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Right of Way Problems Affecting Motorists in Ohio

Sheldon Portman

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NOTES

Right of Way Problems Affecting Motorists In Ohio

WHENEVER the paths of vehicles intersect, the problem of determining who has the right of way is important in order that collisions be avoided, and if a collision does occur, to decide questions of liability. The Ohio Revised Code contains certain rules governing the right of way.[1] They provide that the right of way be given to vehicles on the right at ordinary, non-preference intersections;[2] to vehicles coming from the opposite direction by drivers turning left;[3] to vehicles on a through highway;[4] and to vehicles on a public highway by those approaching from a private drive.[5] The Ohio courts have often been confronted with problems requiring the interpretation of these statutory rules and the definition of the rights and duties of drivers under them. This article presents a discussion of these problems.

RIGHTS AND DUTIES OF MOTORISTS AT INTERSECTIONS

1. *Preferred Drivers*

The earliest, most significant right of way problem considered by the

[1] OHIO REV. CODE § 4511.01(RR) (OHIO GEN. CODE § 6307-2) defines "right of way" as follows: " the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which it is moving in preference to another vehicle approaching from a different direction into its path."

[2] OHIO REV. CODE § 4511.41 (OHIO GEN. CODE § 6307-40)

[3] OHIO REV. CODE § 4511.42 (OHIO GEN. CODE § 6307-41).

[4] OHIO REV. CODE § 4511.43 (OHIO GEN. CODE § 6307-42).

[5] OHIO REV. CODE § 4511.44 (OHIO GEN. CODE § 6307-43).

Ohio courts was whether the statutes created an absolute right in the preferred driver which, if violated, was negligence per se.

When the Supreme Court of Ohio was first confronted with this question,[6] it was decided that the statutes created a mere preference and not an absolute right. The court held that this preference only applied when both vehicles arrived at an intersection at the same time and that it was not negligent per se to fail to yield the right of way.

Five years after its first decision, the Ohio Supreme Court reversed itself in the landmark case of *Morris v. Bloomgren.*[7] The court held that the statutory right of way was an absolute right and not a mere preference, and that it was qualified only by the requirement that the preferred driver proceed in a lawful manner.[8] The court rejected the common law rule that the vehicle first to arrive at an intereection had the right of way. Such a rule, the court said, would result in races to be first at an intersection which was contrary to the purpose of the traffic code to promote public safety. The supreme court further held that the driver on the right at a non-preference intersection has the right to assume that the driver on his left will obey the law and yield the right of way, but if the latter does not yield and the preferred driver discovers this, the preferred driver must then use ordinary care to avoid injury to the other driver.

In defining the nature of the right of way, the supreme court in the *Morris* case carefully stressed that the right was qualified by the requirement that the preferred driver approach in a lawful manner.[9] The court held that when the preferred driver approaches in an unlawful manner, he loses the right of way and must exercise reasonable care.

In determining what constitutes an unlawful manner of approach by the otherwise preferred driver, the Ohio courts have held that it is driving at a greater speed than is reasonable for the circumstances,[10] driving with

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[6] Heidle v. Baldwin, 118 Ohio St. 375, 161 N.E. 44 (1928); George Ast Candy Co. v. Kling, 121 Ohio St. 362, 169 N.E. 292 (1929)

[7] 127 Ohio St. 147, 187 N.E. 2 (1933).

[8] See Note, 89 A.L.R. 838, 839 (1933) The annotation points out that *Morris v. Bloomgren* was a unique interpretation. Other states at that time construed such regulations to give only a relative right dependent upon the circumstances of a given case, such as the speed of the vehicles and the distance of each from the intersection. The "relative right" rule was difficult to apply, and the elements of speculation such as speed and distance made for insecurity as great as if no regulations existed at all.

[9] The court spoke of this as: " the sine qua non obligation cast upon the vehicle approaching from the right, which, to maintain its right, it must observe." 127 Ohio St. 147, 156, 187 N.E. 2, 5.

