

DUTY: VIOLATION OF MOTOR VEHICLE LAWS

In Massachusetts, we have a number of statutes, regulations and local ordinances that govern operation of motor vehicles.

Collectively, I will refer to these statutes, regulations, and local ordinances as the “rules of the road.” The rules of the road provide in part that: *[read from applicable statute/regulation; see Supplemental Instructions: Motor Vehicle Infractions below].*

If you find that the defendant violated any applicable safety statute, ordinance, or regulation and that the accident was one of the things that the statute, ordinance, or regulation was designed to prevent, then you may consider the violation as some evidence of negligence on the part of the defendant. It is not necessary for the defendant to be charged with or convicted of a violation, if you find that the rule of the road was one that the defendant was supposed to comply with and that the defendant did not comply with the rule. You are not *required* to find the defendant negligent because of any violation, but you may consider that fact, together with all the other circumstances, in determining whether the defendant acted

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negligently.

“The violation of a criminal statute is some evidence of the defendant’s negligence as to all consequences the statute was intended to prevent.” *Petras v. Storm*, 18 Mass. App. Ct. 330, 333 (1984) (internal citations and quotations omitted). Such a violation, standing alone, is not grounds for a civil cause of action. See *Picard v. Thomas*, 60 Mass. App. Ct. 362, 368 (2004).

Note: The following is a list of topics and correlating statutes related to motor vehicle violations. Generally, rules of the road can be found in G.L. c. 89, §§ 1 - 11 and 720 C.M.R.

- Speeding, G.L. c. 90, § 17
- Operating without a license, G.L. c. 90, § 10
- Intersection violations, G.L. c. 90, § 14
- Improper turns, G.L. c. 90, §§ 14
- Motorcycles and required helmets, G.L.c.90, § 7
- Learner’s permit to operate motor vehicles, G.L. c. 90, §§ 8B, 13
- Right of way and right to turn on red, G.L. c. 89, § 8
- Stop and yield signs, G.L. c. 89, § 9
- Driving on multilane highways, G.L. c. 89, § 4A
- Emergency vehicles, G.L. c. 89, §§ 7A, 7B
- Regulation of vehicles approaching pedestrian crosswalks, G.L. c. 89, § 11
- Driving on state highways, 720 C.M.R. 9.00
- Crossing over center line, G.L. c. 89, § 1
- Changing lanes, G.L. c. 89, § 4A

SUPPLEMENTAL INSTRUCTIONS

1. *Plaintiff is passenger.* **Passengers are not responsible for the operation of a motor vehicle. For this reason, passengers are not at fault for any negligence by the driver of the vehicle in which the passenger is riding. If you find that the accident was caused by the negligence of either or both operators of the vehicles involved in this accident, the plaintiff-passenger is entitled to recover damages against the negligent defendant operator or operators.**

Passengers may be liable if they actively caused the accident, such as by grabbing the

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steering wheel or attacking the driver. See *Hingham Mutual Fire Insurance Co., v. Niagara Fire Insurance Co.*, 46 Mass. App. Ct. 500 (1999).

Plaintiff may recover from multiple negligent drivers: *Luff v. Mahlowitz*, 296 Mass. 206, 207, (1936); *Meech v. Sewall*, 232 Mass. 460, 461 (1919).

2. **Vehicle maintenance.** **The owner of a motor vehicle owes other motorists and pedestrians the duty to exercise reasonable care to maintain (his / her / their) vehicle in safe mechanical condition.**

See *Kassis v. Lease & Rental Mgmt. Corp.*, 79 Mass. App. Ct. 784, 788 (2018). See also G.L. c. 90, § 7 (requiring brakes and certain other safety equipment to be maintained in good working order).

3. **Registered owner.** **If you find that the defendant was the registered owner of the car involved in the accident, then you may find that the car was being operated and under the control of a person for whose conduct the defendant was legally responsible. If you find the defendant was the registered owner, then the *defendant* has the burden of proof that (he / she / they) is not legally responsible for the conduct of the operator of the car if the operator was negligent.**

See G.L. c. 231, § 85A: "In all actions to recover damages for injuries to the person or to property or for the death of a person, arising out of an accident or collision in which a motor vehicle was involved, evidence that at the time of such accident or collision it was registered in the name of the defendant as owner shall be prima facie evidence that it was then being operated by and under the control of a person for whose conduct the defendant was legally responsible, and absence of such responsibility shall be an affirmative defense to be set up in the answer and proved by the defendant."

