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# Rules of the Road on Private Land

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ON HER WEEKLY SHOPPING SAFARI, Mrs. Suburbanite packs the family station wagon with the children, and drives to the Have-It-All Shopping Center. While trying to park in the ten acre parking lot, which will accommodate 20,000 automobiles, Mrs. Suburbanite is involved in an accident with another automobile. If a lawsuit ensues from this hypothetical situation, the court must determine the traffic laws or regulations applicable to private property. Generally the problem is handled by first ruling whether the property is private or public, and then determining the standard of care imposed or the applicable statutory law.

## Public or Private Property

By statute, a *street or highway* is generally defined as every way open to the use of the public as a thoroughfare for vehicular travel. This is distinguished from a *private road,* which is under private ownership and is traveled upon by the owner or by those having express or implied permission from the owner, but which is not open to use by other persons.[1]

In a case involving interpretation of that state's Vehicle and Traffic Law, a New York court said that it was controlled by the spirit and not the letter of the law, and that the intent of the Legislature was to regulate and control the traffic of motor vehicles upon the public highways of the state for the better protection and safety of the people at large.[2]

The ultimate test used by most courts in determining whether a place is a "public highway," so as to render vehicle and traffic laws applicable, is the right to unrestricted use by the public except for usual police regulations.[3] In *Zielinski v. Lyford*[4] the

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1 *I.e.,* Ohio R. Code § 4511.01 (1953); Ind. St. Ann. 47-1814(b) and 47-1814(c) (1955); Pa. St. Ann. Tit. 75 § 2 (1958).

2 Blindless Headlight Protector, Inc. v. Harnett, 138 Misc. 127, 245 N. Y. S. 346 (1930).

3 Weeks v. Byrnes, 33 N. Y. S. 2d 65 (1942); Sills v. Forbes, 33 Cal. App. 2d 219, 91 P. 246 (1939) where, in finding the road to be private property the court stressed the fact that the permissive use allowed by the owner could be revoked at any time; Pettine v. Tuplin, 71 R. I. 374, 46 A. 2d 42

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court ruled that any open road or alley in New York, even if privately owned, is considered a public highway for the purposes of the statute. However, the only *driveway* which is deemed to be a public highway is a public driveway. This does not mean a driveway which some members of the general public may happen to use from time to time, because such use is common to all driveways. To determine that a driveway is public, it must be one in which the public has some right and over which some public officers have control.

It is not the amount of travel on a roadway that distinguishes it as a public instead of private. A private road might well have the larger traffic. It is the *right* to travel upon it by all the world, and not the exercise of the right, which makes it public. Therefore, a "public use" has been defined as the use which each individual might, of right, demand on the same general terms, and for the same general purpose, as might any other individual.[5]

Suit was brought in a Federal Court in a case involving an accident which occurred on a privately constructed elevated roadway leading from a street to a dock and serving plants along it. The roadway was open to the general public and was used extensively. Plaintiff, a pedestrian on the roadway, was struck by an angle iron projecting twelve to sixteen feet beyond the rear of defendant's truck. Defendant argued that the plaintiff was an implied licensee in his use of the road, and that therefore the defendant was only liable for wanton and wilful negligence. The court held that the plaintiff had a right to go to a warehouse situated on the dock, by reason of his employment, and the roadway was at least to that extent a public roadway.[6]

Various fact situations have been brought before courts, which have necessitated a ruling whether the property is public or private. A filling station driveway which was limited to the use of the customers of the station was held not to be a public street or highway;[7] the use of school ground by trucks on a single

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(1946) roadway held private property because it was posted as private and had never been dedicated and accepted.

[4] 175 Misc. 517, 23 N. Y. S. 2d 489 (1940).

[5] In re Cox, 140 Misc. 313, 250 N. Y. S. 528 (1931).

[6] Pacific Hardware & Steel Co. v. Monical, 205 F. 116 (9th Cir. 1913).

