

ALTERNATIVE VEHICLES: WHAT IS LEGAL AND WHAT IS NOT?

NEGLIGENCE STANDARDS - AUTOMOBILES

Many automobile cases involve a violation of the New York State Vehicle and Traffic Law. A violation of a statute constitutes negligence per se. *Martin v. Herzog*, 228 N.Y. 164 (1920). If proximate cause is established, a party may be entitled to summary judgment or a directed verdict on the issue of negligence. PJI 2:26.

Drivers in the City of New York are subject to further regulation. Title 34 of the Rules of the City of New York is a set of traffic regulations promulgated by the New York City Department of Transportation, which apply in the City. Violations of these regulations are “some evidence of negligence.” *Ferrer v. Harris*, 55 N.Y.2d 285, 293 (1982) (emphasis supplied). Some of the City’s traffic rules are also contained within the Administrative Code of the City of New York (hereinafter Administrative Code). The “some evidence of negligence” standard applies to violations of any administrative regulations. *Long v. Forest-Fehlhaber* 55 N.Y.2d 154, 159 (1982).

ALTERNATIVE VEHICLES

Most attorneys are aware of how these statutes and regulations apply to standard trucks and vehicles operating on our roadways, however, how do they apply to alternative vehicles? As alternative vehicles gain popularity, it is imperative that attorneys become familiar with the restrictions placed upon this growing category of vehicles.

Instead of cars, trucks, or buses, many New Yorkers today opt for bicycles. Others have taken to using motorized two or three wheeled vehicles such as mopeds, “e-bikes,” or trendy “hoverboards” and electric unicycles. This article focuses on “alternative vehicles,” a catch-all term for vehicles which fall outside of the conventional category of automobile, and will provide a reference guide for the rules and regulations governing these modes of transportation.

The use of alternative vehicles is increasing. The City has granted permits to operators of bicycle share programs and scooter share programs, and has invested in bike lanes and traffic control measures meant to accommodate these new vehicles. NYCDOT, *Current Bicycle Route Projects*, <https://www1.nyc.gov/html/dot/html/bicyclists/bike-projects.shtml>; Press Release, NYCDOT, NYC DOT Announces Launch Date of E-Scooter Pilot in the East Bronx (Aug. 12, 2021), <https://www1.nyc.gov/html/dot/html/pr2021/pr21-030.shtml>; Press Release, NYCDOT, DOT Begins Work To Harden Protected Bike Lanes, Outlines Plan To Complete 20 Miles (Feb. 18, 2022), <https://www1.nyc.gov/html/dot/html/pr2022/begins-work-to-harden-protected-bike-lanes.shtml>.

The City and State have updated laws regarding the operation of alternative vehicles. Each has handled the issue differently. What is legal in the five boroughs may be illegal in the State and vice versa. Wherever a regulation is promulgated by both the City and the State, it can be argued that the negligence per se standard applies, since the act or omission is made illegal by State law regardless of the local law.

BICYCLES

The speed limit in the five boroughs is twenty five miles per hour unless otherwise posted.

Administrative Code § 19-177(a). Until November of 2014, the City speed limit was thirty miles per hour. *Mayor de Blasio Signs New Law Lowering New York City's Default Speed Limit to 25 MPH*, Oct. 27, 2014, <https://www1.nyc.gov/office-of-the-mayor/news/493-14/mayor-de-blasio-signs-new-law-lowering-new-york-city-s-default-speed-limit-25-mph#/0>. All vehicles, including bicycles, are subject to this speed limit. Administrative Code § 19-177(b). Traveling in excess of the City speed limit is a violation of a City regulation, and is some evidence of negligence.

