985); State v. Readding, 160 N.J. Super. 238, 389 A.2d 512 (Law Div. 1978).

n9 U.S. v. Wornom, 754 F. Supp. 517 (W.D. Va. 1991).

n10 City of Bellevue v. Lightfoot, 75 Wash. App. 214, 877 P.2d 247 (Div. 1 1994).

n11 State v. Williamson, 2007 WL 1438128 (Idaho Ct. App. 2007).

n12 State v. Williamson, 2007 WL 1438128 (Idaho Ct. App. 2007).

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18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(5), 354(5), 355(5)
Proof, by radar or other mechanical or electronic devices, of violation of speed regulations, 47 A.L.R.3d 822

259 of 276 DOCUMENTS

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Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 982

§ 982 Generally

As in other criminal cases, although the elements of the offense[n1] must be established beyond a reasonable doubt in a prosecution for driving a motor vehicle while intoxicated, driving a motor vehicle while under the influence of intoxicating liquor or drugs, or similar offense,[n2] calls for no extraordinary or unusual limitations on the use of circumstantial evidence to establish those elements.[n3] Evidence of all facts and circumstances directly tending to establish or negative the fact that the defendant was intoxicated or under the influence of intoxicating liquor is admissible.[n4]

Some behavioral manifestations, independent of any scientific test, are sufficient to support a charge of driving while intoxicated.[n5] It is not necessary that a conviction of driving while intoxicated be based upon a blood or breath alcohol test, and the observations of an arresting officer may be sufficient to establish a defendant's guilt, as intoxication is an observable condition about which a witness may testify.[n6] Thus, a defendant's slurred speech, loud and abrasive behavior, disheveled appearance, red and bloodshot eyes, and strong odor of alcoholic beverage on his or her breath are sufficient to sustain a conviction for driving while intoxicated.[n7]

Practice Tip: Objective manifestations of insobriety, personally observed by an officer, are always relevant in driving-under-the-influence prosecutions.[n8]

Proof of the drinking of intoxicating liquor,[n9] or that the defendant's breath smelled of liquor,[n10] is not in itself sufficient to show that the defendant was intoxicated or under the influence of intoxicating liquor, but it is not necessary that the prosecution show that the defendant was in a drunken stupor.[n11]

A conviction for driving while intoxicated cannot stand upon the mere admission of the defendant that he or she was driving while intoxicated, where there is no other proof in the record of such fact, under statutes which provide that the confession of the defendant is not sufficient to warrant his or her conviction without additional proof that the crime charged has been committed.[n12]

A prosecution for aggravated driving under the influence of alcohol requires proof that the defendant drove a motor vehicle under the influence of alcohol while his or her license was suspended, and that the defendant knew or should have known of the suspension, and once the state proves the mailing of a notice of license suspension, the state no longer has the burden to prove receipt of the notice or actual knowledge of its contents, and the burden then shifts to the defendant to show that he or she did not receive the notice.[n13]

FOOTNOTES:

n1 As to such offense, generally, see §§ 332 et seq.

n2 State v. Childress, 78 Ariz. 1, 274 P.2d 333, 46 A.L.R.2d 1169 (1954); Shorter v. State, 234 Ind. 1, 122 N.E.2d 847, 52 A.L.R.2d 1329 (1954).

n3 Wetherington v. State, 319 Ark. 37, 889 S.W.2d 34 (1994); Kremer v. State, 643 N.E.2d 357 (Ind. Ct. App. 1994).

n4 State v. Jones, 306 Mo. 437, 268 S.W. 83 (1924); State v. Forsyth, 131 Wash. 611, 230 P. 821 (1924).

n5 State v. Wiltcher, 956 So. 2d 769 (La. Ct. App. 2d Cir. 2007).

Evidence was sufficient to support a conviction for driving under the influence of intoxicating liquor, as a police officer testified that he noticed a strong smell of alcohol coming from the defendant, that the defendant had glazed, bloodshot, and heavy eyes, and that his speech was slurred, the defendant had difficulty obtaining his insurance document and simultaneously answering the officer's questions, the defendant held onto the tailgate as he walked, as if to stabilize himself, and the defendant told the officer that he had consumed three or four beers approximately two or three hours prior to the stop. Loveless v. City of Booneville, 958 So. 2d 230 (Miss. Ct. App. 2007).

n6 State v. Wiltcher, 956 So. 2d 769 (La. Ct. App. 2d Cir. 2007).

n7 State v. Kent, 391 N.J. Super. 352, 918 A.2d 626 (App. Div. 2007).

n8 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

n9 State v. Noble, 119 Or. 674, 250 P. 833 (1926).

n10 People, on Complaint of Mulrean v. Fox, 256 A.D. 578, 10 N.Y.S.2d 694 (1st Dep't 1939).

n11 State v. Myers, 82 Ohio L. Abs. 216, 164 N.E.2d 585 (Ct. App. 10th Dist. Franklin County 1959).

n12 People v. Hemleb, 4 A.D.2d 878, 166 N.Y.S.2d 837 (2d Dep't 1957); Kerr v. State, 921 S.W.2d 498 (Tex. App. Fort Worth 1996).

n13 State v. Cifelli, 214 Ariz. 524, 155 P.3d 363 (Ct. App. Div. 1 2007).

SUPPLEMENT:

Cases

Evidence was sufficient to support convictions for driving under the influence of drugs to the extent that it was less safe to drive, speeding, following too closely, failure to maintain lane, and failure to signal; evidence showed that officer observed defendant's vehicle weaving out of its lane, closely following other vehicle, and driving in excess of eighty miles per hour, after pulling defendant over, officer observed that defendant's speech was slow, that he was unsteady on his feet, and that his eyes were bloodshot and glassy, and urine test taken by defendant came back positive for cocaine, marijuana, and six different prescription drugs. Cornwell v. State, 283 Ga. 247, 657 S.E.2d 195 (2008).

Even though a conviction for driving under the influence to the extent he was a less safe driver does not require proof that a person actually committed an unsafe act while driving, the commission of a traffic violation, such as failing to stop for a stop sign or failing to maintain a lane, can constitute evidence that a driver is impaired. West's Ga.Code Ann. § 40-6-391(a)(1). Harris v. State, 307 Ga. App. 847, 706 S.E.2d 702 (2011).

In prosecution for driving under the influence of alcohol to the extent that it was less safe to drive, the jury may determine that the driver was impaired upon finding evidence of speeding. West's Ga.Code Ann. § 40-6-391(a)(1). Crusselle v. State, 303 Ga. App. 879, 694 S.E.2d 707 (2010).

Evidence was insufficient to support defendant's conviction for aggravated driving under the influence of alcohol and drugs (DUI), where police officer, who had less that two years' experience as a police officer, and was making his first arrest for driving under the influence of drugs, lacked the necessary experience to provide sufficient testimony that defendant was under the influence of drugs, the smell of burnt cannabis coming from defendant's car did not prove he had smoked cannabis that evening or that cannabis was in his breath, blood, or urine at the time of his arrest, and the signs of impairment defendant did have could have been indicators that drugs, alcohol, or both were present. S.H.A. 625 ILCS 5/11-501(a)(5). People v. Foltz, 343 Ill. Dec. 395, 934 N.E.2d 719 (App. Ct. 5th Dist. 2010).

Evidence was sufficient to support defendant's conviction for operating vehicle while intoxicated; trooper observed defendant's vehicle swerving in between three lanes of traffic, and after initiating a traffic stop, trooper immediately noticed strong odor of alcohol and noticed numerous open beer bottles and cans inside vehicle, trooper then administered at least four field sobriety tests, during which defendant displayed impaired reflexes and unsteady balance, defendant failed all of the tests and was unable to complete the walk-and-turn test, and upon being transported to jail, defendant gave breath sample that revealed.16 grams of alcohol per 210 liters of breath. Hinds v. State, 906 N.E.2d 877 (Ind. Ct. App. 2009).

Substantial evidence supported finding that defendant attempted to operate his vehicle under the influence of alcohol, in alternative means case in which defendant was charged with operating or attempting to operate his vehicle under the influence of alcohol to a degree that rendered him incapable of safely driving a vehicle; defendant was sitting in driver's side of parked vehicle with key in ignition and another individual in the front, alcoholic beverage containers were found inside vehicle, defendant admitted to officer that he had been drinking and that he had driven vehicle to house where he did not reside, and he was unable to satisfactorily complete field sobriety tests and refused to explain why he had exited vehicle from driver's side. State v. Stevens, 285 Kan. 307, 172 P.3d 570 (2007).

Trial court did not abuse its discretion in concluding that evidence of other people's failure to complete field sobriety test was not relevant to or probative of material fact of defendant's impairment, in prosecution for driving under the influence (DUI). State v. Garcia, 40 Kan. App. 2d 870, 196 P.3d 943 (2008).

Evidence was sufficient to support conviction for driving under the influence of intoxicating liquor; two police officers testified that motorist appeared intoxicated because he had diminished motor skills, slurred speech, dilated eyes, and his car smelled of alcohol, officer also testified that motorist was speeding and driving erratically before he pulled him over, and motorist testified that he had been drinking on night in question. Ivy v. City of Louisville, 976 So. 2d 951 (Miss. Ct. App. 2008).

The State is not required to prove a temporal nexus between a breath test and the defendant's alcohol level at the moment he or she was operating the vehicle in order to support a conviction for driving under the influence (DUI); matters of delay between driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence. West's Neb.Rev.St. § 60-6,196. State v. Dinslage, 280 Neb. 659, 789 N.W.2d 29 (2010).

Evidence was sufficient to support conviction for driving under the influence of alcohol (DUI) and for operating motor vehicle with impermissible blood alcohol concentration, thus judgment in which county court used word "or" was in essence a finding of guilt on both theories and was not ambiguous; language of complaint was based on language of DUI statute, which provided three separate grounds for finding that defendant was guilty of DUI and State adduced evidence to prove DUI under both theories as officer presented testimony about his observations of defendant, defendant's performance on field sobriety tests, and opinion that defendant was under the influence of alcohol, and defendant's blood alcohol content was.16 grams of alcohol per 100 milliliters of blood. State v. Brauer, 16 Neb. App. 257, 743 N.W.2d 655 (2007), review overruled, (Jan. 24, 2008).

Being intoxicated at the scene of a traffic accident in which the defendant was the driver is some circumstantial evidence that the defendant's intoxication caused the accident, and the inference of causation is even stronger when the accident is a one-car collision with an inanimate object. V.T.C.A., Penal Code § 49.04(a). Weems v. State, 328 S.W.3d 172 (Tex. App. Eastland 2010).

Finding, in defendant's prosecution for driving while intoxicated (DWI), that defendant's driving was reckless or dangerous, as required for finding that defendant's vehicle was used as deadly weapon at time of offense, was supported by sufficient evidence, including evidence that defendant, at time of crash into road barrier, was intoxicated, that he smelled of alcohol, that he had red and glassy eyes, slurred speech, poor balance, and was geographically disoriented, and that he failed to control his vehicle. V.T.C.A., Penal Code §§ 1.07(a)(17), 49.04. Foley v. State, 327 S.W.3d 907 (Tex. App. Corpus Christi 2010).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6), 354(6), 355(6)
Validity, Construction, and Application of Statute Permitting Forfeiture of Motor Vehicle for Operation of Vehicle While Intoxicated, 89 A.L.R.5th 539
Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication -- post-Sitz cases, 74 A.L.R.5th 319
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123

260 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 983

§ 983 Nonchemical field sobriety tests

Field sobriety tests are relevant and admissible in a driving under the influence prosecution and the fact that these tests may have no specific, quantitative value regarding the extent of a driver's alcohol impairment goes to the weight to be given the tests and not their admissibility.[n1] A number of physical performance and observation tests for sobriety have been developed by police departments, including:

.reciting the ABCs;[n2]

.the leg lift;[n3]

.the walk heel-to-toe test;[n4]

.the walk and turn;[n5] and

.the finger-to-nose test.[n6]

In a prosecution for driving while intoxicated or under the influence of intoxicating liquor, evidence of such manual tests given to the defendant at the time of arrest is admissible,[n7] and it has been held that one's privilege against self-incrimination is not violated by testimony of police officers as to the results of such manual tests given following arrest for drunken driving, even though such tests were given without the defendant's permission.[n8] A police officer may testify concerning the results of a field sobriety test administered in substantial compliance with the testing standards.[n9]

Caution: Although field sobriety tests must be administered properly under law enforcement guidelines, a challenge to the administration of the tests is not the same as a challenge to the foundation for admission of the tests.[n10]

FOOTNOTES:

n1 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

n2 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

n3 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

n4 City of Kettering v. Baker, 40 Ohio App. 2d 566, 69 Ohio Op. 2d 492, 321 N.E.2d 618 (2d Dist. Montgomery County 1974), judgment aff'd, 42 Ohio St. 2d 351, 71 Ohio Op. 2d 322, 328 N.E.2d 805 (1975).

n5 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

n6 People v. Smith, 179 A.D.2d 1060, 578 N.Y.S.2d 800 (4th Dep't 1992); City of Kettering v. Baker, 40 Ohio App. 2d 566, 69 Ohio Op. 2d 492, 321 N.E.2d 618 (2d Dist. Montgomery County 1974), judgment aff'd, 42 Ohio St. 2d 351, 71 Ohio Op. 2d 322, 328 N.E.2d 805 (1975).

n7 People v. Smith, 179 A.D.2d 1060, 578 N.Y.S.2d 800 (4th Dep't 1992); City of Kettering v. Baker, 40 Ohio App. 2d 566, 69 Ohio Op. 2d 492, 321 N.E.2d 618 (2d Dist. Montgomery County 1974), judgment aff'd, 42 Ohio St. 2d 351, 71 Ohio Op. 2d 322, 328 N.E.2d 805 (1975); Alexander v. State, 1956 OK CR 130, 305 P.2d 572 (Okla. Crim. App. 1956).

