

1986

Wayne Sandoval v. Ida Tsosie Smith : Brief of Appellant

Utah Court of Appeals

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BEFORE THE SUPREME COURT OF THE STATE OF UTAH

WAYNE SANDOVAL, individually)
and as Guardian Ad Litem)
for his minor children,)
LAVATO SANDOVAL, SHAWNIELLE)
SANDOVAL, & DANIELLE)
SANDOVAL,)

Plaintiffs/
Appellants,)

vs.)

LEE FOSTER SMITH,)

Defendant/
Respondent.)

860307 CA
Case No. 20648

APPELLANTS' PETITION

Appeal from a Judgment of the Fourth Judicial
District Court for Utah County, State of Utah, the
Honorable David Sam, presiding.

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NOV 5 1985

Clerk, Supreme Court, Utah

BEFORE THE SUPREME COURT OF THE STATE OF UTAH

WAYNE SANDOVAL, individually)	
and as Guardian Ad Litem)	
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Plaintiffs/)	
Appellants,)	Case No. 20648
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vs.)	
)	
IDA TSOSIE SMITH,)	
)	
Defendant/)	
Respondent.)	
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)	

APPELLANTS' BRIEF

Appeal from a Judgment of the Fourth Judicial
District Court for Utah County, State of Utah, the
Honorable David Sam, presiding.

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IDA TSOSIE SMITH,)	
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Defendant/)	
Respondent.)	
)	
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APPELLANTS' BRIEF

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The single issue presented for review is whether the trial judge erred in granting a directed verdict at the end of plaintiffs' case without letting the issues be presented to the jury.

MOTOR VEHICLE STATUTES, RULES AND REGULATIONS

The following statutes regarding traffic rules and regulations of the State of Utah are

referred to by statute and number here and full copies of each Utah State statute is reproduced in Addendum "A," attached hereto and by this reference made a part hereof:

41-6-46 Speed Regulations

41-6-53 and 41-6-54 Duty to Drive
on Right Side of Highway

41-6-61 Roadway Divided into Marked Lanes

41-6-80 Vehicles to Exercise Due Care to
Avoid Pedestrians

41-6-118 Lights and Illuminating Devices

STATEMENT OF THE CASE

At the end of the two-day trial before the Court sitting with a jury, plaintiffs rested their case and defendants moved for a Rule 50 Directed Verdict on the grounds that plaintiffs had not proven a prima facie case. Judge David Sam granted the motion and dismissed the case without allowing it to go to the jury. Appeal is made here from that dismissal.

STATEMENT OF FACTS

This action was brought by the appellant on behalf of himself and on behalf of himself as Guardian Ad Litem for his three minor children

seeking damages from the defendant for wrongful death of his wife and the mother of his children, she having been killed in a pedestrian/auto accident which occurred approximately 11:00 p.m. on the 29th of May, 1982 on U.S. Highway 89, south and east of Kanab, Utah (see, trial transcript page 97 and deposition of Ida Tsosie Smith page 3 through 9).

The highway at that point consists of two 12-foot traffic lanes with a dividing line down the center and a 6-foot wide parking lane on the right of each traffic lane with an approximate 6-foot gravel shoulder (trial transcript page 91 and 92). The road is straight and relatively flat for a substantial distance in both directions from point of the accident.

The Sandovals were traveling in a four-wheel drive Blazer headed for Page, Arizona. The driver was Virginia Sandoval. She pulled off the road onto the gravel shoulder and parked the Blazer to allow the occupants of the vehicle to go to the bathroom. Since they had picked up a male hitchhiker, Virginal Sandoval exited the car on the driver's side and walked across the street,

while her husband and children went to the bathroom outside the right-hand side door of the car. The Blazer's emergency flashers were in operation. (See, trial transcript of recorded statement of Phil Ellsworth page 3.)

Mrs. Sandoval started back toward the parked vehicle, entered the westbound lane of traffic where she stopped near the center line to allow the respondent's eastbound vehicle to pass. (See, trial transcript page 97-98.)

Respondent, whose attention was on the parked vehicle, did not see the pedestrian standing in the street until instantaneously before impact. Her car was partly in the opposing lane of traffic, (see, transcript page 141) and she hurriedly pulled her car to the right (see, transcript page 101). Mrs. Smith's vehicle was damaged around the left front headlight and the driver's side rearview mirror. (See, page 101 trial transcript and Smith Deposition page 15.)

Respondent was driving at the time at approximately 40-45 miles an hour, (see, trial transcript page 101) with her headlights on low beam (Smith deposition page 16). She had no

explanation and could give no reason why she did not see the pedestrian standing in the street (see, Smith deposition pages 21-22). The impact with the car threw Virginia Smith's body 40 to 45 feet down the road (see, trial transcript page 36).