[10] Young v. Swartz, 33 Ohio L. Abs. 324, 34 N.E.2d 795 (App. 1940) In *Cleveland v. Keah,* 157 Ohio St. 331, 105 N.E.2d 402 (1952), the Ohio Supreme Court considered whether exceeding the statutory speed limit automatically constituted an unlawful manner of approach by the preferred driver. The defendant was found guilty of violating the right of way statute when, while making a left turn, he collided

wheels to the left of the centerline of the road,[11] and driving at night without headlights.[12]

In the matter of instructing a jury on the requirement, the Supreme Court of Ohio has held that a trial court must explain in its charge to a jury what acts by the otherwise preferred driver would be unlawful and that it is improper to allow a jury to determine for itself what is unlawful.[13] A court of appeals has held that a jury should be instructed on the lawful manner obligation where there is evidence of unlawful driving by the otherwise preferred driver.[14] But in a case where there was no evidence of an unlawful approach, it was held that a jury need not be instructed on the requirement.[15]

Ohio courts have also ruled that an unlawful manner of approach by the preferred vehicle will never be presumed by the mere fact of a collision,[16] but it must be shown by direct or circumstantial evidence.[17]

Together with the requirement that he proceed in a lawful manner, the preferred driver also has the duty, if he discovers that the non-preferred vehicle is not yielding the right of way, to use reasonable care to avoid injuring the other driver.[18] But in this regard the preferred driver need not exercise reasonable care to observe visually that the unfavored driver is not yielding the right of way. In *Plummer v. People's Transit Co.*,[19] the trial court instructed that the plaintiff, the preferred driver, would be guilty of contributory negligence if he failed to exercise reasonable care to see the defendant. The court of appeals held that this was error because it contradicted the rule of *Morris v. Bloomgren* which was that only if the preferred driver discovers the other driver's position of peril does a duty of ordinary care arise.

An important and difficult problem arises when the preferred driver

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with an automobile coming from the opposite direction. There was evidence that the preferred vehicle was going thirty miles per hour in a twenty-five mile per hour zone. On appeal the defendant argued that his conviction was erroneous because the other driver lost his right of way by proceeding in an unlawful manner. But the supreme court pointed out that the city and state speed limit laws do not make speeds greater than those specified unlawful per se, but that they only establish a prima facie case which may be rebutted by evidence that under the circumstances the speed was neither excessive nor unreasonable.

[11] Columbus v. Radar, 85 Ohio App. 143, 78 N.E.2d 424 (1948).

[12] Boyd v. Hadley, 42 Ohio L. Abs. 353, 59 N.E.2d 676 (App. 1944).

[13] Blackford v. Kaplan, 135 Ohio St. 268, 20 N.E.2d 522 (1939).

[14] Smitley v. State, 26 Ohio L. Abs. 418 (App. 1938)

[15] Schmidt v. City Ice & Fuel Co., 60 Ohio App. 29, 19 N.E.2d 514 (1938).

[16] Morrison v. Bell, 26 Ohio L. Abs. 249 (App. 1937)

[17] Esterly v. Youngstown Arc Engineering Co., 59 Ohio App. 207, 17 N.E.2d 416 (1937), *motion to certify overruled,* October 13, 1937; Morrison v. Bell, 26 Ohio L. Abs. 249 (App. 1937).

[18] Morris v. Bloomgren, 127 Ohio St. 147, 187 N.E. 2 (1933) (syllabus no. 5).

[19] 61 Ohio L. Abs. 322, 104 N.E.2d 75 (App. 1951)

slows down or stops before entering an intersection. The question is whether he forfeits his right of way by such conduct.

In *Pitt v. Nichols*[20] the Supreme Court of Ohio held that a preferred driver does not lose the right of way by slowing down. The court characterized the argument to the contrary as " a queer doctrine that the exercise of caution is negligence."[21] Such slowing down by the favored driver was held not to justify the non-preferred driver in moving across the intersection without yielding.

