

## Motor Vehicle Claims

*<Add these in after the General Negligence Instructions for these cases>*

(a) Standard of care - drivers

*<add this to the General Negligence instruction on "Duty">*

A driver of a motor vehicle must act as a reasonably careful person would act in similar circumstances. A driver must use reasonable care:

- to avoid placing himself/herself or others in danger,
- to keep a proper lookout,
- to follow all traffic signs and signals,
- to make reasonable observations about traffic and weather conditions,
- to obey all motor vehicle laws,
- to maintain control of his/her vehicle and not be distracted, and
- to avoid a collision.

As harm becomes more likely, the driver must be more careful. For example, a driver must be more careful when driving in an area full of pedestrians than in an area where no pedestrians are present. And as the threatened harm becomes more severe, the driver must be more careful. For example, someone driving at a high speed near other vehicles needs to be more careful than someone driving very slowly when no one else is around.

The fact that a collision occurred is not itself evidence of negligence. However, you can and should consider **how** a collision occurred when you are determining whether DFT [or PLF] was negligent.

Whether DFT [or PLF] used reasonable care under the circumstances is for you, the jury, to determine. If DFT [or PLF] did **not** use reasonable care under the circumstances, then you should find that s/he was negligent. If

DFT [or PLF] **did** use reasonable care under the circumstances, then you should find that s/he was **not** negligent.

**(b) Violation of motor vehicle laws or regulations**

*< add this to the General Negligence instruction on "Failure to Use Reasonable Care", if relevant >*

Under our state law [or state regulations], a driver of a motor vehicle may not \_\_\_\_\_ [or a driver of a motor vehicle must \_\_\_\_\_].

*< Insert applicable language—see Appendix, below >*

You may consider whether DFT [or PLF] violated this [law/regulation] in deciding if s/he was negligent.

This is a two-step process, and so you should ask two questions. First, "Did DFT [or PLF] violate this [law/regulation]?" In this trial, this decision is up to you, as the jury, and not anyone else. It does not matter whether the police who responded to the scene chose to issue, or not to issue, any traffic citations, and you should not speculate about that.

If you find that a violation occurred, then you should ask the second question: "Was the law/regulation designed to prevent the harm DFT [or PLF] claims happened here?" If you answer "Yes" to both of these questions then you may consider the violation as some evidence that DFT [or PLF] was negligent and you may give it whatever weight you think appropriate.<sup>1</sup>

The violation of a law or regulation does not automatically prove DFT [or PLF] was negligent, because that decision is up to you. But, if DFT [or PLF] violated a [law/regulation] that would help prevent a collision such as the one that occurred in this case, then you may consider that violation, together with all the other evidence, in determining whether DFT [or PLF] acted negligently in causing a collision.

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<sup>1</sup> *Rubin v. Murray*, 79 Mass. App. Ct. 64, 70 n.8 (2011) (citing *Fishman v. Brooks*, 396 Mass. 643, 649-650 (1986)).

However, you do not need to find DFT [or PLF] violated the law in order to find DFT [or PLF] negligent.

**(c) Mechanical problems with motor vehicles**

*< add this to the General Negligence instruction on "Duty", if relevant >*

The owner of a motor vehicle must use reasonable care to keep his/her vehicle in safe mechanical condition.<sup>2</sup> This includes keeping the brakes and other safety equipment in good working order.

**(d) Liability of registered owner of motor vehicle**

*< if relevant, add after General Negligence question—this would need its own special question >*

If you find that [DFT driver] was negligent, then [DFT registered owner] may also be liable for that negligence. In this situation, the burden of proof shifts to [DFT registered owner]. [DFT registered owner] is liable for the negligence of [DFT driver] unless s/he/it shows, more likely than not, that he/she/it is **not** legally responsible for the conduct of the driver.<sup>3</sup> A registered owner of a vehicle can be legally responsible for the negligence of a driver in several ways.