SUMMARY OF ARGUMENTS

1. RESPONDENT VIOLATED HER DUTY TO DRIVE AT A SAFE SPEED SO AS TO AVOID HAZARD TO PEDESTRIANS LAWFULLY ON THE ROAD. (U.C.A. 41-6-46)

2. RESPONDENT VIOLATED HER STATUTORY DUTY TO DRIVE WITHIN THE RIGHT-HAND LANE OF TRAFFIC. (U.C.A. 40-6-53 and 41-6-54)

3. RESPONDENT VIOLATED HER DUTY TO NOT DRIVE IN THE OPPOSING LANE OF TRAFFIC. (U.C.A. 41-6-61)

4. RESPONDENT VIOLATED HER STATUTORY DUTY AS A VEHICLE DRIVER TO EXERCISE DUE CARE AND TO KEEP A PROPER LOOKOUT. (U.C.A. 41-6-80)

5. VIOLATION OF A STATUTORY TRAFFIC REGULATION CONSTITUTES PRIMA FACIE EVIDENCE OF NEGLIGENCE.

6. THE EVIDENCE WHEN TAKEN IN THE LIGHT MOST FAVORABLE TO PLAINTIFF PRECLUDES THE COURT ENTERING A JUDGMENT FOR NO CAUSE OF ACTION.

ARGUMENT

POINT I

RESPONDENT VIOLATED HER DUTY TO DRIVE AT A SAFE SPEED SO AS TO AVOID HAZARD TO PEDESTRIANS LAWFULLY ON THE ROAD.

Section 41-6-46 of the Utah Code, a portion of the Motor Vehicle Code dealing with speed regulations says in pertinent part:

41-6-46(1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching or going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. (Emphasis added.)

The defendant/respondent Ida Tsosie Smith at trial of this matter testified that as she approached the location where the Sandoval car was parked off to the side of the road:

All of a sudden just out of I don't know where it seemed like I blinked my eyes and there was somebody in front of me and right at that time there was a car coming ahead too facing me with a high beam that kinda

blinded me too and not knowing what I was seeing there for a while but the minute I saw my daughter scream and I saw somebody standing there or something I said anyway I hurried and swerved my car to my right to avoid this object in the road. (Trial transcript pages 97,98.)

Mrs. Smith had testified in her deposition that she did not see the pedestrian until she was approximately three feet from her. She changed that testimony at the trial and testified that she saw the pedestrian first when only a car length from her. See, trial transcript page 100.

With respect to her speed, Mrs. Smith testified that she had been traveling 45 miles an hour and that when she saw the parked car she reduced to 40 miles an hour, See, trial transcript page 101, but that at the speed she was going she could do nothing but attempt to turn to the right but that attempt was too late to avoid collision with the stationary pedestrian.

Section 41-6-46 of the Utah Code quoted above has been the recent subject of discussion in the case of Apache Tank Lines Inc. v. Cheney v. Cowboy Oil, 18 Utah Advance Reports 19 (Supreme Court No. 19573, filed September 20, 1985).

Apache Tank Lines v. Cheney was a very similar case to this one in that it is an action by surviving family members for the wrongful death of Mrs. Cheney.

In discussion of 41-6-46 on page 21 of the Apache case, the Court remarked:

Whether Brunson breached the conduct imposed by the statute was a question for the jury. From the evidence before the trial court a jury could reasonably find that Brunson was driving too fast for existing hazardous conditions; that he was overdriving the area illuminated by his trucks two low-beam headlights; and that he was fatigued, took no evasive action and failed to keep a proper lookout. The trial court invaded the province of the jury when it granted Brunson and Cowboy Oil Company summary judgment.

The case was remanded for a new trial on the merits.

POINT II

RESPONDENT VIOLATED HER STATUTORY DUTY TO DRIVE WITHIN THE RIGHT-HAND LANE OF TRAFFIC.

Section 41-6-53 of the Utah Code mandates that it is the duty of a driver upon all roadways of sufficient width to drive upon the right half of the roadway except under certain specified

conditions, none of which have any application here.

Section 41-6-54 provides:

Drivers of vehicles proceeding in opposite direction shall pass each other to the right and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

In the scenario before the trial court, the respondent driver, Mrs. Smith, approached an area where she observed off to the right of her a car parked on the shoulder of the highway. She simultaneously observed a vehicle approaching from the opposite direction. See, trial transcript page 97. Mrs. Smith was asked (trial transcript page 98):

q) Where was the pedestrian standing in the road?

a) I would say right in the middle and she was not running across or nothing she just stood there with her hands up like this (ind) in front of me.

In response to the same question she responded later (trial transcript page 99).

q) Where was she with respect to the center line of the road?

a) Well I really couldn't say. It is in the middle, the light hitting in my face with the oncoming car but if I would move over a little bit she was just right even with my left wheel of my car ...

q) So you don't know where you were or where she was with respect to the center line?

a) Somewhere right there in the middle anyway (trial transcript page 99).