With regard to the "ABCs,""walk and turn,"and "leg lift"field sobriety tests given appellant, the word, "tests"is a misnomer; these are physical dexterity exercises that common sense, common experience, and the "laws of nature"show are performed less well after drinking alcohol. Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

n8 Alexander v. State, 1956 OK CR 130, 305 P.2d 572 (Okla. Crim. App. 1956); Jones v. State, 795 S.W.2d 171 (Tex. Crim. App. 1990).

n9 State v. Boczar, 113 Ohio St. 3d 148, 2007-Ohio-1251, 863 N.E.2d 155 (2007).

n10 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6), 354(6), 355(6), 426
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459

261 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 984

§ 984 Horizontal gaze nystagmus test

Nystagmus is described as an involuntary jerking of the eyeball, a condition that may be aggravated by the effect of chemical depressants on the central nervous system.[n1] The horizontal gaze nystagmus test, or HGN test, is an accepted, common procedure that has reached a state of verifiable certainty in the scientific community and, accordingly, is admissible as a basis upon which a police officer can determine that a driver was impaired by alcohol.[n2] Some courts have held that the HGN test is nonscientific and occupies the same ground as other field sobriety tests, and that testimony concerning it may be admitted where the testifying officer is properly qualified, as circumstantial evidence of intoxication.[n3] Other courts have held that the HGN test is scientific in nature, distinguishing it from other field sobriety tests on the basis that the validity of the test is a matter of the effect of alcohol on the central nervous system.[n4] Such courts have sometimes required proof of the acceptance and reliability of the test, under rules generally applicable to scientific and technical evidence, prior to permitting testimony about test results.[n5] Furthermore, as scientific evidence, opinion testimony regarding HGN in a driving under the influence of alcohol prosecution requires an expert witness.[n6] However, some of the courts taking this position have also taken judicial notice of the reliability of the test.[n7] HGN test results are admissible without expert testimony so long as the proper foundation has been shown both as to the administering officer's training and ability to administer the test and as to the actual technique used by the officer in administering the test.[n8] Courts admitting HGN test results as scientific evidence have generally admitted the evidence only for proof that the defendant was intoxicated, and have not permitted testimony concerning the specific blood alcohol level of the defendant,[n9] although at least one court has permitted an officer to testify that, based on an HGN test, the officer estimated that the defendant's blood alcohol level was in excess of a particular percent.[n10]

Observation: The HGN test consists of the driver being asked to cover one eye and focus the other on an object held at the driver's eye level by the officer. As the officer moves the object gradually out of the driver's field of vision toward the driver's ear, the officer watches the driver's eyeballs to detect involuntary jerking.[n11]

FOOTNOTES:

n1 State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1993).

n2 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

n3 Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996); State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1993).

n4 Faust v. City of Gadsden, 639 So. 2d 536 (Ala. Crim. App. 1993); Schultz v. State, 106 Md. App. 145, 664 A.2d 60 (1995); State v. Myers, 940 S.W.2d 64 (Mo. Ct. App. S.D. 1997); Kerr v. State, 921 S.W.2d 498 (Tex. App. Fort Worth 1996).

n5 State v. O'Key, 321 Or. 285, 899 P.2d 663 (1995); Emerson v. State, 880 S.W.2d 759 (Tex. Crim. App. 1994).

n6 Castillo v. State, 955 So. 2d 1252 (Fla. Dist. Ct. App. 1st Dist. 2007).

n7 Schultz v. State, 106 Md. App. 145, 664 A.2d 60 (1995); Emerson v. State, 880 S.W.2d 759 (Tex. Crim. App. 1994).

n8 State v. Boczar, 113 Ohio St. 3d 148, 2007-Ohio-1251, 863 N.E.2d 155 (2007).

n9 State v. O'Key, 321 Or. 285, 899 P.2d 663 (1995).

n10 State ex rel. McDougall v. Ricke, 161 Ariz. 462, 778 P.2d 1358 (Ct. App. Div. 1 1989).

n11 State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1993).

SUPPLEMENT:

Cases

Trial court acted within its discretion at a trial for operating a motor vehicle while under the influence of intoxicating liquor (DWI) in admitting evidence of a horizontal gaze nystagmus (HGN) test administered to defendant by police officer; officer testified that she had been trained in administering field sobriety tests and interpreting the results of those tests and that she had received advanced training from the national traffic safety administration, and officer had substantially complied with the standards of the traffic safety administration for administering the HGN test. State v. Popeleski, 291 Conn. 769, 970 A.2d 108 (2009).

State failed to lay foundation for admission of results of horizontal gaze nystagmus test given to defendant by police officer during investigation of traffic accident, and thus results of test were inadmissible, during prosecution of defendant for driving under the influence (DUI), in determining whether officer had probable cause to believe that defendant had been driving under the influence of alcohol; although officer testified as to the principles underlying the test, he failed to testify about the standards for conducting test contained in National Highway Traffic Safety Administration (NHTSA) training manual, or that he had complied with those standards. U.S.C.A. Const.Amend. 4. Miller v. State, 4 A.3d 371 (Del. 2010).

To lay a proper foundation for the admission of horizontal gaze nystagmus test results, the State needs to demonstrate (1) that the officer who administered the test was trained in the procedure and (2) that the test was properly administered. People v. Diaz, 377 Ill. App. 3d 339, 316 Ill. Dec. 187, 878 N.E.2d 1211 (1st Dist. 2007).

Field sobriety test results were reported as an officer's observations about defendant's ability to perform simple tasks, and thus, the failure to precisely calculate a forty-five degree angle did not render horizontal gaze nystagmus (HGN) test unreliable and inadmissible, and officer's failure to inform defendant that he was permitted to hold his arms out six inches from his body for balance did not render walk-and-turn test inadmissible. Hinds v. State, 906 N.E.2d 877 (Ind. Ct. App. 2009).

State trooper's testimony about defendant's performance on horizontal gaze nystagmus (HGN) test, that he observed "lack of smooth pursuit" and "distinct nystagmus at maximum deviation" in each eye, constituted expert testimony subject to the strictures of rule governing the admissibility of expert testimony, even though trooper did not expressly provide an opinion as to defendant's state of intoxication, and thus testimony was not admissible without a preliminary legal determination that trooper was qualified to testify as an expert witness and without the State establishing the reliability of the administration of the HGN test; testimony was not based on trooper's general knowledge as a layperson but upon his specialized knowledge and training. State v. Blackwell, 408 Md. 677, 971 A.2d 296 (2009).

Highway patrol officer was justified in conducting further investigation and horizontal gaze nystagmus test after officer noticed driver's red and bloodshot eyes and she admitted drinking. Brewer v. Ziegler, 2007 ND 207, 743 N.W.2d 391 (N.D. 2007).

Driver's failure of horizontal gaze nystagmus test and screening breath test which reflected blood alcohol concentration above the legal limit provided probable cause to place driver under arrest. Brewer v. Ziegler, 2007 ND 207, 743 N.W.2d 391 (N.D. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6), 354(6), 355(6), 426
Vertical Gaze Nystagmus Test: Use in Impaired Driving Prosecution, 117 A.L.R.5th 491
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439

262 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 985

§ 985 Expert and opinion evidence

In a prosecution for driving while intoxicated or under the influence of intoxicating liquor, opinion evidence is admissible on the issue of the intoxication or sobriety of the defendant.[n1] It has been held that such an opinion may be given by a lay witness, inasmuch as it is nonexpert testimony and no special knowledge is required to qualify the witness,[n2] and that the witness may describe the facts and circumstances that led to his or her opinion -- that is, he or she may give details as to the appearance and conduct of the defendant as derived from observation, and then testify whether the defendant was intoxicated or sober.[n3]

Intoxication may also, of course, be the subject of expert testimony in a prosecution for driving while intoxicated or under the influence of intoxicating liquor,[n4] such as the opinion of a physician on such matter.[n5] Scientific tests may afford a basis for expert opinion by physicians,[n6] but a hypothetical question as to intoxication, directed to a physician, must embrace all the facts and circumstances that have been put in evidence, or otherwise it is objectionable.[n7] Defendants are also permitted to introduce expert testimony regarding lack of intoxication, and it is error for a court arbitrarily to exclude such evidence.[n8]

FOOTNOTES:

n1 State v. Murphy, 451 N.W.2d 154 (Iowa 1990); State v. Lewellyn, 78 Wash. App. 788, 895 P.2d 418 (Div. 3 1995), as amended on reconsideration on other grounds, (Aug. 3, 1995) and rev'd on other grounds, 130 Wash. 2d 215, 922 P.2d 811 (1996).

n2 State v. Adams, 2 Conn. Cir. Ct. 481, 202 A.2d 262 (App. Div. 1964); State v. Lewellyn, 78 Wash. App. 788, 895 P.2d 418 (Div. 3 1995), as amended on reconsideration on other grounds, (Aug. 3, 1995) and rev'd on other grounds, 130 Wash. 2d 215, 922 P.2d 811 (1996).

n3 State v. Powell, 306 S.W.2d 531, 66 A.L.R.2d 1141 (Mo. 1957); Schluter v. State, 153 Neb. 317, 44 N.W.2d 588 (1950).

n4 State v. Lewellyn, 78 Wash. App. 788, 895 P.2d 418 (Div. 3 1995), as amended on reconsideration on other grounds, (Aug. 3, 1995) and rev'd on other grounds, 130 Wash. 2d 215, 922 P.2d 811 (1996).

n5 People v. McHugh, 62 Cal. App. 17, 216 P. 76 (1st Dist. 1923).

Prejudice resulted from a failure to permit a doctor to testify as to what standards or criteria he used in arriving at the conclusion that the defendant was so intoxicated as to be unfit to operate a vehicle. State v. DeCristofaro, 102 R.I. 193, 229 A.2d 613 (1967).

n6 § 988, 989.

n7 People v. McHugh, 62 Cal. App. 17, 216 P. 76 (1st Dist. 1923).

n8 Com. v. Smythe, 23 Mass. App. Ct. 348, 502 N.E.2d 162 (1987).

