



The Educator



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Motor - Rules of the roads when at crossroads

The Motor Vehicle and Road Traffic Act in many jurisdictions imposes a duty on road users to exercise care while travelling on the roads. It imposes a duty on a driver to exercise special care at crossroads. Additionally, as arbitrator Jaipaul, following jurisprudence, said in **Caribbean Alliance Insurance Company Ltd. and PIC Insurance Company Ltd.** [2009]; drivers of motor vehicles are under a duty to exercise due care on the road. They are expected, *inter alia*:

- to determine what other users of the road are doing.
- to maneuver their vehicles in order to prevent and avoid accidents.
- to use and to observe proper signals that are clear and unambiguous and, as far as practicable, in keeping with the Highway Code.
- to exercise due care and attention at all times.

This duty might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances, including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.

In this issue of *The Educator*, we look at the rules of the road as it relates to crossroads and the liability resulting from negligence or contributory negligence.

Emergency

The defence of emergency and the liability that follows was best explained in many cases. For example, as Madam Justice Esco Henry said in the just releases Saint Vincent and The Grenadines High Court case of **Donald Findlay v. Wendell Walters** [2017]

A driver emerging onto a major road from a minor road is obliged to give way to traffic on the major road. A driver on the major road has a parallel duty to exercise care to avoid collision with a vehicle emerging from a side road. No evidence was provided about the speed at which either vehicle was travelling. I cannot speculate. The area of damage to Mr. Walters' car is consistent with Mr. Findlay's and his witnesses' account of how the accident happened. Mr. Walters' decision to enter the highway at that time, was negligent and fell short of what a reasonable driver would have done in similar circumstances [References omitted].

Based on the evidence and findings of fact, Mr. Findlay has established on a balance of probabilities that in breach of his duty, Mr. Walters failed to give way but instead drove onto Vigie highway into the path of Mr. Findlay's oncoming vehicle when it was unsafe to do so. Mr. Findlay has also proven on a balance of probabilities that he took the requisite

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evasive action to avoid the collision by swerving his car out of the way. In that regard, he fulfilled his duty. I therefore find that that the accident was caused wholly by Mr. Walters' negligence.

In the Grenada High Court case of **John Mark Forshaw et al v Eric Williams et al** [2012], the defendant Eric Williams was traveling up an incline on a minor road. As he approached the intersection of Mt. Moritz Main Road, a major road, there were several things to his left that obstructed his view of traffic coming from his left on the major road; a signboard, a dense bush and a parked vehicle. He made the turn onto the major road without being sure that it was safe to do so.

The court found that with those three obvious obstructions in his way [a signboard, a dense bush and a parked vehicle], he ought to have taken great care and precaution before he attempted to enter the major road.

The court also noted that he was travelling up an incline, operating an almost full garbage truck, a relatively large vehicle. It was a tricky manoeuvre even without the obstructions which blocked his view, even if only partially.

In her decision, the trial judge opined:

I find that the first defendant drove onto the major road from the minor road when it was unsafe to do so given all the attendant circumstances. He clearly did not see the second claimant coming towards the intersection because of the obstructions and found himself into the major road with the claimant's vehicle bearing down on him. He could do nothing to avoid the collision at that point.

In all the circumstances, I can find no contributory negligence on the part of the second claimant in this matter.

In the Saint Vincent and The Grenadines High Court case of **Cosmore Dennie v Louis Williams** [1998], the defendant Louis Williams negligently emerged from Sharp Street, a minor road into Bay Street, a major road without stopping and at the time when it was unsafe to do so. The court found that the 'careless act of the defendant created an emergency situation for the claimant who was forced to take evasive action by swerving to the right in an effort to avoid the collision. The defendant was 100% at fault for the accident.

Reasonable man test

Users of the road owe a duty of care to each other. In deciding which of them breached that duty you must apply the 'reasonable man test' articulated in **Blyth v Birmingham Waterworks Co.** and echoed by Justice Errol Thomas in the Antigua and Barbuda High Court case of **Alex Losik v Eldeane Henry** [2010]. Both Justices declared:

'Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.'

The Test For Contributory Negligence

The general rule on the issue of contributory negligence, is for the defendant to prove that the claimant actions has contributed in some degree to the accident. The test for contributory negligence was accepted to be as laid down by the Eastern Caribbean Court of Appeal in

Alphonso and Others v Deodat Ramnath (1997). Jurisprudence in the Caricom states that whether the claimant by his acts or omissions contributed to his injuries, in the sense that he failed to take reasonable care for his own safety taking into account, as he must, that other users of the road are likely to be negligent. It is also a very salutary principle that, when one man by his negligence puts another in a position of difficulty, you ought to be slow to find that other man negligent merely because he may (have) failed to do something which, looking back on it afterwards, might possibly have reduced the amount of damage. Contributory negligence does not depend on a breach of duty to the first appellant but on lack of care by the respondent for his own safety. Although contributory negligence does not depend on duty of care, it does depend on foreseeability. Just as actionable negligence requires foreseeability of harm to others, so contributory negligence requires foreseeability (of harm) to oneself.

A taste of both..