[7] Kayser v. Johnson, 217 Minn. 140, 14 N. W. 2d 337 (1944) the owner of a filling station was not held liable under the Safety Responsibility Act for the alleged negligence of the driver in striking a pedestrian in the station's driveway, even if the driver was operating the vehicle with the consent of the owner of the station.

occasion, to repair or improve the grounds, did not constitute public traffic on the grounds;[8] driveways leading to public buildings or public institutions were considered public driveways;[9] the driveway of a cemetery was held to be private property;[10] a public cemetery was ruled a public place in a case involving a mechanic's lien;[11] a roadway provided for use of the public within Fair Grounds was held to be governed by the rules for public highways;[12] a federal works project (W. P. A.) was ruled to be not governed by the law of the road or the rules applying to a public highway;[13] travel on a road construction project was held to be regulated by the statutory requirements for public highways;[14] a portion of a dedicated highway withdrawn from the general use of the public due to a temporary obstruction was held to be governed by the rules of private property; [15] an auto sales lot was held to be not a public place;[16] privately owned and operated parking lots are generally held to be private property.[17]

### Traffic Law of Private Property

In general the duty of a vehicle driver on private property is defined by the common law rules of ordinary negligence, or the standard of care of an ordinary prudent man under like or similar circumstances, and is not governed by the statutory rules

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[8] Smith v. Harger, 84 Cal. App. 2d 361, 191 P. 2d 25 (1948); Gattavara v. Lundin, 166 Wash. 548, 7 P. 2d 958 (1932); compare Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P. 2d 1044 (1941) jury was instructed that the Vehicle Code provisions where applicable to traffic on school grounds in absence of special provisions.

[9] See *supra* n. 4.

[10] Williams v. Roche Undertaking Co., 255 Ala. 56, 49 So. 2d 902 (1950).

[11] Peterson v. Stolz, 269 S. W. 113 (Tex. Civ. App. 1925).

[12] Canard v. State, 175 Ark. 918, 298 S. W. 24 (1927).

[13] Patterson v. Edgerton Sand & Gravel Co., 227 Wis. 11, 227 N. W. 636 (1938) the court said its decision was based upon the private character of the premises.

[14] Distefano v. Universal Trucking Co., 116 Conn. 246, 164 A. 492 (1933); the court held that the statute does not limit its application to a vehicle on a traveled portion of the highway. Although the place was not open to public travel, it was part of a highway upon which the truck was traveling and the statute is applicable to its operation upon that portion of the highway.

[15] Czarnetzky v. Booth, 210 Wis. 536, 246 N. W. 574 (1933); a gondola was placed upon a portion of a dedicated highway for the purpose of unloading.

[16] Guscinski v. Kenzie, 282 Mich. 204, 275 N. W. 820 (1937).

[17] Zorzecki v. Hatch, 347 Mich. 138, 79 N. W. 2d 605 (1956); Glazer v. Dunlap, 52 Ohio L. Abs. 296, 83 N. E. 2d 669 (1948); Stinson v. Columbus & Chicago Motor Freight Inc., 69 Ohio L. Abs. 449, 125 N. E. 2d 881 (1952); Weeks v. Byrnes, *supra* n. 3.

of the road.[18] Applying this rule, it was held that the statute relating to the sounding of the horn imposed no absolute duty on a motorist to sound his horn in backing onto his private driveway.[19] Another court ruled that the statute regulating motor carriers was intended to protect people on the public highways and did not create a liability for a tort against a common carrier for an occurrence on private property.[20] It has been held that the statutory requirements relating to rear view mirrors[21] and brakes[22] do not apply to vehicular travel on private property.

Once it has determined that the property is private, and that the case is governed by the rules of ordinary negligence, the court is confronted with the problem of what constitutes a breach of the duty to exercise ordinary care. Generally this resolves into a question of fact for the jury.[23] Under extreme circumstances a court may hold a motorist to a higher degree of care than that required under ordinary circumstances. A court in California ruled that a truck driver has a clear duty of care towards pedestrians, and is required to exercise greater caution in a school yard than under ordinary circumstances.[24] Yet a Massachusetts

[18] Altmore v. Hunt, 101 Cal. App. 2d 10, 224 P. 2d 904 (1950); Sills v. Forbes, *supra* n. 3; Smith v. Bassett, 159 Kan. 128, 152 P. 2d 794 (1944); Vaughan v. Lewis, 236 Miss. 792, 112 So. 2d 247 (1959); State v. Root, 132 Ohio St. 229, 6 N. E. 2d 979 (1937); Glazer v. Dunlap, *supra* n. 17; Joseph v. Larkworthy, 15 Ohio N. P. (N. S.) 561 (1913); Weeks v. Byrnes, *supra* n. 3; Alexander v. Barnes Grocery Co., 223 Mo. App. 1, 7 S. W. 2d 370 (1928); Nass v. Harris, 117 N. J. L. 427, 189 A. 626 (1937); Edelson v. Higgins, 43 Cal. App. 2d 759, 111 P. 2d 668 (1941).

