

1-1963

Speed Laws and Burdens of Proof

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Recommended Citation

Charles E. Chase, *Speed Laws and Burdens of Proof*, 14 HASTINGS L.J. 451 (1963).
Available at: https://repository.uchastings.edu/hastings_law_journal/vol14/iss4/9

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NOTES

SPEED LAWS AND BURDENS OF PROOF

In using its power to promote public safety, the California Legislature has enacted statutes restricting the speed of vehicles using the streets, roads, and highways. These statutes impose upon the California driver three speed limit rules: a maximum speed limit,¹ prima facie speed limits,² and a basic speed law.³ The subject of this inquiry is the requirements these speed rules impose on the driver and the burdens of proof these speed rules require in civil and criminal trials.

Three Speed Laws

On January 1, 1960 a *maximum speed limit* of 65 miles per hour became effective.⁴ This speed limit sets an absolute speed on all vehicles, although certain types of vehicles may be restricted to a lower speed limit.⁵

The *prima facie speed limits* are determined by the nature of the area through

¹ CAL. VEH. CODE § 22349: "Maximum Speed Limit. No person shall drive a vehicle upon a highway at a speed greater than 65 miles per hour."

² CAL. VEH. CODE § 22352: "Prima Facie Speed Limit. The prima facie limits are as follows and the same shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(a) Fifteen miles per hour:

When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the railway for a distance of 400 feet in both directions along such railway. This subdivision does not apply in the case of any railway grade crossing where human flagman is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

When traversing any intersection of highway if during the last 100 feet of his approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all such highways, except at an intersection protected by stop signs, or yield right-of-way signs, or controlled by official traffic control signals.

(b) Twenty-five miles per hour:

On any highway other than a state highway, in any business or residence district unless a different speed is determined by local authority under procedures set forth in this code.

When passing a school building or the grounds thereof, contiguous to the highway while children are going to or leaving such school during opening or closing hours or during the noon recess period. Such prima facie limit shall also apply when passing any other school grounds which are not separated from the highway by a fence, gate or other physical barrier while the grounds are in use by children."

³ CAL. VEH. CODE § 22350: "Basic Speed Law. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

⁴ CAL. VEH. CODE § 22349.

⁵ CAL. VEH. CODE §§ 22406, 22408, 22414, 22412.

which a street passes. The usual areas in which these limits are applicable are residential and business districts, blind intersections, obstructed railroad crossings, and school buildings and grounds during school hours.⁶

Prior to 1959, if the area was not posted with a sign designating the prima facie speed limit, the highway speed limit was applicable.⁷ This posting requirement was deleted when the California vehicle code was revised in 1959.⁸ In *Beard v. David*⁹ the court stated that the posting of signs is not necessary, and whether the area was one in which a prima facie speed limit was applicable is to be shown by proof of facts as to the nature of the area. For instance, for a business district the criterion is that for 600 feet 50 percent or more of the property fronting on the street is occupied by buildings used for business;¹⁰ for a residential district that one side of the street has 13 or more separate dwellings within one-quarter of a mile fronting the street.¹¹

Local authorities may by ordinance determine and declare prima facie speed limits less than the 65 mile per hour maximum and they may range from 25 to 60 miles per hour.¹² These speed variations are effective when appropriate signs are erected upon the street.¹³ This posting requirement applies only when local authorities have set prima facie limits other than as required by statute.

Thus, in addition to observing the maximum speed limit, the California driver must observe the prima facie speed limit of less than the maximum when it is applicable.¹⁴ These prima facie speed limits apply to all vehicles.¹⁵

The *basic speed law* is a codification of the common law. It has been attacked as being invalid for indefiniteness, but has nevertheless been held to be constitutional.¹⁶

It is a general principle of California law that the operator of a vehicle may not escape liability by saying that he was not exceeding the speed limit established by statute or ordinance.¹⁷ The basic speed law can be violated regardless of the posted *prima facie speed law* since it is governed by a different objective standard—what is reasonable and proper under the circumstances. There have been a great many California decisions in which the speed was considered excessive even though the driver was driving at a speed less than the maximum or the prima facie speed limit.¹⁸ Thus, the maximum speed limit does not

⁶ CAL. VEH. CODE § 22352.

⁷ *Clark v. Pamplin*, 147 Cal. App. 2d 676, 305 P.2d 950 (1957).

⁸ Cal. Stat. 1959, c. 3, p. 1691. deleted the words "in which event the speed designated on the sign shall be the prima facie limit."

⁹ 179 Cal. App. 2d 175, 3 Cal. Rptr. 651 (1960).

¹⁰ CAL. VEH. CODE § 235.