Again later in cross-examination the following exchange took place (trial transcript page 140):

q) Well, I asked you the question, well you have indicated that she was standing on the center mark and then you answer?

a) Yes she was standing in the middle. I pulled over when I passed the car so that if there would be anybody standing there or anything. I just automatically went in the center lane to pass the car that was parked on the roadside.

q) Then I ask the question, your car then must have been partly in the other lane of traffic, the lane that was headed toward Kanab, is that right?

a) A little bit maybe, yes, maybe a little bit over.

q) Then if you will turn to the next page I ask the question on line 9, but is it a fact that she was on the

center line and that your car was partly in both lanes?

a) Yes, I pulled over to my left a little bit to pass the vehicle that was parked on the roadside ...

q) Well at the time you first saw her and you say you cranked your car to the right, how much of your car was in oncoming lane of traffic and how much was in your own lane of traffic?

a) If I was over then I will say maybe a foot, part of the car and when I turned I just really turned to the right to avoid hitting her.

It is evident from the foregoing that a jury could well have believed the evidence of the defendant/respondent that at the time the impact occurred with the pedestrian that the pedestrian was at or near the center line of the street and that Mrs. Smith's car was a foot or so into the wrong lane of traffic. Had she been wholly within her own lane of traffic, Mrs. Sandoval would be alive today.

POINT III

RESPONDENT VIOLATED HER DUTY TO NOT DRIVE IN THE OPPOSING LANE OF TRAFFIC.

Both Sections 40-6-54 quoted in Point II above and Section 41-6-61 of the Utah Code mandate that a vehicle at all times be driven within a

single lane of traffic. 41-6-61 says in pertinent part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:

1. A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety ...
(Emphasis added.)

As applied to the fact situation before the Court, whether Mrs. Smith violated that duty was a jury question and the Court erred in infringing on that duty. See, Apache v. Cheney v. Cowboy Oil Company, supra.

POINT IV

RESPONDENT VIOLATED HER STATUTORY DUTY AS A VEHICLE DRIVER TO EXERCISE DUE CARE AND TO KEEP A PROPER LOOKOUT (41-6-80 U.C.A.)

Section 41-6-80 of the Utah Code which deals with pedestrian's rights and duties vis-a-vis motor vehicles states the duty of the vehicle driver when a pedestrian is in the area in the following words:

41-6-80 Notwithstanding other provisions of this chapter or any local

ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human powered vehicle and shall give an audible signal when necessary and exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.

Only one Utah Supreme Court case has been disclosed by research to construe this section. That is the case of Rivas v. Pacific Finance, 397 P.2d 900. In that case which involved a vehicle accident which took the life of a small child playing in the street on a sleigh the Court correctly held:

Applying the above rules to the evidence as we view it, we agree with the conclusion of the trial court that there is a basis therein upon which reasonable minds could differ both as to the negligence of the defendant and the contributory negligence of the plaintiff. Accordingly, these questions were properly submitted to the jury for determination.

It was improper for the Court to substitute its judgment for that of the jury under the circumstances.

POINT V

VIOLATION OF THE STATUTORY TRAFFIC
REGULATION CONSTITUTES PRIMA FACIE
EVIDENCE OF NEGLIGENCE.

As a general rule, violation of the standard of safety set by a statute or ordinance is prima facie evidence of negligence. In commenting on this general rule, the Supreme Court in the case of Hall v. Warren, 632 P.2d 848, a 1981 Utah Supreme Court case set forth the following terms and conditions under which this rule comes into effect (page 850):

To invoke the rule, a party must show (1) the existence of the statute or ordinance, (2) that the statute or ordinance was intended to protect the class of persons which include the party, (3) that the protection is directed toward the type of harm which has in fact occurred as a result of the violation, and (4) that the violation of the ordinance or statute was a proximate cause of the injury complained of.

It is submitted that based upon the evidence placed before the jury that the plaintiff/appellant had met all of those requirements, not once but several times. Within the purview of each of the statutes quoted above, the jury, based upon the only evidence before it at the time, could

certainly have found that Mrs. Smith was guilty of driving at a speed too fast for the conditions then in existence, that she had failed to keep a proper lookout and to observe what was clearly to be seen, that she failed to drive entirely within her own traffic lane and it is submitted that keeping a 6-foot wide car within a 12-foot wide traffic lane is not really that demanding of a driver, and that she had negligently allowed her car to drift into the opposing lane of traffic even though there was an approaching car in that lane and that she had driven into an area where she should reasonably have anticipated the presence of pedestrian traffic and that for reasons known only to her she had not observed the pedestrian standing waiting for her to pass, but had in fact swerved out of her own lane of traffic and picked off the stationary pedestrian.

As the Court stated in Hall v. Warren, supra, at page 851:

The summary judgment in the instant case cannot be sustained. The allegations, if proven, may support a claim in negligence. Moreover, the record reveals disputed issues of material facts.