State law grants a bicyclist all of the rights and duties of the operator of an automobile. VTL § 1231. Under the VTL, a bicycle passenger under the age of five must wear a helmet and must be restrained in a separate seat. A child under the age of one is not permitted to ride on a bicycle at any time. A bicycle rider who allows a child under five years to ride without a helmet or a proper seat, or who twice allows a child under one year to ride, is subject to a fine of up to \$50. Any rider under fourteen years of age must wear a helmet, or face a maximum fine of \$50 if he does not promptly obtain a helmet after being cited. VTL § 1238.

§ 1236 of the VTL imposes equipment requirements, (brakes, reflectors, lights, audible signals).

VTL § 1232 regulates the operation of a bicycle, requiring riders to use handlebars and to sit or stand across the seat. Clinging to another vehicle, a practice commonly referred to as “skitching,” is also prohibited, under VTL § 1233.

Where a bike lane is provided, bicyclists must operate therein; otherwise bicyclists must ride in the right-hand shoulder or against the right-hand curb. VTL § 1234(a). Bicyclists are permitted to

deviate from course only to avoid obstacles or turn. *Id.* State law also regulates entrance to a roadway and the overtaking of other vehicles. VTL § 1234(b)-(c).

Because the State has not indicated otherwise, violations of these State laws carry the default penalty provided by § 1800 of the VTL. This default is a fine of up to \$150 and/or a jail sentence of up to fifteen days (for a first offense). VTL § 1800(b)(1). Because these are State statutes, violations will also constitute negligence per se in a trial or motion for summary judgment.

The City handles bicycles differently. The VTL and the RCNY combine so as to render inapplicable the particular State law regarding bicycle lane use. 34 RCNY § 4-02(e). Under VTL § 1642(a), the City is authorized to declare certain State laws regulating human powered vehicles ineffective within its borders; the City has exercised this authority by declaring VTL § 1234, which requires the use of bike lanes, ineffective. 34 RCNY § 4-02(e).” Bicyclists in the City still must use bike lanes, but the requirement is found in a City regulation instead. 34 RCNY § 4-12(p). The City has not specified a penalty for an infraction, so under VTL § 1800(c), the State default penalty applies. Under the Administrative Code, the City has also separately proscribed the use of bicycles on sidewalks; a violation of this Rule carries a fine of up to \$100.

Administrative Code § 19-176. Because they are proscribed only under City rules, use of the sidewalk or failure to maintain the bicycle lane as required will operate only as some evidence of negligence, and not negligence per se.

The RCNY place further restrictions upon bicyclists. A bicyclist may not park, stop, or stand in a bike lane. 34 RCNY § 4-08(e)(9). Bicyclists also may not perform U-Turns while in business districts. 34 RCNY § 4-05(b). Bicyclists may not reverse into crosswalks or intersections. 34

RCNY § 4-07(d). They must, during certain hours, avoid sections of roadway designated “play streets” by the City. 34 RCNY § 4-07(e). Playstreets are streets closed to automobiles during certain hours so as to facilitate outdoor play for children; the streets selected are generally minimally traveled one way streets not otherwise designated bus truck or fire routes. New York City Department of Health and NYCDOT, *Playstreets in New York City: A Guide for Community Groups*, <https://www1.nyc.gov/assets/doh/downloads/pdf/cdp/school-community-guide.pdf>. The list of streets is subject to change as community groups are granted, or fail to renew, play street permits. *Id.* at 3. One nonacademic source lists a block of West 150th Street in Harlem, a block of Blake Avenue in Brownsville, and a block of Cromwell Avenue in the Concourse section of the Bronx, as among those streets which have borne this designation. Alejandra O’Connell – Domenech *City Adding Play Streets for New York City Kids to Open Streets Program*, Jul. 24, 2020, <https://www.amny.com/news/city-adding-play-streets-for-new-york-city-kids-to-open-streets-program/>.

