

Para 201-You & the Law
Chapter 10-Cars
Wednesday-10/28/09

XIII . Your Car & the Police

A. The Stop: (1) be polite, stay in car, produce driver's license, registration
(2) ask to see their identification

B. The Search:

- (1) you can refuse to consent to search but if officers have probable cause, they can search
--can challenge later with motion to suppress
- (2) if the violation means you could be taken into custody, searches generally permitted
- (3) they can do pat-down search/frisk on you
- (4) U.S. Supreme Court in Terry case addressed the lesser expectation of privacy in vehicle versus home--due to mobility of vehicle
- (5) they can search around the driver's immediate area, glove compartment (anything within reach of driver); can search through closed containers; can search impounded vehicles for purpose of inventory of possessions/belongings
- (6) can seize items in plain view
- (7) police can pull you over at roadblock and set up stops, checkpoints etc for drunk driving purposes
- (8) fuzz-busters illegal in some states

C. The Arrest: do not:

- (1) speak to anyone about your case
- (2) answer police Q's or waive your right to counsel
- (3) submit to line-up or tests without your attorney

XIV. *** DUI: driving under the influence
DWI: driving while intoxicated
OUI: operating under the influence
Physical control: car need not be in motion

A. Prosecution proves case by: (1) officers' testimony about vehicle operation and defendant's behavior, (2) results of field sobriety tests, (3) results of chemical tests

B. Every state has "implied consent" laws viewing drivers as automatically agreeing to blood, breath, and urine tests to determine sobriety
--if you refuse testing, your license is automatically suspended (length of time varies with offense)

C. Tests

- (1) field sobriety tests: walking the line; standing on one foot; touching body parts
- (2) breathalyzer tests: blow into machine which measures percentage of alcohol in body
--intoxicated level: .10 or .08, depending on the state
--can challenge breathalyzer results: machine not certified; operator inadequately trained; machine maintained improperly

D. Legal drinking age is 21 in all states; some states provide enhanced penalties for readings of .20 or higher

E. Dram-shop laws and social host laws: expand liability for negligence to include persons providing alcohol

F. License suspension or revocation:

(1) driving without license: usually charges dropped if you appear at court with your license

(2) suspension: temporary withdrawal of privilege to drive

(3) revocation: more permanent withdrawal of driving privileges
--usually for habitual reckless driving; fleeing/eluding police; DUI's etc

(4) may be released on bond or personal recognizance

(5) revocation or suspension hearings are administrative proceedings, not judicial proceedings

(6) license renewal could involve vision test, new photo, written test, or road test

G. Seat-belt laws: all states require children to be restrained while riding in motor vehicles
--most states reject "seat-belt defense" & won't permit evidence you didn't buckle up as proof you were negligent

XV. Speeding & Other Offenses

--minor violations: fines

--major violations: fines; jail time

A. Check state law on "leaving the scene": in most states, when there has been an accident involving personal injury or property damage, you are required to stop, notify police, etc.

B. Reckless driving: willful or wanton disregard for safety of persons/property
--standard of duty of care: reasonable care

C. Liability for allowing others to drive your car: family purpose doctrine: 20 or so states have this-
parents will be liable for their children's negligence

D. Failure to fill out accident report is misdemeanor in most states

E. Contact attorney after accident: if you are suing, you'll hire your own attorney; if you are being sued, your insurance company provides attorney for you

XVI. Negligence: elements:

(1) duty of care

(2) breach of duty

(3) breach was proximate cause of injury

(4) damages

A. Contributory negligence: only a few states have this; bars recovery if your own negligence contributed to the accident in any way

B. Comparative negligence: majority of states have this: divides the damages among the drivers in the accident based on their degree of fault

--modified comparative fault states: you may recover only if your fault is below a certain threshold; i.e. 50 %

--fact-finder (jury or judge) determines % of fault--if you were 20% at fault and total damages were \$100,000, you could recover \$80,000

XVII. Insurance

--rates determined by : age; sex; marital status; geographic location; age, make, model of your vehicle

A. Could charge surcharge if you have had a number of accidents

B. Could give you discounts for safety equipment, senior citizen status, good grades if student

C. Some states require you to buy “uninsured motorist coverage” so you can collect from your insurance company if you are injured by an uninsured driver: see p. 39 for specifics

D. No-Fault Insurance: type of insurance where carriers compensate their own policy holders for medical and other costs

(1) to protect you, your passengers, pedestrians you injure

(2) don't go to court

(3) applies only to bodily injury claims not property damage claims

(4) Pros: no protracted court cases

(5) Cons: restricts injured person's right to sue the other driver for general damages

E. Choice Statutes: enable drivers to choose between no-fault policy and straight tort-based negligence policy

F. Financial responsibility laws: require drivers to have insurance or post bond (or have certain sum in cash)

G. Compulsory insurance statutes: mandate proof of financial responsibility as condition of vehicle registration (i.e. collision & comprehensive)

***See web-sites regarding insurance: www.iii.org- (p. 45)

***See materials on pp. 41-45 for many useful web-sites, including: <http://www.nhtsa.gov> and <http://www.cpsc.gov>