

OPERATING WITHOUT BEING LICENSED

The defendant is charged with operating a motor vehicle without being licensed to do so. Section 10 of chapter 90 of our General Laws provides as follows:

**“No person . . .
shall operate a motor vehicle upon any way
unless licensed by the registrar [of motor vehicles]
[with certain exceptions that are not relevant here].”**

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

***First:* That the defendant operated a motor vehicle;**

***Second:* That the defendant did so on a way; and**

***Third:* That the defendant did so without having a valid license to operate a motor vehicle, issued by the Registrar of Motor Vehicles.**

At this point, the jury must be instructed on the definition of “Operation of a Motor Vehicle” (Instruction 3.200) and the definition of “way” in G.L. c. 90, § 1, which may be excerpted from Instruction 3.280.

Watson v. Forbes, 307 Mass. 383, 384-385, 30 N.E.2d 228, 229 (1940) (not a defense that defendant was never notified of expiration of license); *Santa Maria v. Trotto*, 297 Mass. 442, 446, 9 N.E.2d 540, 543 (1937) (license is required only for operation on “way”); *Commonwealth v. Magarosian*, 261 Mass. 228, 158 N.E. 771 (1927) (defendant licensed to operate one category of vehicle is unlicensed with respect to other categories of vehicles).

NOTES:

1. **Burden of proof as to unlicensed status.** In a prosecution for operating an uninsured auto (G.L. c. 90, § 34J), the Commonwealth has the burden of proving that the defendant's vehicle is uninsured, and cannot utilize G.L. c. 278, § 7 to shift this burden to the defendant, since lack of "insurance is an element of the crime charged, not a mere license or authority [and] cannot be viewed as an affirmative defense . . ." *Commonwealth v. Munoz*, 384 Mass. 503, 507, 426 N.E.2d 1161, 1163 (1981). It appears that the same rationale would apply to the issue of license in a prosecution under G.L. c. 90, § 10.

The Commonwealth will normally prove the defendant's unlicensed status by means of a certificate from the Registry of Motor Vehicles. See G.L. c. 90, § 30; G.L. c. 233, § 76.

2. **Not a civil motor vehicle infraction.** Operating without being licensed (G.L. c. 90, § 10) is a criminal offense and not a civil motor vehicle infraction. G.L. c. 90C, § 3(A), par. 1.

3. **Statutory exceptions.** General Laws c. 90, § 10 contains seven exceptions to the requirement of a Massachusetts license: (1) a person who is licensed in another state or country, has applied for a Massachusetts license but has not yet been given a drivers test, and has been issued a 60-day temporary permit by the Registry of Motor Vehicles; (2) a person who possesses a valid Massachusetts learner's permit; (3) a person who is licensed in another state and who is accompanying a spouse who is a member of the armed forces on assignment to Massachusetts; (4) a member of the armed forces on active duty who has a license issued by the state of his or her domicile; (5) a member of the armed forces within 45 days of returning from active duty outside the United States who has a license issued by the armed forces in a foreign country; (6) a nonresident who is licensed in the state or country where the vehicle is registered, but for not more than 30 days in the aggregate annually or beyond 30 days after acquiring a regular abode or place of business within Massachusetts unless Massachusetts liability insurance requirements are met; and (7) a nonresident who is licensed in the state or country of his or her domicile, if it grants reciprocal privileges to Massachusetts residents, but for not more than 30 days in the aggregate annually or beyond 30 days after acquiring a regular abode or place of business within Massachusetts unless Massachusetts liability insurance requirements are met.