*< if relevant >* A car/truck owner is legally responsible for the driver when the vehicle's owner employs the driver and the driving occurred within the scope of the driver's employment. For example, a driver using a company vehicle to travel to an appointment for the company's business is driving within the scope of his/her employment. When that occurs, the owner of the vehicle (the employer) is liable for the negligence of the driver. On the other hand, an employee driving a company vehicle to the grocery store over the weekend for his/her family is not driving within the scope of

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<sup>2</sup> See *Zarrillo v. Stone*, 317 MAA. 510 (1945); *Facteau v. Gould*, 310 Mass. 105 (1941). See also G.L. c. 90, § 7 (requiring brakes and certain other safety equipment to be maintained in good working order).

<sup>3</sup> G.L. c. 231, § 85A.

his/her employment; in that case, the driver would be responsible for his/her actions, but the company that owned the vehicle would not have any negligence automatically attributed to it.

In addition, a company/person who owns the vehicle is liable if the driver is acting on that company/person's behalf. For example, if I let a neighbor use my car to do errands for my family, that person is acting on my behalf and I am legally responsible if s/he is in a collision while doing those errands.

On the other hand, if a neighbor borrows my car to do his/her own errands and is not doing anything on my behalf, then I am not legally responsible if s/he is in a collision.

### **Negligent Entrustment of a Motor Vehicle**

A car/truck owner must use reasonable care not to lend the vehicle to a driver whom the owner knows is incompetent or unfit as a driver. We refer to this as "negligent entrustment." To be awarded damages from a vehicle owner under this theory, PLF must prove that four things are more likely true than not true:

1. DFT loaned his/her/its vehicle to an incompetent or unfit person;
2. DFT gave permission to the operator to drive the car/truck/vehicle;
3. DFT actually knew of the operator's incompetence or unfitness to drive the vehicle;<sup>4</sup> and
4. the driver's incompetence or unfitness caused the PLF's injuries

I will now explain each of these things more fully.

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<sup>4</sup> *Ortiz v. N. Amherst Auto Rental, Inc.*, 64 Mass. App. Ct. 499; 501 (2005); *Nunez v. A & M Rentals*, 63 Mass. App. Ct. 20, 22 (2005) (citations omitted).

### **(a) Loaned Vehicle to Incompetent or Unfit Driver**

PLF must prove that the driver was not competent or fit to drive, based on all of the circumstances. For example, you may consider:

- Was the person's driver's license suspended or revoked, either currently or in the recent past?
- How many collisions did the driver have in the past?
- How many motor vehicle moving violations did s/he have in the past?
- Had a commercial motor vehicle driver ever received a warning or reprimand for driving safety issues?
- Was the driver impaired by alcohol, legal medications or illegal drugs at the time DFT loaned the vehicle to the driver?
- Did the driver have a history of impairment by alcohol, legal medications, or illegal drugs, which led to unsafe driving in the past?
- Was there any other sign that it was unsafe to let the person drive?

These are offered as examples, but you should consider all of the facts in this case when you make your decision.

### **(b) Knowledge of Incompetence or Unfitness**

Next, PLF must also prove that DFT actually knew of the driver's incompetence or unfitness. It is not enough to prove what DFT should have known.<sup>5</sup> For example, if the owner of a vehicle knows that the driver is

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<sup>5</sup> "In order to prevail on a claim for negligent entrustment in the Commonwealth, the plaintiff must show that '(1) the defendant entrusted a vehicle to an incompetent or unfit person whose incompetence or unfitness was the cause of the [victim's] injuries; (2) [the defendant] gave specific or general permission to the operator to drive the [vehicle]; and (3) the defendant had actual knowledge of the incompetence or unfitness of the operator to drive the vehicle.'" *Picard v. Thomas*, 60 Mass. App. Ct. 362, 369 (2004), citing *Mitchell v. Hastings & Koch Enterprises, Inc.*, 38 Mass. App. Ct. 271, 276-277 (1995). Compare Restatement (Second) of Torts § 390 (1965) (permitting a finding of negligent entrustment on a showing that the entrustor had reason to know the trustee was incompetent)."

drunk or has a long history of drunk driving, you may find that the owner actually knew of that person's incompetence or unfitness. On the other hand, if the vehicle owner did not know that information, then he/she/it did not have actual knowledge of incompetence or unfitness, even if he/she/it could have learned that information by making a simple inquiry. The standard is not what DFT should have known, but what DFT actually knew.