SUPPLEMENT:

Cases

The average adult is competent to testify regarding alcohol intoxication because it is within the common experience of most adults. People v. Foltz, 343 Ill. Dec. 395, 934 N.E.2d 719 (App. Ct. 5th Dist. 2010).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6), 354(6), 355(6)
Competency of nonexpert witness to testify, in criminal case, based upon personal observation, as to whether person was under the influence of drugs, 21 A.L.R.4th 905

263 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 986

§ 986 Driving, operation, or actual physical control of vehicle

Under a statute criminalizing driving or operation of a vehicle while intoxicated or under the influence of intoxicants, driving or operation is frequently an essential element of the offense which must be pled and proved.[n1] Similarly, in a prosecution for being in actual physical control of a vehicle while intoxicated, the state must establish the element of actual physical control.[n2] The element of driving, operation, or actual physical control may generally be established through circumstantial evidence.[n3] Thus, a person may be arrested, tried, and convicted of operating a motor vehicle while under the influence of an intoxicating liquor even if there is no eyewitness presented who viewed the defendant operating the vehicle, provided there is sufficient evidence on the issue.[n4]

FOOTNOTES:

n1 State v. Pike, 312 Mo. 27, 278 S.W. 725 (1925).

n2 City of Fargo v. Schwagel, 544 N.W.2d 873 (N.D. 1996).

n3 Harper v. State, 213 Ga. App. 564, 445 S.E.2d 563 (1994); Com. v. Congdon, 68 Mass. App. Ct. 782, 864 N.E.2d 1227 (2007).

n4 Travis v. State, 2007 WL 1413208 (Miss. Ct. App. 2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6), 354(6), 355(6)
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115

264 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
a. In General

8 Am Jur 2d Automobiles and Highway Traffic § 987

§ 987 Prior convictions

Where a statute criminalizing driving while intoxicated or a similar offense contains multiple severity levels, or provides for enhanced punishment, on the basis of a defendant's previous convictions for the offense, it has been held that, though the level of severity with which the defendant is charged must be pled in the charging instrument, the defendant's previous convictions do not constitute elements of the offense which must be proved at trial, but instead can be established during the punishment phase.[n1] When a sentencing enhancement provision does not create a separate substantive offense, a defendant's prior convictions for driving under the influence are inadmissible bad character evidence in a prosecution for driving under the influence, even though the prior convictions are relevant to the categorization of the sentence the defendant will receive if convicted.[n2] However, it has been held that, where a conviction must have occurred within a prescribed time period to support an enhanced severity level or penalty, failure to establish the date of a prior conviction requires reversal of a subsequent conviction under the enhancement provision.[n3]

Some states have statutes protecting the right of a defendant to a fair trial in an enhanced DUI prosecution by providing that, where the defendant elects to be tried by a jury, the proceeding must be bifurcated, with evidence and information about the defendant's alleged prior convictions excluded from the jury's knowledge at the guilt phase.[n4] Although certified copies of records of prior DUI convictions is one method of proving commission of prior offenses, it has been held that such copies are not the sole acceptable method, and where those records have been destroyed in the ordinary course of the court business, other proof can be substituted.[n5] Furthermore, it has been held that where proof of prior convictions is deferred to the sentencing phase of a prosecution for driving while intoxicated or a similar offense, the prior convictions need not be proved beyond a reasonable doubt,[n6] and that the state's proof may rest upon evidence otherwise inadmissible at trial.[n7] Some courts have held that prior convictions in other states may be proved to support punishment under an enhanced penalty provision, where the out-of-state convictions were for substantially similar offenses,[n8] but other states have taken the opposite position.[n9] Although it has been held that a defendant's prior uncounseled convictions for driving while intoxicated may not be used under an enhancement statute,[n10] it has also been held that unless the defendant offers evidence raising a question whether he or she was represented by or waived counsel in connection with the prior convictions, the prosecution need not prove such representation or waiver to rely on the prior convictions under an enhanced penalty provision.[n11]

FOOTNOTES:

n1 State v. Masterson, 261 Kan. 158, 929 P.2d 127 (1996).

n2 Ex parte Parker, 740 So. 2d 432 (Ala. 1999).

n3 Phipps v. State, 111 Nev. 1276, 903 P.2d 820 (1995).

n4 State v. Rodriguez, 575 So. 2d 1262 (Fla. 1991) (holding modified on other grounds by, State v. Harbaugh, 754 So. 2d 691 (Fla. 2000)).

n5 People v. Laskowski, 287 Ill. App. 3d 539, 223 Ill. Dec. 110, 678 N.E.2d 1241 (4th Dist. 1997); State v. Spaeth, 206 Wis. 2d 135, 556 N.W.2d 728 (1996).

n6 People v. Laskowski, 287 Ill. App. 3d 539, 223 Ill. Dec. 110, 678 N.E.2d 1241 (4th Dist. 1997).

n7 State v. Spaeth, 206 Wis. 2d 135, 556 N.W.2d 728 (1996).

n8 Blume v. State, 112 Nev. 472, 915 P.2d 282 (1996).

n9 State v. Nelson, 121 N.M. 301, 1996-NMCA-012, 910 P.2d 935 (Ct. App. 1995).

n10 State v. Matautia, 81 Haw. 76, 912 P.2d 573 (Ct. App. 1996).

n11 People v. Laskowski, 287 Ill. App. 3d 539, 223 Ill. Dec. 110, 678 N.E.2d 1241 (4th Dist. 1997).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6) to 355(6)

265 of 276 DOCUMENTS

American Jurisprudence, Second Edition

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Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
b. Medical or Chemical Tests for Intoxication

8 Am Jur 2d Automobiles and Highway Traffic § 988

§ 988 Generally

In a prosecution for driving while intoxicated or under the influence of intoxicating liquor, evidence as to the alcoholic content of a specimen of the body fluid of the defendant, as determined by scientific analysis, and expert opinion testimony as to what the presence of the ascertained amount of alcohol in the blood, urine, or other body fluid of an individual indicates with respect to the matter of such individual's intoxication or sobriety, is ordinarily admissible as relevant and competent evidence upon the issue of intoxication.[n1] To warrant the admission in evidence of the specimen of the body fluid and testimony as to the analysis thereof, the specimen must be satisfactorily identified as that taken from the person whose intoxication is in question.[n2] Whether breath test data may be admitted into evidence is a matter decided solely by the trial court and is not contingent upon its relevancy being established by other facts submitted to the jury.[n3]

Caution: When the particular device used in a breath test is not used to determine the amount of alcohol in a person's blood, but rather only gives an indication of possible impairment,[n4] it is impermissible to testify to the results of such a breath test by giving a numeric reading as to the amount of alcohol in a person's blood.[n5]

When the prosecution presents evidence which includes an approved blood alcohol test method by a properly licensed operator, the fact finder may presume that the test procedure is reliable, the operator is qualified, and the presumptive meaning of the test as set forth in the pertinent state statute is applicable.[n6] However, the presumptions are rebuttable, and a defendant may in any proceeding attack the reliability of the testing procedures, the qualifications of the operator, and the standards establishing the zones of intoxicant levels.[n7]

As is the case with respect to blood alcohol tests, the results of alcohol breath tests taken using a device or technique such as a breathalyzer or an intoxilyzer, the reliability of which is established, are admissible to prove intoxication in such a prosecution.[n8] An adequate foundation must be laid for the admission of breath-test results in a prosecution for operating a vehicle while intoxicated.[n9] Statutes governing the admissibility of breath-test results generally require the state to establish three elements:

(1)the test was performed on an approved device,[n10] with that approval or certification being current at the time the test was given;[n11]

(2)the test was performed by an operator certified to use the device; and[n12] and

(3)the methods used to perform the test were approved by the designated state agency.[n13]

The state may be required to present expert testimony establishing the relationship between breathalyzer test results and intoxication as a foundational requirement of the admissibility of test results.[n14] Under the common law, evidence of blood alcohol levels in a driving while impaired prosecution will comply with due process when the evidence shows

that: (1) the testing procedure is reliable, (2) the test was performed by someone qualified to do so on equipment proper for that purpose, and (3) expert testimony explains the science behind the test and the outcome.[n15]

Observation: In order for breath-test results to be admissible to establish a motorist's intoxication, as grounds for an administrative suspension of a driver's license, once the motorist presents evidence showing that the breath-test machine is not in substantial compliance with appropriate regulations, burden shifted to the state to prove there was substantial compliance.[n16]

Where requirements for, and methods of, making a chemical test are prescribed by statute, the statute must be complied with in order for the test results to be admissible in evidence.[n17] However, it has been judicially recognized that results of a blood test taken pursuant to a hospital blood test statute are admissible in a prosecution for driving while under the influence of intoxicating liquor, even though the administration of the test did not meet the requirements applicable to a police-administered test.[n18]

The competency of a witness who tested the accused's blood alcohol level to operate the equipment used to measure that level is generally a question for the decision of the trial court.[n19] However, before a witness is permitted to evaluate the findings or results of such a test, that is, to testify as to the relationship between the alcoholic content of the blood and intoxication generally, or to give an opinion as to what a given percentage of alcohol in the blood indicates with respect to intoxication, or as to the effect of such given percentage of alcohol upon the mental or physical conduct of an individual, he or she must be shown to be properly qualified as an expert upon the subject.[n20]

In a prosecution of a defendant for driving under the influence with an alcohol concentration of .20 or more, if multiple valid tests are done, and at least one result is less than the statutory threshold for the offense, the state cannot satisfy its burden of proof beyond a reasonable doubt simply by asking the jury to disregard the result showing innocence, for a verdict of guilty in that instance would be based on little more than speculation.[n21]

FOOTNOTES:

n1 Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966); State v. Duguid, 50 Ariz. 276, 72 P.2d 435 (1937); State v. Morkrid, 286 N.W. 412 (Iowa 1939).

As to statutes permitting medical or chemical tests for intoxication of person arrested, generally, see §§ 346 et seq.

Related References:
As to blood alcohol tests as evidence, generally, see Am. Jur. 2d, Evidence § 1021.

n2 State v. Foster, 198 Kan. 52, 422 P.2d 964 (1967); People on Information of Buckhout v. Sansalone, 208 Misc. 491, 146 N.Y.S.2d 359 (County Ct. 1955); Toms v. State, 95 Okla. Crim. 60, 239 P.2d 812 (1952).

n3 State v. Martinez, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894 (2007).

n4 Heller v. State, 234 Ga. App. 630, 507 S.E.2d 518 (1998).

n5 Hopkins v. State, 283 Ga. App. 654, 642 S.E.2d 356 (2007).

n6 Robertson v. State, 604 So. 2d 783 (Fla. 1992).

n7 Robertson v. State, 604 So. 2d 783 (Fla. 1992).

A blood alcohol test result, which was obtained by using a test kit after the expiration date on the label of the kit, was not presumed unreliable, and thus the admission of the test kit result did not violate due process, in a prosecution for driving under the influence manslaughter, as the Florida Department of Law Enforcement regulations did not require specific compliance with an expiration date of the kit employed, and the test kit was scientifically reliable. Bruch v. State, 954 So. 2d 1242 (Fla. Dist. Ct. App. 4th Dist. 2007).

n8 Morgan v. City of Vestavia Hills, 628 So. 2d 1047 (Ala. Crim. App. 1993); Williams v. State, 884 P.2d 167 (Alaska Ct. App. 1994) (abrogated on other grounds by, State v. Coon, 974 P.2d 386, 95 A.L.R.5th 729 (Alaska 1999)); Coombs v. Pierce, 1 Cal. App. 4th 568, 2 Cal. Rptr. 2d 249 (5th Dist. 1991).

Upon proper objection, there must be a threshold showing of a breath test machine's validity as a foundation for admission of the test result. State v. Martinez, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894 (2007).

n9 State v. Stohr, 730 N.W.2d 674 (Iowa 2007), as amended on denial of reh'g, (June 5, 2007).

n10 State v. Pilotti, 99 Conn. App. 563, 914 A.2d 1067 (2007), certification denied, 282 Conn. 903, 919 A.2d 1037 (2007); State v. Stohr, 730 N.W.2d 674 (Iowa 2007), as amended on denial of reh'g, (June 5, 2007); Vanderpool v. Director of Revenue, 226 S.W.3d 108 (Mo. 2007); State v. Martinez, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894 (2007).

n11 Jones v. State, 285 Ga. App. 352, 646 S.E.2d 323 (2007); State v. Martinez, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894 (2007).

The state presented an adequate foundation by expert testimony that the type of breath test machine was approved over 10 years earlier and was still in use, and therefore approved, at the time of the defendant's trial, and thus, the foundation was adequate for admission of the alcohol concentration test results in a driving under the influence (DUI) prosecution. State v. Anderson, 2007 WL 1228790 (Idaho Ct. App. 2007), review granted, (July 25, 2007).

n12 State v. Stohr, 730 N.W.2d 674 (Iowa 2007), as amended on denial of reh'g, (June 5, 2007); Vanderpool v. Director of Revenue, 226 S.W.3d 108 (Mo. 2007).

n13 State v. Stohr, 730 N.W.2d 674 (Iowa 2007), as amended on denial of reh'g, (June 5, 2007); Vanderpool v. Director of Revenue, 226 S.W.3d 108 (Mo. 2007).

n14 Com. v. Colturi, 448 Mass. 809, 864 N.E.2d 498 (2007).

n15 Bruch v. State, 954 So. 2d 1242 (Fla. Dist. Ct. App. 4th Dist. 2007).

n16 State, Dept. of Highway Safety and Motor Vehicles v. Wejebe, 954 So. 2d 1245 (Fla. Dist. Ct. App. 3d Dist. 2007).

n17 State v. Hraha, 193 N.W.2d 484 (Iowa 1972).

n18 State v. Haselman, 33 Conn. App. 242, 635 A.2d 310 (1993); State ex rel. Allen v. Bedell, 193 W. Va. 32, 454 S.E.2d 77 (1994).

n19 State v. Hanrahan, 523 S.W.2d 619 (Mo. Ct. App. 1975).

n20 Lister v. England, 195 A.2d 260 (D.C. 1963); State v. Morton, 39 N.J. 512, 189 A.2d 216 (1963); State v. Moore, 245 N.C. 158, 95 S.E.2d 548 (1956); Alexander v. State, 1956 OK CR 130, 305 P.2d 572 (Okla. Crim. App. 1956).

