



Posted on: January 19, 2007

THE URBANE CYCLIST, IS IT SAFE?

January 19, 2007

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Originally published in Momentum Magazine, BC Edition

Laurence Olivier fans will remember that famous question in *Marathon Man*, a movie produced in 1976, whose tag line was “it isn’t safe”. Laurence Olivier’s nasty character, Dr. Christian Szell, was attempting to extract an answer to that famous question from Thomas Levy, played by Dustin Hoffman. Mr. Levy, an unwitting grad history student, was caught in the middle of an international conspiracy involving stolen diamonds, an exiled Nazi war criminal, and a rogue government agent. When asked repeatedly by Dr. Szell whether or not it was safe while being tortured, Mr. Levy had no ability to answer the question because he had no idea what Dr. Szell was talking about.

The general legal requirement to behave “safely” falls squarely on the shoulders of all cyclists as a result of the *Motor Vehicle Act*. However, despite the use of terms “safely”, and “safety” throughout that statute, nowhere in it are those words defined. Let’s face it, there is in this world no such thing as absolute safety in the sense that no accident can occur. What then is the true legal meaning of the word “safe”?

The common law has struggled with the definition of safe for hundreds of years. What has emerged from this struggle is a hybrid definition containing subjective and objective factors. In determining what is safe within the meaning of any rule or regulation, the common law says that some regard must be had to the capabilities of the person to whom the term is being applied. This is a simple reflection of the fact that what is safe for Lance Armstrong may not be safe for Granny Smith. So when statutes such as the *Motor Vehicle Act* attempt to prescribe rules relating to safety, those rules are almost always broad and vague enough that they invite a whole host of evidentiary considerations. An example might illustrate the point better.

Let’s take my favourite statutory reservoir of ambiguity, the *Motor Vehicle Act* provisions relating to passing on the right. The statute says you cannot pass on the right but provides a number of exceptions to that general rule. However, even if you fit within one of the exceptions, you cannot pass on the right “when the movement cannot be made safely...”. We know the use of the term in this context must import some objective standard which has a definite function in limiting what would otherwise be a legal free for all. That



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standard would relate to what the law describes as the “reasonable person”. However, we also know that the term would apply differently to different circumstances. As such, the definition of safe must depend to some extent on the circumstances of each particular case. The definition morphs into what would be considered safe by a reasonable person in the specific shoes of the individual cyclist.

Terms like “safe”, used in legislation, typically require interpreting. They have no inherent legal meaning beyond their ordinary meaning, but the latter can differ wildly, depending on who is doing the interpreting. Language has power, and is often construed in accordance with personal or institutional motivation, and bias, rather than any actual absolute standard.

The moral of this story is if someone tells you you’ve done something unsafely, particularly someone acting on behalf of a motorist by whom you have injured, it is probably best to take that advice with several grains of salt. Ultimately, the only person in a social democracy with jurisdiction to decide whether or not a cyclist’s conduct is safe or unsafe, is a duly appointed Judge. The job of that individual is to interpret the rules set out in the *Motor Vehicle Act* based on principles of common law and the evidence of any given case. It is only after an application of the law to the facts of individual cases that an actual finding of what is safe or not safe can be made.

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