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One Hundred Questions and Answers on Traffic Law Enforcement

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ONE HUNDRED QUESTIONS AND ANSWERS ON TRAFFIC LAW ENFORCEMENT

NEWMAN F. BAKER†

These questions were framed by the police officers attending the course of study offered by the Northwestern University Traffic Institute. They were not concocted by an imaginative professor nor were they scholastic interrogatories. They came from a group of earnest, interested policemen who wanted to know the answers. It is submitted that they are good questions and practical ones, too. A careful consideration of them may save the policeman reader from personal embarrassment or legal liability. At least, they deal with pertinent and difficult problems and the solving of problems is one of the most productive forms of education.

A few words of caution should precede the materials which follow. They are samples of the many questions which the police officer must expect to face in his daily work of enforcing state and city traffic laws; many more could well be asked. They are arranged in a rough classification, but they are not intended to cover any subject completely, nor do they indicate the content of a formal course in criminal law. Moreover, the questions are presented as

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suggestive rather than informative. The policemen who asked them came from various parts of the country and many of them involve local laws, ordinances, or situations. A large part of them raise issues legally in dispute and the short space allotted to the answers is entirely inadequate for qualification or discussion necessary to achieve the lawyer's ideal of accuracy. So, the answers are not to be taken as authority but the reader is strongly advised to refer to his own statutes and ordinances and, if possible, to secure definite answers from his department's legal counsel.

The ambitious policeman displays great interest in this field of traffic law enforcement and is grateful for any material designed for his professional advancement. Unfortunately, he has great difficulty in getting printed materials of any value. The police writers are often inaccurate and the lawyers display small interest in the subject. For that reason the writer preserved these questions and attached short answers. It is hoped that a study of them will stimulate further research and discussion of the legal difficulties of traffic law enforcement.

(NOTE: To lend interest to this study the reader should cover each page with a blank sheet of paper. Slide the paper down so as to expose the first question. Read it carefully and then if necessary read it again. When you are sure you understand the problem, then ask yourself, "Suppose this happened to me. What would I do? What is the answer? What do I really know about this topic?" When you have definitely decided upon your solution, move the paper to expose the printed answer. If you differ from the writer, and that is to be expected on many questions, go to your own laws and see if a local provision which you have differs from the general practice. Questions like these should be *upsetting, provoking and irritating*. If the writer is wrong, prove that he is wrong. Go to the roots of the problems and satisfy yourself that you have the absolutely correct solutions.)

POWERS

1

Does a police officer, who sees a motorist go through a stop sign, have the right to commandeer a passing car for pursuit?

He can ask for the motorist's assistance but generally in petty misdemeanor cases the motorist need not obey the request. However, if it is a case of an escaping felon, then the statutes generally authorize the officer to get help from bystanders. This comes from the old common law *posse comitatus*. They are bound to assist except that they cannot be forced into a position of danger to their own lives.

2

Certain hedges at street corners are accident hazards but the property owners refuse to trim the vegetation. There is no ordinance requiring them to do so. Is there any way whereby an officer may force their removal?

No. Private property may be controlled for the public health, safety, comfort, or general welfare but only by due process of law. The state or city would have to pass a law condemning such traffic hazards and such a law must be a reasonable one. Unless this is done there seems to be nothing that a police officer can do about it directly.

3

An American Legion parade is scheduled with the Mayor, a permit is issued, and notices of the parade are printed in the papers. Does the Police Department have the right to remove cars from the street; even to the extent of using a wrecker to do so?

Yes, but it depends upon the city ordinances. Motorists have the right to use a public street. The Police Department does not own it. Still, if the parade is *authorized*, the removal of obstructing cars seems to be a necessary authorization, too.

4

Can an officer issue a summons ticket upon mere information and belief or suspicion?

No. To illustrate, suppose A comes to officer X and says, "Brown 1937 Ford Sedan, License No. 4-173,895 was speeding up First Street just a moment ago." Officer X pursues and curbs the car while it is *not* speeding. He has no right to arrest and no right to issue a summons. The informant is required by law to sign a complaint before a magistrate and then a warrant may be issued to arrest the offender.

5

Can a police officer take a car which has been involved in an accident and subject it to a brake test against the owner's will? If so would the evidence thus gained be legal?

No. Unless authorized by law the officer has no right to take the car and drive it off to a place where brakes may be tested just to see if a crime has been committed. If he does so many courts would rule that the evidence was illegally obtained and could not be used; other courts may admit it. (Of course, the officer in making a general accident investigation could test the brakes at the scene and it should be remembered that if a person is formally accused of a crime the car may be seized and examined with the purpose of discovering evidence of the crime charged.)

6

Can the Chief of Police, through his traffic bureau, order the establishment of testing lanes and compel local residents to take their cars through for inspection?

No, unless authorized by statute or ordinance. A police officer is not an administrative or executive officer. He is hired to enforce exist-

ing laws; not to create additional ones. The police may be given the power to set up testing lanes by the city council but the Chief cannot create it just because he thinks it is a good idea.

7

An officer pursues and curbs a speeding motorist. The latter locks himself within the car and refuses to come out or to accompany the officer. What can the officer do?

He can break the window, open the door, take out the offender and drag him off to the station. His offense was a misdemeanor, committed in the officer's presence, and therefore the officer had a right to arrest. He can use all reasonable means to accomplish that end.

8

In the absence of statutes or ordinances requiring parties involved in accidents to report, what authority does a policeman have to investigate? Can he detain witnesses at the scene of the accident to interrogate them? Can he take an innocent party to the station to get his story written out and signed?