The testimony of one who is not a qualified expert in such respect is inadmissible. State v. Minnix, 101 Ohio App. 33, 1 Ohio Op. 2d 19, 137 N.E.2d 572 (4th Dist. Ross County 1956).

n21 State v. Anderson, 2007 WL 1228790 (Idaho Ct. App. 2007), review granted, (July 25, 2007).

SUPPLEMENT:

Cases

In order to introduce breath test results as evidence in a driving under the influence (DUI) prosecution, the State must first present evidence that the test was performed substantially in accordance with approved methods, that is, by a per-

son trained and qualified to conduct it, on an approved machine that has been tested and inspected. State v. Belvin, 986 So. 2d 516 (Fla. 2008).

There are four foundational elements the State must establish for admissibility of a breath test in a prosecution for driving under the influence (DUI): (1) that the testing device was working properly at the time of the testing; (2) that the person administering the test was qualified and held a valid permit; (3) that the test was properly conducted under the methods stated by the Department of Health and Human Services Regulation and Licensure; and (4) that all other statutes were satisfied. State v. Kuhl, 276 Neb. 497, 755 N.W.2d 389 (2008).

Testimony of defendant's expert about source code for alcohol breath test monitor was inadmissible; record showed that testimony of expert was not relevant to questions before county court, those being whether State had access to source code for machine used to test defendant's breath and whether State should have been required to turn over source code. State v. Kuhl, 16 Neb. App. 127, 741 N.W.2d 701 (2007), review sustained, (Jan. 24, 2008).

Toxicology evidence was relevant, in prosecution for two counts of manslaughter and two counts of negligent homicide; the central issue at trial was whether defendant was under the influence of drugs at the time he caused automobile accident, and the toxicology results were relevant to show whether the defendant had recently ingested certain drugs and was under the influence of those drugs. Rules of Evid., Rule 401. State v. Dilboy, 160 N.H. 135, 999 A.2d 1092 (2010), as modified on denial of reconsideration, (June 3, 2010) and petition for cert. filed (U.S. Aug. 31, 2010).

It is no defense to a charge of refusal to submit to a breath test for drivers to claim that they were too drunk to understand the standard statement informing drivers of the consequences of refusing to submit to breath test. N.J.S.A. 39:4-50.2(e), 39:4-50.4a(a). State v. Marquez, 202 N.J. 485, 998 A.2d 421 (2010).

Purpose of the statute governing the interpretation of chemical tests for blood-alcohol content is to ease the requirements for the admissibility of chemical test results while ensuring that the test on which the results are based is fairly administered. NDCC 39-20-07. State v. Stroh, 2011 ND 139, 800 N.W.2d 276 (N.D. 2011).

Because finality attaches to a ruling that blood testing was performed in substantial compliance with the methods approved by the Director of Health on a motion to suppress, a defendant may not challenge the admissibility of the test results at trial by arguing that the state failed to comply with the rules; evidentiary objections challenging the competency, admissibility, relevancy, authenticity, and credibility of the chemical test results, however, may still be raised. R.C. § 4511.19(D)(1). State v. Syx, 190 Ohio App. 3d 845, 2010-Ohio-5880, 944 N.E.2d 722 (2d Dist. Montgomery County 2010).

Department of Health notice, approving a particular device for prearrest breath testing of a person suspected of driving under the influence of alcohol (DUI), did not provide basis for admissibility of results obtained from that device in a prosecution for underage drinking; sole purpose of the device approval was to assist officers in determining probable cause to arrest for DUI. U.S.C.A. Const.Amend. 4; 18 Pa.C.S.A. § 6308; 75 Pa.C.S.A. § 1547(k). Com. v. Brigidi, 6 A.3d 995 (Pa. 2010).

Defendant's blood alcohol results and expert testimony regarding blood test results were admissible in prosecution for intoxication manslaughter; experts detailed training and qualifications and specified that alcohol testing tool was accepted in scientific and medical communities, methodology and scientific techniques of machine were described in detail, operating manual detailed scientific principles involved, though no witness identified specific error rate for machine, each confirmed that machine would not analyze sample if error code registered on machine, and expert testified that he implemented same techniques he learned in machine training in analyzing defendant's blood sample. Wooten v. State, 267 S.W.3d 289 (Tex. App. Houston 14th Dist. 2008), petition for discretionary review refused, (Feb. 4, 2009).

Trial court's denial of defendant's request for computer and computer program used in breath testing device in defendant's driving while intoxicated (DWI) trial did not implicate defendant's rights under the confrontation clause, since neither computer nor computer program was a "witness" that could be called to testify. Taylor v. State, 264 S.W.3d 914 (Tex. App. Fort Worth 2008).

Trial court's denial of defendant's request for computer and computer program used in breath testing device in defendant's driving while intoxicated (DWI) trial did not violate defendant's Sixth Amendment right to an adequate defense and was not reversible *Brady* error, absent showing of any reasonable probability that access to computer and computer program would result in different outcome of trial. Taylor v. State, 264 S.W.3d 914 (Tex. App. Fort Worth 2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6) to 355(6), 411, 416, 426
Qualification as expert to testify as to findings or results of scientific test to determine alcoholic content of blood, 77 A.L.R.2d 971
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1

266 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
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2. Driving while Intoxicated or under Influence of Liquor or Drugs
b. Medical or Chemical Tests for Intoxication

8 Am Jur 2d Automobiles and Highway Traffic § 989

§ 989 Time of testing as effecting admissibility of results

Proof of intoxication at the time of arrest, when remote from the operation of the vehicle, is insufficient in itself of prove intoxication at the time the person was driving, and in this remote circumstance, time is an element of importance that the state must establish to meet its burden of proving that the person drove while intoxicated.[n1] In a prosecution for driving while intoxicated, a fact finder cannot determine that one who is under the influence of an alcoholic beverage at an established time was necessarily in that condition at some earlier unspecified moment without any evidence concerning the length of the interval involved.[n2] Thus, the fact that chemical or medical tests in connection with an arrest for driving while intoxicated or under the influence of intoxicating liquor were made at a time remote from the time of the alleged offense is a good reason for excluding the results thereof as evidence.[n3] Under some statutes there is a presumption that a motorist was at least as intoxicated at the time of driving as at the time of chemical testing provided the testing was performed within a prescribed number of hours of driving, and such a presumption does not violate due process.[n4] Under such a statute the defendant may not offer "delayed absorption"evidence to argue that the chemical test result did not accurately reflect his or her impairment at the time of driving.[n5]

Under a statute prohibiting the operation of a motor vehicle while the operator has a blood alcohol level of .08 or more, breathalyzer test results are admissible without the necessity of evidence of retrograde extrapolation, which concerns changes in blood alcohol content over time, provided that the test was performed within a reasonable time after the operation of the vehicle.[n6] For purposes of the above rule, the passage of up to three hours is a "reasonable time,"although the facts and circumstances in particular cases may establish that a lesser or greater time period ought to be applied.[n7] The determination whether a breathalyzer test was performed within a reasonable time after the defendant's last operation of a vehicle falls within the trial judge's sound discretion.[n8]

FOOTNOTES:

n1 State v. Davis, 217 S.W.3d 358 (Mo. Ct. App. W.D. 2007).

n2 State v. Davis, 217 S.W.3d 358 (Mo. Ct. App. W.D. 2007).

n3 State v. McGarr, 147 A. 876 (R.I. 1929).

Evidence was insufficient to support a jury verdict that the defendant was operating a vehicle while intoxicated, as required to support a conviction for driving while intoxicated (DWI), since the time interval between when the defendant was driving the vehicle and when he was found intoxicated was approximately 40 minutes, the defendant returned home and did not remain at the scene of the accident, the defendant had access to alcohol in the interim between the accident and his contact with the officers, and although the defendant's false statements to

the officers were consistent with a fear that he would be accused of DWI, they did not demonstrate that the defendant actually was intoxicated when he drove the car into a construction area. State v. Byron, 222 S.W.3d 338 (Mo. Ct. App. W.D. 2007).

n4 Valentine v. State, 155 P.3d 331 (Alaska Ct. App. 2007).

n5 Valentine v. State, 155 P.3d 331 (Alaska Ct. App. 2007).

n6 Com. v. Colturi, 448 Mass. 809, 864 N.E.2d 498 (2007).

n7 Com. v. Colturi, 448 Mass. 809, 864 N.E.2d 498 (2007).

n8 Com. v. Colturi, 448 Mass. 809, 864 N.E.2d 498 (2007).

SUPPLEMENT:

Cases

Magistrate who issued search warrant for the drawing of defendant's blood had substantial basis to determine that evidence of intoxication would probably be found in defendant's blood, though search warrant affidavit did not specify the time at which defendant was stopped for suspected driving while intoxicated (DWI) and retrograde extrapolation to blood alcohol content (BAC) at time of alleged offense might not be possible, where warrant was issued at 3:54 a.m. on date of alleged offense and was therefore issued within four hours of the stop. U.S.C.A. Const.Amend. 4; Vernon's Ann.Texas C.C.P. art. 18.01; V.T.C.A., Penal Code § 49.01(2). State v. Jordan, 342 S.W.3d 565 (Tex. Crim. App. 2011).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6) to 355(6), 411, 416, 426
Admissibility and Sufficiency of Extrapolation Evidence in DUI Prosecutions, 119 A.L.R.5th 379
Mental incapacity as justifying refusal to submit to tests for driving while intoxicated, 76 A.L.R.5th 597
Qualification as expert to testify as to findings or results of scientific test to determine alcoholic content of blood, 77 A.L.R.2d 971

8 Am Jur 2d Automobiles and Highway Traffic § 989

Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229

267 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

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VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
b. Medical or Chemical Tests for Intoxication

8 Am Jur 2d Automobiles and Highway Traffic § 990

§ 990 Compulsory tests

The United States Supreme Court has held that the use in evidence of the results of a chemical analysis of a sample of blood taken involuntarily from the body of the defendant at the direction of a police officer after the defendant's arrest for driving while under the influence of intoxicating liquor does not violate the defendant's privilege against self-incrimination, does not deny the defendant due process (where there was ample justification for the police officer's conclusion that the defendant was under the influence of alcohol), does not violate the defendant's right to counsel, even when such sample of blood was taken against the advice of counsel, and does not constitute an unreasonable search and seizure in violation of the constitutional rights of the accused, notwithstanding that the sample was taken without a warrant, where the police officer was justified in requiring the test and manner in which the test was performed was reasonable.[n1] Generally, therefore, in the absence of a statute to the contrary, neither due process, nor the privilege against self-incrimination, nor the prohibition against unreasonable search and seizure is violated by reception of evidence of a compulsory or involuntary blood test,[n2] urinalysis,[n3] or breath test[n4] for intoxication or alcohol. Although withdrawing blood without a warrant and without consent is a "search"and "seizure"under the federal and state constitutions, when an officer has reasonable grounds to believe an accused has been driving under the influence, an exception to the warrant requirement exists due to exigent circumstances,[n5] based primarily on the fact that alcohol as well as other drugs are metabolized in the body and any significant delay in taking a blood test may deprive the state of an accurate indication of the driver's condition and could result in the loss of evidence.[n6] Furthermore, although there are decisions holding otherwise,[n7] a number of courts, including the United States Supreme Court, have held that evidence to prove intoxication from a blood test of the defendant is admissible where made from a specimen obtained while the defendant was unconscious.[n8] Additionally, constitutional rights and privileges relied upon to exclude evidence secured by such chemical or medical tests of the defendant may be waived by consenting thereto, rendering the evidence admissible.[n9]

In some states an accused has a right to have administered an additional chemical test independent from one sought by State after arrest for driving under the influence.[n10] This independent blood test which a drunk-driving arrestee is entitled to obtain after submitting to a mandatory breath test serves to give the arrestee an opportunity to challenge the breath-test evidence.[n11] The right is invoked by some statement that reasonably could be construed, in light of the circumstances, to be an expression of a desire for an additional, independent test, and courts are guided by the circumstances surrounding an alleged request, not simply the semantics of the alleged request itself.[n12]

FOOTNOTES:

n1 Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966).