Bicycles are not permitted on the Brooklyn Bridge, Manhattan Bridge, Williamsburg Bridge, Ed Koch Queensboro Bridge, or any limited access highways, unless expressly permitted by a sign. This essentially restricts travel from Brooklyn or Queens to any of the other boroughs; (the Roosevelt Island Bridge is not off limits but does not connect Queens with Manhattan Island; the Rikers Island Bridge is not off limits but does not connect Queens with the mainland). 34 RCNY §§ 4-12(o), 4-07(i). (Currently the Brooklyn Bridge has a bike lane. Press Release, NYCDOT, *Brooklyn Bridge Bike Lane Ridership Skyrockets* (Nov. 8, 2021), <https://www1.nyc.gov/html/dot/html/pr2021/brooklyn-bridge-bike-ridership-skyrockets.shtml>.) Excluding the helmet requirements, age restrictions, and sidewalk rule, the City has not specified penalties for any

infractions. Under VTL § 1800(c), then, the State default penalty, a maximum of a \$150 fine and fifteen days of imprisonment, applies. A violation of these rules will be relevant at trial or in a motion for summary judgment, but because they are City rules, violations will operate only as some evidence of negligence, not negligence per se.

BICYCLES WITH ELECTRIC ASSIST

Under State law, “e-bikes,” or bicycles with electric assist, may be operated on public highways. An “e-bike” must be no more than thirty six inches wide, and equipped with operable pedals and a motor producing less than 750 watts. VTL § 102-c. E-bikes are further categorized according to the maximum speed at which the motor will operate.

An “e-bike” will qualify as a Class 1 if the motor operates only while the rider is pedaling, and only until the bicycle reaches twenty miles per hour. VTL § 102-c(a). A Class 2 “e-bike” is similar to a Class 1, except the motor operates regardless of whether the bicycle is being pedaled. VTL § 102-c(b). Class 3 “e-bikes” are similar to a Class 2, except the motor operates until the bicycle reaches twenty five miles per hour; a Class 3 designation only applies within the City. VTL § 102-c(c).

All such bicycles must be in compliance with regulations promulgated by the Consumer Product Safety Commission. VTL § 102-c. The State does not recognize any bicycles with electric assist which fall outside of these definitions. These vehicles are explicitly excluded from the state’s definition of “motor vehicle,” yet they still appear to be subject to a registration requirement under Title XI of the VTL. VTL §§ 121-c, 125, 401, 2261. According to the New York State Department of Motor Vehicles (hereinafter DMV), however, no class of “e-bikes” must be

registered, though they may not be ridden on streets with a speed limit greater than thirty miles per hour, or on any sidewalks. DMV, *Electric Scooters and Bicycles and Other Unregistered Vehicles*, <https://dmv.ny.gov/registration/electric-scooters-and-bicycles-and-other-unregistered-vehicles>. (Explicit statutory support for this registration exemption is not found in the VTL, but § 400-a grants the Department discretion as to which vehicles may be registered). Riders of Class 3 e-bikes must wear protective headgear, or face a maximum fine of \$50 if they do not promptly buy or rent a helmet after being cited. VTL § 1238(5-c). All bicycles with electric assist are subject to all the provisions of the VTL which would normally apply to automobiles. VTL §§ 121-c, 2260. An e-bike rider shown to have been in violation of these State statutes will be considered negligent per se.

The City permits only Class 1 e-bikes, and only if the motors on such bicycles cease to operate when the rider applies the brake. 34 RCNY §§ 4-01; 4-12(p)(5)(C). The bicycle also must bear a prominently displayed label indicating *either* the manufacturer and wattage of the motor and the maximum assisted speed of the bicycle, or the manufacturer of the bicycle. 34 RCNY § 4-12(p)(5)(A).

A “pedal-assist” bicycle falls within the City’s definition of bicycles. The rules which apply to bicycle operation therefore apply to “pedal-assist” bicycle operation. 34 RCNY § 4-01(b).

Violation of these rules is some evidence of negligence at trial or in a motion for summary judgment.