The effect of stopping by the preferred vehicle was considered in *Singer v. Brinks, Inc.*[22] The non-preferred driver argued that the favored driver lost his right of way by not proceeding "uninterruptedly" as "right of way" is defined in the code.[23] But the court of appeals held that the statute means only that the preferred driver has the *right* to proceed without interruption.

In *Lay v. Cahill*[24] the defendant, the preferred driver, stopped before entering the intersection. A collision occurred when the plaintiff, the non-preferred driver, proceeded through the intersection believing that the defendant was yielding the right of way. A majority of the Ohio Supreme Court reversed a judgment for the plaintiff and held, without discussing the question of right of way, that both drivers were negligent.[25] The majority pointed out that the plaintiff was contributorily negligent because he failed to sound his horn or give any warning that he intended to pass ahead of the defendant.

The majority decision in the *Lay* case implies that the preferred driver may waive his absolute right of way by stopping, and if the non-preferred driver, in the exercise of reasonable care, warns the preferred driver of his intent to pass through the intersection, the otherwise preferred driver will be liable for the resulting collision. This seems a reasonable rule for this situation. By stopping, the preferred driver manifests an intent to yield the right of way thereby justifying the non-preferred driver's belief that he may proceed. Such a situation is distinguishable from that of *Pitt v. Nichols*, wherein the preferred driver merely slowed down but did not stop. If he does come to a full stop, it would seem reasonable to hold that he thereby waives his absolute right and must exercise ordinary care.

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[20] 138 Ohio St. 555, 37 N.E.2d 379 (1941).

[21] *Id.* at 563, 37 N.E.2d at 383.

[22] 56 Ohio L. Abs. 118, 91 N.E.2d 270 (App. 1949)

[23] See note 1 *supra.*

[24] 154 Ohio St. 49, 93 N.E.2d 289 (1950).

[25] Judges Turner, Hart and Stewart dissented. They contended that the question whether the preferred driver proceeded in a lawful manner was a question of fact for the jury. But *query:* if the defendant were proceeding in an unlawful manner, how would that vitiate the plaintiff's negligence?

Another interesting problem regarding the rights of preferred drivers was recently considered for the first time in *Gratziano v. Grady.*[26] The question was whether the preferred driver lost his right of way by making a left turn at the intersection. The majority of the court of appeals held that he did lose the right of way, basing this decision on the language of the statute defining "right of way"

> the right to proceed uninterruptedly in a lawful manner *in the direction in which it is moving.* [27] (emphasis by the court.)

The majority further stated that the unfavored driver had a right to assume that the preferred vehicle would proceed in a straight direction, and that if the latter vehicle turned left, the distance each could move before crossing paths would be reduced, thereby making a collision more likely. In this regard, the court ruled that it was in the interest of greater safety for the otherwise preferred driver to yield the right of way.[28]

The *Gratziano* case further qualifies the "absolute" right of way declared in *Morris v. Bloomgren.* The court's construction of the statute defining right of way, that the preferred driver must move in a straight direction or yield the right of way, seems much too literal. The court may be correct in stating that when a left turn is made the distance between the paths of the vehicles is reduced; however, this fact seems too inconsequential to require the forfeiture of the right of way and to complicate its exercise. It seems more reasonable to require the unfavored driver to anticipate that the driver with the right of way may turn left and to require him to allow enough space for the preferred driver to execute a left turn if he chooses to do so.

In the above cases, the Ohio courts have attempted to define the rights and duties of preferred drivers under the Ohio right of way rules. *Morris v. Bloomgren* definitely established that the preferred driver has an absolute right of way so long as he approaches the intersection in a lawful manner. If he discovers the unfavored driver failing to yield the right of way, the preferred driver must use reasonable care to avoid a collision. The preferred driver does not forfeit the right of way by slowing down as he approaches the intersection, but if he stops and then enters, the supreme court has suggested that he may lose his absolute right and be required to exercise reasonable care. The preferred driver has been held to lose the right of way if he turns left or changes direction, but the soundness of this ruling seems questionable.