The taking of a blood sample from a defendant suspected of driving while intoxicated over his objection was not done with excessive force, and, thus, did not violate the Fourth Amendment, as the defendant never expressly refused to give a blood sample, did not manifest a fear of

needles, did not express a willingness to instead take a breathalyzer test, and had no violent reaction to the bodily intrusion engendered by the search, and, when asked whether he agreed to have his blood drawn, the defendant failed to answer and appeared to be drifting in and out of consciousness. State v. Renshaw, 390 N.J. Super. 456, 915 A.2d 1081 (App. Div. 2007).

n2 People v. Blandon, 194 Colo. 102, 568 P.2d 1171 (1977); Smith v. State, 143 Ga. App. 347, 238 S.E.2d 698 (1977); State v. Swayze, 197 Neb. 149, 247 N.W.2d 440 (1976).

n3 Ridgell v. U.S., 54 A.2d 679 (Mun. Ct. App. D.C. 1947); Toms v. State, 95 Okla. Crim. 60, 239 P.2d 812 (1952).

n4 Davis v. State, 174 Ind. App. 433, 367 N.E.2d 1163 (1977); People v. Graser, 90 Misc. 2d 219, 393 N.Y.S.2d 1009 (Town Ct. 1977); Ross v. State, 1976 OK CR 283, 556 P.2d 638 (Okla. Crim. App. 1976); Com. v. Rutan, 229 Pa. Super. 400, 323 A.2d 730 (1974).

n5 State v. Diaz, 144 Idaho 300, 160 P.3d 739 (2007); State v. Steimel, 921 A.2d 378 (N.H. 2007).

Probable cause has been to exist to support the warrantless seizure of blood of a defendant in several cases. Cunningham v. State, 284 Ga. App. 739, 644 S.E.2d 878 (2007); State v. Renshaw, 390 N.J. Super. 456, 915 A.2d 1081 (App. Div. 2007).

n6 State v. Steimel, 921 A.2d 378 (N.H. 2007).

n7 State v. Wolf, 53 Del. 865, 164 A.2d 865 (1960); State v. Weltha, 228 Iowa 519, 292 N.W. 148 (1940).

n8 Breithaupt v. Abram, 352 U.S. 432, 77 S. Ct. 408, 1 L. Ed. 2d 448 (1957); People v. Lewis, 152 Cal. App. 2d 824, 313 P.2d 972 (4th Dist. 1957); State v. Cram, 176 Or. 577, 160 P.2d 283, 164 A.L.R. 952 (1945).

n9 Kallnbach v. People, 125 Colo. 144, 242 P.2d 222 (1952); State v. Slater, 242 Iowa 958, 48 N.W.2d 877 (1951); City of Sioux Falls v. Ugland, 79 S.D. 134, 109 N.W.2d 144 (1961).

n10 Bluel v. State, 153 P.3d 982 (Alaska 2007); Anderton v. State, 283 Ga. App. 493, 642 S.E.2d 137 (2007).

n11 Bluel v. State, 153 P.3d 982 (Alaska 2007).

n12 Anderton v. State, 283 Ga. App. 493, 642 S.E.2d 137 (2007).

SUPPLEMENT:

Cases

Officer had probable cause to believe that defendant was driving the vehicle involved in fatal car accident and committed the offense of driving while intoxicated (DWI), and thus, officer was authorized to take defendant's blood specimen without defendant's consent; eyewitness at scene of accident informed officer that he had witnessed defendant crawling out of the pickup involved in the accident, and that he did not see anyone else get out of the pickup, and officer observed bruising injuries on defendant's left shoulder that were consistent with the driver's side seatbelt. U.S.C.A. Const.Amend. 4; V.T.C.A., Transportation Code § 724.012(b). Somers v. State, 333 S.W.3d 747 (Tex. App. Waco 2010), reh'g overruled, (Dec. 21, 2010).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide

West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6) to 355(6), 411, 412, 414, 415, 418, 419, 426
Drunk driving: Motorist's right to private sobriety test, 45 A.L.R.4th 11
Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 A.L.R.3d 852
Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 A.L.R.3d 325
Requiring submission to physical examination or test as violation of constitutional rights, 25 A.L.R.2d 1407

268 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
b. Medical or Chemical Tests for Intoxication

8 Am Jur 2d Automobiles and Highway Traffic § 991

§ 991 Implied consent

Under typical implied-consent statutes, a driver who operates a motor vehicle on state roads is deemed to have impliedly consented to a chemical test of his or her blood alcohol content, although a driver may withdraw that consent, however, in doing so, the driver makes his or her license subject to revocation.[n1] Under such statutes every driver on the roads is deemed to have consented to chemical testing in the course of an arrest for driving while under the influence of alcohol.[n2] Implied consent to evidentiary testing is not limited to a breathalyzer test, but may also include testing the suspect's blood or urine, and the evidentiary test to be employed is of the arresting officer's choosing.[n3] To protect the rights of the driver in that he or she may withdraw his or her consent before a test is administered, many implied consent schemes mandate accurate warnings that accurately inform a driver of his or her statutory right to consent or refuse, as well as the consequences of such consent or refusal.[n4] Because an implied-consent statute provides that a person arrested for driving while intoxicated is deemed to have given his or her consent to the taking of a breath sample, a statutory presumption of consent exists, and thus, the defendant bears the initial burden at a suppression hearing to show that evidence exists rebutting the statutory presumption that he or she voluntarily consented to submit a breath specimen.[n5]

Caution: The determinative issue with the implied consent notice is whether the notice given was substantively accurate so as to permit the driver to make an informed decision about whether to consent to the testing, but the law does not require the arresting officer to ensure that the driver understands the implied consent notice.[n6] However, even when the officer properly gives the implied consent notice, if the officer gives additional, deceptively misleading information that impairs a defendant's ability to make an informed decision about whether to submit to testing, the defendant's test results or evidence of his or her refusal to submit to testing must be suppressed.[n7]

Statutory implied consent notice provisions are generally mandatory, although substantial compliance with the notice provisions is sufficient.[n8] Failure to give the warnings required by an implied-consent statute has been held to render the test results inadmissible,[n9] as has failure to obtain service of an interpreter required to make the warnings meaningful.[n10] On the other hand, some courts have held that in such situations the test result is still admissible, but the prosecution forfeits the right to revoke driving privileges and to rely on a statutory presumption of intoxication,[n11] and others find that the implied-consent statute indicates no legislative intent to impose any greater consequences for a failure to instruct on the consequences of refusal to submit to a breath or blood test, and thus suppression of the test evidence is not warranted.[n12] Furthermore, failure to give appropriate warnings has under some circumstances been held harmless error, not requiring reversal of a conviction based in part on evidence obtained from a test under an implied-consent statute.[n13] Where the implied-consent statute requires that the defendant be under arrest before its provisions apply, lack of arrest or probable cause to arrest will generally render evidence obtained through a test inadmissible.[n14] Where a test subject is not under arrest at the time of an alcohol test, and reasonable grounds for arrest of the type specified in an implied-consent statute do not exist, the statute does not apply to bar introduction of the result of the test, and its admissibility is determined under general principles.[n15]

When an implied-consent statute requires that the notice to be given to persons arrested for driving under the influence of alcohol be given at the time of arrest, notice is deemed timely if it is given at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant.[n16]

A defendant with a commercial driver's license, when stopped for driving under the influence in a noncommercial vehicle, is not entitled to a warning that a refusal to take a breath test will result in the loss of commercial driving privileges.[n17]

In some states a suspect arrested for driving under the influence of intoxicants has the right, upon request, to a reasonable opportunity to obtain legal advice before deciding whether to submit to a breath test.[n18] In one state a driver arrested for driving while intoxicated may request to speak to an attorney and must be given 20 minutes in which to attempt to contact an attorney, but after 20 minutes has expired, if the driver still refuses to take the alcohol breath test, the refusal is final.[n19] However, if a driver arrested for driving while intoxicated requests to speak to an attorney, but is not given a 20-minute opportunity to do so, the refusal of an alcohol breath test cannot be valid.[n20]

Although a suspect arrested for driving under the influence of intoxicants may have the right, upon request, to a reasonable opportunity to obtain legal advice before deciding whether to submit to a breath test, the degree of privacy allowed may be limited in order to conduct an accurate breath test or because of security considerations.[n21] The state, however, bears the burden of justifying any restriction on private consultation.[n22]

FOOTNOTES:

n1 Staggs v. Director of Revenue, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007); State v. Amaya, 221 S.W.3d 797 (Tex. App. Fort Worth 2007), petition for discretionary review refused, (Aug. 22, 2007).

n2 State v. Diaz, 144 Idaho 300, 160 P.3d 739 (2007); Escarcega v. State ex rel. Wyo. Dept. of Transp., 2007 WY 38, 153 P.3d 264 (Wyo. 2007).

n3 State v. Diaz, 144 Idaho 300, 160 P.3d 739 (2007).

n4 State v. Okada, 113 Haw. 363, 152 P.3d 535 (Ct. App. 2007).

n5 State v. Amaya, 221 S.W.3d 797 (Tex. App. Fort Worth 2007), petition for discretionary review refused, (Aug. 22, 2007).

n6 State v. Brookbank, 283 Ga. App. 814, 642 S.E.2d 885 (2007).

n7 McHugh v. State, 285 Ga. App. 131, 645 S.E.2d 619 (2007).

n8 Thompson v. Kansas Dept. of Revenue, 37 Kan. App. 2d 255, 152 P.3d 106 (2007).

n9 Parrish v. State, 216 Ga. App. 832, 456 S.E.2d 283 (1995).

n10 State v. Woody, 215 Ga. App. 448, 449 S.E.2d 615 (1994).

n11 State v. Tucker, 533 N.W.2d 152 (S.D. 1995); State v. Nguyen, 1997 SD 47, 563 N.W.2d 120 (S.D. 1997).

n12 State v. Dubiel, 958 So. 2d 486 (Fla. Dist. Ct. App. 4th Dist. 2007).

n13 Ayers v. City of Atlanta, 221 Ga. App. 381, 471 S.E.2d 240 (1996).

n14 U.S. v. Chapel, 55 F.3d 1416 (9th Cir. 1995); State v. Stelzenmuller, 285 Ga. App. 348, 646 S.E.2d 316 (2007); State v. Babbitt, 188 Wis. 2d 349, 525 N.W.2d 102 (Ct. App. 1994).

n15 Robertson v. State, 604 So. 2d 783 (Fla. 1992); State v. Lewellyn, 78 Wash. App. 788, 895 P.2d 418 (Div. 3 1995), as amended on reconsideration, (Aug. 3, 1995) and rev'd on other grounds, 130 Wash. 2d 215, 922 P.2d 811 (1996).

The implied-consent statute does not bar introduction of a diagnostic blood test performed at the hospital prior to the defendant's arrest. State ex rel. Allen v. Bedell, 193 W. Va. 32, 454 S.E.2d 77 (1994).

n16 Dunbar v. State, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

n17 Robinson v. Kansas Dept. of Revenue, 37 Kan. App. 2d 425, 154 P.3d 508 (2007), review denied, (June 21, 2007); Escarcega v. State ex rel. Wyo. Dept. of Transp., 2007 WY 38, 153 P.3d 264 (Wyo. 2007).

n18 State v. Matviyenko, 212 Or. App. 125, 157 P.3d 268 (2007).

n19 Staggs v. Director of Revenue, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).

n20 Staggs v. Director of Revenue, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).

n21 State v. Matviyenko, 212 Or. App. 125, 157 P.3d 268 (2007).

n22 State v. Matviyenko, 212 Or. App. 125, 157 P.3d 268 (2007).

SUPPLEMENT:

Cases

A person only receives the protection of the implied consent law if the testing provisions of that law are being utilized by the state; if the defendant has consented to the test, then the blood test falls wholly outside the scope of the implied consent law. West's F.S.A. § 316.1932, et seq. State v. Murray, 51 So. 3d 593 (Fla. Dist. Ct. App. 5th Dist. 2011).