MOPEDS (LIMITED USE MOTORCYCLES)

Under the VTL a limited use motorcycle, commonly referred to as a moped, may be operated on public highways, if its top speed is forty miles per hour or lower. VTL § 121-b. A vehicle qualifies as a limited use motorcycle if it has two or three wheels, and a seat or saddle for the operator. As with e-bikes, the State has created legal categories of limited use motorcycles. *Id.*

A limited use motorcycle with a top speed over thirty but not more than forty miles per hour falls into Class A. VTL § 121-b. Class B limited use motorcycles have a top speed over twenty but not more than thirty miles per hour. VTL § 121-b. Class C limited use motorcycles have a top speed of twenty miles per hour or less. *Id.*

Vespa is one well – known manufacturer of limited use motorcycles. Among Vespa’s offerings are mopeds with regulated motors. *See Vespa, Primavera 50 30 MPH* <https://storeusa.vespa.com/primavera/primavera-50-limited-speed.aspx>; *Vespa, Elettrica 45 KM/H* https://www.vespa.com/en_EN/models/elettrica/elettrica-45-kmh-3-5-kw-electric-moped/. The regulators limit the top speed of these mopeds to approximately 30 miles per hour. *Id.* Such regulated Vespas qualify as Class B limited use motorcycles. *See* VTL § 121. The fastest mopeds Vespa offers can reach speeds of nearly 80 miles per and therefore do not fall within the State’s definition of a limited use motorcycle. *Vespa Metro Vancouver, FAQs* <https://www.vespametro.com/node/623>. *See* VTL § 121.

All mopeds are subject to a registration requirement by the State. VTL § 2261(1). Class B and Class C mopeds must remain in the right lane or the right – hand shoulder unless preparing to turn left. VTL § 2262. Riders of Class A and B mopeds must wear helmets, and goggles or face shields. VTL §§ 2265; 381(6)(7). All moped riders must be licensed. VTL § 501-a. (The State

requires a motorcycle license for Class A mopeds. DMV, *Register a Moped*, <https://dmv.ny.gov/registration/register-moped>.) Otherwise, all of the same provisions of the VTL apply to these vehicles. VTL § 2260. Violations of these statutes will establish negligence per se at trial or in a motion for summary judgment.

The RCNY place upon moped riders similar restrictions as they do on bicyclists and e-bicyclists. Mopeds must remain in bike lanes where available, and must not be ridden on a sidewalk except where expressly permitted by a sign. 34 RCNY § 4-07(c)(3)(i). Moped riders must, during certain hours, avoid sections of roadway designated “play streets” by the City. 34 RCNY § 4-07(e). Riders may not back mopeds into a crosswalk or an intersection. 34 RCNY § 4-07(d). A rider may not perform U-Turns while in business districts. 34 RCNY § 4-05(b).

As with bicycles, mopeds are not permitted on the Brooklyn Bridge, Manhattan Bridge, Williamsburg Bridge, Ed Koch Queensboro Bridge, or any limited access highways, unless expressly permitted by a sign. 34 RCNY §§ 4-12(o), 4-07(i). According to the NYC Ferry website, “motorized sit down scooters and gas-powered bikes are not permitted onboard” ferries.

<https://www.ferry.nyc/about/faq/>

#:~:text=Bike%20Capacity%3A%20NYC%20Ferries%20can,bikes%20are%20not%20permitted%20onboard. This makes travel between boroughs even more restrictive for moped riders than for bicyclists.

A violation of these rules will be relevant at trial or in a motion for summary judgment, but will operate only as some evidence of negligence, not negligence per se.

ELECTRIC SCOOTERS

Electric scooters are permitted on public highways in the State. Qualifying vehicles can be powered only by either human power, or an electric motor which can carry the scooter at no more than twenty miles per hour. VTL § 114-e. There is no registration requirement and an operator need not have a driver's license. VTL §§ 125, 401.