¹¹ CAL. VEH. CODE § 515.

¹² CAL. VEH. CODE § 22358.

¹³ CAL. VEH. CODE § 22358.

¹⁴ *Fortier Trans. Co. v. Union Packing Co.*, 96 Cal. App. 2d 748, 216 P.2d 470 (1950).

¹⁵ *Ibid.*

¹⁶ *Ex Parte Daniels*, 183 Cal. 636, 192 Pac. 442, 21 A.L.R. 1172 (1920); *People v. DeCausas*, 150 Cal. App. 2d 274, 309 P.2d 835 (1957).

¹⁷ *Opitz v. Schenck*, 178 Cal. 636, 174 Pac. 40 (1918).

¹⁸ *Reaugh v. Cudahy Packing Co.*, 189 Cal. 335, 208 Pac. 125 (1922); *Opitz v. Schenck*, 178 Cal. 636, 174 Pac. 40 (1918); *Graf v. Garcia*, 117 Cal. App. 2d 792, 256 P.2d 995 (1953); *Grasso v. Cunial*, 106 Cal. App. 2d 294, 235 P.2d 32 (1951).

constitute permission to drive an automobile at the maximum speed limit under all circumstances.¹⁹

The terms "reasonable" and "proper" refer to the speed of the vehicle and not the manner of driving.²⁰ In a criminal action an appellate court said that the complaint was faulty as it alleged, as a violation of the basic speed law, the manner of driving rather than driving at a speed which endangered the safety of persons or property.²¹ In *People v. Cole*,²² the court stated that mere speed constitutes a violation of the basic speed law, and the absence of an accident is immaterial.

The basic speed law requires the exercise of judgment on the part of the driver. The driver is bound to know the conditions which dictate the speed at which he can drive with a reasonable degree of safety. These conditions are: the driver's car, his ability to handle that car, and knowledge of his ability to come to a stop at different speeds and under different highway conditions.²³

Burden of Proof in Civil Trial

In a civil action, *the maximum speed statute* presents little trouble. All that is required to prove negligence is the fact that the defendant exceeded that limit. In cases where trucks have exceeded the maximum limit applicable to such vehicles, California courts have held the excessive speed itself constituted negligence *per se*.²⁴ In *Lewis v. Franklin*,²⁵ the court stated that if the jury believed that the defendant was exceeding the maximum speed limit, then the defendant was guilty of negligence as a matter of law and it was error to instruct otherwise.

The *prima facie limit* presents more of a problem to the plaintiff in a civil action. The fact that the defendant has exceeded a *prima facie* speed limit does not constitute negligence *per se*.²⁶ It is necessary for the plaintiff to establish, as a fact, that the operation of the vehicle at a speed exceeding the applicable *prima facie* limit was unreasonable and improper *under the circumstances*.²⁷ This burden is placed on the plaintiff by statute.²⁸ This statute applies only to *prima facie* speed limits and not to the maximum speed limit.

Whenever a plaintiff alleges that the defendant exceeded the basic speed law, he is directly alleging that the defendant was negligent. The plaintiff must

¹⁹ *Walters v. Du Four*, 132 Cal. App. 72, 22 P.2d 259 (1933).

²⁰ *People v. Banat*, 39 Cal. App. 2d Supp. 765, 100 P.2d 374 (App. Dept., Super. Ct., Los Angeles 1940).

²¹ *Ibid.*

²² 124 Cal. App. 2d Supp. 904, 269 P.2d 247 (App. Dept., Super Ct., San Bernardino, 1954).

²³ *Wilding v. Norton*, 156 Cal. App. 2d 374, 319 P.2d 440 (1957).

²⁴ *Lewis v. Franklin*, 161 Cal. App. 2d 177, 326 P.2d 625 (1958); *Fortier Trans. Co. v. Union Packing Co.*, 96 Cal. App. 2d 748, 216 P.2d 470 (1950); *Wood v. Moore*, 64 Cal. App. 2d 144, 148 P.2d 91 (1944).

²⁵ 161 Cal. App. 2d 177, 326 P.2d 625 (1958).

²⁶ *Miller v. Northwestern Pacific R.R.*, 206 Cal. App. 2d —, 24 Cal. Rptr. 99 (1962); *Williams v. Cole*, 181 Cal. App. 2d 70, 5 Cal. Rptr. 24 (1960); *Faselli v. Southern Pac. Co.*, 150 Cal. App. 2d 644, 310 P.2d 698 (1957); *Jones v. Fat*, 86 Cal. App. 2d 823, 195 P.2d 933 (1948).

²⁷ CAL. VEH. CODE § 40831.

²⁸ CAL. VEH. CODE § 40831.