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[26] 83 Ohio App. 265, 78 N.E.2d 767 (1948)

[27] OHIO REV. CODE § 4511.01(RR) (OHIO GEN. CODE § 6307-2)

[28] Judge Hornbeck dissented terming this interpretation unnecessary, impractical and contrary to the rule of *Morris v. Bloomgren,* which he said, qualified the preferred driver's right only by the lawful manner requirement.

2. *Non-preferred Drivers*

The major problem regarding non-preferred drivers has been their failure to observe visually the preferred vehicle, either because the particular driver neglected to look effectively or because objects on street corners obstructed his view.

If the non-preferred driver does not look effectively and fails to see the vehicle with the right of way, such failure has been held to be negligence as a matter of law.[29]

Frequently, the situation arises where the non-preferred driver looks for other vehicles at an intersection but does not see them because of an obstruction to his view at the street corner. When the obstruction limits the non-preferred driver's range of vision to a very short distance, his entry into the path of an oncoming preferred vehicle in an attempt to cross the intersection has been held to be negligence per se.[30] In this situation the courts require the non-preferred driver to regulate his approach so as to observe other vehicles from a position where he can look safely and effectively.[31] In this regard, it has been pointed out that the unfavored driver at a non-preference intersection may proceed as far as the center of the intersecting highway to avoid obstructions when looking to the right since his vehicle has the right of way over vehicles on his left.[32]

The difficult question arises, however, if the non-preferred driver can see for a reasonable distance that no vehicle is present, and it is possible to assume that if a preferred vehicle beyond the obstructed view of the unfavored driver is traveling at a lawful speed, it will not reach the intersection until the non-preferred driver is safely across. However, the preferred vehicle exceeds the speed limit, suddenly appears and collides with the non-preferred vehicle. Does the unfavored driver's attempt to cross the intersection under such circumstances constitute negligence per se? As yet the Supreme Court of Ohio has not considered this problem, but there are several court of appeals decisions.[33]

In each of these cases, the excessive speed of the preferred vehicle was

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[29] Williams v. Goodwin, 90 Ohio App. 159, 104 N.E.2d 81 (1950); Willard v. Fast, 75 Ohio App. 225, 61 N.E.2d 807 (1944); Pritchard v. Cavanaugh, 18 Ohio L. Abs. 354 (App. 1934), *aff'd*, 129 Ohio St. 542, 196 N.E. 164 (1934); Ford Motor Co. v. Smith, 16 Ohio L. Abs. 7 (App. 1933).

[30] Bevilacqua v. Mack, 92 Ohio App. 63, 109 N.E.2d 565 (1951) (the view to the right was ten feet); Jackson v. Mannor, 90 Ohio App. 424, 107 N.E.2d 151 (1951) (twenty-five feet); Solomon v. Mote, 38 Ohio L. Abs. 169, 49 N.E.2d 703 (App. 1942) (twenty to twenty-five feet)

[31] *Ibid.*

[32] Solomon v. Mote, 38 Ohio L. Abs. 169, 49 N.E.2d 703 (App. 1942); *cf.* General Exchange Ins. Co. v. Elizer, 32 Ohio L. Abs. 579, 31 N.E.2d 147 (App. 1940) *Query:* how does a motorist approaching a thoroughfare proceed when his view is obstructed in both directions?

raised as a defense. The courts rejected this defense where the only evidence of excessive speed was an inference drawn from the relation of the distance of the non-preferred driver's range of vision to the time that elapsed from when he looked to when the collision occurred.[34] In the absence of more positive proof the courts have held the non-preferred driver to be negligent per se for not regulating his approach so as to observe the other vehicle effectively and to stop before entering its path.[35] In only two cases was proof of the excessive speed of the preferred vehicle more positively established.[36] In these, both decided by the same court of appeals, the question whether the non-preferred driver was negligent per se for attempting to cross the intersection was determined by the facts of each case.