Unless a witness is willing to be interrogated or to go to the police station, the officer cannot detain or question anyone who is not arrested, and he must have legal grounds for arresting before doing so.

9

Is it lawful for a policeman to give a motorist a ticket or summons, and at the same time require him to sign a recognizance, i.e., a personal promise to appear?

No. The only person to set bail or to allow a personal recognizance is a judge, unless this procedure is allowed by statute. Police officers are not judges. In some places officers investigating accidents give out "subpoenas," an utterly illegal procedure.

10

A car, filled with tough looking persons, fails to stop on officer's siren and travels on at high speed. The officer in the squad car pursues but gradually begins to lose the chase. What can the officer do to stop the other car?

This is a difficult question, where law and practice may not coincide. Legally, the officer should give up the chase, taking the number if possible, and then ask for an arrest warrant for the traffic offense. If he shoots he may kill someone and be liable criminally. Justifiable homicide by an officer is limited to killing an escaping felon or in defense of his own life. Unless he is sure that the persons are felons, he must treat them as ordinary citizens.

11

Can a police officer shoot at the tires of a speeder in order to prevent his escape?

No. He cannot; and if he does so he may find himself in serious trouble. Speeding is only a misdemeanor, not a felony. Much power and authority is given to policemen to prevent the escape of known felons or to take them into custody. This is because it is dangerous to the

community to have felons at large. But the right to use excessive force is not given to officers in misdemeanor cases. If the car is wrecked and the speeder is killed, the officer may be guilty of manslaughter, or liable to a civil suit.

12

Is it lawful for a state police officer to stop a motorist on the highway and demand his driver's license when there has been no indication of a violation of the law?

Many state laws require motorists to show their licenses when requested. In the absence of such statute there seems to be no way to justify such a practice. "Suspicion" alone does not serve as a proper basis for the officer's action. And the law of arrest is significantly silent as to the right of the police to question or investigate.

LIABILITIES

13

A police captain details an "off-duty" officer to lead a funeral on his motorcycle. He is to be paid by the funeral director and he owns his own equipment. While engaged in this work he falls and is injured. Who is liable?

Probably the city. The city would not be liable if the officer is injured while engaged in private work for himself for compensation. But the fact that the captain ordered him to do the work might entitle the injured officer to benefits under the department pension rules. If engaged in police work and obeying his superior's orders, the officer was not "off-duty" technically while leading the funeral.

14

An officer illegally arrests a motorist and forces him to enter the squad car, leaving the motorist's car on the street. Before the motorist could be released and return to his property certain valuable parts were stolen. Would the officer be liable?

Yes. And perhaps he would be liable even if the arrest was legal. When forcing persons to leave their property where they cannot protect it the officer should see to it that it is in some way safeguarded, if reasonably possible.

15

A truck is found operating with an overload on the highway where the pay load, size of tires, etc., is restricted. Can the officer force the driver to unload at the location of the stopping and send for another truck? If the freight is injured or stolen will the officer be responsible?

If the violation is clear the officer may enforce compliance with the motor vehicle code. If any injury to the property results the officer would not be responsible unless he *unnecessarily* exposed it. It was not his fault that the truck was being operated illegally. In no case should a highway policeman be penalized for forcing violators to comply with the statute.

16

A police officer goes to scene of an accident and witnesses declare that the slightly injured driver, A, was intoxicated. A, excited and talking wildly, is arrested as a drunken driver and taken to the station. There he is found to have a bruised head but he passes the intoxication test successfully and is discharged. Can the police officer be sued for false arrest?

Generally, he would not be held liable because drunken driving has been made a felony in many states and the officer probably had reasonable grounds to suspect that A was guilty of that offense. Therefore, the arrest was proper. If drunken driving were only a misdemeanor, however, he might be liable.

17

An officer arrests a person for driving with defective brakes. As the officer is driving the car to the auto pound he has an accident due to the failure of the brakes. Is he liable for damages? Would the city be liable?

The officer would be liable. The city would not. Usually departmental rules provide for towing by a private garage in this situation. In no case should an officer drive a car when it is in such a condition that it is unlawful for a private citizen to drive it.

18

If an officer makes an arrest on the complaint of a citizen and it later develops that the arrest was not justified, which of the two would be liable to be sued for false arrest?

Both could be sued but, as a practical matter, obtaining a judgment against the officer would be difficult if his informant told a plausible story and if there was no time for a warrant. The citizen must be shown to have acted maliciously before he can be sued successfully.

19

What recourse have persons against police officers who arrest illegally or make illegal searches and seizures?

Omitting any crimes which may have been committed by the police, the citizen may sue for assault and battery (if force was used), false imprisonment, or false arrest. But seldom is there a successful suit because it is difficult for the layman to get evidence to be used against the policeman. If an illegal search and seizure is used to obtain evidence the injured party may sue for a trespass and in some jurisdictions may have the evidence excluded at his trial.

20

How far can an arresting officer go before he is civilly liable?

This question is touched upon at other places in this series and is not concrete enough to make a fair answer possible. Still, policemen ask it time and again in this way. In general, a police officer with a warrant can go to extreme lengths to effect an arrest. Without a warrant he may arrest felons, even upon suspicion. Misdemeanants who commit their offenses in his presence may be arrested. *In all cases no more force may be used than is reasonably necessary.*

21

A policeman sees a law violation and commandeers a private car to give chase. As they whirl down the street the officer cries to the driver, "Faster! Faster!" The driver tries to make a turn and the car skids and is wrecked, the driver being injured. He afterward sues the officer for his damages. Is the officer liable?

