



Timothy A. Loranger

BAUM, HEDLUND, ARISTEI & GOLDMAN

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE

March 2017 Issue



California bicycle laws – A primer

A LOOK AT THE ISSUES A LAWYER MAY BE PRESENTED WITH UPON BEING RETAINED IN A BICYCLE CASE

California's perfect weather and scenery create a wonderful background for those of us who enjoy bicycling. Bicycles provide an excellent form of exercise, opportunity for recreation, and an alternative means of transportation. Bicycles are also environmentally friendly and an alternative to gas-burning motor vehicles. California communities are leading the charge in promoting the use of bicycles for short trips rather than cars by creating bicycle-friendly streets, roads, bicycle paths, and intersections with bicycle traffic controls.

According to the California Air Resource Board, the City of Davis has the highest rate of bicycle use in the nation. Twenty-seven percent of its 64,000 residents commute to work on their bicycles. Forty-one percent of Davis' cycling commuters claim a bicycle is their primary source of transportation. (*ARB Bicycle Awareness Program*, California Environmental Protection Agency, Air Resource Board) <<https://www.arb.ca.gov/planning/tsaq/bicycle/factsht.htm>>

The Cities of Davis, Palo Alto, Pasadena, Chico, Long Beach, Santa Barbara, and San Diego are all advancing unique projects and local laws to help bicycles, pedestrians, and motor vehicles enjoy a safer co-existence on the roads.



Despite the efforts of cities to improve bicycle safety, two percent of all traffic deaths and crash-related injuries involve bicycles. (*Bicyclists*, National Highway Transportation Safety Administration <<https://www.nhtsa.gov/road-safety/bicyclists>>.) According to the Insurance Institute for Highway Safety, in the year 2015 there were 817 cyclists killed in crashes

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with motor vehicles. This number represents a full 13 percent increase in motor vehicle-related bicycle deaths since 2014. This number also represents the highest number of bicycle accident deaths since 1995. (*Pedestrians and bicycles*, Insurance Institute for Highway Safety, Highway Loss Institute <<http://www.iihs.org/iihs/topics/t/pedestrians-and-bicyclists/fatalityfacts/bicycles>>.) As demonstrated by the alarming increase in bicycle-related deaths between 2014 and 2015, promoting and encouraging the use of bicycles as transportation naturally increases the number of bicycles sharing the road with an ever increasing population of more vehicles.

Quieter cars present a danger

Another consideration is the ever evolving motor vehicle which continues to change to meet emissions standards. Car manufacturers are turning out vehicles that are either electric or a hybrid of electric and gas burning. This change in propulsion also creates a quieter, relatively silent, car that requires bicyclists and pedestrians to remain on heightened alert. Quieter and silent cars allow electric and hybrid vehicles to sneak up on pedestrians and cyclists. The lack of noise-related warning creates dangers on the road, at an intersection, or when a car is backing out of a driveway.

Another change to vehicles on the horizon is the self-driving car. Self-driving cars must be programmed to identify bicyclists on the roads, sidewalks, and in crosswalks and must be able to analyze, anticipate, and respond to them despite the difficulty in predicting human behavior. This is especially true if young and inexperienced cyclists are encountered.

An increase in bicycles on the road naturally leads to a potential increase in cycling accidents. (Despite efforts to reduce bicycle and motor vehicle interactions with bicycle-friendly streets and intersections, more bike paths separated from motor vehicle traffic, stricter laws regarding the use of helmets, and laws such as that requiring electric cars produce artificial noise at certain speeds.) This increase in the number of injuries



also means an increase in the likelihood that you will be contacted by an injured cyclist or a cyclist's family and asked to handle their litigation. In anticipation of that phone call, or if you have already been retained to handle a bicycle case, this article is written as an introduction to a couple of the common issues that arise in bicycle litigation. Hopefully, this guide will provide you with a primer that will get you on the right path to appropriate and relevant research.

Must cyclists use an available bike lane?

We have all experienced the ongoing conflict/tension between bicycles and motor vehicles. The simple fact is that

bicycles and motor vehicles are required to coexist on the same roads. Although there are tremendous differences between a motor vehicle and a bicycle's weight, speed, visibility, maneuverability, and vulnerability, cyclists must obey the same rules of the road as vehicle drivers.