In *Kellar v. Miller*,[37] the non-preferred driver's range of vision to the right was limited to sixty feet because of shrubbery on the corner. Within that distance he saw no vehicles approaching, but upon entering the intersection he was struck by the preferred vehicle which was traveling forty-five miles per hour in a thirty-five mile per hour zone. The court of appeals, reversing the trial court, held that the non-preferred driver was contributorily negligent as a matter of law for attempting to cross the intersection without looking effectively, regardless of the excessive speed of the other driver.[38]

However, in *Brink's Express Co. v Brokaw*,[39] the same court of appeals held seven years earlier that a non-preferred driver was not contributorily negligent as a matter of law for entering the intersection when he was unable to observe the defendant to his right.[40] The court based its opinion largely on the fact that the defendant was traveling forty-five miles per hour in a twenty mile per hour zone.

These two cases appear distinguishable on their facts. In a thirty-five mile per hour speed zone, a non-preferred driver who attempts to cross the intersection having only a sixty foot range of vision, as was the situation in

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[33] Kellar v. Miller, 67 Ohio App. 361, 36 N.E.2d 890 (1941); General Exchange Ins. Co. v. Elizer, 32 Ohio L. Abs. 579, 31 N.E.2d 147 (App. 1940); Coshun v. Mauseau, 62 Ohio App. 249, 23 N.E.2d 656 (1939); Brink's Express Co. v. Brokaw, 18 Ohio L. Abs. 39 (App. 1934).

[34] Gen. Exchange Ins. Co. v. Elizer, 32 Ohio L. Abs. 579, 31 N.E.2d 147 (App. 1940); Coshun v. Mauseau, 62 Ohio App. 249, 23 N.E.2d 656 (1939)

[35] *Ibid.*

[36] Kellar v. Miller, 67 Ohio App. 361, 36 N.E.2d 890 (1941); Brink's Express Co. v. Brokaw, 18 Ohio L. Abs. 39 (App. 1934).

[37] 67 Ohio App. 361, 36 N.E.2d 890 (1941).

[38] Judge Hornbeck dissented, arguing that the defendant lost his right of way by exceeding the speed limit, and the plaintiff was justified in proceeding where no car could be seen within sixty feet.

[39] 18 Ohio L. Abs. 39 (App. 1934).

[40] The facts stated in the opinion do not indicate exactly how limited the driver's range of vision was except that it was "a closely built up area of the city."

the *Kellar* case, could very well be found guilty of negligence per se.[41] Whereas an unfavored driver having a view that is reasonable for the circumstances where the speed limit is only twenty miles per hour, as was true in the *Brink's* case, can not be held negligent as a matter of law for atempting to cross the intersection without anticipating the preferred vehicle's approach at forty-five miles per hour. In both cases the non-preferred motorist *may* be guilty of negligence, but in the former he is guilty as a matter of law.

In the foregoing cases, the Ohio courts have held that the non-preferred driver has a duty to look effectively for preferred vehicles approaching an intersection. When an obstruction at the corner of an intersection impedes his view, he is not relieved of that duty but must regulate his approach so that he can look effectively and be able to stop safely before entering the path of the preferred vehicle. Neither can he rely on the assumption that the preferred vehicle will not reach the intersection if it approaches at a lawful speed. If in the latter case the preferred vehicle exceeds the speed limit and a collision occurs, the non-preferred driver may still be found guilty of contributory negligence.

Right of Way Problems at Stop Signs

Several interesting questions on right of way that are specially related to the erection and maintenance of stop signs at intersections have been the subject of decision by the Ohio courts. Obviously, the absence of a stop sign from view, either because it was never erected or has been destroyed or hidden by some object, will have an important effect upon the conduct of a motorist who is unfamiliar with the particular intersection. The legal consequences of these situations are therefore important.