No. Leaving aside the question whether the citizen was required to assist the officer, he was driving his own car and engaged in public service. He as driver had to take the responsibility for the safe operation of the vehicle.

22

An officer investigated an accident and found a driver very badly injured. The officer started him to the hospital but the injured person protested that he was not hurt and did not want to go to the hospital. Nevertheless, the officer took him and at the hospital it was found that he was in bad shape and he had to stay 10 days before he was released. He refused to pay his bill. Is the officer responsible?

No. He must take emergency cases to a hospital and usually hospitals are required to admit them. He made no personal contract with the hospital for the party's care and treatment.

23

An ordinance makes a certain traffic regulation but it is not backed by a state law. An arrest is made and the motorist carries his case to the supreme court and the ordinance is declared unconstitutional and void. Is the officer liable for false arrest?

No. He is sworn to enforce the law and he is not required to consider in advance what laws are good ones and what laws may be held void. The fact that the ordinance was on the books at the time of arrest should be enough to protect him.

24

One night Captain A tells Officer B, "Smithville just phoned that the bank robbers are coming our way over the U. S. Highway. Green sedan with four people in it. Take C, D, and E and stop them at the city limits. Shoot if you have to, and look out, for they are dangerous." B and the others take their stations and try to flag down a speeding green sedan. When it failed to stop B shot and killed the driver, who was no robber but a local surgeon rushing a patient to the hospital. Is B guilty of manslaughter?

In a case like this one appellate court said "Yes."

25

Where an officer arrests a person but the judge and prosecutor dismiss the accused summarily, can the officer be sued for false arrest?

As a general rule, no. The fact that there is insufficient evidence to hold the accused does not mean that at the time the officer had no reasonable grounds for making the arrest. Nor does it show any malice on the part of the officer. The evidence must be beyond a reasonable doubt before there can be a conviction but an officer does not have to be sure of guilt before he arrests.

26

Can a person collect damages from a municipality if his car is damaged by an attendant at an inspection lane?

Yes. While a person cannot sue the sovereign state without its consent, a city may be sued. Damages are collected for such things as ice on the sidewalk, unsafe streets and the like. Of course, recovery and the amount of the damages depend upon the negligence of the city's attendant and his connection with the city must be such as practically to make him the agent of the city and engaged in the city's business.

ARREST

27

Is a traffic offense committed "in the presence" of an officer under these facts: A squad car is in Street A; one block south is Street B. The police in the squad car hear screeching brakes and a crash, followed by breaking glass. They turn over into Street B and there find two overturned cars. They pull out a man who appears to be intoxicated; they think he has violated a traffic signal. Can they arrest him for a misdemeanor committed in their presence? (Having other evidence from witnesses, etc.?)

Yes. "In their presence" is not limited to sight but the other senses may be used. In their hearing serves as well as in their sight.

28

A police officer halted a motorist running his car with one headlight dark. As soon as the motorist was informed about the defect he cut in the distance beam with his foot button and said, "Look again, copper, if you think you're so smart. Better get a new glass eye." The policeman said, "Don't get funny or I'll run you in." The reply was, "Oh, Yeah!" Then the arrest was made. Was it legal?

An officer has no right to arrest a citizen for *mere impudence*. How could he be booked? "Smart aleck" conduct is not criminal and the officer who arrests such a person could not charge him with an offense. (Of course, he could give the motorist a ticket for driving with only one light, and there is always "disorderly conduct," which is a convenient charge in such cases.)

29

Does the issuance of an "Arrest Ticket" constitute an arrest?

No. Many cities use so-called arrest tickets but they really are only a form of the summons. An arrest requires that the accused be taken into physical custody. A summons is merely a notice to appear in court, or else an arrest warrant will issue. Tags, citations, tickets, notices, etc., are all just forms of the summons.

30

Can a police officer, pursuing a speeder in town or county A, pass on into town or county B, and arrest the offender in the latter jurisdiction?

No. Intra-state close pursuit is allowed by statute in a half dozen

states, but generally the police officer may not operate outside the city limits, and the sheriff is shorn of his special powers at the county line. Of course, they could arrest anywhere as *citizens* if they meet the statutory requirements, but usually citizens cannot arrest for misdemeanors.

31

An officer finds a car improperly parked near a fireplug. He writes out a ticket. The owner appears and, as the ticket is handed to him, he protests loudly that his parked car had been pushed up beside the fireplug by someone else. The officer insists upon giving him the ticket. Whereupon the citizen tears it up and stamps upon the pieces. Can an arrest now be made?

No. Tearing up a ticket is no criminal offense. The officer might justify a disorderly conduct arrest but would have to show that the accused was disorderly, and if the citizen caused no commotion that would be difficult.

32

What does a person have to do to be guilty of resisting arrest?

Such a question is difficult to answer in a short space. If the officer informs the accused that he is arresting him and that person uses a gun, stone, stick or fist and attempts to fight the officer, of course it is "resisting." But if the officer lays a heavy hand on his shoulder and he merely squirms away saying, "Get your hands off of me," the officer has no right to use his baton and reduce the accused to helplessness. It's all a matter of reasonableness under the circumstances. One thing is certain: if the offender understands that he deals with an officer it is his duty to submit to arrest peacefully.

33

In many cities it is a common practice for squads of police to make rounds of pool halls, gambling places, saloons, etc., and on the public streets, searching or "frisking persons" for concealed weapons. Is there any legal authority to support this practice?

No. The right to arrest is governed by statute and the "drag-net" and indiscriminate search and seizure are generally held to be illegal. The practice may be tolerated by officials but is not by the courts.