The scooter must weigh less than one hundred pounds, and must have handlebars and a floorboard or seat for the rider. VTL § 114-e. Every electric scooter must have a brake, a bell or another audible signal, and, during certain hours, lamps on the front and rear of the vehicle. VTL § 1285.

Starting on June 1, 2022, all electric scooters operated in the state must display a permanent label indicating the top speed, motor wattage, and maximum occupancy of the scooter. VTL § 1282(9) (b). Manufacturers are under an obligation to affix such labels to new scooters. VTL § 1282(9) (a). They also must make such labels available for scooters sold in the past. *Id.* But it is the duty of the operator to ensure the label is present. VTL § 1282(9)(b).

A rider of an electric scooter has all of the rights and duties of a driver of an automobile. VTL § 1281. But the State further imposes a speed limit of fifteen miles per hour on these vehicles, (the speed limit in the City is twenty five miles per hour unless otherwise posted), and prohibits their operation on greenways and on roads with speed limits over thirty miles per hour. VTL § 1282(5)-(8); Administrative Code § 19-177(a). Operation is prohibited on sidewalks, (although a rider can *park* on a sidewalk as long as the scooter is not obstructing traffic). VTL § 1282(7)(b). Electric scooters must be ridden in a bike lane when possible; otherwise the scooter must be ridden close to the curb; (a rider may alter course to avoid obstructions). VTL § 1284(1). A

scooter rider must not carry anything obstructing her vision or interfering with her use of the handlebars. VTL § 1282(2).

A rider must be at least sixteen years old; if a person fifteen years or younger operates an electric scooter, that rider *as well as the person who allowed him to ride it* are in violation of State law. VTL § 1282(4). A rider under eighteen years of age must wear a helmet, although violation of this provision does not constitute contributory negligence or assumption of risk. VTL § 1286.

A scooter rider is prohibited from “skitching.” VTL § 1283. Riders also may not carry a passenger, although violation of this provision does not operate as contributory negligence or assumption of risk. VTL § 1282(1).

State law authorizes local governments to regulate the time place and manner of electric scooter operation within their jurisdictions. VTL § 1281(2)(a). The VTL further provides that no person shall operate an electric scooter in violation of local laws adopted pursuant to such authority. VTL § 1281(3). Thus, a violation of a City rule enacted pursuant to VTL § 1281(2)(a) is a violation of State law. It could be argued, then, that an established violation of a City regulation of electric scooters would operate as negligence per se. Currently, the City has enacted no such additional rules, though the City has imposed a penalty of \$250 for the operation in a public place of an electric scooter which does not come within the State’s definition in VTL § 114-e. Administrative Code § 19-176.2.

ELECTRIC SKATEBOARDS AND ELECTRIC UNICYCLES

The State’s position on electric skateboards and electric unicycles is unclear. Both theoretically fall within the definition of a “limited use vehicle” according to both the City and the State,

which would indicate that riders are subject to the same regulations which apply to “e-bike” and electric scooter riders. VTL § 121-c; 34 RCNY § 4-01. But the City has recently published an informational graphic entitled “Electric Bicycles & More,” indicating that the use of electric skateboards or unicycles is altogether illegal. <https://www1.nyc.gov/html/dot/downloads/pdf/ebikes-more-english.pdf>. Explicit statutory support for these bans is not found in either City or State law. They do not appear in the list of motor vehicles ineligible for registration in the State. DMV, *Electric Scooters and Bicycles and Other Unregistered Vehicles*, <https://dmv.ny.gov/registration/electric-scooters-and-bicycles-and-other-unregistered-vehicles>. But the recent legislation regarding alternative vehicles might be better understood as a rollback of a sweeping ban on alternative vehicles. Until recently, even electric assist bicycles and electric scooters were illegal in the State. Today they are treated only as carveouts from the registration requirement. Troy Closson, *Electric Scooters are now Legal in New York. But are they Safe?*, N. Y. Times, Nov. 23, 2020, <https://www.nytimes.com/2020/11/23/nyregion/electric-scooters-nyc.html>; DMV, *Electric Scooters and Bicycles and Other Unregistered Vehicles*, <https://dmv.ny.gov/registration/electric-scooters-and-bicycles-and-other-unregistered-vehicles>. This suggests that an electric skateboard or unicycle rider may still be in violation of State law.