As in the Hall case, this case should be reversed and sent back for a jury determination.

POINT VI

THE EVIDENCE WHEN TAKEN IN THE LIGHT
MOST FAVORABLE TO THE PLAINTIFF
PRECLUDES THE COURT ENTERING A
JUDGMENT FOR NO CAUSE OF ACTION.

It is axiomatic that when a court has taken the very questionable position of depriving a jury of its rightful prerogative to decide contested issues of fact that those facts should be taken in the light most favorable to the party ruled against. This position was so even under earlier law pertaining to contributory negligence but now that the laws of the State of Utah have done away with contributory negligence and have erected in its place the law of comparative negligence there is ever more reason to let such contested issues go to the jury rather than have the judge summarily dispose of them. As stated in the case of Williams v. Melby, 699 P.2d 923, a very recent 1985 decision by the Utah Supreme Court:

Even though plaintiff may have been negligent, summary judgment is an altogether inappropriate procedure

for assessing her degree of negligence against the negligence of the defendants. In the days when contributory negligence was an absolute defense in a negligence action, summary judgment could be used to dispose of negligence actions without depriving a plaintiff of his right to a trial on the merits. Now, however, contributory negligence is not an absolute defense, and summary judgment is rarely an appropriate remedy for resolving negligence actions. (Page 723).

In another very recent case decided by the Supreme Court August 9, 1985, the case Wessel v. Erickson, 15 Utah Advance Reports 36 (Supreme Court No. 19219), the Court very clearly differentiated between a Rule 41(b) motion which permits a court trying a case without a jury to grant a Motion to Dismiss at the end of plaintiff's case, from a Rule 50(a) motion for a directed verdict in a case tried by a jury before the Court, at page 37:

Rule 41(b) permits a Court trying a case without a jury to grant a motion to dismiss when it concludes 'that upon the facts and the law the plaintiff has shown no right to relief.'

The trial court is not precluded from granting such a motion merely because the plaintiff has made out a prima facie case. As it is when ruling

upon a Rule 50(a) motion for the directed verdict in a case tried to a jury. See, e.g., Utah State National Bank v. Livingston, 69 Utah 284, 290-91, 254 P. 781, 784 (1927); Cruz v. Montoya, 660 P.2d 723, 728 (Utah, 1983).

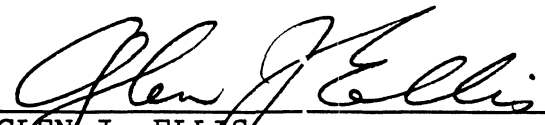
In Cruz v. Montoya, 660 P.2d 723, the Court discussed the function of a directed verdict on pages 728 and 729. The Court held, citing many cases therein, that in directing a verdict the trial court may not weigh the evidence, that the Court must consider the evidence in a light most favorable to the party against whom the motion is directed and resolve controverted facts in his favor and if the evidence and its inferences would cause reasonable men to arrive at different conclusions as to whether the essential facts were not proved then the question was one of fact for the jury. Unless the evidence is wholly lacking and incapable of reasonable inference to prove some issue which supports the plaintiff's claim, the Court should not direct a verdict for the defendant.

CONCLUSION

It is submitted that with the evidence being for the jury, the Court in the instance before the


Bar was wholly in violation of the jury's prerogative and the facts were sufficient to sustain a jury determination and the Court was guilty of violating these restrictions on its power and should be reversed.

Respectfully submitted this 28th day of OCTOBER, 1985.


GLEN J. ELLIS

NOTICE OF MAILING

Mailed two copies of the foregoing Appellants' Brief to respondent's attorneys, Ray H. Ivie and Ray Phillips Ivie, at their known address 48 North University, P.O. Box 672, Provo, Utah 84603; and ten copies to the Clerk of the Supreme Court, 332 State Capitol Building, Salt Lake City, Utah 84114, postage prepaid, this 28th day of OCTOBER, 1985.


GLEN J. ELLIS, Attorney

will be prohibited from consuming alcoholic beverages as provided in subsection (1).

(5) The provisions of subsection (2) shall not apply to passengers traveling in any duly licensed taxicab or bus.

(6) Any person convicted of a violation of this section is guilty of a class B misdemeanor. 1981

41-6-44.30. Seizure and impoundment of vehicles by category I peace officers.

The legislature finds that it is contrary to the safety of the public to leave vehicles unattended on public roads.

(1) If a category I peace officer arrests or cites the driver of a vehicle for violating Section 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44, which complies with Subsection 41-6-43(1), the officer shall seize and impound the vehicle except as provided under Subsection (2).

(2) If a registered owner of the vehicle, other than the driver, is present at the time of arrest, the officer may release the vehicle to that registered owner, but only if the registered owner:

(a) requests to remove the vehicle from the scene;

(b) presents to the officer a valid driver's license and sufficient identification to prove ownership of the vehicle;

(c) complies with all restrictions of his driver's license; and

(d) would not, in the judgment of the officer, be in violation of Section 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44, which complies with Subsection 41-6-43(1), if permitted to operate the vehicle, and if the vehicle itself is legally operable.