34

A police officer stationed at an intersection sees an obviously intoxicated driver. He commandeers a taxi and follows, intending to arrest him. Before the drunk is taken into custody he reaches his home and staggers in, leaving the door open. Can the officer enter and arrest him?

The better practice would be to obtain a warrant. However, in most states an officer has the power to arrest for a misdemeanor committed in his presence. Therefore, to make the arrest he could follow the offender into his home but should not resort to undue force or violence.

35

A local resident's car is hit by an out-of-state car. The out-of-state driver is in the wrong as he failed to make the proper signal. Both drivers go to the police station where an accident report is made out.

There it appears that the erring driver is insured in an insurance company located in his state. The police officer then "arrests" him and will not release him until he contacts the insurance company and pays the local man's damages. Is this legal?

No. It is using the arrest power as a collecting agency.

36

Can a citizen who finds his neighbor's car parked in front of his own garage entrance arrest his neighbor?

No. The citizen's right to arrest generally is less than that of a regular police officer. The citizen usually can arrest a felon without a warrant; but he cannot arrest an orderly misdemeanor without a warrant. The law prefers that the citizen lay his case before a magistrate and have a warrant issued rather than to go into direct action himself. The latter would often result in fights and disorder.

37

Where "hit-and-run" is only a misdemeanor can an officer receive a car's description by radio and make an arrest without warrant?

Ordinarily not. For arrest without warrant there must be a misdemeanor committed in the officer's presence, or a felony seen or suspected. This is one place where the law of arrest seems to be defective. Of course, if the hit-and-run offense is a felony an arrest without warrant may be made upon suspicion only.

38

An officer tags a car for overtime parking although he never saw the driver. The tag orders him to report at the Police Court "within 24 hours or a warrant will be issued." The car owner does not appear nor does anyone else. Can a warrant be legally issued for the owner?

Yes. There seems to be probable cause to issue the warrant to the owner and have it served by the officer. A summons was disobeyed and normally that calls for a warrant. Certainly this would be true where the ordinance recites that licensed owner shall be *prima facie* liable.

39

Would an officer be guilty of manslaughter if, after making an illegal arrest, he killed the suspect for resisting or the suspect is killed while trying to escape?

Yes. Note, of course, that the arrest is *illegal*. Hence, the officer is stripped of any powers which he had beyond those of any citizen. We must then treat the officer as if he were a layman and he has no right to use force against another citizen. But remember that if the arrest is legal it makes no difference that the person killed actually was innocent. The officer is protected when he has lawful grounds to make an arrest.

40

What is the warrant for arrest and how does it protect the officer?

The warrant is a court order issued to the officer commanding him to arrest the person named therein. The officer should read it carefully to see that it is properly made out and issued by a court with jurisdiction and then the officer should make sure that he has the right person. After

that has been determined it is his duty to arrest and he may use all reasonable force in taking the party named into custody. In so acting he does not exercise his own discretion but follows a court order; it is the court's responsibility from then on.

EVIDENCE

41

Can an accused person, or his counsel, lawfully demand that he be permitted to examine physical evidence found at the scene of the accident?

Yes. While it is only natural that accident prevention squads work hand in hand with the prosecution in their zeal for strict law enforcement it must be remembered that it is not the function of the police to prosecute, and, theoretically, they should be neutral as between the prosecution and defense. Any defendant on trial should have access to any physical evidence used by the state. However, the officer incurs no liability if he fails to obey a peremptory demand by the accused. He may require him to get a court order.

42

Can a transcript of the record of a criminal trial be obtained and used by attorneys in a civil action, either to be admitted as evidence or to be used in questioning witnesses or in disproving facts established at the criminal trial?

A complete transcript of a criminal case may not be used as evidence in a civil case even though the two cases may involve the same accident. The issues of the proceedings differ: (1) violation of law, (2) damages caused by fault of the defendant. But the record of the criminal case may be used to show up discrepancies in the testimony of witnesses in the civil case.

43

An officer stops a car on the street for a traffic violation, arrests the driver, and orders him to precede the officer to the station. While the offender is being booked by the desk sergeant the officer searches the car and finds a concealed pistol. Can the pistol be used in evidence, i.e., is the search legal?

Probably it is legal. Certainly, once an arrest is made for other legal cause the person may be searched. We would hold that the car also can be searched.

44

A car is stopped for reckless driving and the operator is arrested and searched. A gun is found upon him and seized. The operator has a woman companion, a hard looking moll. The officer thought she had a gun on her, too. Can he legally search her?

No. After an arrest is lawfully made the right to search and seize follows naturally but comes only from the arrest made. Here the woman was not arrested for she was not driving. Searching her upon suspicion only would be illegal in most states.

45

Can an attorney in a civil accident case force the records clerk of the police accident bureau to produce confidential records or reports of accidents for use at the civil trial?

Ordinarily he can. The reporting officer can be subpoenaed and the court may require him to bring in the confidential records. This would be true regardless of an ordinance requiring compulsory confidential reports. Of course, if a state law declares the reports to be confidential they cannot be subpoenaed by private counsel for use in a law suit.

46

Can a magistrate, while trying a traffic case, use the defendant's record of previous traffic prosecutions?

Yes, it seems that this may be done. Of course, if the offender is being tried for a state offense—a crime—only evidence of the particular offense may be used unless he is charged under an habitual criminal law. But being tried for an ordinance violation, before a petty judge, without a jury, where the punishment is fine only, the offender cannot object to having his record used. Also the record can be used after a finding of guilt and before penalty.