The Ohio Revised Code provides that the right of way must be yielded to vehicles on thoroughfares.[42] It is therefore important to determine when a thoroughfare legally exists. In this regard, it has been held that under laws authorizing the designation of thoroughfares,[43] stop signs must be erected on the intersecting streets before the legal character of a thoroughfare attaches.[44]

An interesting situation was presented in *Bartlett v. McDonald.*[45] Stop signs were mistakenly erected on a street that was designated a main thoroughfare by local ordinance, but no signs were placed on the intersecting streets. The defendant, who was approaching on the thoroughfare, failed to obey the signs and collided with the plaintiff who was travelling on the

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[41] If the preferred driver were traveling at the maximum lawful speed of thirty-five miles per hour from over sixty feet away, which was the extent of the non-preferred driver s vision, he would be in the intersection in a little over one second since, at that speed, he would cover 51.3 feet per second.

[42] Ohio Rev. Code § 4511.43 (Ohio Gen. Code § 6307-42)

intersecting street. On appeal from an adverse judgment, the defendant argued that despite the stop signs he had no duty to stop because he was on a main thoroughfare. The court, however, held that the statute[46] giving local authorities the power to designate a main thoroughfare required that stop signs be erected at the cross streets of such thoroughfares, and that without stop signs on the cross street in this case, the street that the defendant was approaching on could not be a thoroughfare.[47]

In *Security Ins. Co. v. Smith*,[48] a municipal court applied the rule of the *Bartlett* case in a situation where the plaintiff's insured was driving on a street which the community had always regarded as a thoroughfare and on which city buses were operated. The defendant entered this street from a side street where no stop signs had ever been erected. The court held that without stop signs the street in question was not a thoroughfare under state law,[49] and therefore, the right of way was governed by the general, non-preference right of way statute[50] which gave the right to the defendant who approached on the right.

Strictly speaking, the logic of the *Security Insurance Co.* case may be correct; however, it seems inequitable to convert what the driver on the alleged thoroughfare reasonably thought was an absolute right of way into an absolute duty to yield the right of way. At the same time, an absolute duty to yield should not be imposed on the driver on the intersecting street where the stop sign is missing. The better rule in this situation might be to treat their rights as equal and to require ordinary care of each,[51] or to impose liability upon the authorities responsible for erecting the stop signs.

The question of whether a thoroughfare loses its character as such if the stop signs once erected are no longer standing was raised in *Conners v. Dobbs*.[52] The plaintiff was driving on a street that was designated a thoroughfare by ordinance. He was struck by the defendant's vehicle which

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[43] OHIO REV. CODE § 4511.65 (OHIO GEN. CODE §§ 6310-32, 6307-63)

[44] Bartlett v. McDonald, 59 Ohio App. 85, 17 N.E.2d 284 (1937); Security Ins. Co. v. Smith, 34 Ohio Op. 392, 72 N.E.2d 693 (Oakwood Mun. Ct. 1946).

[45] 59 Ohio App. 85, 17 N.E.2d 284 (1937).

[46] OHIO REV. CODE § 4511.65 (OHIO GEN. CODE § 6310-32).

[47] Citing 1927 OPS. ATT'Y GEN. [Ohio] No. 2890.

[48] 34 Ohio Op. 392, 72 N.E.2d 693 (Oakwood Mun. Ct. 1946)

[49] OHIO REV. CODE § 4511.65 (OHIO GEN. CODE § 6307-63) " all sections of streets and highways on which are operated motor coaches for carrying passengers, for hire, along a fixed or regular route under the authority granted by the municipal corporation within which such route lies, are hereby designated as through highways, provided that stop signs shall be erected at all intersections with such through highways by local authorities. "

[50] OHIO REV. CODE § 4511.41 (OHIO GEN. CODE § 6307-40)

[51] See discussion of an analogous problem in note 55, *infra*.