According to the California Department of Motor Vehicles, "[e]ach year more than 100 people are killed and hundreds of thousands more are injured in bicycle collisions." (*Sharing the Road (FFDL 37) Safety Tips for Bicycles and Motorists*, California Department of Motor Vehicles <https://www.dmv.ca.gov/portal/dmv/?1dmy&urile=wcm:path:/dmv_content_en/dmv/pubs/brochures/fast_facts/ffdl37>.)

A typical conflict between bicycle and car takes place every day when an impatient automobile is driving behind a cyclist. The driver wants to pass the cyclist on the left but does not have enough space. The impatient driver does not keep a proper distance between himself and the cyclist. When the cyclist makes a sudden or unanticipated move, the impatient driver does not have

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enough time to react and avoid the cyclist. In other words, many drivers do not understand that the cyclist has the right to “take the lane” under certain circumstances.

Vehicle Code section 21202 states that a cyclist “shall ride as close as practicable to the right-hand curb or edge of the roadway except under the following situations:

(1) When overtaking and passing another bicycle or vehicles proceeding in the same direction.

(2) When preparing for a left turn at an intersection into a private road or driveway.

(3) When reasonably necessary to avoid conditions (including but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes that make it unsafe to continue along the right-hand curb or edge. . . . For purposes of this section, a “substandard width lane” is a lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.

(4) When approaching a place where a right turn is authorized.

Within these exceptions to section 21202, the cyclist has every right to “take the lane” and drivers of automobiles must be prepared to share the lane, give the cyclist ample following distance, room to maneuver, and depending on conditions, pass very carefully to the left or wait until such time as the cyclist may safely return to the right side of the road.

When a bicycle lane is available, cyclists must use that lane if they are traveling slower than the traffic with which they are traveling. (Veh. Code, § 21208.) Of course, there are exceptions to this requirement such as when the cyclist is making a left turn, passing, avoiding hazardous conditions, or approaching a place where a right turn is authorized.

Injuries to cyclists riding on the road with motor vehicles are common, and it is important that you understand how the interaction between your client and the car occurred. It is very likely that a defense attorney will argue that the cyclist was in violation of section 21202. This



argument does not take into consideration the condition of the road, the width of the road, or some other condition that gave the cyclist the right to “take the lane.” This same argument would likely be made against a cyclist that departs or avoids an available bicycle lane and is struck by a vehicle that is not paying attention or otherwise refuses to share the road. Proving a violation of section 21208 requires the defense to eliminate all possibilities that the cyclist’s actions did not fall within an exception to the Vehicle Code.

Riding on the sidewalk

There are many times when cyclists, (children, less experienced cyclists, or cyclists too afraid to travel on the road with motor vehicles), prefer to ride on the sidewalk. Of course, conditions of the road may make riding a bicycle on the street unreasonable and dangerous. When a cyclist is injured while riding on a sidewalk, (for example by a motor vehicle backing out of a driveway), the first question that is asked is whether the cyclist is automatically going to be presumed to be at fault. Confusion about this issue is somewhat logical since bicycles are generally “expected” to follow the rules of the road as are motor vehicles.

The short answer to this question is that: *It depends*. Vehicle Code section 21206 states:

“This chapter does not prevent local authorities, by ordinance, from regulating the registration of bicycles and the parking and operation of bicycles on pedestrian or bicycle facilities, provided

such regulation is not in conflict with the provision of this code.” That is not to say that bicycles operated on sidewalks are not required to follow the rules of the road, in fact, The Honorable John J. Meehan requested that the Office of the Attorney General write an opinion paper on whether bicycles on sidewalks are subject to the same Vehicle Code requirements as cyclists riding on the road. The conclusion reached is as follows: “Persons riding bicycles on sidewalks are subject to the same Vehicle Code requirements . . . and may be subject to additional local regulations.” (76 Ops. Cal. Atty. Gen. (1993).)