47

What is meant by the term prima facie in statutes making a certain definite speed a prima facie presumption of reckless driving or illegal speeding?

It means only "at first sight" and is not to be confused with a *conclusive* presumption. A *prima facie* presumption may be overcome by the defense by showing a dry road, good visibility, uncrowded condition, car in good mechanical shape, driving skill and the like.

48

Would a state law be upheld which places a prima facie presumption of guilt upon the registered owner of a car which has been observed in some traffic law violation?

Statutory *prima facie* presumptions are opposed to the general presumption of innocence which favors all persons charged with crimes. If intended to supercede the latter they probably would be held unconstitutional. But usually the courts hold that they merely put the burden of "going forward" with the proof upon the accused.

49

Is a pistol in the pocket to the driver's door carried "on or about the person" of the operator?

Yes, according to most cases. In one case a revolver behind the cushion of the driver's seat was held to be "about his person" in violation of a gun-law; so was a gun in a handbag on the floor between the two front seats. Therefore, it is proper to hold that a gun is concealed about the person when he has it in the pocket of the car where it is as handy to use as in his coat pocket.

50

Is it legal to mark a picture taken at the scene of an accident, e.g.,

to set a small slate with writing on it against a wrecked car, or to use a ruler or measure?

Yes, and this is a desirable practice in order to show that no trick photography was used. One court threw out a marked picture, the judge ruling that the picture was not an accurate portrayal of the scene, but this decision seems wrong. Markings made to help accurate interpretation seem quite proper.

RULES OF LAW

51

Is the negligence which is sufficient to win a law suit for damages in a civil case sufficient to convict a motorist for manslaughter if a person is killed by him?

No. The negligence in a civil case need be only enough to show fault by a preponderance of the evidence. In a criminal case the negligence must be so great as to show a gross or criminal disregard for human life and an utter indifference to the consequences. It must show more than a mere accident; it must show wantonness. And proof must be beyond a reasonable doubt.

52

When a fatal accident occurs as the result of the speeding or negligence of a driver, is the driver guilty of manslaughter?

Not necessarily. We must consider the degree of his negligence, or the type of violation being committed at the time of the accident, e.g.:

- (1) Drunken or reckless driving + death = manslaughter
- (2) Gross carelessness or very fast speeding + death = manslaughter, but
- (3) Ordinary carelessness + death = excusable homicide
- (4) Petty traffic violation + death = excusable homicide.

It all depends upon the facts of the individual case.

53

A owns a car and allows B to drive it while A sits alongside of him. B drives through a stop sign and wrecks another car which had the right of way. Would A be criminally liable?

No, unless he had ordered B to drive heedlessly and in a dangerous manner. He may be civilly liable for the damages caused on the theory that he made B his agent. But there can be no "agency" theory applicable if there is a law violation through carelessness or negligence. You cannot delegate authority to another to be merely careless for you.

54

Can there be a murder committed by automobile?

Yes. Suppose A saw his enemy B in the street and deliberately ran him down. It would be murder the same as if a pistol or club had been used to kill. But few auto deaths are deliberate.

Murder requires malice, and malice and negligence do not have similar meanings. So there are very few murder convictions for unintentional auto homicides. However, if the driver were in the act of committing a felony, or if he were an escaping felon, or intoxicated, or

driving 80 miles an hour past a school house, it is likely that such gross conduct might be treated as malicious and, therefore, murder.

55

A, unaware that B is intoxicated, asks him to drive A home. B gets behind the wheel and by mistake throws the car into reverse and kills a person. Is A criminally liable?

No. If A did not know of B's condition and his error in trusting B was a reasonable one, A should not be responsible in any way. Had he known of B's condition A might be convicted of manslaughter. In one case with several other exaggerating circumstances a man who gave the wheel over to a drunk was convicted of murder!

56

In a heavy rainstorm at night a driver strikes and injures a pedestrian and continues on his way. He is apprehended and defends by saying that he did not know he struck anyone or anything. If true, is this a good defense to a charge of leaving the scene of an accident?

Yes. Many crimes require proof of criminal intent before convictions may be had. Since this might happen to any of us and since a conviction might punish a really innocent person most courts would hold that the state must prove knowledge before it can convict. They would arrive at this interpretation even though the statute said nothing about "knowledge."

57

A law provides for compulsory accident reporting within 24 hours of the accident. A and B have an accident and both cars, amply covered by insurance, are badly battered, but neither A nor B were hurt. They agree that A should report for both, so B does nothing. Has B committed an offense?

Probably not, as there are cases which have justified reporting through an agent, and B may have constituted A his agent to report. There are holdings to the contrary, however.

58

Is a car owner guilty of a crime if he loans a poor neighbor his license tags so that his neighbor can drive his car to a picnic?

No, unless some Motor Vehicle Code has expressly made lending tags an offense. But the neighbor, if he has a wreck or speeds and his tags are checked, may be convicted of the offense. Possibly there may be a conviction of the lender as an accessory or under some such theory, but it is very unlikely.

59

Can a person be convicted of driving a car while intoxicated if no one saw him driving and he was picked up asleep at the wheel with the car in a ditch?

It depends upon your statute. If the offense is limited to drunken driving, he cannot be convicted, as he was not driving at the time he was arrested. But many states punish drunken operating and the accused may be shown to have come within this law. A drunk who starts

the engine but has not yet shifted the gears may be convicted of illegal operating.

60

Is a traffic ordinance a criminal law?