[52] 77 Ohio App. 247, 66 N.E.2d 546 (1945).

entered from the right on a cross street where the stop sign was no longer standing. The court held that a thoroughfare could not lose its character as such after stop signs had once been erected, that the plaintiff had a right to rely on his knowledge that the street was a thoroughfare, and that the defendant was "charged with knowledge" of the designation of the thoroughfare and should have come to a full stop.

The "constructive knowledge" doctrine of the *Connors* case was later applied in *Flannery v. Tessaromatics.*[53] The plaintiff, a resident of Kentucky who was unfamiliar with the streets involved, collided with a third party upon entering a thoroughfare without stopping. It was a dark and rainy night, and the defendant's tractor-trailer truck was parked three feet behind the stop sign entirely concealing it. Plaintiff sued the defendant for negligence in blocking the sign in violation of a statute prohibiting parking within thirty feet of a stop sign.[54] The court of appeals reversed the jury verdict for the plaintiff and held that he was guilty of contributory negligence as a matter of law; that under the doctrine of *Conners v. Dobbs,* the plaintiff was "charged with knowledge" of the stop sign even though he was unable to see it.

The "constructive knowledge" doctrine of the *Conners* case seems unduly harsh. To charge a motorist with knowledge that he is approaching a thoroughfare because stop signs were standing at one time, perhaps one month, one year or ten years before, when none are present at the time of the accident, seems contrary to the apparent purpose of the statutes which require the erection of stop signs for the proper designation of a thoroughfare. The obvious policy of the stop sign requirement would seem to be that the driver on the intersecting street be given adequate warning that he is approaching a thoroughfare where he must yield the right of way. In the absence of such warning, it seems unreasonable to impose an absolute duty to yield the right of way on a theory of constructive knowledge. The application of this rule in the *Flannery* case amply demonstrates its unreasonableness. A more equitable rule in this situation might be to impose on the non-preferred driver a duty of reasonable care rather than an absolute duty to stop.[55]

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[53] 91 Ohio App. 215, 108 N.E.2d 146 (1949)

[54] OHIO REV. CODE § 4511.68(G) (OHIO GEN. CODE § 6307-66(a)(7))

[55] In the *Conners* case, the court leaned toward this position in dicta when it said that independent of the statutory right of way, assuming that the common law governed the rights of the parties, the evidence indicated that the defendant failed to exercise any care to avoid the collision.

In this regard, attention is directed to an analogous situation, discussed below, where a traffic light is out for one vehicle and another vehicle has the "go" or green light. This occurred in *Welch v. C. C. Lines, Inc.,* 142 Ohio St. 166, 50 N.E.2d 343 (1943), wherein both vehicles entered the intersection and collided. The Supreme Court of Ohio held that both drivers had equal rights, and each was bound

Such a rule of reasonable care was applied in *Franz v. Levine*,[56] wherein a stop sign was hidden by a barrel. The court held that when the defendant saw the obstruction he should have anticipated, in the exercise of reasonable care, that a sign might be hidden, and he should not have proceeded until he had learned that fact.

The general problem of the legal consequences of missing or hidden stop signs is a difficult one. Undoubtedly, the Ohio Supreme Court will be called upon in the future to clarify the difficulty.

RIGHT OF WAY PROBLEMS AT TRAFFIC SIGNALS

Morris v. Bloomgren[57] established that preferred drivers had the right to assume that non-preferred vehicles would yield the right of way. But even before that decision, the Ohio Supreme Court recognized the right of drivers having the green light at a traffic signal to rely on others obeying the red stop light.

