

Car Versus Bike: Rules of the Road

With a weak economy and an increase in environmental awareness, more residents are opting for bicycles as the preferred method of city transportation.¹ There has been a 72 percent decrease, between 2000 and 2010, in the average risk of serious injury experienced by commuter cyclists in New York City because of the increase of bike lanes in the city,² even though the number of cyclists has increased 13 percent between 2009 and 2010 and has doubled from 2006 to 2010.³ Over the last year, the number of bicyclists on the roads has increased an additional 14 percent.⁴

State Vehicle and Traffic Laws

The Vehicle and Traffic Laws and Regulations (VTL) are applicable to both drivers and cyclists in the State of New York,⁵ and any finding of a violation of this statute constitutes negligence per se.⁶ Numerous sections of the VTL deal with bicycle use, equipment and cyclist behavior.

Bicyclists have the same rights as automobile drivers to the use of the roads and are subject to the same duties, including the duty of care, with certain exceptions, pursuant to Section 1231 of the VTL. (A driver, pursuant to VTL 1146, has a duty to use reasonable care to avoid colliding with a bicyclist.)

The VTL is applicable to bicyclists who ride upon any highway, private road open to public motor vehicle traffic and any path set aside for the exclusive use of bicycles.⁷ Under New York No-Fault Law, bicyclists who are involved in an accident with a motor vehicle are protected and thus, the defendant driver's insurance company may



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be required to cover the injured bicyclist's first \$50,000 of medical bills.⁸

Required Equipment

Under the VTL, a bicycle is defined as:

Every two- or three-wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such

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wheels in a tandem or tricycle, except that it shall not include such a device as having solid tires and intended for use on a sidewalk by pre-teenage children.⁹

A person who is riding a bicycle shall ride on a permanent and regular seat with his or her feet affixed to the pedals at all times.¹⁰ If a bicyclist is riding from one-half hour after sunset to one-half hour before sunrise, he or she must have equipped on the front of his bicycle a lamp that emits a white light visible in the dark from a distance of at least 500 feet to the front and a red or amber light equipped on the rear visible for a minimum of 300 feet. During this time a bicyclist must also furnish his bicycle with reflective devices or material that is consistent with those standards

promulgated by the Transportation Commissioner.¹¹

Additionally, new bicycles should have reflective tires or a reflex reflector mounted on the spokes of each wheel. An operator must equip his bicycle with a brake, and a bell or other device that is capable of giving an audible signal that can be heard from a distance of at least 100 feet; however, such device may not be a siren or a whistle.¹²

Riding on a Roadway

It is required that a cyclist have at least one hand on the handle bars at all times and shall not carry any "package, bundle, or article" that would prevent him from doing so.¹³ The operator is also prohibited from carrying more people on the bicycle than the number for which it is designed and equipped and is prohibited from riding or attaching him or herself to any vehicle operating on a roadway.¹⁴

When riding on a roadway, a cyclist should remain on the right-hand curb or edge of the roadway to avoid interfering with the flow of traffic, except when making a left-hand turn or when other conditions may make it unsafe to continue along the right-hand side of the roadway. Two riders may operate abreast in a single lane, except when being overtaken by a vehicle, at which point they should ride single file.¹⁵ A vehicle, however, that is overtaking a bicycle from behind, which is proceeding on the same side of the road as the vehicle, is required to pass on the left-hand side of the bicycle at a safe distance.¹⁶ Bicyclists who are entering a roadway from a paved road are required to come to a full stop before entering the roadway.¹⁷

Signaling to Traffic

A bicyclist is required to give hand and arm signals when making turns and stopping or decreasing speeds. Failure to do so could preclude a motorist's liability in a bicyclist's personal injury action. A bicyclist who is making a left-hand turn must have his left hand and arm extended horizon-

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tally, and when making a right hand turn he is required to have his left hand and arm extended upward or right hand and arm extended horizontally. Additionally, to indicate stopping or a decrease in speed, the left hand and arm should be extended downward.¹⁸

Helmets and Children

Pursuant to VTL §1238, operators of a bicycle are prohibited from having a passenger under the age of 1 year. However, a child between the ages of 1 and 5 may be a passenger on a bicycle so long as he is wearing a tightly secured helmet that meets the standards established by the commissioner and is placed in a separate seat securely attached to the bicycle that retains the child in place and protects the child from moving parts of the bicycle. A child between the age of 5 and 14 is prohibited from being a passenger on a bicycle or an operator of a bicycle, unless he is wearing a helmet that meets the aforementioned standards. It is well settled that "as a matter of law children under the age of 6 years cannot be charged with knowledge and understanding of traffic regulations and compliance with them."¹⁹

The failure of an individual to comply with Section 1238 of the VTL "shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude, or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action." However, a police officer may issue a summons for a violation of Section 1238 of the VTL to "operators and passengers less than 14 years of age to the parent or guardian of the violator if the violation occurs in the presence of such person's parent or guardian and where such parent or guardian is 18 years of age or more."²⁰

There is no requirement that individuals above the age of 14 wear helmets per the VTL. Nevertheless, a question of negligence may be relevant when assessing damages related to the injuries suffered by a bicyclist provided that competent testimony is submitted sufficient to raise an issue of fact as to whether some or all of a bicyclist's injuries would have occurred had a helmet been worn.²¹

Bicycle Lanes and Paths

Operators of a bicycle are required to use either a bicycle lane or bicycle path if one is available to them. The VTL defines a bike lane as "a portion of the roadway which has been designated by striping, signing and pavement markings for the preferential or exclusive use of bicycles," and a bike path as, "a path physically separated from motorized traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way and which is intended for the use of bicycles."²²

New York City Traffic Rules

The New York City Traffic Rules and Regulations are applicable to drivers within the five boroughs and are supplemented by the VTL. When there is no applicable traffic rule or regulation, the VTL will apply. The Traffic Rules and Regulations differ from the VTL because a violation does not constitute "negligence per se," but rather is "some evidence" of negligence and will be charged as such to the jury.

