

5.30G DUTY OF AUTOMOBILE DRIVER TO MAKE OBSERVATIONS (Approved before 1983)

1. For Traffic Conditions

The law imposes upon the driver of an automobile the duty of exercising such care as is reasonable under all the circumstances confronting him/her at the particular time. This duty requires motorists to use our streets and highways with reciprocal regard for the rights of others who may also be using them. Thus a motorist is required to make such observations for traffic and vehicles which are in or may come into his/her path of travel, as a reasonably prudent person would make.

Cases:

Ambrose v. Cyphers, 29 N.J. 138 (1959); *Bedford v. Hurff*, 9 Misc. 15 (Sup. Ct. 1930); *Poole v. Twentieth Century Operating Co.*, 121 N.J.L. 244 (E. & A. 1938); *Trout v. Bright*, 10 Misc. 914 (D.C. 1932); *Crisciotti v. Greatrex*, 9 N.J. Super. 26 (App. Div. 1950); *Hyman v. Bierman*, 130 N.J.L. 170 (E. & A. 1943); *Schaublin v. Leber*, 50 N.J. Super. 506 (App. Div. 1953).

Statutory duty to make observations: N.J.S.A. 39:4-53, driver to have clear view; N.J.S.A. 39:4-125, view on curve, grade, etc.; N.J.S.A. 39:3-74, windshield to permit clear view; N.J.S.A. 39:4-55, view on curve; N.J.S.A. 39:4-86, passing only where clearly visible. N.J.S.A. 39:4-37.1, blind persons.

The duty to exercise reasonable care between persons using a public highway is mutual. An approaching driver is justified in assuming, until he/she discovers that it is contrary to the fact, that all other users of the highway will exercise reasonable care in their use of the highway.

Tischler v. Steinholtz, 99 N.J.L. 150, 151 (E. & A. 1923); *German v. Harris*, 106 N.J.L. 521, 523 (E. & A. 1930); *Nile v. Phillips Express Co.*, 118 N.J.L. 455, 460 (E. & A. 1937); *Cole v. Twentieth Century Operating Co.*, 121 N.J.L. 244, 248 (E. & A. 1938); *Van Rensselaer v. Viorst*, 136 N.J.L. 628, 631 (E. & A. 1947).

2. For Pedestrians

Vehicular operators and pedestrians have a common right to the use of a public highway. Their rights and duties are mutual and relative and each is charged with a duty of reasonable care, commensurate with the risk of danger involved in the particular circumstances. Thus a motorist is required to make such observations for pedestrians who are in, or may come into his/her path of travel, as a reasonably prudent person would make.

Cases:

Poole v. Twentieth Century Operating Co., 121 N.J.L. 244 (E. & A. 1938); *Van Rensselaer v. Viorst*, 136 N.J.L. 628 (E. & A. 1948); *LeBavin v. Suburban Gas Co.*, 134 N.J.L. 10 (E. & A. 1946).

The general rule is that the vigilance and care required of the operator of a motor vehicle may vary in respect to persons of different ages or physical conditions. He/She must increase his/her exertions in order to avoid danger to children whom he/she may see, or by the exercise

of reasonable care should see, on or near the highway. Children are entitled to care proportionate to their inability to foresee and avoid danger.

Rosenberg v. Holt, 102 N.J.L. 159 (E. & A. 1925); *Eastmond v. Wachstein*, 4 Misc. 966 (Sup. Ct. 1926); *Ferris v. McArdle*, 92 N.J.L. 580 (E. & A. 1919); *Greco v. Schmidt*, 101 N.J.L. 554 (E. & A. 1925); *Sembler v. Scott*, 130 N.J.L. 184 (E. & A. 1943); *Balog v. Mitchell Co.*, 3 Misc. 1000 (Sup. Ct. 1925); *Silberstein v. Showell, Fryer & Co.*, 109 Atl. 701 (1920); *Mulhern v. Philadelphia Home-Made Bread Co.*, 101 Atl. 74; 5A Am. Jur., *Automobiles & Highway Traffic* — Secs. 439, 440, 444.

School Zones — N.J.S.A. 39:4-167; Playgrounds, N.J.S.A. 39:4-168; Caution Signs, N.J.S.A. 39:4-166.

3. Where View Obstructed at Intersection

The fact that an operator of an automobile cannot see up an intersecting street until he/she is actually in it, does not obligate him/her to get out of the car and look up and down the street before proceeding over or into it. A person is not required to extend his/her vision beyond a point where vehicles traveling at a lawful speed would threaten his/her safety. The duty imposed upon a motorist in such situation is to approach the obscured intersection with reasonable care and caution, commensurate with the risk involved. This duty requires the motorist to have his/her vehicle under proper control, to operate it at an appropriate speed and to make such reasonable and effective observations as a reasonably prudent person would make, commensurate with the risk of danger involved.

Cases:

Moser v. Castles Ice Cream Co., 2 Misc. 1029 (Sup. Ct. 1924); *Wilson v. Kuhn*, 3 Misc. 1032 (Sup. Ct. 1925); *Abel v. Seek Baking Co.*, 4 Misc. 213 (Sup. Ct. 1926); *Boyer v. Great At. & c.*, 99 N.J.L. 451 (E. & A. 1924); *Rich v. Eldredge*, 106 N.J.L. 181 (E. & A. 1929); *Rizio v. P.S.*, 128, N.J.L. 60 (E. & A. 1942); *LeBavin v. Suburban Gas Co.*, 134 N.J.L. 10 (E. & A. 1946); *Neidig v. Fisher*, 123 N.J.L. 242 (E. & A. 1939); *Webber v. McCormick*, 63 N.J. Super. 409 (App. Div. 1960); *Schuttler v. Reinhardt*, 17 N.J. Super. 480 (App. Div. 1952).