HOVERBOARDS AND SEGWAYS

Under the VTL, hoverboards and segways fall within the definition of an “electric personal assistive mobility device.” VTL § 114-d. Outside of the City, these vehicles are not considered motor vehicles, so they may be ridden on sidewalks, subject to substantially the same restrictions as electric scooters, (equipment requirements, occupancy limits, the rule against “skitching”).

VTL §§ 1271 – 1276. The VTL also requires riders to wear helmets. VTL § 1276. Within the City, however, State law defines hoverboards and segways as motor vehicles, thereby prohibiting their use on sidewalks. VTL §§ 125, 1225-a. Thus, operation of a hoverboard on a City sidewalk would constitute negligence per se.

The Administrative Code defines “motorized scooter” as “any wheeled device with handlebars that is designed to be stood or sat upon by the operator, is powered by an electric motor or by a gasoline motor that is capable of propelling the device without human power and is not capable of being registered with the [DMV].” Administrative Code § 19-176.2(a). § 19-176.2 prohibits the use of a motorized scooter in any public place in the City. Segways come within this definition of “motorized scooter,” (though the Rule expressly excludes from its coverage the e-bikes and e-scooters discussed above). Operation of a segway would constitute some evidence of negligence. The City appears to treat hoverboards just the same as segways. Indeed, the graphic entitled “Electric Bicycles & More,” published by the City at <https://www1.nyc.gov/html/dot/downloads/pdf/ebikes-more-english.pdf>, lists these vehicles as prohibited within the City.

ALL TERRAIN VEHICLES AND DIRT BIKES

All terrain vehicles and dirt bikes do not come within the State’s definition of a motor vehicle. VTL § 125. Instead they come within a separate definition provided in VTL § 2281(1). These vehicles still may be registered in the State, and they may be operated on public highways, provided they have been “manufactured for sale for operation primarily on off-highway trails . . . and [are] only incidentally operated on public highways,” VTL §§ 2281 – 2282. The use of an all terrain vehicle or dirt bike on public highways is heavily restricted under the VTL. Unless a

highway has been designated and posted as open for travel by all terrain vehicles, riders may only make a direct crossing of a highway, and only under certain circumstances. VTL § 2403(1).

Under the VTL, an ATV operator must ride on the vehicle's seat, and may not carry a passenger unless the vehicle was designed for more than one person; an operator also may not tow another person in any sort of trailer unless it is "attached by a rigid support, connection or towbar." VTL § 2404(3-4).

The VTL places some vague restrictions upon operators. § 2404(1) imposes a speed limit of "reasonable and prudent," on all terrain vehicles, and prohibits operation which "unreasonably endanger[s] the person or property of another" An operator also must not travel "at a speed greater than minimum required to maintain forward movement of the ATV," "within one hundred feet of a dwelling between midnight and six a.m." VTL § 2404(1)(g).

Violation of any of these provisions would constitute negligence per se. Within the City, however, use of an all terrain vehicle in a street or a park is entirely prohibited. Administrative Code § 19-196(b). Use of an all terrain vehicle in these public places which does not otherwise violate State law would constitute only some evidence of negligence.

CONCLUSION

Alternative vehicle use is rapidly increasing in the City. A violation of a State statute constitutes negligence per se, while a violation of a City rule is only "some evidence of negligence."

Thorough review of the New York State Vehicle and Traffic Law and the Rules and Administrative Code of the City of New York is imperative in representing a plaintiff or a defendant in cases involving alternative vehicles.

Andrea M. Alonso and Kevin G. Faley are partners at Morris Duffy Alonso Faley & Pitcoff.

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