These rules and regulations provide that the operator of a vehicle is prohibited from parking, standing, or stopping within or obstructing a designated bike lane, except for roadway access, turns and when necessary to avoid unsafe conditions. Bicycles, on the other hand, "are prohibited on expressways, drives, highways, interstate routes, bridges, and thruways, unless otherwise authorized by signs," or for the purpose of accessing a bike path/lane, making turns at an intersection or into a private roadway or driveway, and whenever reasonably necessary to avoid unsafe conditions.²³

Furthermore, Section 1234(a) of the VTL, which requires an individual to ride on the right side of the roadway, does not apply in the City of New York, and bicyclists are permitted to ride on either side of a 40-foot, one-way roadway.

These rules and regulations also prohibit a bicycle from being operated on any sidewalk, unless there is a sign permitting such use. However, a child 12 years of age or under is permitted to ride on a sidewalk so long as the wheels of the bicycle are less than 26 inches in diameter. The rules and regulations also prohibit an individual from riding a bicycle in a park, except in places specifically designated for bike riding. However, a bicyclist is permitted to push bikes in single file to and from such places, except on beaches and boardwalks.²⁴

Bicycle Messengers

Due to the number of bike messengers employed in the city, there is a specific provision under the New York City Administrative Code that applies to bicycles used for commercial purposes. Businesses that use bicycles for commercial purposes must have the name of their business on the bike as well as their business identification number and must provide the operator with a bicycle helmet meeting the standards set forth by the commissioner. During business hours, the operator of the bicycle must carry and produce on demand a numbered ID card with the operator's photo, name, home address and the business' name, address, and phone number.

Any business that chooses to use bicycles for commercial pur-

poses must maintain a log book that includes the name, identification number and place of residence of each of its employed operators as well as the date of employment and date of discharge. The bike log must track daily trips made, the operator who made such trip, including his name and identification number, and the name and place of origin of the destination.²⁵

The New York City Administrative Code also follows the New York City Traffic Rules and Regulations with regards to prohibiting bicycles from being ridden on a sidewalk. Riders who violate this provision may have their bicycles confiscated and risk being subject to legal sanctions.²⁶

Conclusion

In any personal injury action, knowledge of applicable statutes and case law is crucial to competent handling of the matter. As more individuals look for ways to economize, bicycles are becoming a more popular mode of transportation. Bicyclists are subject to most of the same duties as motor vehicles, as well as many other statutory requirements, which could result in a jury charge of negligence per se against a cyclist. With an increase in the number of bicyclists, it is more important than ever that practitioners are prepared for the pavement wars that are bound to continue.

1. See New York City: Department of City Planning, Bicycle Network Development, Benefits of Bicycling (2011) available at <http://www.nyc.gov/html/dcp/html/bike/home.shtml>.
2. New York City: Department of Transportation, Bicyclists: Bicycle Statistics and Reports (2011) available at <http://www.nyc.gov/html/dot/html/bicyclists/bikestats.shtml>.
3. Id.
4. DNAINfo.com, Bike Ridership up 14 Percent Citywide, DOT says, July 28, 2011 available at <http://www.dnainfo.com/20110728/manhattan/bike-ridership-up-14-percent-citywide-dot-says>.
5. New York City, N.Y., Rules, Tit. 34, Ch. 3.
6. See New York Vehicle and Traffic Law (VTL) §1151.
7. VTL §1230.
8. *Oeschger v. Fullforth*, 51 A.D.2d 864, 380 N.Y.S.2d 171 (1976); See N.Y. Ins. Law §5102, §5103, and §5104.
9. VTL § 102; New York City, N.Y., Rules, Tit. 34, §4-01.
10. VTL §1232 (a).
11. VTL §1236.
12. VTL §1236(d), (c) and (b), respectively.
13. VTL §1235.
14. VTL §1232 (b), 1233.
15. VTL §1234 (a) and (b).
16. VTL §1222-a.
17. VTL §1234 (c).
18. VTL §1237, *Dobrovinskaya v. Dembitzer*, 77 A.D.3d 980, N.Y.S.2d (2d Dept. 2010) (Sole proximate cause of bicycle-car accident was bicyclist's failure to signal her intended movement or to ascertain whether desired lane change could be made with safety, thus precluding motorist's liability in bicyclist's personal injury action).
19. See N.Y. Pattern Jury Instr. 2:49 (citing *Branch v. Stehr*, 93 A.D.2d 849, 461 N.Y.S.2d 346 (2d. Dept. 1983)).
20. VTL §1238(2), (5), (5-a), (8).
21. *Dean v. Holland*, 76 Misc.2d 517 (1973); See also *Phelan v. State*, 804 N.Y.S.2d 886, 901 (2005) (Discussing that adult bicyclist's damages would not be diminished for failure to wear a helmet when no evidence or persuasive testimony was proffered to establish that her injuries would have been avoided or diminished had she worn a helmet).
22. VTL §102-b.
23. 34 NYCRR §4-08(e)(9), 4-12(c)(p).
24. 34 NYCRR §4-07(3)(l), (c). See also N.Y.C. Admin. Code §19-176.
25. N.Y.C. Admin. Code §10-157.
26. N.Y.C. Admin. Code §19-176; See also 34 NYCRR §4-07.