Defendant was arrested for an offense arising out of acts alleged to have been committed in violation of driving-under-influence (DUI) statute and, thus, was subject to implied-consent statute, even though arresting officer mentioned possession of illegal drug paraphernalia and hit-and-run as he placed defendant in handcuffs; officer had probable cause to arrest defendant for violating DUI statute, and officer then arrested defendant and read statutory implied-consent warning to him. State v. Underwood, 283 Ga. 498, 661 S.E.2d 529 (2008).

The coincidence of probable cause to arrest defendant for driving under the influence of alcohol (DUI) less safe and defendant's actual arrest meant that defendant was, as a matter of law, arrested for an offense arising out of acts alleged to have been committed in violation of the DUI statute, and was therefore subject to breath test under implied consent law. U.S.C.A. Const.Amend. 4; West's Ga.Code Ann. § 40-6-391(a)(1). Scoggins v. State, 306 Ga. App. 760, 703 S.E.2d 356 (2010).

Defendant was not in custody at time she submitted to field sobriety tests following traffic stop, and thus was not entitled to be given implied consent warning prior to tests. West's Ga.Code Ann. § 40-6-392(a)(4). Waters v. State, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

The implied consent statute establishes the basic principle that a driver impliedly agrees to submit to a test to determine alcohol concentration or presence of a controlled substance in return for the privilege of using the public highways. I.C.A. § 321J.6(1). State v. Hutton, 796 N.W.2d 898 (Iowa 2011).

Defendant's refusal to take breath test following arrest was subject to exclusion in prosecution for operating while intoxicated (OWI) based on officer's violating defendant's statutory rights in failing to inform defendant of the proper scope of his right to call an attorney and a family member following defendant's request to make a telephone call to a person outside the scope of statute. State v. Garrity, 765 N.W.2d 592 (Iowa 2009).

The implied consent law provides a framework for drawing blood from driving-while-intoxicated defendants in the absence of a search warrant; once a valid search warrant is obtained, the issue of implied consent becomes moot. U.S.C.A. Const.Amend. 4; V.T.C.A., Transportation Code §§ 724.031-724.035. State v. Webre, 347 S.W.3d 381 (Tex. App. Austin 2011).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6) to 355(6), 411, 412, 414, 415, 418, 419, 426
Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459
Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 A.L.R.3d 852

269 of 276 DOCUMENTS

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VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
b. Medical or Chemical Tests for Intoxication

8 Am Jur 2d Automobiles and Highway Traffic § 992

§ 992 Admissibility of evidence of refusal to take test

Courts dealing with the issue of the admissibility of a defendant's refusal to take an intoxication test prior to the widespread passage of implied-consent statutes generally held that where a person could not be compelled to take a test, evidence of a refusal to do so was inadmissible,[n1] though some courts held otherwise.[n2] Under implied-consent statutes, evidence of a defendant's refusal to submit to a breath test has been held admissible in a prosecution for driving under the influence, especially when the defendant was given clear and unequivocal warning of the effect of his or her refusal to submit to the test.[n3] Evidence of a refusal to take a test under an implied-consent statute is admissible, since the test itself could have been compelled, and thus permitting a defendant to refuse a test and suffer the logical consequences, such as using the refusal at a subsequent trial, does not force the suspect to self-incriminate.[n4] However, some courts taking this position have also held that, for a defendant's refusal to take a test to be admissible at trial, the defendant must be properly informed as required by the implied-consent statute.[n5] Some courts have held that a defendant's refusal to take a chemical intoxication test is admissible to explain the absence of test results, but not to prove intoxication,[n6] and that a prosecutor may comment on a refusal to take a test for the same reason, but that any such comment should be coupled with an admonition to the jury that such a refusal has no bearing on guilt or innocence.[n7] However, other courts considering the issue have held that a defendant's refusal to take an alcohol test pursuant to an implied-consent statute is inadmissible as evidence of intoxication.[n8] Evidence of refusal to take a test for intoxication has been held properly admitted where the defendant failed to object to its admission,[n9] or where the defendant waived the constitutional rights and privileges relied upon to exclude evidence based upon the refusal to submit to a test.[n10]

Caution: The legality of a driver's arrest is not an element of the crime of breath-test refusal; rather, any question concerning the legality of the arrest is a suppression issue to be decided by the judge.[n11]

FOOTNOTES:

n1 Stuart v. District of Columbia, 157 A.2d 294 (Mun. Ct. App. D.C. 1960); State v. McCarthy, 259 Minn. 24, 104 N.W.2d 673, 87 A.L.R.2d 360 (1960).

n2 State v. Bock, 80 Idaho 296, 328 P.2d 1065 (1958) (rejected on other grounds by, State v. Sherwin, 236 N.J. Super. 510, 566 A.2d 536 (App. Div. 1989)).

n3 State v. Brookbank, 283 Ga. App. 814, 642 S.E.2d 885 (2007); People v. Ashley, 15 Misc. 3d 80, 836 N.Y.S.2d 758 (App. Term 2007).

n4 Pennsylvania v. Muniz, 496 U.S. 582, 110 S. Ct. 2638, 110 L. Ed. 2d 528 (1990).

n5 Robertson v. State, 604 So. 2d 783 (Fla. 1992); Moore v. State, 217 Ga. App. 536, 458 S.E.2d 479 (1995); State v. Donner, 192 Wis. 2d 305, 531 N.W.2d 369 (Ct. App. 1995).

n6 State v. Pineau, 491 A.2d 1165 (Me. 1985).

n7 People v. Mosher, 93 Misc. 2d 179, 402 N.Y.S.2d 735 (Town Ct. 1978).

n8 People v. Duke, 136 Mich. App. 798, 357 N.W.2d 775 (1984).

n9 Sanders v. State, 134 Ga. App. 825, 216 S.E.2d 371 (1975); People v. Jackson, 28 Ill. App. 3d 420, 328 N.E.2d 636 (5th Dist. 1975).

N10 People v. Johnson, 88 Misc. 2d 53, 387 N.Y.S.2d 801 (City Crim. Ct. 1976); Barnhart v. State, 1956 OK CR 105, 302 P.2d 793 (Okla. Crim. App. 1956); City of Sioux Falls v. Johnson, 78 S.D. 272, 100 N.W.2d 750 (1960).

n11 Lampley v. Municipality of Anchorage, 159 P.3d 515 (Alaska Ct. App. 2007).

SUPPLEMENT:

Cases

Evidence of a defendant's refusal to take a test related to a driving under the influence (DUI) charge is admissible at trial to show that the defendant was conscious of his guilt. State v. Rumsey, 225 Ariz. 374, 238 P.3d 642 (Ct. App. Div. 2 2010).

Defendant's refusals to have blood drawn by medical personnel while he was in the hospital after traffic accident were not attributable to any request or action by the police, and thus were not protected from admission as evidence, in prosecution of defendant for vehicular homicide while operating under the influence of alcohol and causing serious bodily injury while under the influence of alcohol, under statute providing that a defendant's refusal to take a blood alcohol test is not admissible in a criminal proceeding. Com. v. Arruda, 73 Mass. App. Ct. 901, 895 N.E.2d 783 (2008), review denied, 452 Mass. 1110, 898 N.E.2d 862 (2008).

If driver arrested for operating motor vehicle while under influence of alcohol refuses to be tested within two hours, then evidence of refusal is admissible against driver at trial, as consciousness of guilt, but only upon showing that person was given sufficient warning, in clear and unequivocal language, of effect of refusal and persisted in refusal. McKinney's Vehicle and Traffic Law §§ 1192, 1194(2)(f). People v. Popko, 33 Misc. 3d 277, 930 N.Y.S.2d 782 (City Crim. Ct. 2011).

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18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439

Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6) to 355(6), 413
Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 A.L.R.4th 1112

270 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
2. Driving while Intoxicated or under Influence of Liquor or Drugs
b. Medical or Chemical Tests for Intoxication

8 Am Jur 2d Automobiles and Highway Traffic § 993

§ 993 Weight of evidence as to results of medical or chemical tests

Evidence as to the results of medical or chemical tests for intoxication is not conclusive or binding upon the jury, and the weight to be given such evidence is a matter for the determination of the jury, and the guilt or innocence of the defendant is still a question to be determined on the basis of all the evidence in the case.[n1] However, in some states statutes create a presumption or inference of intoxication based upon evidence showing the presence in the blood of the accused of a specified percentage of alcohol.[n2] Such statutes have been held to be a legitimate exercise of the legislative power,[n3] there being a sufficient connection between the presumed fact and the proved fact to negative the idea that the accused was denied due process.[n4] However, it has been held that a statute which establishes a presumption that a person whose breath, blood, or urine is shown to contain a specified level of alcohol is or was intoxicated or under the influence of alcohol is unconstitutional, to the extent the presumption is deemed mandatory and conclusive.[n5] Additionally, it should be noted that under some statutes in a prosecution for driving under influence the jury may infer from a chemical test result that shows a blood alcohol level of .04% or less that the defendant was not under the influence at the time of driving.[n6]

A defendant may of course introduce evidence to rebut a presumption arising from the result of an intoxication test, but it has been held that, where a test showing a specified blood-alcohol content gives rise to a presumption that the defendant's blood-alcohol content at the time of driving was a specified amount, evidence of good performance on field sobriety tests, or other evidence tending to disprove intoxication, is irrelevant.[n7] Some states have enacted statutes criminalizing having a blood-alcohol content of .10% or more within two hours of driving, but such statutes do not create impermissible presumptions,[n8] and the result of a test administered within the statutory period is admissible without relation-back evidence.[n9]

When the defendant's blood alcohol concentration was .20% several hours after the accident, the jury could infer that the defendant's blood alcohol concentration was .08% at the time of the accident, thus supporting a conviction for driving under the influence of intoxicating liquor.[n10]

FOOTNOTES:

n1 State v. Gallant, 108 N.H. 72, 227 A.2d 597 (1967); State v. Damoorgian, 53 N.J. Super. 108, 146 A.2d 550 (County Ct. 1958); People on the Information of Bruckner v. Wyner, 207 Misc. 673, 142 N.Y.S.2d 393 (County Ct. 1955).

n2 Valentine v. State, 155 P.3d 331 (Alaska Ct. App. 2007); Yap v. Com., 49 Va. App. 622, 643 S.E.2d 523 (2007).

Related References:
As to the presumption of intoxication arising from alcohol tests, generally, see Am. Jur. 2d, Evidence § 240.

n3 State v. Childress, 78 Ariz. 1, 274 P.2d 333, 46 A.L.R.2d 1169 (1954); Com. v. DiFrancesco, 458 Pa. 188, 329 A.2d 204 (1974).

n4 State v. Childress, 78 Ariz. 1, 274 P.2d 333, 46 A.L.R.2d 1169 (1954); State v. Coates, 17 Wash. App. 415, 563 P.2d 208 (Div. 1 1977).

n5 § 333.

n6 Valentine v. State, 155 P.3d 331 (Alaska Ct. App. 2007).

n7 Charles v. Com., 23 Va. App. 161, 474 S.E.2d 860 (1996).

n8 State v. Crediford, 130 Wash. 2d 747, 927 P.2d 1129 (1996).

n9 State v. Superior Court In and For County of Coconino, 173 Ariz. 447, 844 P.2d 614 (Ct. App. Div. 1 1992).

n10 Smith v. State, 956 So. 2d 997 (Miss. Ct. App. 2007).

SUPPLEMENT:

Cases
If a test shows a blood alcohol level of.08 or more in the defendant's blood, the jury, in any criminal prosecution for operating a vehicle while under the influence of alcohol or drugs, can assume the defendant was under the influence of alcohol. State v. Garcia, 40 Kan. App. 2d 870, 196 P.3d 943 (2008).

Evidence was insufficient to establish reckless behavior so as to support conviction for reckless homicide; although defendant's vehicle was described as having rear tires which were extremely worn, eyewitness to collision testified that defendant was not speeding or driving erratically before tires lost traction immediately prior to collision, toxicology report showed no alcohol or drugs in defendant's blood, and while hydrocodone, marijuana, and Xanax were found in defendant's urine, there was no toxicologic evidence to support finding that he was under influence of any substance at time of collision. Ison v. Com., 271 S.W.3d 533 (Ky. Ct. App. 2008), review denied, (Jan. 14, 2009).