[19] Nass v. Harris, *supra* n. 18; Edelson v. Higgins, *supra* n. 18.

[20] Albers v. Great Central Transport Corp., 14 Ohio Supp. 25 (Ohio C. P. 1944).

[21] Gootar v. Levin, 109 Cal. App. 703, 293 P. 706 (1930).

[22] Alexander v. Barnes Grocery Co., supra n. 18.

[23] Budgen v. Brady, Fla., 103 So. 2d 672 (1958), motorist is presumed to see what is clearly visible; Sills v. Forbes, *supra*, n. 3, dust obscured roadway; Giardina v. Garnerville Holding Corp., Inc., and Avery v. Garnerville Holding Corp., Inc., 265 App. Div. 1004, 38 N. Y. S. 2d 913 (1943), *aff'd* 291 N. Y. 619, 50 N. E. 2d 1015 (1943), smoke obscured a private road; Nelson v. Mitten, 218 Iowa 914, 255 N. W. 662 (1934), plaintiff moved from a safety zone to a dangerous zone behind a truck; Laudner v. Jones, 221 Iowa 863, 266 N. W. 115 (1936), plaintiff was pinned against a wall by a backing truck which was in neutral gear; Long v. Metcaft, 134 S. W. 2d 485 (Tex. Civ. App. 1939), plaintiff was pinned against a derrick by a truck which had defective brakes; Rosa v. American Oil Co., Inc., 129 Conn. 585, 30 A. 2d 385 (1943), workman in an uncompleted gas station was injured by a truck; Radio Cab Inc. v. Houser, 76 U. S. App. 35, 128 F. 2d 604 (D. C. 1942), plaintiff was using a gas station to repair his muffler when defendant, who had been drinking, ran over his leg in the station's driveway.

[24] Taylor v. Oakland Scavenger Co., *supra* n. 8.

court, presented with a similar fact situation, held that the driver was bound to use only ordinary care.[25]

Some courts have used, by the way of reference, the rules of the road or statutory regulations in order to determine what standard is required of a motorist on private property. It has been held that the universal custom of operating vehicles on the right side of the road has been so well established as custom, as to have the same effect as if it were law. This has established a standard of care which is required of all drivers, whether they are traveling on public or on private roads.[26] Although the statutory requirement of sounding the horn before backing was held to be not binding per se, the court indirectly used this requirement in finding the defendant liable for injuries sustained by a child in a school yard.[27]

A difficult problem is presented when the accident occurs on private property abutting a public road and when the motor vehicle remains on the public road. In *Aldridge v. Hasty*[28] it was held that a driver on a highway owed those standing outside the bounds of the highway a duty to observe and obey positive mandates of state motor vehicle traffic regulations, and that state motor traffic regulations are not intended merely to protect users of highways, but are designed to protect life, limb and property of all persons on or about the highways who may suffer injury as a proximate result of violations of such regulations. In *School v. Walker*[29] the court ruled that motorists and truck operators owe a householder the duty not to knock the house off its foundation. If either did so by negligently violating traffic laws, he would be liable to the householder for the resulting damage, and could not successfully assert that there was no negligence because he did not owe the householder a duty to obey the traffic laws. Another court held that the rules of the road relative to the right of way are particularly designed only for the protection of users of roadways, and that violation of them as to persons within that class may be negligence per se. But the owners of buildings on the land abutting the highway would not

[25] Tenny v. Reed, 262 Mass. 335, 159 N. E. 913 (1928).

[26] Altmore v. Hunt, *supra*, n. 18; Sills v. Forbes, *supra* n. 3; Bean v. Coffee, 169 Ark. 1052, 277 S. W. 522 (1925) held it was a question of fact for the jury whether the driver of a vehicle on private property could be negligent in stopping on the left side on an alley.

[27] Tenny v. Reed, *supra*, n. 25.

[28] 240 N. C. 353, 82 S. E. 2d 331 (1954).