In *Henderson v. Cleveland Ry.*,[58] the plaintiff, a passenger of a car, was injured in a collision after she told the driver: "The light is green. Go ahead." The supreme court held that she had a right to rely on vehicles in the cross street observing the stop signal, and therefore, she was not contributorily negligent in telling the driver to proceed when the light was green.[59]

The rights and duties of drivers at a traffic signal when one of the lights is not operating was considered by the Ohio Supreme Court in *Welch v. C.C. Lines, Inc.*[60] The plaintiff, a passenger on a bus, was injured when the bus collided with the defendant's truck. The traffic signal was green for the bus, but the light was not operating for the defendant. The supreme court held that since the light was not operating for the truck, the traffic ordinance requiring obedience to the red light did not apply; that in the absence of the traffic light, the general right of way statute applied, giving the right of way to the vehicle on the right, which was the truck. Thus, the defendant was rightfully in the intersection, and the bus was also rightfully in the intersection since it had the green light. In this situation, the court ruled that each vehicle had equal rights and that each was bound to exercise ordinary care.[61]

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to exercise reasonable care. This same rule should be applied to the obscured or missing stop-sign situation.

[56] 72 Ohio App. 280, 51 N.E.2d 219 (1943).

[57] 127 Ohio St. 147, 187 N.E. 2 (1933).

[58] 123 Ohio St. 468, 175 N.E. 863 (1931).

[59] *Accord*, Roberts v. Krasny, 35 Ohio L. Abs. 314, 40 N.E.2d 458 (App. 1941); Sherman v. Fallen, 14 Ohio L. Abs. 289 (App. 1933) *Cf.* Pesta v. Ruf, 38 Ohio L. Abs. 67, 48 N.E.2d 876 (App. 1942).

[60] 142 Ohio St. 166, 50 N.E.2d 343 (1943).

[61] In dicta the court points out that the traffic signal, although not operating, was a

Another difficult problem arises when a traffic signal changes while one vehicle is in the intersection, and the other vehicle on the cross street starts up with the light in its favor. The question is whether the vehicle caught under the changing light has an absolute right to clear the intersection.

Two court of appeals decisions have held that when the traffic light changes, vehicles within the intersection have an absolute right to clear, and it is the duty of opposing traffic to allow those vehicles to do so.[62] These courts held that the "go" signal did not confer authority to proceed regardless of other persons or vehicles already in the intersection, and that a motorist was negligent per se in this situation if he proceeded into the intersection in sole reliance upon the traffic light.

But in *Beers v. Zettelmeyer*[63] the Supreme Court of Ohio took a different view of this problem. The plaintiff was a passenger in a car that was caught under a change of lights and was struck by the defendant, who had started up when the light changed in his favor. On appeal the plaintiff argued that the trial court erred by instructing that the defendant's only duty was to exercise reasonable care when the light changed in his favor while the plaintiff's vehicle was still in the intersection. He urged that the court should have charged that the defendant had an absolute duty to allow the plaintiff's car to clear the intersection. But on the basis of *Welch v. C.C. Lanes, Inc.*,[64] the supreme court held that if both cars entered the intersection lawfully with the "go" signal, they both had equal rights, and each was required to exercise ordinary care to avoid a collision.[65]

The *Beers* case does not conform with the policy announced in *Morris v. Bloomgren* that right of way rules should be definite and certain in the interest of greater safety. The rule that a driver has an absolute duty to yield the right of way to vehicles caught under a changing traffic signal seems a much more certain and safe rule of conduct.

CONCLUSION

Thus, have the Ohio courts defined the rights and duties of motorists under the right of way statutes. Fortunately, the Ohio Supreme Court recognized early the need for definiteness in the application of the statutory rules for greater safety. Under the rule that the statutes confer an absolute right qualified only by the requirement that the preferred driver approach in a

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warning to the defendant. This should be a very important factor in determining whether the defendant exercised reasonable care.

[62] Monsey v. Cincinnati St. Ry., 86 Ohio App. 61, 89 N.E.2d 683 (1949); Dayton v. Christ, 31 Ohio L. Abs. 644 (App. 1940)

[63] 155 Ohio St. 520, 99 N.E.2d 655 (1951).

[64] 142 Ohio St. 166, 50 N.E.2d 343 (1943)

[65] *Cf.* Condon v. Zavesky, 113 N.E.2d 115 (Ohio App. 1953) (held that the plaintiff owed a duty of reasonable care to the defendant who was caught under a changing left turn signal)