Evidence was insufficient to establish wanton behavior so as to support conviction for first-degree assault or first-degree wanton endangerment; although defendant's vehicle was described as having rear tires which were extremely worn, eyewitness to collision testified that defendant was not speeding or driving erratically before tires lost traction immediately prior to collision, toxicology report showed no alcohol or drugs in defendant's blood, and while hydrocodone, marijuana, and Xanax were found in defendant's urine, there was no toxicologic evidence to support finding that he was under influence of any substance at time of collision. Ison v. Com., 271 S.W.3d 533 (Ky. Ct. App. 2008), review denied, (Jan. 14, 2009).

Evidence, including results of breath alcohol testing, was sufficient to support defendant's conviction of driving under the influence (DUI) on basis of driving while having a concentration of at least.08 of 1 gram or more by weight of alcohol per 210 liters of his breath. State v. Kuhl, 276 Neb. 497, 755 N.W.2d 389 (2008).

Blood or breath alcohol test made in compliance with the statutory scheme, and its corresponding regulations, is sufficient to make a prima facie case on the issue of blood alcohol concentration in a prosecution for driving under the influence (DUI). State v. Kuhl, 276 Neb. 497, 755 N.W.2d 389 (2008).

Driving while intoxicated (DUI) offense can be shown either by evidence of physical impairment and well-known indicia of intoxication or simply by excessive alcohol content shown through a chemical test. State v. Kuhl, 276 Neb. 497, 755 N.W.2d 389 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(6), 354(6), 355(6), 416, 426
Admissibility and Sufficiency of Extrapolation Evidence in DUI Prosecutions, 119 A.L.R.5th 379
Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage, 54 A.L.R.4th 149
Construction and application of statutes creating presumption or other inference of intoxication from specified percentages of alcohol present in system, 16 A.L.R.3d 748

271 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
3. Homicide

8 Am Jur 2d Automobiles and Highway Traffic § 994

§ 994 Generally

In a prosecution for involuntary manslaughter, for criminal negligence resulting in the death of another, or a similar offense arising out of the operation of a motor vehicle, the prosecution has the burden of proving beyond a reasonable doubt that the accused's unlawful act or culpable or criminal negligence was the proximate cause of the death.[n1] The fact that the accused's act or conduct was the proximate cause of the death may be shown by circumstantial evidence.[n2] However, where the proof of proximate cause is by means of circumstantial evidence, the facts from which the inference of the accused's guilt is drawn must be established with certainty, and they must be inconsistent with his or her innocence and must exclude to a moral certainty every other reasonable hypothesis.[n3]

Evidence of vehicular manslaughter or homicide must be reasonably connected in some way to the incident resulting in the death in question, and where the conduct of the defendant is too remote in time or distance it will be ruled inadmissible.[n4]

In prosecutions for involuntary manslaughter arising out of the operation of a motor vehicle, experimental evidence as to whether the accused could have seen the deceased or the vehicle in which he or she was riding and have avoided the accident has been held admissible,[n5] where the conditions under which the experiment took place were deemed sufficiently similar to the conditions which existed at the time of the accident in question.[n6] Similarly, evidence concerning examination of or tests on the vehicle involved, and tending to prove the defendant's negligence or disprove other causes of the accident, has been held admissible.[n7]

Permitting an investigating officer to testify that his or her investigation revealed that the collision occurred in the decedent's lane of travel is error, since the officer's testimony constitutes an opinion or conclusion which invades the province of the jury.[n8]

In various cases the evidence has been found to be sufficient to support a conviction for homicide or manslaughter by operation of a vehicle,[n9] and also where the defendant permitted an intoxicated person to drive his or her vehicle.[n10]

FOOTNOTES:

n1 State v. Vaught, 56 Ohio St. 2d 93, 10 Ohio Op. 3d 224, 382 N.E.2d 213 (1978).

The trier of fact was required to evaluate the defendant's failure of perception in crashing into a telephone pole and tree, killing three of his 4 teenage passengers, and seriously injuring the other, and determine whether, under all the circumstances, it was serious enough to be condemned, and therefore the circumstances under which the defendant's dangerous speeding and the accident itself occurred were relevant to the question of whether the defendant was criminally negligent. People v. Cabrera, 40 A.D.3d 1139, 835 N.Y.S.2d 747 (3d Dep't 2007), leave to appeal granted (N.Y. June 19, 2007).

n2 Williams v. State, 97 Okla. Crim. 229, 263 P.2d 527 (1953) (overruled on other grounds by, Slusher v. State, 1991 OK CR 83, 814 P.2d 504 (Okla. Crim. App. 1991)); State v. Busby, 102 Utah 416, 131 P.2d 510, 144 A.L.R. 1468 (1942).

n3 People v. Jackson, 255 A.D. 688, 8 N.Y.S.2d 939 (4th Dep't 1939).

n4 Hart v. State, 75 Wis. 2d 371, 249 N.W.2d 810 (1977); Bartlett v. State, 569 P.2d 1235 (Wyo. 1977) (overruled on other grounds by, Nowack v. State, 774 P.2d 561 (Wyo. 1989)).

Sufficient evidence supported convictions for malice murder and aggravated battery, where an eyewitness saw the defendant strike the victim with his accelerating vehicle, the eyewitness gave chase, which led to police apprehending the defendant shortly thereafter, the police noticed marks on the front of the defendant's vehicle that were consistent with what one would expect after recently hitting a pedestrian, and the injuries the victim suffered to his leg directly and materially contributed to the subsequently occurring condition which killed the victim. Taylor v. State, 282 Ga. 44, 644 S.E.2d 850 (2007), petition for cert. filed, 76 U.S.L.W. 3058 (U.S. July 29, 2007).

n5 Stevens v. People, 97 Colo. 559, 51 P.2d 1022 (1935); State v. McMurray, 47 Wash. 2d 128, 286 P.2d 684 (1955).

n6 State v. McMurray, 47 Wash. 2d 128, 286 P.2d 684 (1955).

n7 State v. Wright, 52 N.C. App. 166, 278 S.E.2d 579 (1981).

n8 State v. Wells, 52 N.C. App. 311, 278 S.E.2d 527 (1981).

n9 Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007); Barber v. State, 863 N.E.2d 1199 (Ind. Ct. App. 2007), transfer denied, (Aug. 8, 2007); People v. Cabrera, 40 A.D.3d 1139, 835 N.Y.S.2d 747 (3d Dep't 2007), leave to appeal granted (N.Y. June 19, 2007); Com. v. Matroni, 2007 PA Super 110, 923 A.2d 444 (2007).

n10 Hernandez v. State, 959 So. 2d 355 (Fla. Dist. Ct. App. 3d Dist. 2007).

SUPPLEMENT:

Cases

Evidence was sufficient to establish that defendant had been drinking before collision so as to support conviction for first degree vehicular homicide; testimony of eyewitnesses and of officer who investigated accident established that defendant was driving erratically and dangerously prior to collision, defendant's flight from accident scene was evidence of his guilt, and defendant admitted that there were two open bottles of liquor in his car prior to fatal crash and that he had alcohol problem on that day. Merritt v. State, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

Evidence was sufficient to show that defendant was intentionally operating his automobile, and not having a seizure, at time he crossed center line and struck victim's vehicle and killed him, as required to support conviction for motor vehicle homicide by negligent operation; defendant admitted that he was in control of automobile before alleged seizure, witnesses saw defendant's automobile swerve immediately prior to crash as if defendant were trying to avoid victim's vehicle, medical tests of defendant revealed no abnormalities and no indication of a seizure, defendant had no personal or family history of seizures, and seizure-like symptoms exhibited by defendant after accident could have been caused by defendant's concussion. Commonwealth v. Merry, 453 Mass. 653, 904 N.E.2d 413 (2009).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding

A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(13), 354(13), 355(13)
Vehicular Homicide, 13 Am. Jur. Trials 295

272 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
3. Homicide

8 Am Jur 2d Automobiles and Highway Traffic § 995

§ 995 Evidence of intoxication or use of alcohol

Evidence of the accused's intoxication is admissible in a prosecution for involuntary manslaughter arising out of his or her operation of a motor vehicle.[n1] Such evidence is, of course, directly relevant in a prosecution for involuntary manslaughter by an unlawful act in the operation of a motor vehicle, where the unlawful act charged is driving while intoxicated or under the influence of intoxicating liquor.[n2] Such evidence is also admissible where the prosecution is for involuntary manslaughter by criminal or culpable negligence resulting in the death of another,[n3] since such negligence is that which evinces a reckless disregard for the safety of others, and evidence that the accused was intoxicated may permit the jury to infer reckless indifference to others on the highway.[n4] Just as in prosecutions for driving while intoxicated,[n5] evidence as to the result of medical or chemical tests for intoxication of the accused have been admitted in evidence in prosecutions for homicide resulting from the operation of a motor vehicle.[n6] Where the defendant's knowledge or state of mind is relevant, it has sometimes been held permissible to introduce evidence of prior convictions for driving while intoxicated or similar offenses, for the limited purpose of establishing such knowledge or state of mind.[n7]

FOOTNOTES:

n1 State v. Deming, 66 N.M. 175, 344 P.2d 481, 77 A.L.R.2d 964 (1959); State v. McBride, 109 N.C. App. 64, 425 S.E.2d 731 (1993); State v. Clayton, 272 N.C. 377, 158 S.E.2d 557 (1968).

n2 § 371.

n3 State v. McBride, 109 N.C. App. 64, 425 S.E.2d 731 (1993); Wilson v. State, 94 Okla. Crim. 189, 237 P.2d 177 (1951).

n4 Penton v. State, 114 So. 2d 381 (Fla. Dist. Ct. App. 2d Dist. 1959); Wilson v. State, 94 Okla. Crim. 189, 237 P.2d 177 (1951).

n5 §§ 982 et seq.

n6 Kallnbach v. People, 125 Colo. 144, 242 P.2d 222 (1952); State v. Rhoades, 380 A.2d 1023 (Me. 1977); State v. Deming, 66 N.M. 175, 344 P.2d 481, 77 A.L.R.2d 964 (1959).

n7 People v. Brogna, 202 Cal. App. 3d 700, 248 Cal. Rptr. 761 (2d Dist. 1988).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(13) to 355(13)

273 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
4. Other Offenses

8 Am Jur 2d Automobiles and Highway Traffic § 996

§ 996 Reckless driving; racing

Although the mere act of driving while under the influence of intoxicating liquor is not in itself a sufficient predicate for a conviction of reckless driving, [n1] the fact that one charged with reckless driving had been drinking is a factor to be considered in determining his or her guilt, and evidence of such drinking is generally recognized as being admissible in a prosecution for reckless driving. [n2]

Where a motorist was involved in a collision with another motorist and was thereafter charged with reckless driving, it was held that a highway patrolman experienced in investigating highway accidents, who arrived at the scene of the collision shortly after the accident, could properly state at the trial his conclusion as to where the impact occurred, based upon his personal observations of the facts, especially skid marks upon the pavement. [n3]

Prosecutions for racing have ordinarily been considered criminal in nature, and a criminal burden of proof has usually been imposed upon the prosecution in proceedings under anti-racing statutes. [n4] However, several jurisdictions have indicated that the nature of the racing violation was something less than a criminal act, and that clear, convincing, and satisfactory proof of violation was sufficient. [n5]

In a prosecution for violation of a statute criminalizing racing, an intent on the part of one driver to outdistance rather than overtake and pass another vehicle, or an intent to compete, must be established. [n6]

FOOTNOTES:

n1 § 356.

n2 Guy v. State, 678 N.E.2d 1130 (Ind. Ct. App. 1997) (disapproved of on other grounds by, Abney v. State, 821 N.E.2d 375 (Ind. 2005)); State v. Tevis, 340 S.W.2d 415 (Mo. Ct. App. 1960); Allen v. State, 1954 OK CR 92, 273 P.2d 152 (Okla. Crim. App. 1954); Davis v. State, 194 Tenn. 282, 250 S.W.2d 534 (1952).

n3 Long v. State, 1954 OK CR 109, 274 P.2d 553 (Okla. Crim. App. 1954).

n4 People v. Anderson, 177 Colo. 84, 492 P.2d 844 (1972); State v. Lippi, 116 Ohio App. 123, 21 Ohio Op. 2d 432, 187 N.E.2d 52 (3d Dist. Van Wert County 1962) (overruled on other grounds by, State v. James, 41 Ohio App. 2d 147, 70 Ohio Op. 2d 314, 324 N.E.2d 301 (3d Dist. Allen County 1974)).

n5 People v. Squilleri, 37 Misc. 2d 291, 231 N.Y.S.2d 443 (Magis. Ct. 1962); City of Madison v. Geier, 27 Wis. 2d 687, 135 N.W.2d 761 (1965).

n6 State v. Barrett, 45 Ohio App. 2d 20, 74 Ohio Op. 2d 64, 340 N.E.2d 418 (6th Dist. Wood County 1975).