[29] 187 Va. 619, 47 S. E. 2d 418 (1948).

be within that class, and a motorist's failure to yield the right of way could not constitute negligence per se as to such an owner.[30]

Another problem exists for the courts in deciding if the statutory law of the road is applicable when part of the vehicle is on private property and part is on a public road. In *Santa Maria v. Trotto*[31] the front wheels of a truck were on a public highway when it backed up and knocked down the supports of a platform, thus injuring the plaintiff. Plaintiff sought to invoke the statutory law. The court held that the legislative intent was to regulate the use and the operation of vehicles on public highways, and did not have the purpose of protecting persons who are not travelers on public ways. In *City Ice and Fuel Co. v. Center*[32] defendant appealed judgment against him by the trial court. The trial court had charged that the statute requiring the sounding of the horn before backing was binding in that case. Defendant objected to this charge, on the ground that the accident occurred on private property. The court held that the house where the accident happened was very close to the street, if it did not actually abut on the street, and as the movement of backing was performed in the street, therefore the statute was applicable.

In the line of cases involving collisions within parking lots (constituting private property), the statutory rules of the road have been held to be inapplicable. The cases have been decided by the application of the basic principles of negligence law, although widely recognized rules of customs of the road play a great part in aiding the court in its decisions. In *Zarzecki v. Hatch*[33] the plaintiff's auto, which was proceeding down the main lane of an airport parking lot, was struck by defendant's automobile, which was coming into the main lane from a feeder lane. The plaintiff testified that she first saw the defendant's car when it was about seventeen feet from her car, and that the defendant failed to stop before coming into the main lane. The court, in upholding a judgment for the plaintiff, ruled that the statutory rule of the road was inapplicable. In reference to the facts of the case, the court said that it was not necessary for a motorist in a main lane to stop at the intersection of each feeder

[30] Erickson v. Kongsli, 40 Wash. 2d 79, 240 P. 2d 1209 (1952).

[31] 297 Mass. 442, 9 N. E. 2d 540 (1937).

[32] 54 Ohio App. 116, N. E. 2d 580 (1936).

[33] *Supra,* n. 17.

lane in order to be free from contributory negligence as a matter of law, and ruled that the negligence of the defendant was the proximate cause of the accident.

In *Glaser v. Dunlap*[34] the accident occurred in an entirely private parking lot maintained by the owner for the exclusive use of its employees. The plaintiff was proceeding along an "aisle," in first gear, when struck at an intersection in the lot by the defendant who was proceeding down a passage marked "highway number one." The defendant's car was being operated in high gear at a speed of about 20 to 25 miles per hour. The court, sitting without a jury, and applying the common law of negligence, held the defendant to be liable because of his failure to observe a proper lookout and his negligence in driving at an excessive speed under the road conditions. The court applied the rules that a motor vehicle operator has no right to assume that the road is clear, and that he who arrives at an intersection first is entitled to cross first. The court also said that a normally prudent person would look to the left and then to the right, because on a public highway he is required to yield to a vehicle on the right. The court admitted that cars on "highway number one," on which the defendant was driving cars, were permitted to move more freely than on the "aisle" upon which the plaintiff was moving. In holding the defendant liable and the plaintiff free of contributory negligence, the court pointed out that the plaintiff reached the intersection well in advance of the defendant and at a much slower speed.

In *Stinson v. Columbus and Chicago Motor Freight Inc.*[35] the judgment in favor of the defendant was upheld in an action arising out of a collision in a driveway of a shopping center parking lot. The court ruled that, under the ordinary principles of negligence law, the trial court could find either an absence of negligence on the part of the defendant or contributory negligence on the part of the plaintiff. The defense of contributory negligence lost the case for a plaintiff allegedly injured in an accident which occurred on a patron parking lot of an ice company.[36]

In *Weeks v. Byrnes*[37] the defendant, in backing out of a parking space in an A. & P. parking lot, hit plaintiff's parked car.

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[34] *Supra* n. 17.

[35] *Supra* n. 17.

[36] Nicholas v. Chloupek, 231 Cal. App. 2d 184, 72 P. 2d 561 (1937).

[37] *Supra*, n. 3.

The New York court found for the plaintiff, holding that the negligence of the defendant had been established by a fair preponderance of the evidence, and deciding specifically that the vehicle and traffic law was not applicable to a private parking lot.

## Conclusion

As the number of automobiles increases, and as a main attraction to retail merchandising becomes the amount of parking facilities available to customers, courts will be confronted more often with traffic accidents on private property. Whether the common law rules of negligence are used, or whether the statutory regulations are applied initially or indirectly by analogy, the courts will find it more and more important to settle this legal problem uniformly and realistically.