### **(c) Permission to Drive the Vehicle**

Next, PLF must prove that DFT gave the driver permission to operate the vehicle. Someone can give permission in writing, through spoken words, or by conduct that communicates permission, such as handing car keys to a person who asks to borrow a car.

### **(d) Causation**

Finally, you must decide whether PLF has proved that the driver's incompetence or unfitness to drive caused PLF's injuries.

## **Negligent supervision by parent**

Parents must use reasonable care to prevent their minor children, which means a child under the age of 18, from intentionally or negligently harming others. To prove a claim of negligent supervision of a parent related to a child's reckless driving, PLF must show three things:

First, the minor's tendency to drive recklessly or dangerously;

Second, the parent's awareness of the minor's tendency to drive recklessly or dangerously; and

Third, a lack of appropriate action by the parent.<sup>6</sup>

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*Nunez v. A&M Rentals*, 63 Mass. App. Ct. 20, 22 (2005). See also *Pratt v. Martineau*, 69 Mass. App. 670, 676-677 (2007).

<sup>6</sup> *Cooke v. Lopez*, 57 Mass. App. Ct. 703, 705-706 (2003).

For example, if a parent knew that his/her teenager had a pattern of using the parent's car repeatedly to drive in a dangerous and reckless way, a reasonably careful parent may need to stop loaning the car to the minor. However, awareness of a single incident is not enough to establish knowledge of a tendency for unsafe or reckless driving.<sup>7</sup>

### **Negligent failure to secure vehicle**

An owner or a person in control of a vehicle must take reasonable steps to protect against reasonably foreseeable criminal acts. For example, if a person leaves the car keys in the ignition and the car is stolen, you may consider the act of leaving the keys in the ignition as some evidence of negligence.<sup>8</sup>

### **Passenger – add this to comparative negligence charge**

If you find that the collision resulted from the negligence of either or both of the drivers of the cars/trucks/vehicles involved in this collision, a passenger such as PLF is entitled to recover damages.<sup>9</sup> As a passenger, PLF is not responsible for any driver's negligence.<sup>10</sup>

## **APPENDIX OF JURY INSTRUCTIONS ON DUTY IMPOSED BY COMMON MOTOR VEHICLE LAWS OR REGULATIONS**

### **Following too closely<sup>11</sup>**

Under Massachusetts regulations, a driver must not follow another vehicle more closely than is reasonable and careful under the circumstances, in

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<sup>7</sup> Ibid.

<sup>8</sup> *Poskus v. Lombardo's of Randolph, Inc.*, 423 Mass. 637 (1996).

<sup>9</sup> *Meech v. Sewall*, 232 Mass. 460, 461 (1960).

<sup>10</sup> *Bessey v. Saleme*, 302 Mass. 188 (1939). The judge should omit this charge if there is evidence that the passenger distracted the driver or acted in some way to cause the collision.

<sup>11</sup> "The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the highway." 720 C.M.R. 9.06(7).

light of the speed of the vehicles, the traffic conditions, and the conditions of the highway.

### **Passing bicyclists<sup>12</sup>**

Massachusetts law requires a driver of a motor vehicle to slow down when s/he is 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.