Since riding a bicycle on a sidewalk is not forbidden by the Vehicle Code, one must look to the local authority and its ordinances to make a determination. While there are certainly local authorities that forbid riding bicycles on sidewalks, many cities and counties do allow riding bicycles on sidewalks with a strong caveat that doing so must not interfere with or present a danger to persons or property. The following are examples of Municipal Codes from the Los Angeles County, the City of Los Angeles, and other incorporated cities within Los Angeles County. (*LA County Sidewalk Riding: Part 1*, Los Angeles Department of Transportation <<https://ladotbikeblog.wordpress.com/2010/08/04/la-county-sidewalk-riding-part1>>)

Los Angeles – County

A person shall not operate any bicycle or any vehicle or ride any animal on any sidewalk or parkway except at a permanent or temporary driveway or at specific locations thereon where the commissioner finds that such locations are suitable for, and has placed appropriate signs and/or markings permitting such operation or riding. (Sec. 15.76.080.)

Los Angeles – City

No person shall ride, operate or use a bicycle, unicycle, skateboard, cart, wagon, wheelchair, roller-skates, or any other device moved exclusively by human power, on a sidewalk, bikeway

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or boardwalk in a willful or wanton disregard for the safety of persons or property.

(LAMC Sec. 56.15.)

Beverly Hills

The operator of a bicycle shall not ride on the public sidewalk in any business district as prohibited by section 5-6-801 of this title.

(Sec. 5-5-8 E.)

It shall be unlawful for any person to operate, ride, or propel any bicycle, skateboard, roller skates or similar type device on the sidewalk in any business district. For purposes of this section, "business district" shall be defined as designated in section 235 of the state Vehicle Code.

(Sec. 5-6-801 A.)

A 'business district' is that portion of a highway and the property contiguous thereto (a) upon one side of which highway, for a distance of 600 feet, 50 percent or more of the contiguous property fronting thereon is occupied by buildings in use for business, or (b) upon both sides of which highway, collectively, for a distance of 300 feet, 50 percent or more of the contiguous property fronting thereon is so occupied. A business district may be longer than the distances specified in this section if the above ratio of buildings in use for business to the length of the highway exists.

(California Vehicle Code Section 235.)

Glendale

No person shall ride or operate a bicycle upon any public sidewalk in any business district within the city except where such sidewalk is officially designated as part of an established bicycle route. Pedestrians shall have the right-of-way on sidewalks. The prohibition in this section shall not apply to peace officers on bicycle patrol."

(Sec. 10.64.025.)

What direction must the cyclist travel on a sidewalk?

The answer to this question may be confusing since the Vehicle Code section 21650.1 states that a bicycle "operated on a roadway . . . shall be operated in the same direction as vehicles are required to be driven upon the roadway." Fortunately, *Spriesterbach v. Holland* (2013) 215 Cal.App.4th 255, resolved this question. In that case the court concluded that section 21650.1 does not require a bicycle riding upon a sidewalk to travel in the same direction as the flow of traffic on the roadway. The court reasoned that a sidewalk is not a "shoulder of a highway." Once again, an unwary litigant may be made to believe that their client was negligent per se by a seeming violation of section 21650.1.

Quiet cars

Relatively new technology in the form of electric/hybrid vehicles and developing technology in the form of self-driving vehicles may also affect bicycle-accident litigation. Hybrid/electric vehicles, when operating on battery power, do not make much noise. There is no dramatic engine noise. The only real noise comes from the sound of tires on the road and perhaps the sound made by the vehicle moving through the air. Cyclists and pedestrians rely upon their senses to keep safe.

One of the most important senses is hearing. This is why the California legislature enacted Vehicle Code section 27400, which states: "A person operating a . . . bicycle may not wear a headset covering, earplugs in, or earphones covering, resting on, or inserted in, both ears." Hearing an approaching vehicle alerts us to make appropriate adjustments or prepare to take evasive action.

Under the direction of the Obama Administration, the National Transportation Traffic Safety Association is requiring that all new hybrid and electric cars make artificial noise at speeds below 19 miles per hour. Manufacturers must be compliant by September 2,

2019. The reason expressed for this new federal safety standard is to assist "pedestrians who are blind, have low vision, and other pedestrians [to] detect the presence, direction and location of these vehicles." (*NHTSA sets 'Quiet Car' safety standard to protect pedestrians*, National Highway Traffic Safety Administration <<https://www.nhtsa.gov/press-releases/nhtsa-sets-quiet-car-safety-standard-protect-pedestrians>>)