(3) Any officer who impounds a vehicle under this section shall remove, or cause the vehicle to be removed, to the nearest accessible impound yard that meets the standards set by rule by the Division of Motor Vehicles, or if none, to a garage or some other reasonably safe place. The impound yard standards set by the Division of Motor Vehicles shall be fair and reasonable and shall be unrestricted as to number of impound yards per geographical area. The peace officer or agency by whom the officer is employed shall, within 24 hours after the seizure, notify the Division of Motor Vehicles of the seizure and impoundment. The notice shall set forth the driver's name, a description of the vehicle, its identification number, if any, its license number, the date, time, and place of impoundment, the reason for impoundment, and the name of the garage or place where the vehicle is stored.

(4) Upon receipt of notice, the Division of Motor Vehicles shall give notice to the registered owner of the vehicle in the manner prescribed by Section 41-1-16. The notice shall set forth the date, time, and place of impoundment, the name of the person driving the vehicle at the time of seizure, the reason for seizure and impoundment, and the name of the garage or place where the vehicle is stored. It shall also inform the registered owner that the person is responsible for payment of towing, impound, and storage fees charged against the vehicle. The notice shall also inform the registered owner of the vehicle of the conditions as prescribed in Subsection (5) which must be satisfied before the vehicle can be released.

(5) The impounded vehicle shall be released after the registered owner or the owner's agent (a) makes a claim in person for release of the vehicle at any

office of the State Tax Commission, (b) pays an impound fee of \$25, (c) presents identification sufficient to prove ownership of the impounded vehicle, and (d) pays all towing and storage fees to the impound lot where the vehicle is stored. All impound fees assessed under this subsection shall be treated as dedicated revenue to the Division of Motor Vehicles.

(6) Any impounded vehicle not claimed by the registered owner or the owner's agent within the time prescribed by Section 41-1-117, shall be sold in accordance with that section and the proceeds, if any, disposed of in accordance with Section 41-1-117. The date of impoundment is considered the date of seizure for purposes of computing the time period provided in Section 41-1-117.

(7) Towing and storage fees shall be established by the Division of Motor Vehicles and shall be reviewed by the division annually to ensure equity for vehicle owners and towing and storage operators. Towing, impound, or storage fees are a lien on the vehicle.

(8) The registered owner of the vehicle upon the payment of all fees and charges incurred in the seizure and impoundment of the owner's vehicle has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the driver of the vehicle whose actions caused the impoundment.

(9) No liability may be imposed upon any peace officer, the state, or any of its political subdivisions on account of the enforcement of this section. 1984

41-6-45. Reckless driving - Penalty.

(1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(2) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five days nor more than six months or by a fine of not less than \$25 nor more than \$299, or by both such fine and imprisonment. On a second or subsequent conviction, the person shall be punished by imprisonment for not less than ten days nor more than six months, or by a fine of not less than \$50 nor more than \$299 or by both such fine and imprisonment. 1978

Article 6. Speed Restrictions

41-6-46. Speed regulations - Safe and appropriate speeds at intersections, crossings, and curves - Prima facie speed limits - Emergency power of the governor.

41-6-47. Prima facie limit.

41-6-48. Speed restrictions - Powers of local authorities.

41-6-49. Minimum speed regulations.

41-6-50. Special speed limit on bridges - Prima facie evidence.

41-6-51. Speed contest or exhibition on highway - Barricade or obstruction therefor.

41-6-52. Violation - Pleading.

41-6-52.1. Repealed.

41-6-46. Speed regulations - Safe and appropriate speeds at intersections, crossings, and curves - Prima facie speed limits - Emergency power of the governor.

(1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing

an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(2) Where no special hazard exists the following speeds shall be lawful but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(a) Twenty miles per hour.

When passing a school building or the grounds thereof during school recess or while children are going to or leaving school during opening or closing hours; provided, that local authorities may require a complete stop before passing a school building or grounds at any of said periods.

(b) Twenty-five miles per hour in any urban district.

(c) Fifty-five miles per hour in other locations.

The speed limits set forth in this section may be altered as authorized in subsection (3) and sections 41-6-47 and 41-6-48.

(3) The governor by proclamation, in time of war or emergency, may change the speed on the highways of the state. 1978

41-6-47. Prima facie limit.

Whenever the department of transportation shall determine upon the basis of an engineering and traffic investigation that any prima facie speed heretofore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a state highway, said department of transportation may determine and declare a reasonable and safe prima facie speed limit thereat which shall be effective when appropriate signs giving notice are erected at such intersection or other place or part of the highway. 1979

41-6-48. Speed restrictions - Powers of local authorities.