In the Saint Lucia High Court case of **Wayne Stewart and Stewart & Associates v Richard Giraudy** [2010], Mr. Stewart was driving past the entrance to Sandals Halcyon, and as he positioned the vehicle into the right lane of the Gros Islet highway, he had a clear (view) line of the Sunny Acres/Gablewoods Mall exit from the highway. As he approached the said exit, he noted the defendant Richard Giraudy motor vehicle was positioned in the exit. He continued to drive in the right south bound lane to Castries. The defendant came over to the exit into the highway. In doing so the defendant crossed over the left south bound lane and into the right south bound lane in which he was driving. The defendant caused the vehicle that he was driving to collide into his vehicle. The claimant alleges that he, the defendant, caused that collision which forced his, the claimant's vehicle in the concrete median.

Justice Redhead stated:

In my judgment the defendant is principally to be blamed for the accident. In that he has admitted that he had seen the Claimant's vehicle approaching at a distance of about 120 feet away. Yet he decided to emerge from the Sunny Acres exit onto the highway. He ought to have contemplated that it was quite possible for the Claimant to switch from one lane to the other, having regard to the paucity of the traffic on the road at the time. It would have been prudent therefore, for the defendant to have waited until the Claimant had passed the junction, before emerging onto the Gros-Islet highway. In that regard, in my judgment, the defendant was negligent.

On the issue of contributory negligence, Justice Redhead stated:

In my judgment the claimant was also negligent. He could have avoided the accident. He saw the defendant emerging from the exit some distance away. He says he was about one car length away he did not stop only slowed down. In my opinion he was unable to stop because of the speed at which he was travelling.

Whilst there is no duty generally to foresee that another will be negligent there are instances even so where a prudent man is to take precautions by anticipating the negligence of others, especially where experience commonly has shown such negligence to be likely or where resulting damage can be minimized.'

...

I find as a fact that the defendant exited the Sunny Acres junction, drove for a short distance before the collision occurred. This view is supported by the fact that if the collision had occurred when the defendant was exiting the Sunny Acres junction, then

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the Claimant would have struck the defendant's car at or about the right angle position and that the resulting damage to the defendant's vehicle would have been greater, instead the damages sustained by both vehicles suggest a rubbing against the sides of both vehicles, except when the claimant's vehicle struck the median.

In the end, the Court placed blame for the accident 25% on the Claimant and 75% on the Defendant. Therefore the damages awarded was in relation to that blame that is 75% of the sum claimed by the Claimant and 25% of the sum claimed by the defendant.

A tip for all of us

Justice Redhead offered the following advice:

It is commonly known that drivers or motorists would emerge, perhaps carelessly, from minor roads into major roads and prudent drivers should always anticipate that and take the necessary precautions to guard against such eventualities.

Strange but true

Mr. Joseph Cox is an elderly wholesale fish huckster who lives in the fishing village of Dennerly, Saint Lucia. His business is the purchase of fish wholesale from local fishers for resale to various hotels, included some signature hotels like The Landings, Sandals Grande and Rex Resorts. A younger Ms. Junie Jn. Marie worked with him for several years as his assistant on a commission basis.

On 12th September 2009, Mr. Cox had to leave Saint Lucia to get medical attention in the United States of America where he would remain for six months until March 2010. He wanted his business to continue uninterrupted in his absence. So, just prior to his departure for the United States, he took Ms. Jn Marie with him to the Dennerly Community Credit Cooperative Society Ltd. ("the Cooperative") and introduced her to Ms. Thora Dundas, the general manager.

When Mr. Cox left Saint Lucia in September 2009, he had the sum of \$12,170.94 in his account. When he returned from the United States in February or March 2010, he had \$31,403.48. His account balance had increased by \$19,232.54. But he was not satisfied with his account balance. He observed "extremely large withdrawals" from his account which he did not think were properly connected to his business. He noticed that Ms. Jn Marie had purchased a vehicle in his absence and had commenced construction of a dwelling house. He became suspicious of her. He believed she used his money for her vehicle and house. He got an accountant, Ms. Brenda Edwin, who visited the hotels, compiled information and submitted a report which is in evidence. Based on the report, Mr. Cox concluded that \$61, 896.50 (later revised to \$42,937.21) was "over withdrawn after all expenses for the fish purchased by the hotels have been catered for."

Mr. Cox claims that the Dennerly Community Credit Cooperative Society Ltd. ("the Cooperative") breached its contractual obligation to him by allowing his assistant, Ms. Junie Jn Marie, who was not a signatory to his account, to make unauthorized withdrawals from his account.

Mr. Cox, now eighty years old, was an honest, straightforward and credible witness. He alleges that had the Cooperative advised or educated him on the proper procedures for making

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withdrawals he would have been bound to comply with that procedure. The Cooperative, he contends, should have reasonably foreseen that its failure to require proper authorization from him would have caused him loss and should have taken steps to prevent this.

In the end, in dismissing Mr. Cox's claim, the Court noted that "[I]t would seem unjust to allow Mr. Cox to approbate and reprobate. His business recorded a profit in his absence under the agency of Ms. Jn Marie which he enjoyed the benefit of, yet, at the same time, he seeks to deny that she could lawfully have made withdrawals from his account as no proper mandate had been given to the Cooperative".

Source: Saint Lucia High Court case of **Joseph Cox v. [1] Junie Jn Marie [2] Dennery Community Credit Cooperative Society Ltd.** [2017]

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