4. **Negligent entrustment.** **The duty of reasonable care includes a duty to**

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refrain from lending one's vehicle to a person whom the owner knows, or reasonably should know, because of age, training, or mental or physical disability, is incompetent as an automobile operator.

Leone v. Doran, 363 Mass. 1, 11–12 (1973), vacated in part on other grounds, 363 Mass. 886 (1973). The plaintiff must show that the defendant owner or controlled the vehicle, that the defendant gave the driver permission to operate the vehicle, that the driver was incompetent and that the defendant knew about that incompetence. See *id.* at 7, 11.

5. ***Respondeat superior.* An employer is responsible for the negligence of (his / her / their / its) employee if the employee was acting within the scope of (his / her / their / its) employment at the time of (his / her / their / its) negligence; that is while the employee was engaged in doing nothing but the employer's work. In determining whether the particular conduct was in the scope of the person's employment, you may take into account whether it was the type of conduct that the employee was employed to perform, whether the conduct occurred substantially within the authorized time and space limits and whether it was motivated, at least in part, by a purpose to serve the employer.**

See *Lee v. Beverly Enterprises-Massachusetts*, 457 Mass. 234, 238-239 (2010).

**SUPPLEMENTAL INSTRUCTIONS:
MOTOR VEHICLE INFRACTIONS**

1. ***Pedestrians not in a marked crosswalk; need to reduce speed.* Massachusetts**

law requires that, “[u]pon approaching a pedestrian who is upon the traveled part of any way and not upon a sidewalk, every person operating a motor vehicle shall slow down.”

G.L. c. 90, § 14. See also *Goldstein v. Gontarz*, 364 Mass. 800, 804 (1974) (“[A]lthough it [is] the duty of the plaintiff to exercise the care of a reasonably prudent person under all the circumstances, he [or she may] rely to some extent on the assumption that the driver of the [vehicle] exercise some care to avoid hitting [him or her].”).

Additionally, Massachusetts law provides that a defendant has a duty to decrease the speed of (his / her / their / its) motor vehicle “when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.”

G.L. c. 90, § 17.

2. Pedestrians in marked crosswalks **Massachusetts law requires a driver of a motor vehicle to yield the right of way to a pedestrian in a marked crosswalk. This means slowing down or stopping, if needed. This law applies to pedestrians who are in the crosswalk if they are on the same side of the road as the vehicle, or within ten feet of that side of the road where the vehicle is traveling.**

A driver must not enter a marked crosswalk while a pedestrian is crossing or until there is enough space to do so safely. This law

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applies even if a traffic control signal indicated that vehicles could proceed.

A driver must not pass any other vehicle that has stopped at a marked crosswalk to permit a pedestrian to cross.

G.L. c. 89, § 11.

3. ***Right of way at intersections.*** **Massachusetts law requires that “[w]hen two vehicles approach or enter an intersection . . . at approximately the same instant, the operator of the vehicle on the left shall yield the right-of-way to the vehicle on the right.”**

G.L. c. 89, § 8. This statute does not apply when “an operator is otherwise directed by a police officer, or by a traffic regulating sign, device or signal lawfully erected and maintained” as required by law.

4. ***Right of way at rotaries.*** **Under Massachusetts law, when a driver enters a rotary intersection that is not controlled by a traffic sign or signal, that driver must yield the right of way to any vehicle already in the intersection.**

G.L. c. 89 § 8. As above, this section does not apply if a police officer is directing traffic.

5. ***Stop signs.*** *Note: instruct only on markings applicable to the facts of the case.*

Under Massachusetts law, a driver who is approaching a stop sign must stop at the clearly marked stop line, if one exists. If there is

no stop line, then the driver must stop before entering the nearest crosswalk on the driver's side of the intersection. If there is neither a clearly marked stop line nor a crosswalk, then the driver must stop at the closest point to the intersecting road where the driver has a view of approaching traffic on the intersecting roadway before entering it.

G.L. c. 89, § 9.