Violations of ordinances are not strictly crimes even though a fine or jail sentence results. Really they are *quasi-criminal*. Crimes are defined only by statute, state or Federal, but when cities are created by the state the legislature generally gives the city government the right to pass reasonable regulations to promote the city's safety, health, comfort, etc. Such an enabling act also allows the city to hire policemen and gives them the right to arrest. That ordinance violation is only *quasi-criminal* is shown by the fact that they may be tried summarily and less formally than regular crimes.

61

Suppose a garage man, desiring to drum up tire trade goes down the road and inserts at various places blocks of wood with nails driven through the blocks pointing upward. His purpose is to stimulate his trade by causing punctures. No statute expressly covered his deed. Can he be convicted under any general criminal law?

Yes, malicious mischief, which usually makes criminal the destruction or injuring of another's property with malice. Hope of gain by the wrongdoer is not necessary to prove, just the malicious injury.

62

A crashes into B and B threatens to have A prosecuted—which is richly deserved. A begs B not to have him prosecuted and agrees to assist B to recover from A's insurance company for all damage and agrees to pay B \$100 for his trouble if B will refuse to sign a complaint against him. Is this compounding a crime?

No. At common law the party had to receive a "reward" for his agreement not to prosecute a felon. Even if there can be a compounding of a misdemeanor it is not unlawful to collect in full any civil damages from the wrongdoer.

63

Can a motorist be convicted of assault and battery in that he unintentionally struck a pedestrian rightfully crossing the highway at a crossing, the cause of the accident being the excessive speed of the automobile?

Yes. Though ordinarily there must be criminal "intent" to injure before there can be an assault and battery, the necessary intent can be *inferred* or implied from the doing of something unlawful from which injury is reasonably to be expected. The speed is not the only controlling factor but may be considered along with all other circumstances.

64

Can the defense of contributory negligence be used in a traffic violation case?

No. Contributory negligence as a defense can be used in *civil* cases where it is useful in estimating damages. For example, car A hits and damages car B, which had been parked without lights. When driver B

sues driver A, A may defend by proving that B, himself, was negligent and his negligence contributed to the injury. But if speeder A kills jaywalker B we look only at A's conduct in the criminal case. If he was in the wrong that is enough.

65

A statute makes it a felony to "take possession of and drive or take away" any motor vehicle. A garage man who had a car stored with him took it out and used it without the authority of the owner. Was he guilty under this statute?

No. He already had possession of the car. But, suppose one of his mechanics had used it? If the act were entirely beyond his authority probably he would be guilty. Certainly, if the building janitor did so, he would fall within the statute.

66

The X Corporation uses a truck driven by driver A. While making a delivery A stops alongside a stop sign, thereby obstructing the vision of B, who, while thus failing to see the stop sign, crashes into another car at the intersection. Who is guilty—X, A, or B?

X cannot be charged criminally unless the corporation had instructed its drivers to make such stops. A would be guilty of violating the parking ordinance. B would be presumed at law to know that the stop sign was there. He could be prosecuted for failure to stop. However, the fact that he could not see the stop sign would be a defense against a reckless driving charge.

67

Is it a crime to possess a car having the engine number altered or removed?

Yes, in many states by statute. Some of these statutes have been so worded that the word "knowingly" has been omitted. It has been held that knowledge that the number has been tampered with is not an element of the offense and need not be proved. This may work great hardship upon an innocent purchaser of a tampered-with second-hand car. But it is justified as a reasonable regulation which affects few innocent persons and effectually decreases auto theft profit.

PROCEDURE

68

Can a criminal charge be filed against the driver of a death car even though the coroner's jury has returned a verdict of "excusable homicide?"

Yes. Coroners are county officers empowered to investigate the causes of death but the proceedings before the coroner have no binding effect upon the prosecutor except that he usually realizes that if the evidence is insufficient before the coroner's jury it will hardly be sufficient before a criminal jury where the proof must be beyond a reasonable doubt.

69

Is it possible or legal for the city to enforce an ordinance against reckless driving when the state Motor Vehicle Code has the offense completely covered by statute?

Yes. There is no reason why certain conduct by a motorist may not be forbidden by both state law and city ordinance. When this is done the prosecution usually is had before the local police judge on the ordinance rather than through the county prosecuting attorney's office. But both state and city would have jurisdiction.

70

A judge, sitting in the traffic court, orders all policemen to arrest all motorists driving more than 50 miles an hour in any city boulevard at any hour of the day or night. Is such order legal?

It is not. The judge is elected or hired to do judging, not police work. He cannot rule what constitutes reckless driving. It is up to the police to arrest motorists whose actions fit the state law or the city ordinance defining reckless driving, and then they shall be tried in a court to determine guilt or innocence. Moreover, ordinary speeding alone does not prove recklessness.

71

Can the arresting officer, who was not at the scene of an accident, sign the complaint against the party causing the accident?

Yes. The older cases, in an effort to prevent malicious, hasty, and groundless accusations of crime, required the party really injured to do the complaining, rather than an intruding stranger. But any interested citizen should be allowed to sign a complaint upon information and belief. The law now seeks to protect complainants. And in accident cases the arresting officer usually makes a better complainant than the injured party.

72

If an accident occurs in a street, which marks the boundary line between the city and county, may a city policeman give a summons or make an arrest?

Granting that it is uncertain whether the wreck was or was not on the exact surveyor's line the officer would have authority to act. Most statutes create a sort of border land or zone at jurisdictional boundaries within the state so as to make arrest possible if they occur near the boundary, e.g., 20 rods, 50 rods, 100 feet, etc.