Although the safety standard focuses on pedestrians, quiet vehicles pose a threat to bicycles as well. In fact, a 2011 study concludes that electric vehicles pose twice the risk of an accident when they are starting, stopping, slowing, backing up, or when entering or leaving parking spaces or driveways. (*Incident Rates of Pedestrian and Bicycle Crashes by Hybrid Electric Passenger Vehicles: An Update*, National Highway Traffic Safety Administration, DOT HS 811 526 (2011).) According to NHTSA, implementing this new safety standard will prevent 2,400 pedestrian injuries each year." (*NHTSA sets 'Quiet Car' safety standard to protect pedestrians*, National Highway Traffic Safety Administration <<https://www.nhtsa.gov/press-releases/nhtsa-sets-quiet-car-safety-standard-protect-pedestrians>> (November 14, 2016).)

Self-driving cars

The self-driving car presents another interesting dilemma for the cyclist in that the vehicle itself must be able to identify, interact with, and potentially maneuver to avoid bicycles. The bicycle and rider present a much different profile than most cars – although motorcycles might have similar characteristics. Bicycles are more likely operated in a less predictable manner so that the computer of a self-driving car must anticipate the sudden movements of a bicycle whether purposeful by the rider or caused by the bicycle interacting with a road hazard or malfunction.

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“One of the challenges we face in developing our software is that humans can be pretty unpredictable!” said Jennifer Haroon, Google’s Head of Business Operations for The Google Self-Driving Car Project. Ms. Haroon discusses that the answer lies in their “many miles of driving experience” and that they can even “predict the unpredictability [sic].” And what happens if the vehicle gets confused and can’t make a decision? Well, “it will do the safe thing and slow down or come to a stop.” (*Self-Driving Cars & Bikes: An Interview with Google, BikeAustin* <<https://bikeaustin.org/2015/09/self-driving-cars-bikes-an-interview-with-google/>>)

Google claims that it has developed algorithms which are specifically designed for cyclist-detection. “Cyclists are fast and agile – sometimes moving as quickly as cars – but that also means that it’s hard for others to anticipate their movements.” If this is true, how has Google seemingly solved the problem? “Our cars recognize cyclists as unique users of the road, and are taught to drive conservatively around them.” (*Google Self-Driving Car Project Monthly Report*, Google) <<https://static.googleusercontent.com/media/www.google.com/en/selfdrivingcar/files/reports/report-0616.pdf>>

The size of this project is mind boggling considering all of the variables that must be identified and prioritized so that

the computer can make the best decision possible under a “totality of the circumstances approach.” For example, the Google Monthly Report explains that the car will be able to identify a row of parked cars, a bicycle that is riding alongside them, and detect when a car door opens. The response of the car would be to move left to give the cyclist additional room to maneuver around the opened door. Of course, that assumes that the car has room to move to the left safely since there might be other vehicles moving in the same direction or oncoming.

The law regarding these last issues is a new frontier and it will be interesting to see how it all plays out. At this point there are many quiet electric/hybrid cars on the road and it is well known that these cars present a particular danger to pedestrians and cyclists. Does driving a silent car raise the standard of care for the driver? Could a cyclist sue the manufacturer of the vehicle arguing the known danger and the failure to add sound despite a 2019 mandate? Self-driving vehicles are extremely rare, however, what happens when they arrive on our streets? Who will we look to when a cyclist is injured by a self-driving car? Is it the owner or the manufacturer? Will the state implement new insurance regulations that require manufacturers to pay for insurance that protects all persons on the road? Stay tuned.

Conclusion

This article contains only a small sampling of the many issues that may arise once you’ve been retained to handle a bicycle-injury case. Bicycles, like other products, must also be designed and manufactured appropriately. As such, your case may actually involve a design or manufacturing defect. Notwithstanding the immunities enjoyed by public entities for bike paths and trails, your case may also involve a poorly designed or maintained roadway or intersection. If you are working on your first bicycle case, seek out colleagues who have handled these cases or consult with appropriate experts before deciding on the theory of your case.

Timothy A. Loranger is a partner at Baum, Hedlund, Aristei & Goldman, based in Los Angeles. Although Tim’s main focus is in aviation litigation, Tim has experience working on numerous commercial transportation cases involving commercial trucking, train, and bus accidents stemming from negligent design, manufacturing, operation, and maintenance. Tim is proudly serving on the CAALA Board of Governors. He is a graduate of Southwestern School of Law and California State University Northridge. ☒