6. **Yield signs.** *Note: instruct only on markings applicable to the facts of the case.*

Under Massachusetts law, a driver who is approaching a yield sign must slow down to a speed that is reasonable for the existing conditions. [If a stop is needed for safety, the driver must stop at a clearly marked stop line.] [If there is no stop line, then the driver must slow down, or stop if needed for safety, before entering the crosswalk on the near side of the intersection.] [If there is no stop line and no crosswalk, the driver must slow down or stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it.]

After slowing or stopping as needed under the circumstances, the driver with a yield sign is required to yield the right of way to any

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vehicle in the intersection or approaching on another roadway so closely that the other vehicle is an immediate hazard.

If you find that the (defendant) (plaintiff) failed to stop at a yield sign, and the collision occurred after that yield sign in the intersection or junction of the roads, then you do not need any other evidence to find that the (defendant) (plaintiff) failed to yield the right of way. You are not required to reach that conclusion, however.

G. L. c. 89, § 9.

7. Following too closely. Under Massachusetts regulations, a driver must not follow another vehicle more closely than is reasonable and careful under the circumstances, in light of the speed of the vehicles, the traffic conditions, and the conditions of the highway.

See 720 C.M.R. 9.06(7).

8. Passing bicyclists. Massachusetts law requires a driver of a motor vehicle to slow down when approaching a bicyclist traveling in the same direction. The driver of a motor vehicle may only pass the bicyclist if the driver and bicyclist are at a safe distance from each other and the driver proceeds at a speed that is reasonable and careful under the circumstances. The driver of a motor vehicle may

not overtake and pass a bicyclist traveling in the same direction to make a right turn unless the driver can make the turn at a safe distance from the bicyclist and at a speed that is reasonable and careful.

A driver who collides with a bicyclist may not defend the case by arguing that the bicyclist was traveling to the right of vehicles in traffic.

See G.L. c. 90, § 14.

9. **Signal before turning. Under Massachusetts law, every driver must activate the vehicle's directional signal before making any turn that would affect the operation of any other vehicle.**

If the vehicle's turn signals were not working Under Massachusetts law, every driver must activate the vehicle's directional signal before making any turn that would affect the operation of any other vehicle. If you find that a vehicle's turn signals are not working, then the driver must use their hand and arm to signal all turns using their hand and arm out of their open window. To signal an intent to turn left, the driver must extend their left hand and arm straight out to

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**the left. To signal an intent to turn right, the driver must
extend their left hand and arm upward.**

See G.L. c. 90, § 14B.

10. *Speed Limits and Special Hazards.* **Under Massachusetts law, a driver must drive at a speed that is reasonable and proper under the circumstances, considering traffic, road use and safety of the public. [The parties in this case agree that the posted speed limit was ___ miles per hour.] [The parties in this case do not agree what the speed limit was, so that is one of the facts that you must determine].**

If the speed limit is not clearly posted and is at issue, the jury must determine whether the following applies: “(1) if a motor vehicle is operated on a divided highway outside a thickly settled or business district at a rate of speed exceeding fifty miles per hour for a distance of a quarter of a mile, or (2) on any other way outside a thickly settled or business district at a rate of speed exceeding forty miles per hour for a distance of a quarter of a mile, or (3) inside a thickly settled or business district at a rate of speed exceeding thirty miles per hour for a distance of one–eighth of a mile, or (4) within a school zone which may be established by a city or town as provided in section two of chapter eighty–five at a rate of speed exceeding twenty miles per hour.” G.L. c. 90, § 17.

Driving over the speed limit is some evidence that the driver was negligent. If you find that the defendant was driving over the speed limit, you do not need any other evidence to find that the defendant was driving at a speed greater than what would be reasonable and proper under the circumstances. You are not required to reach that conclusion, however.

On the other hand, sometimes even driving at the posted speed limit is not reasonable, if there are special hazards such as pedestrians, other traffic, weather, or highway conditions. Whenever one of these special hazards exist, a driver must slow down to a speed that is safe in light of that special hazard.

G.L. c. 90, § 17.

11. **Turning left. Under Massachusetts law, a driver turning left on a two-way street must yield the right of way to any (vehicle) (bicycle) approaching from the opposite direction. A driver may not turn left into the path or lane of oncoming traffic until it is safe to do so.**

G. L. c. 90, § 14.