73

Where an accused person is charged with ordinance violation, must the prosecution prove (1) guilt beyond a reasonable doubt as in criminal proceedings, or (2) guilt by only a preponderance of evidence as in the case of a tort (civil law-suit)?

Since ordinance violation is treated as only a quasi-criminal offense and is tried without a jury, in all except unusual cases a preponderance of evidence seems to be sufficient to sustain a conviction.

74

An officer pursues a drunken, reckless driver who hops out of his car and darts into the U. S. Post Office. Inside, he denies the right of the officer to arrest him on Federal property. Can the arrest be made?

Yes. The arrest is made for a local offense, not for a Federal offense. Otherwise Post Offices would become sanctuaries for escaping criminals.

75

A policeman arrested a motorist who had caused an accident, and helped to prepare the case against the accused. At trial for the traffic offense the injured prosecuting witness told the judge that he had been compensated for his injuries and had his car fixed up. The judge as a result reduced the charges and gave the motorist the minimum fine. The policeman objected in open court and was placed in contempt of court. Was this proper?

Yes, the policeman had no right to object. He was not a judge. Right or wrong, he had no authority to tell the judge what to do.

76

An officer arrests a motorist for reckless driving. At trial before a magistrate the case was erroneously dismissed because the motorist and magistrate were "close" friends. Does the officer have any way to rectify this miscarriage of justice?

No. It is not his business, but that of the prosecuting attorney. The latter should protest and do what he can to prevent the case from being dropped. Once a defendant is discharged at or after trial no one can have the case reopened. The police are not prosecutors.

77

Which would have jurisdiction, Federal Government or State, if a customs inspector is struck by an automobile while on Federal property? (e.g., while on the parkway before the Post office.)

The state. If the charge against the offender is the violation of the state Motor Vehicle Code the fact that the injured party was a Federal employee will not give the United States jurisdiction, nor the fact that it occurred on Federal property if within the state's traffic jurisdiction.

78

A statute makes it a felony to resist an officer and a city ordinance makes it a mere violation punishable by a \$3 fine. A person resisted an officer who had him booked under the ordinance and his fine was paid after a summary trial before a Justice of Peace. Then the local prosecutor got wind of the affair and had the same person indicted by the grand jury for the felony. Has he already been in jeopardy?

No. Generally, the cases hold that where one act is a crime against two sovereignties both may prosecute. And somewhat illogically this rule is applied to city-state offenses, although the city is not a separate sovereignty. (According to the ordinary rules of jeopardy, the city had jurisdiction, the two offenses were identical, and the evidence would be the same. That would prevent a second trial.)

PERSONS

79

A speeding automobile struck and injured a pedestrian and the owner of the car urged the driver to keep on going. The driver consented. No report of the accident was made. Both were charged with the offense of leaving the scene of an accident without giving name, address, etc. Can they both be convicted?

Yes. The chauffeur would be guilty without question, whether or

not he knew of the statute; the owner would be guilty as an accessory, if not as a principal.

80

Occasionally in all states National Guard troops are mustered out to cope with civil disorders. How about their relations with the local police? Can guardsmen run through stop signs, speed, and violate traffic laws with impunity?

When the National Guard is lawfully called out by the Constitutional authority of the Governor we have in effect the supplanting of civil authority by the military. So long as the traffic violators are called by and are serving the military forces there is nothing the local police can do about it.

81

A chauffeur of a foreign consul is caught speeding. The officer, seeking to arrest him, curbs the car. The chauffeur tells the officer that since he is serving a foreign consul he is immune from arrest. Is this correct?

No. Any chauffeur driving alone is subject to arrest. And if accompanied by a consul the latter also may be arrested as he is merely a commercial representative of a foreign country. However, diplomatic agents, such as ministers and ambassadors, and their necessary staffs in service are immune.

82

An officer arrests a woman for speeding and orders her to precede his car to the station. She is excitable and tells him she is pregnant and in poor health. Nevertheless, the officer insists that she accompany him. She protests and shows that she is a local resident and tearfully refuses to go. The officer compels her to. She miscarries at the station. Is the officer civilly liable?

No. If he had the legal right to make the arrest he is fully protected. As a matter of fact, once a person is arrested the officer has no legal right to release that person. His duty requires him to take the party to the station. He is not a judge.

83

Can an automobile dealer use his dealer's number for private purposes?

No. By statute it is common to allow dealers to have one number for all his cars without the necessity of procuring a new one for each machine as it comes into his hands. Such a provision does not apply to his private car or cars. In one case a dealer was held to be a law violator when he used a car with his dealer's number to deliver auto parts to a customer as a matter of accommodation.

84

Could a police officer arrest the driver of a U. S. Post Office mail truck for reckless driving during the Christmas rush?

Yes. Reckless driving is not necessary to carry out this governmental function. However, it is doubtful if the truck could be impounded. Government chauffeurs may be required to take driver's tests, and the usual rules of the road apply to them except when engaged in necessary governmental work.

85

Can a soldier, home on furlough from the army, be arrested and tried for a violation of the state motor vehicle law?

We know no reason why the arrest and trial cannot be conducted as in the case of an ordinary citizen. Of course, erring soldiers usually are given up to their superior officers for trial by court martial. But in our case the state caught him and it can keep him. The uniform of the U. S. Army does not grant local immunity.

86

A state trooper, while on duty, violates the rules of the road and passes a car upon the left while rounding a curve. He strikes X's car coming from the opposite direction and kills X. Can the trooper be held civilly or criminally liable?

The trooper is liable just like anybody else *unless* his work required him to take a chance in the performance of his duties, e. g., if he was trying to overtake a fleeing bank robber he would be expected to violate traffic regulations.