4. Where Vision Impaired

Where the view of the roadway ahead is impaired by obstructions to view caused by darkness, fog, rain on glass or other such obstruction, there is a duty to exercise care commensurate with the risk of the hazard presented. The operator of a motor vehicle in such a situation is required to exercise reasonable care, that is, such care as the existing conditions require, to have his/her vehicle under such control as to be able to stop, if necessary, to avoid harm to others on the highway. In addition, while operating a vehicle in the night time, the operator is required to anticipate that other vehicles and persons may be on the highway and must use reasonable care to so adjust his/her lights that he/she can observe vehicles or pedestrians at a sufficient distance to avoid contact with them at the speed he/she is traveling.

Cases:

Ball v. Camden & Trenton Ry. Co., 76 N.J.L. 539 (E. & A. 1909); *Anderson v. Public Service Corporation*, 81 N.J.L. 700 (E. & A. 1911); *Crisciotti v. Creatrex*, 9 N.J. Super. 26 (App. Div. 1950); *Osburn v. DeYoung*, 99 N.J.L. 204 (E. & A. 1923); *Garvey v. Public Service & c., Transport*, 136 N.J.L. 533 (E. & A. 1943); *Madde v. Lindberg*, 12 N.J. Super. 248 (App. Div. 1951); *Hartpence v. Grouleff*, 15 N.J. 545 (1954); *Greenfield v. Dusseault*, 60 N.J. Super. 436 (App. Div. 1960); *Spear v. Hummer*, 11 Misc. 709 (Sup. Ct. 1933), 42 A.L.R. 2d 13 (1926).

5. Temporary Blindness of Driver as Affecting Duty

No person is entitled to drive a car on a public street or highway while blind, even temporarily. Where street lights, headlights or other lights or reflections of light have the effect of causing temporary blindness, it is his/her duty to stop his/her car and thereafter to proceed only when the temporary blindness has passed.

Cases:

Osburn v. DeYoung, 99 N.J.L. 204, *aff'd*, see *Martin v. DeYoung*, 99 N.J.L. 284 (E. & A. 1923); *Robinson v. Mutnick*, 102 N.J.L. 22 (Sup. Ct. 1925); *Devine v. Chester*, 7 Misc. 131 (Sup. Ct. 1929); *Hammond v. Morrison*, 90 N.J.L. 15 (Sup. Ct. 1917); 22 A.L.R. 2d 292 (1923); *Windshields*, N.J.S.A. 39:4-126.

6. Duty as to Obstacles and Defects in Streets

The law does not impose upon a motorist an absolute duty to observe and avoid obstacles and defects in a street or highway. The operator of a vehicle has the right to place reasonable reliance upon proper preservation of a street or highway in a reasonably safe condition. But where a defect or obstacle is obvious or clearly visible or where reasonable observation would disclose it in time to avoid or prepare for it, the operator of an automobile is liable for failure to exercise reasonable care to avoid it [or its effects].

Cases:

Geise v. Mercer Bottling Co., 87 N.J.L. 224 (1915); *Volinsky v. Public Service Coordinated Transport*, 5 N.J. Super. 320 (App. Div. 1949); *Messier v. City of Clifton*, 24 N.J. Super. 133 (App. Div. 1952); *Hallett v. Wm. Eisenberg & Sons, Inc.*, 116 N.J.L. (E. & A. 1935); *Rapp v. Public Service Coordinated Transport, etc.* (1952); *Robinson v. Mutnick*, 102 N.J.L. 22 (Sup. Ct. 1925); *Bowen v. Healy's Inc.*, 16 N.J. Misc. 113 (Sup. Ct. 1938); *Fisher v. Healy's Special Tours, Inc.*, 121 N.J.L. 198 (E. & A. 1938); *Yanas v. Hogan*, 133 N.J.L. 188 (Sup. Ct. 1945).

7. Duty as to Persons under Disability

The operator of a car is bound to consider the lack of capacity of those in his/her way to care for their own safety, when such incapacity is known or should

be known by him/her in the exercise of reasonable care. Where the driver of a vehicle actually observes that a person is under disability he/she is under a duty to exercise reasonable care to avoid injury to him/her, having this incapacity in mind.

This rule applies to persons who are rendered helpless or whose capacity for self-protection is limited due to infancy, intoxication, illness or other causes. A driver under such circumstances is required to exercise a degree of care commensurate with risk of danger involved. [The mere fact that a pedestrian is intoxicated does not confer a right upon the driver to run him/her down.]

Cases:

Eichinger v. Krause, 105 N.J.L. 402 (E. & A. 1929); blind persons, N.J.S.A. 39:4-37.1; *Confone v. Gnassi*, 5 Misc. 343 (Sup. Ct. 1927); *Bageard v. Consolidated Traction*, 64 N.J. 316 (E. & A. 1900); *Petrone v. Margolis*, 29 N.J. Super. 180 (App. Div. 1952); *Tabor v. O'Grady*, 61 N.J. Super. 446 (App. Div. 1960).