### **Pedestrians in marked crosswalks<sup>13</sup>**

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

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<sup>12</sup> "In approaching or passing a person on a bicycle the operator of a motor vehicle shall slow down and pass at a safe distance and at a reasonable and proper speed. .... No person operating a vehicle that overtakes and passes a bicyclist proceeding in the same direction shall make a right turn at an intersection or driveway unless the turn can be made at a safe distance from the bicyclist at a speed that is reasonable and proper.... When turning to the left within an intersection or into an alley, private road or driveway an operator shall yield the right of way to any vehicle approaching from the opposite direction, including a bicycle on the right of the other approaching vehicles which is within the intersection or so close thereto as to constitute an immediate hazard. It shall not be a defense for a motorist causing an accident with a bicycle that the bicycle was to the right of vehicular traffic..." G.L. c. 90, § 14.

<sup>13</sup> "When traffic control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be so to yield, to a pedestrian crossing the roadway within a crosswalk marked in accordance with standards established by the department of highways if the pedestrian is on that half of the traveled part of the way on which the vehicle is traveling or if the pedestrian approaches from the opposite half of the traveled part of the way to within 10 feet of that half of the traveled part of the way on which said vehicle is traveling.



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 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.

### **Pedestrians – not in a marked crosswalk**

Under Massachusetts law, a driver must slow down when approaching a pedestrian who is in the road and not on a sidewalk.

[See also Speed Limits and Special Hazards, below.]

### **Right of Way at Intersections<sup>14</sup>**

*< omit if police officer was directing traffic—these rules do not apply in that circumstance >*

Under Massachusetts law, when two vehicles approach or enter an intersection at the same time and there are no traffic signs or signals, the driver of the vehicle on the left must yield the right of way to the vehicle on the right.

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No driver of a vehicle shall pass any other vehicle which has stopped at a marked crosswalk to permit a pedestrian to cross, nor shall any such operator enter a marked crosswalk while a pedestrian is crossing or until there is a sufficient space beyond the crosswalk to accommodate the vehicle he is operating, notwithstanding that a traffic control signal may indicate that vehicles may proceed." G.L. c. 89, § 11.

<sup>14</sup> "When two vehicles approach or enter an intersection of any ways, as defined in section one of chapter ninety, 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. .... The foregoing provisions of this section shall 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 in accordance with the provisions of section two of chapter eighty-five and, where so required with the written approval of the department of highways and while such approval is in effect." G.L. c. 89 § 8.

## Right of Way at Rotaries<sup>15</sup>

Under Massachusetts law, when a driver enters a rotary intersection that is not controlled by a traffic sign or signal, s/he must yield the right of way to any vehicle already in the intersection. [NOTE THAT THIS SECTION DOES NOT APPLY IF A POLICE OFFICER IS DIRECTING TRAFFIC].

## Signal before turning<sup>16</sup>

Under Massachusetts law, every driver must activate his/her directional signal before making any turn that would affect the operation of any other vehicle.

[< *if the vehicle's turn signals were not working, instruct as follows*> Under Massachusetts law, every driver must activate his/her 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 the left. To signal an

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<sup>15</sup> "...Any operator of a vehicle entering a rotary intersection shall yield the right-of-way to any vehicle already in the intersection. The foregoing provisions of this section shall 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 in accordance with the provisions of section two of chapter eighty-five and, where so required with the written approval of the department of highways and while such approval is in effect." G.L. c. 89 § 8.

<sup>16</sup> "Every person operating a motor vehicle, before stopping said vehicle or making any turning movement which would affect the operation of any other vehicle, shall give a plainly visible signal by activating the brake lights or directional lights or signal as provided on said vehicle; and in the event electrical or mechanical signals are not operating or not provided on the vehicle, a plainly visible signal by means of the hand and arm shall be made. Hand and arm signals shall be made as follows:—

1. An intention to turn to the left shall be indicated by hand and arm extended horizontally.
2. An intention to turn to the right shall be indicated by hand and arm extended upward.
3. An intention to stop or decrease speed shall be indicated by hand and arm extended downward.

Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five dollars for each offense. G.L. c. 90, § 14B.

intent to turn right, the driver must extend their left hand and arm upward.]<sup>17</sup>

## Speed Limits and Special Hazards<sup>18</sup>

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. [*< if applicable >* The parties in this case agree that the posted speed limit was \_\_ miles per hour. OR: 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 NO SPEED LIMIT WAS POSTED, SEE FOOTNOTE BELOW.] Driving over the speed limit is some evidence that the driver was negligent.

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<sup>17</sup> See G.L. c. 90, § 14B.

<sup>18</sup> "No person operating a motor vehicle on any way shall run it at a rate of speed greater than is reasonable and proper, having regard to traffic and the use of the way and the safety of the public. Unless a way is otherwise posted in accordance with the provisions of section eighteen, it shall be prima facie evidence of a rate of speed greater than is reasonable and proper as aforesaid (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. Operation of a motor vehicle at a speed in excess of fifteen miles per hour within one-tenth of a mile of a vehicle used in hawking or peddling merchandise and which displays flashing amber lights shall likewise be prima facie evidence of a rate of speed greater than is reasonable and proper. If a speed limit has been duly established upon any way, in accordance with the provisions of said section, operation of a motor vehicle at a rate of speed in excess of such limit shall be prima facie evidence that such speed is greater than is reasonable and proper; but, notwithstanding such establishment of a speed limit, every person operating a motor vehicle shall decrease the speed of the same when a special hazard exists with respect to pedestrians or other traffic, or by reason of weather or highway conditions. Any person in violation of this section, while operating a motor vehicle through the parameters of a marked construction zone or construction area, at a speed which exceeds the posted limit, or at a speed that is greater than is reasonable and proper, shall be subject to a fine of 2 times the amount currently in effect for the violation issued. Except on a limited access highway, no person shall operate a school bus at a rate of speed exceeding forty miles per hour, while actually engaged in carrying school children." G. L. c. 90, § 17.

If you find that DFT was driving over the speed limit, you do not need any other evidence to find that the DFT was driving too fast 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.

### Stop signs<sup>19</sup>

*<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.

### Turning left<sup>20</sup>

Under Massachusetts law, a driver turning left on a two-way street must yield the right of way to any vehicle [or bicycle] approaching from the

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<sup>19</sup> "Every driver of a vehicle approaching a stop sign or a flashing red signal indication shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. ... " G. L. c. 89, § 9.

<sup>20</sup> "... Any operator intending to turn left, in an intersection, across the path or lane of vehicles approaching from the opposite direction shall, before turning, yield the right-of-way until such time as the left turn can be made with reasonable safety. .... The foregoing provisions of this section shall 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 in accordance with the provisions of section two of chapter eighty-five and, where so required with the written approval of the department of highways and while such approval is in effect." G.L. c. 89 § 8.

opposite direction. [IF APPLICABLE: This includes a bicycle on the right of other approaching vehicles.] A driver may not turn left into the path or lane of oncoming traffic until it is safe to do so.

## Yield signs<sup>21</sup>

<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 and, if a stop is needed for safety, 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, then 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 vehicle in the

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“When approaching for a left turn on a two-way street, an operator shall do so in the lane of traffic to the right of and nearest to the center line of the roadway and the left turn shall be made by passing to the right of the center line of the entering way where it enters the intersection from his left. When turning to the left within an intersection or into an alley, private road or driveway an operator shall yield the right of way to any vehicle approaching from the opposite direction, including a bicycle on the right of the other approaching vehicles, which is within the intersection or so close thereto as to constitute an immediate hazard.” G. L. c. 90, § 14.

<sup>21</sup> “The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then 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, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways; provided, however, that if such a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right of way.” G. L. c. 89, § 9.

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

If you find that DFT [or PLF] 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 DFT [or PLF] failed to yield the right of way. You are not required to reach that conclusion, however.