87

Can the operator of a street car be arrested for speeding?

Yes, if the offense is properly covered by statute or ordinance. The motor vehicle codes are not designed to include the electric street cars but ordinances which limit the speed of such cars are quite common. Also, the motorman might be arrested if he drives recklessly or is intoxicated.

88

Can a police officer arrest the driver of a fire truck for speeding?

No, if it was necessary speeding to a fire. Courts have ruled that exceptions must be made for fire trucks, ambulances, and army trucks and cars, so long as they are being operated in necessary governmental service. The speed laws are for safety. Therefore, we cannot make arrests if it will do more harm than good, e.g., arresting the driver of a fire truck may uphold the speed law but it may also endanger a whole city.

89

Are members of the Civilian Conservation Corps (C. C. C.) subject to the state traffic laws while operating a government vehicle?

Yes. So far as the writer knows they are amenable to the state laws because they are civilians and their work does not require a violation of the laws. A soldier required to speed in carrying dispatches during an emergency or a sheriff in hot pursuit of an escaping criminal must not be annoyed by local regulations, but C. C. C. work is not in the same category.

90

Are doctors, who carry the red cross emblem on their cars, immune from arrest by speeders?

They are not, so far as the law is concerned, but through courtesy and a desire to speed up errands of mercy they usually are allowed by the police to talk their way out of tickets. As a result many of them

abuse their non-legal privilege. Still, the officer knows that if he arrests a speeding doctor and the patient really needs his immediate services the court will discharge the doctor and reprimand the policeman.

MISCELLANEOUS

91

Where it is made unlawful by statute to drive a car without a current number plate would it be a defense that the operator failed to receive the plate through no fault of his own?

Yes, that would be a good defense. Suppose he could show application in due time, payment of fee, that his car had been re-registered by the Secretary of State and a number assigned to him but, through error of someone in the Office of the Secretary of State, no plates had been sent to him. That has been held to be a good defense.

92

Where a statute requires a motorist who injured another to stop and render assistance, suppose a pedestrian is struck and instantly killed. The motorist knowing that the deceased was beyond human aid sped on. Can he be convicted?

Yes. One court said, "Certainly decency and common respect dictate that mutilated humans should not be allowed to lie around in the street as mute evidence of the destruction wrought by speed."

93

A statute required any motorist who struck a person to stop and render assistance to the injured person. Immediately after the crash the injured person crawled out of the wreckage and appeared to be only slightly injured. So the motorist after identifying himself sped on. The injured party actually was dangerously hurt and nearly bled to death. Can the motorist be convicted?

Yes. Knowledge of the extent of injuries is not necessary to be governed by the statute.

94

A truck driver was driving north on a street filled with slowly moving vehicles. He drove on the north bound car tracks but was held back by the slowness of the cars in front of him. Since the south bound car tracks were clear he turned out to the left and proceeded north on the south bound car tracks. An ordinance required all drivers to drive as closely as possible to the right curb. Is he guilty of an ordinance violation?

No. He could not get to the curb because of parked cars; he had a right to pass the slow cars ahead. The ordinance should be interpreted reasonably, in light of conditions.

95

Can the state legislature delegate to a commission the right to make regulations which have the same effect as law?

Yes, if reasonable. Law-making itself cannot be delegated but must always reside in the legislature, but some fields of law-making require technical knowledge plus discretion in application. Herein the legisla-

ture may lay down general rules and leave specific detailed requirements to a commission, board, or local governmental agency. Parking, equipment, lights, safety devices, etc., often are regulated in this manner.

96

A statute authorizes the police, having reasonable grounds to believe that a car left standing or parked on a street has been abandoned, to remove the same. Where no theft has been reported and there is no evidence of abandonment except that the car was left on the street, what amount of time might be presumed to be reasonable grounds sufficient to cause a belief of abandonment?

To leave a car over night in an exposed position, where overnight parking is uncommon should be enough. Opinions might vary, however.

97

A citizen driving through a stop sign is seen by an officer. The officer stops the motorist and informs him of the violation. The citizen is a respectable local resident and was driving slowly. The right side of the windshield had fogged and the citizen claimed reasonably that he did not see the sign. The officer lets him go in spite of the fact that he has taken oath to enforce the law—all laws without favoritism. Was the officer right in his action?

This is a matter of policy. Enforcement must be selective. Rigid and uncompromising enforcement is hardly compatible with good policing. We do not have the court or jail facilities to handle all actual violations.

98

Does a sheriff have the right to hold a stolen car until the owner pays him a reward advertised for the recovery of the car?

No. The law of contracts limits a reward contract to the offeror and a private citizen as acceptor. Public officers, such as sheriffs or police officers, are paid for doing their duties—including the recovery of stolen cars. So, while rewards may generally be given to them as gratuities, they cannot sue on "contracts" for rewards, or insist upon payment.

99

A and B are two states which require operators' licenses of the same standards. There was reciprocity between the two states so that drivers of one are recognized as qualified drivers of the other. A motorist in A had his driver's license revoked by the authorities of that state. He then went across the state line and secured an operator's license in B. Later he was arrested in A for driving without a license. Is he guilty?

Yes. He cannot escape the penalty by such a subterfuge.

100

Can parking be completely prohibited on a narrow street of homes in order to use the street as a connecting link in a boulevard system?

No. The courts have gone far in sustaining reasonable ordinances regulating the times within which there can be no parking, time limits of normal parking, parking near intersections, etc. But it has been held that the property owners cannot be denied in toto the right to park in the streets fronting their property, under the circumstances given above.