

5.30G DUTY OF AUTOMOBILE DRIVER TO MAKE OBSERVATIONS (Approved before 1983; Revised 03/2021)

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 the driver 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 the motorist's path of travel, as a reasonably prudent person would make.

Cases:

Ambrose v. Cyphers, 29 N.J. 138 (1959); *Schaublin v. Leber*, 50 N.J. Super. 506 (App. Div. 1953).

Statutory duty to make observations: *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 they discover that it is contrary to the fact, that all other users of the highway will exercise reasonable care in their use of the highway. *Tichenor v. Santillo*, 218 N.J. Super. 165 (App. Div. 1987).

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 the motorist's path of travel, as a reasonably prudent person would make.

Cases:

Rice Miller Crisciotti v. Greatrex, 9 N.J. Super (App. Div. 1950);
Poole v. Twentieth Century Operating Co., 121 N.J.L. 244 (E. & A. 1938); *Rice v. Miller*, 455 N.J. Super. 90 (App. Div. 2018).

3. Where View Obstructed at Intersection

The fact that an operator of an automobile cannot see up an intersecting street until they are actually in it, does not obligate them 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 their vision beyond a point where vehicles traveling at a lawful speed would threaten their 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 their 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.

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 their 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 their lights that they can observe vehicles or pedestrians at a sufficient distance to avoid contact with them at the speed they are traveling.

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 streetlights, headlights or other lights or reflections of light have the effect of causing temporary blindness, it is their duty to stop their 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 N.J. Misc. 131 (Sup. Ct. 1929); *Hammond v. Morrison*, 90 N.J.L. 15 (Sup. Ct. 1917); *McCormack v. Haines*, 9 N.J. Misc. 547 (Sup. Ct. 1931); *Pagano v. McClammy*, 159 N.J. Super. 581 (App. Div. 1978); 64 A.L.R. 3d 551 (1975); See also, N.J.S.A. 39:3-74, windshield to permit clear view.

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. 201 (E. & A. 1936); *Rapp v. Public Service Coordinated Transport, etc.*, 9 N.J. 11 (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); *Finley v. Wiley*, 103 N.J. Super. 95 (App. Div. 1968).

7. Duty as to Persons Under Disability

The operator of a car is bound to consider the lack of capacity of those in the operator's way to care for their own safety, when such incapacity is known or should be known by the operator in the exercise of reasonable care. Where the driver of a vehicle actually observes that a person is under disability, the driver is under a duty to exercise reasonable care to avoid injury to them, 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 them 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 N.J. Misc. 343 (Sup. Ct. 1927); *Bageard v. Consolidated Traction*, 64 N.J.L. 316 (E. & A. 1900); *Petrone v. Margolis*, 20 N.J. Super. 180 (App. Div. 1952); *Tabor v. O'Grady*, 61 N.J. Super. 446 (App. Div. 1960).