SUPPLEMENT:

Cases

Evidence regarding hazardous design of intersection where defendant's vehicle struck another car and consequent malfunctioning was relevant to determination whether defendant operated his vehicle in reckless disregard for safety of others, as required to support conviction for reckless driving and serious injury by vehicle based on reckless driving, to defense of accident, and to whether defendant's driving was proximate cause of collision. Dunagan v. State, 283 Ga. 501, 661 S.E.2d 525 (2008).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(4), 353(5), 354(4), 354(5), 355(4), 355(5)
Validity, construction, and application of criminal statutes specifically directed against racing of automobiles on public streets or highways (drag racing), 24 A.L.R.3d 1286

274 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
4. Other Offenses

8 Am Jur 2d Automobiles and Highway Traffic § 997

§ 997 Leaving scene of accident; failure to render aid

In a prosecution of a motorist for leaving the scene of an accident without stopping and identifying him- or herself, the prosecution is required to prove beyond a reasonable doubt that it was a motor vehicle driven by the defendant that was involved in the violation in question.[n1] It is clear that the identity of the operator of a vehicle involved in an accident may be proved by circumstantial evidence,[n2] and indeed that a person may be convicted of leaving the scene of an accident based upon circumstantial evidence,[n3] but it has been held that to convict on circumstantial evidence, the circumstances must be proved, and must all point in the same direction, and together must be irreconcilable with any reasonable hypothesis other than that of guilt.[n4] In a prosecution for leaving the scene of an accident that resulted in the death of another person, the state is not required to provide eyewitness evidence that the defendant was the driver of the vehicle at the time of the collision as long as it provides sufficient proof supporting a reasonable inference that the defendant was driving the vehicle.[n5]

In some states, statutes provide that in any prosecution for violation of law relating to the operation of a motor vehicle, the registration plate on a vehicle is prima facie evidence that the owner of the vehicle was operating it at the time and place of said violation.[n6]

In a prosecution of a motorist for leaving the scene of an accident involving injury, the state must prove that defendant knew or had reason to know that the motorist or passengers in the other vehicle had sustained an injury.[n7]

FOOTNOTES:

n1 People v. Hakala, 270 A.D. 612, 61 N.Y.S.2d 718 (1st Dep't 1946); City of Cleveland v. Coleman, 72 Ohio L. Abs. 94, 127 N.E.2d 420 (Ct. App. 8th Dist. Cuyahoga County 1955); Freeman v. State, 118 Tex. Crim. 102, 40 S.W.2d 105 (1931).

n2 State v. Mendiola, 126 Idaho 575, 887 P.2d 1082 (Ct. App. 1994); Payne v. Tuozzoli, 80 N.M. 214, 453 P.2d 384 (Ct. App. 1969).

n3 State v. Mendiola, 126 Idaho 575, 887 P.2d 1082 (Ct. App. 1994).

n4 City of Cleveland v. Coleman, 72 Ohio L. Abs. 94, 127 N.E.2d 420 (Ct. App. 8th Dist. Cuyahoga County 1955).

n5 Kramm v. State, 949 So. 2d 18 (Miss. 2007).

n6 State v. La Riviere, 1 Conn. Cir. Ct. 47, 22 Conn. Supp. 385, 173 A.2d 900 (App. Div. 1961) (abrogated on other grounds by, State v. Rosario, 81 Conn. App. 621, 841 A.2d 254 (2004)); Com. v. Bolger, 182 Pa. Super. 309, 126 A.2d 536 (1956).

n7 Neel v. Com., 49 Va. App. 389, 641 S.E.2d 775 (2007).

SUPPLEMENT:

Cases

Evidence was sufficient to support defendant's conviction for evasion of responsibility in the operation of a motor vehicle; defendant was operating vehicle at time that accident occurred, she knew that she had been in an accident and that the accident caused damage to property, and defendant failed to stop at once and render such assistance as might have been needed. State v. Bereis, 114 Conn. App. 554, 970 A.2d 768 (2009), certification denied, 293 Conn. 902, 975 A.2d 1278 (2009).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(8), 354(8), 355(8)
Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid, 82 A.L.R.4th 232
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91

275 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
4. Other Offenses

8 Am Jur 2d Automobiles and Highway Traffic § 998

§ 998 Theft of, and offenses concerning, stolen motor vehicles and equipment

The unexplained possession of an automobile recently stolen does not constitute in law prima facie evidence of larceny. [n1] The possession of a stolen automobile is a question of fact to be determined by the jury, like any other link in the chain of circumstantial evidence, and its weight and effect are questions for the jury. [n2]

The evidence was sufficient to sustain convictions on four counts of illegal possession of a vehicle identification number, three counts of forgery of a vehicle identification number, and three counts of offering a false instrument for filing in the first degree, where the investigation of the defendant and his business revealed that the defendant engaged in a pattern of repairing and restoring stolen vehicles, affixing fraudulent vehicle identification numbers thereto and registering them with the Department of Motor Vehicles as completely different vehicles. [n3]

The statutory crime of failure to return a rental vehicle can be established by evidence that the defendant had the ability to return a vehicle rented by the defendant, that the defendant had actual knowledge that the vehicle was overdue, that the defendant had a duty to return the vehicle, and that the defendant either intended not to comply with that duty or the defendant knowingly disregarded that duty. [n4]

FOOTNOTES:

n1 Doe v. State, 14 Ohio App. 178, 1921 WL 1094 (1st Dist. Warren County 1921).

n2 Doe v. State, 14 Ohio App. 178, 1921 WL 1094 (1st Dist. Warren County 1921).

As to view followed in prosecutions under the National Motor Vehicle Theft Act, see § 999.

Evidence was sufficient to establish that the defendant was the perpetrator so as to support a conviction for the unauthorized use of a motor vehicle, as an officer unequivocally identified the defendant in court as the person who was sitting behind the wheel of a stolen car, there were no internal contradictions or irreconcilable conflicts with the identification evidence, there was no evidence that the officer had a limited view of the car's driver, and the officer testified that he pulled alongside the vehicle defendant was driving, gave chase to the defendant after the defendant fled, and apprehended the defendant almost immediately. State v. Johnson, 958 So. 2d 695 (La. Ct. App. 5th Cir. 2007).

n3 People v. Marshall, 39 A.D.3d 967, 834 N.Y.S.2d 361 (3d Dep't 2007).

n4 Williams v. State, 173 Md. App. 161, 917 A.2d 1213 (2007).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426

18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(10) to 353(12), 354(10) to 354(12), 355(10) to 355(12)

276 of 276 DOCUMENTS

American Jurisprudence, Second Edition

James Buchwalter, J.D., William H. Danne, J.D., John J. Dvorske, J.D., Laura Hunter Dietz, J.D., Romualdo P. Eclavea, J.D., Edward K. Esping, J.D., Sonia Larsen, J.D., Jack K. Levin, J.D., William Lindsley, J.D., Thomas Muskus, J.D., Eric C. Surette, J.D.

Automobiles and Highway Traffic
VII. Criminal Proceedings
C. Evidence
4. Other Offenses

8 Am Jur 2d Automobiles and Highway Traffic § 999

§ 999 Offenses under National Motor Vehicle Theft Act

It is settled that in order to warrant a conviction for the violation of the National Motor Vehicle Theft Act,[n1] the evidence must be sufficient to establish defendant's guilt and all the essential elements of the offense beyond a reasonable doubt.[n2]

The effect of evidence of the unexplained possession of a recently stolen motor vehicle has been passed on in a number of prosecutions under the National Motor Vehicle Theft Act, and it has generally been held that such evidence raises a presumption or warrants an inference of guilty possession,[n3] which may be explained or rebutted.[n4] However, such evidence does not create a presumption of law; it creates or permits a mere inference or, at best, a presumption of fact,[n5] which grows weaker as the time of the possession lengthens from the time of the theft.[n6]

Prior participation in auto thefts may be shown as relevant to the issue of knowledge.[n7]

It has also been held that the possession in one state of a motor vehicle recently stolen in another state, which is not satisfactorily explained, is a circumstance from which the jury may reasonably infer and find in the light of surrounding circumstances that the person in possession of the vehicle not only knew it to be stolen property but also transported it or caused it to be transported in interstate commerce.[n8]

FOOTNOTES:

n1 18 U.S.C.A. §§ 2312, 2313.

As to National Motor Vehicle Theft Act, see §§ 388 et seq.

n2 U.S. v. Serra, 291 F.2d 625 (2d Cir. 1961); Evans v. U.S., 240 F.2d 695 (10th Cir. 1957).

n3 Pilgrim v. U.S., 266 F.2d 486 (5th Cir. 1959); Schwachter v. U.S., 237 F.2d 640 (6th Cir. 1956); U.S. v. Angel, 201 F.2d 531 (7th Cir. 1953).

n4 U.S. v. Edwards, 576 F.2d 1152 (5th Cir. 1978); Wilkerson v. U.S., 41 F.2d 654 (C.C.A. 7th Cir. 1930).

n5 Brubaker v. U.S., 183 F.2d 894 (6th Cir. 1950); Morandy v. U.S., 170 F.2d 5 (9th Cir. 1948).

n6 U.S. v. Di Carlo, 64 F.2d 15 (C.C.A. 2d Cir. 1933).

n7 U.S. v. King, 572 F.2d 1274, 3 Fed. R. Evid. Serv. 595 (8th Cir. 1978).

n8 Fitts v. U.S., 284 F.2d 108 (10th Cir. 1960).

In prosecution for transportation of stolen motor vehicles in interstate commerce in violation of 18 U.S.C.A. § 2312, the federal government did not have to prove that the defendants knew cars moved in interstate commerce once it is shown that defendants knew cars were stolen. U.S. v. Breedlove, 576 F.2d 57 (5th Cir. 1978).

REFERENCE: West's Key Number Digest, Automobiles [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
18 U.S.C.A. §§ 2312, 2313
A.L.R. Index, Automobiles and Highway Traffic
A.L.R. Index, Driving While Under the Influence of Drugs
A.L.R. Index, Reckless Driving
A.L.R. Index, Speed and Speeding
A.L.R. Index, Traffic Offenses and Violations
A.L.R. Index, Vehicular Homicide
West's A.L.R. Digest, Automobiles and Highway Traffic [westkey]353(4) to 353(6), 353(8), 353(10) to 353(13), 354(4) to 354(6), 354(8), 354(10) to 354(13), 355(4) to 355(6), 355(8), 355(10) to 355(13), 411 to 419, 426
Proof that Driver Was "Operating"Vehicle While Intoxicated, 61 Am. Jur. Proof of Facts 3d 115
Proof of Identification of Hit-and-Run Vehicle and Driver, 60 Am. Jur. Proof of Facts 3d 91
Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 Am. Jur. Proof of Facts 3d 459
Reconstruction of Traffic Accidents, 9 Am. Jur. Proof of Facts 3d 115
Unreliability of the Horizontal Gaze Nystagmus Test, 4 Am. Jur. Proof of Facts 3d 439
Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229
Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213
Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1
Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79
Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123
Vehicular Homicide, 13 Am. Jur. Trials 295
West's Key Number Digest, Automobiles [westkey]353(10) to 353(12), 354(10) to 354(12), 355(10) to 355(12)
What constitutes concealing stolen motor vehicle within meaning of 18 U.S.C.A. sec. 2313, 67 A.L.R. Fed. 572
Construction and application of word "stolen"in National Motor Vehicle Theft Act (Dyer Act) (18 U.S.C.A. secs. 2311 to 2313), 45 A.L.R. Fed. 370
What constitutes "motor vehicle"within meaning of National Motor Vehicle Theft Act (Dyer Act) (18 U.S.C.A. secs. 2311 to 2313), 15 A.L.R. Fed. 919
Requirements as to interstate character of offense under provision of National Motor Vehicle Theft Act (Dyer Act) (18 U.S.C.A. sec. 2313) making it offense to receive, conceal, store, barter, sell, or dispose of stolen motor vehicle moving as, or which is part of or constitutes, interstate commerce, 15 A.L.R. Fed. 888
Presumptions and inferences arising in Prosecutions under National Motor Vehicle Theft Act (Dyer Act) (18 U.S.C.A. secs. 2312, 2313) from unexplained possession of stolen motor vehicle, 15 A.L.R. Fed. 856