(1) Whenever local authorities in their respective jurisdiction determine on the basis of an engineering and traffic investigation that the prima facie speed permitted under this article is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe prima facie limit thereon which:

(a) Decreases the limit at intersections; or

(b) Increases the limit within an urban district; or

(c) Decreases the limit outside an urban district, but not to less than 35 miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper prima facie speed for all arterial streets and shall declare a reasonable and safe prima facie limit thereon which may be greater or less than the prima facie speed permitted under this chapter for an urban district.

(3) Any altered limit established as herein above authorized shall be effective when appropriate signs giving notice thereof are erected upon such street or highway.

(4) The department of transportation shall have exclusive authority to determine and declare prima facie evidence of a lawful speed on state highways whether such highways be within or without the

corporate limits of any city. 1978

41-6-49. Minimum speed regulations.

(1) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when:

(a) Reduced speed is necessary for safe operation;

(b) Upon a grade;

(c) Reduced speed is necessary because of adverse weather conditions;

(d) In compliance with official traffic control devices; or

(e) Preparing to turn left or enter a left lane exit ramp.

(2) Operating a motor vehicle on a controlled access highway at less than the lawful maximum speed side by side with and at the same speed as a vehicle operated in the adjacent right lane constitutes evidence of impeding or blocking normal movement of traffic.

(3) Whenever the department of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the department of transportation or such local authority may determine and shall post a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation.

(4) A violation of this section is a class B misdemeanor. 1983

41-6-50. Special speed limit on bridges - Prima facie evidence.

(1) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(2) The department of transportation upon request from any local authority shall, or upon its own initiative, may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it finds that such structure cannot with safety withstand vehicles traveling at the speed otherwise permissible under this chapter, the department of transportation shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

(3) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by the department of transportation and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure. 1978

41-6-51. Speed contest or exhibition on highway - Barricade or obstruction therefor.

(a) No person shall engage in any motor vehicle speed contest or exhibition of speed on a highway and no person shall aid or abet in any such motor vehicle speed contest or exhibition on any highway.

(b) No person shall, for the purpose of facilitating or aiding or as an incident to any motor vehicle speed contest upon a highway, in any manner obstruct or place any barricade or obstruction or

assist or participate in placing any such barricade or obstruction upon any highway. 1953

41-6-52. Violation - Pleading.

(a) In every charge of violation of any speed regulation in this act the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the prima facie speed applicable within the district or at the location.

(b) The provisions of this act declaring prima facie speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident. 1953

41-6-52.1. Repealed. 1975

Article 7. Regulations Applicable to Driving on Right Side of Highway, Overtaking, Passing and Other Rules of the Road

41-6-53. Duty to drive on right side of highway - Exceptions.

41-6-54. Passing vehicles proceeding in opposite directions.

41-6-55. Overtaking and passing vehicles proceeding in same direction.

41-6-56. Passing upon right - When permissible.

41-6-57. Limitation on passing.

41-6-58. Limitations on driving on left side of road - Exceptions.

41-6-59. Signs and markings on roadway - No passing zones - Exceptions.

41-6-60. One-way traffic - Signs.

41-6-61. Roadway divided into marked lanes - Rules - Traffic-control devices.

41-6-62. Following another vehicle - Proximity and distance - Caravan or motorcade - Exception for funeral procession.

41-6-63. Repealed.

41-6-63.10. Highway divided into two separate roadways by dividing section - Unlawful actions of drivers - Dividing-section defined and described.

41-6-64. Controlled-access highways - Driving upon and from highways.

41-6-65. Controlled-access highways - Prohibiting use by class or kind of traffic - Traffic-control devices.

41-6-53. Duty to drive on right side of highway - Exceptions.

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the roadway; provided any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portions of the highway within such distance as to constitute an immediate hazard;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designed and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtak-

ing and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway. 1975

41-6-54. Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible. 1953

41-6-55. Overtaking and passing vehicles proceeding in same direction.

The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to the following provisions:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and may not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(3) On a road having more than one lane in the same direction, the driver of a vehicle traveling in a left lane shall, upon being overtaken by another vehicle in the same lane, yield to the overtaking vehicle by moving safely to the right, and may not impede the movement or free flow of traffic in a left lane except:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing this movement;

(b) when preparing to turn left;

(c) when reasonably necessary in response to emergency conditions;

(d) to avoid actual or potential traffic moving onto the right lane from an acceleration or merging lane; or

(e) when necessary to follow the highway direction signs that direct use of a lane other than the right lane.

(4) Violation of this section is a class B misdemeanor. 1985

41-6-56. Passing upon right - When permissible.

(1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle;

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement with safety. Such movement shall not be made by driving off the roadway. 1978

41-6-57. Limitation on passing.

No vehicle shall be driven to the left side of the center of the roadway in overtaking or passing

another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction of any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practical and in the event that the passing movement involves the use of a lane authorized for vehicles approaching in the opposite direction before coming within 200 feet of any vehicle approaching from the opposite direction. 1975

41-6-58. Limitations on driving on left side of road - Exceptions.

(a) No vehicle shall at any time be driven on the left side of the roadway under the following conditions:

(1) When approaching or upon a crest of a grade or a curve on the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.

(2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing.

(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in section 41-6-53(a)(2) nor to the driver of a vehicle turning left onto or from an alley, private road or driveway. 1975

41-6-59. Signs and markings on roadway - No passing zones - Exceptions.

(1) The department of transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in paragraph (1), no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its lengths.

(3) This section does not apply to the conditions described in section 41-6-53(a)(2) nor to the driver of a vehicle turning left onto or from an alley, private road or driveway. 1978

41-6-60. One-way traffic - Signs.

(a) The department of transportation and local authorities may designate any highway, roadway, part of a roadway or specific lanes under their respective jurisdictions upon which vehicular traffic shall proceed in one direction at all or such time as shall be indicated by official traffic-control devices.

(b) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction indicated by official traffic-control devices.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such

island.

41-6-61. Roadway divided into marked lanes - Rules - Traffic-control devices.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation of making or completing a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device. 1978

41-6-62. Following another vehicle - Proximity and distance - Caravan or motorcade - Exception for funeral procession.

(1) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combinations of vehicles.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions. 1978

41-6-63. Repealed.

1975

41-6-63.10. Highway divided into two separate roadways by dividing section - Unlawful actions of drivers - Dividing section defined and described.

Whenever a highway has been divided into two separate roadways by a dividing section, it shall be unlawful to drive any vehicle upon any such highway except to the right of such dividing section, or to drive any vehicle over, upon, or across any such dividing section or to make any left turn or semicircular or U-turn on any such divided highway, except through a plainly marked opening in such dividing section designed and designated for such left turn, semicircular or U-turn, unless a sign

lanes into which the lane of the driver is merging and which are so close as to be an immediate hazard. This section shall not apply to entry lanes to limited access highways. 1983

41-6-76. Emergency vehicle - Duties of respective drivers.

(a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of this act, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. 1975

41-5-76.10. Vehicle or pedestrian working upon highway - Right of way.

(a) The driver of a vehicle shall yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic-control devices.

(b) The driver of a vehicle shall yield the right of way to any authorized vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays lights meeting the requirements of section 41-6-140.20. 1975

Article 10. Pedestrians' Rights and Duties

41-6-77. Pedestrians subject to traffic-control devices - Other controls.

41-6-78. Pedestrians' right of way.

41-6-79. Pedestrians yielding right of way.

41-6-79.10. Emergency vehicle - Duties of driver and pedestrian.

41-6-79.20. Passing closed railroad or bridge gate or barrier prohibited.

41-6-80. Vehicles to exercise due care to avoid pedestrians and human-powered vehicles - Audible signals to be given.

41-6-80.1. Drivers to yield right of way to blind persons - Exceptions - Use of cane - Liability.

41-6-80.5. Vehicle crossing sidewalk - Driver to yield.

41-6-81. Pedestrians to use right half of crosswalks.

41-6-82. Walking along or upon roadways - Standing in roadway for prohibited purposes - Yielding right of way to vehicles - Pedestrians under the influence.

41-6-82.10. Unmarked crosswalk locations - Restrictions on pedestrian.

41-6-77. Pedestrians subject to traffic-control devices - Other controls.

(1) A pedestrian shall obey the instructions of any official traffic-control device specifically applicable to such pedestrian unless otherwise directed by a police officer.

(2) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in sections 64-6-24 [41-6-24] and 41-6-25.

(3) At all other places, pedestrians shall be accorded the privileges and be subject to the restrictions stated in this chapter. 1978

41-6-78. Pedestrians' right of way.

(1)(a) 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 necessary to yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard. Paragraph (1)(a) shall not apply under the conditions stated in section 41-6-79(2).

(2) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. 1978

41-6-79. Pedestrians yielding right of way.

(1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(4) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements. 1978

41-6-79.10. Emergency vehicle - Duties of driver and pedestrian.

(1) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of section 41-6-146, and visual signals meeting the requirements of section 41-6-14 or section 41-6-140, or of a police vehicle properly and lawfully making use of an audible signal, every pedestrian shall yield the right of way to the authorized emergency vehicle.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with regard for the safety of all persons using the highway, nor from the duty to exercise due care to avoid colliding with any pedestrian. 1978

41-6-79.20. Passing closed railroad or bridge gate or barrier prohibited.

No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad crossing or bridge while such gate or barrier is closed or is being opened or closed. 1975

41-6-80. Vehicles to exercise due care to avoid pedestrians and human-powered vehicles - Audible signals to be given.

Notwithstanding other provisions of this chapter or any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human powered vehicle and shall give an audible signal when necessary and exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person. 1978

- buses - Requirements.
- 41-6-153. Warning signal around disabled vehicle - Time and place.
- 41-6-154. Hazardous materials - Transportation regulations - Fire extinguishers.
- 41-6-154.10. Air conditioning equipment - Requirements.
- 41-6-154.20. Television receivers in motor vehicles prohibited if driver can see viewing screen - Exception.
- 41-6-154.50. Motorcycles - Required equipment - Brakes.
- 41-6-155. Vehicles and equipment must be in safe mechanical condition.
- 41-6-156. Inspection by officers - Certificate of inspection.
- 41-6-157. Enforcement of inspection requirements.
- 41-6-158. Periodic inspection required - Display of inspection sticker required.
- 41-6-159. Suspension of registration.
- 41-6-160. Official inspection stations - Permits - Suspension or revocation - Utah-based interstate commercial motor carriers.
- 41-6-160.5. Hearing board created - Members - Term - Meetings - Findings and conclusions - Order.
- 41-6-161. Permits not transferable - Certificate of inspection - Fees.
- 41-6-162. Falsely representing to be official station.
- 41-6-163. Counterfeit certificates of inspection.
- 41-6-163.5. Emissions inspection - Automatic repealer.
- 41-6-163.6. Emissions inspection - County program.
- 41-6-164. Violation of act - Misdemeanor.
- 41-6-164.5. Violation of chapter.
- 41-6-165. Requiring or knowingly permitting driver to unlawfully operate vehicle.
- 41-6-165.5. Government owned vehicles subject to this chapter.
- 41-6-166. Appearance upon arrest for misdemeanor - Setting bond.
- 41-6-167. Notice to appear in court - Contents - Promise to comply - Signaling - Release from custody - Official misconduct.
- 41-6-168. Violation of promise to appear as misdemeanor - Appearance by counsel.
- 41-6-169. Arrests without warrants.
- 41-6-169.10. Repealed.
- 41-6-170. Record of violation not admissible in civil action.
- 41-6-171. Conviction shall not affect credibility as a witness.
- 41-6-172. Improper disposition or cancellation of notice to appear or traffic citation - Official misconduct - Misdemeanor.
- 41-6-173. Keeping of records - Making and forwarding of abstract upon conviction or forfeiture of bail - Form and contents - Public inspection - Official misconduct.
- 41-6-174. Repealed.
- 41-6-175. Short title of act.
- 41-6-175.5. Conflict with Federal Motor Carrier Safety Regulations.
- 41-6-176. Odometer required.
- 41-6-177. Unlawful acts with respect to operation of odometer.
- 41-6-178. Statement as to odometer reading required of transferor.
- 41-6-179. Repair or replacement of odometer.
- 41-6-180. Violation of odometer requirements as misdemeanor.

41-6-117. Vehicle in unsafe condition or improperly equipped - Violation of act - Misdemeanor - Accessories - Exception as to farm implements and road machinery.

(a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the department, or which is equipped in any manner

in violation of this chapter or those regulations or for any person to do any act forbidden or fail to perform any act required under this chapter or those regulations.

(b) Nothing in this chapter or regulations of the department shall prohibit equipment required by the United States Department of Transportation nor the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or those regulations.

(c) The provisions of this chapter and regulations of the department, with respect to equipment required on vehicles, shall not apply to implements of husbandry, road machinery, road rollers or farm tractors, except as specifically made applicable.

(d) The provisions of this chapter and regulations of the department with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles, except as specifically made applicable.

(e) The provisions of this chapter and regulations of the department shall not apply to vehicles moved solely by human power, except as specifically made applicable.

(f) A federal motor vehicle safety standard which conflicts with a provision of this act shall supersede that provision as to any vehicle in compliance with the federal standard. The department shall report any such conflict to the appropriate committees or officials of the legislature and may adopt a regulation to replace the superseded provision. 1979

41-6-117.5. Permit to operate vehicle in violation of equipment regulations.

(a) The department may issue a permit which will allow operation of a vehicle in violation of the provisions of this chapter or in violation of departmental regulations.

(b) The permit shall be carried by the driver or in the vehicle and shall be displayed upon demand of a magistrate or police officer.

(c) In issuing such permits, the department may limit the time, manner or duration of operation and may otherwise prescribe conditions of operation that are necessary to protect the safety of highway users or efficient movement of traffic. Said conditions shall be stated on the permit and a person shall not violate them. 1979

41-6-118. Lights and illuminating devices - Duty to display - Time.

(a) Every vehicle upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 1,000 feet ahead shall display lighted lamps and other lamps and illuminating devices as respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and further that stop lights, turn signals and other signaling devices shall be lighted as prescribed for the use of such devices.

(b) Whenever requirement is hereinafter declared as to distance from which certain lamps and device shall render objects visible or within which such lamps or devices shall be visible, said provision shall apply during the times stated in subdivision (a) in respect to a vehicle without load when upon straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.