

REQUESTED CHARGE NO. 1  
for Plaintiff, Celia Lopez

There are three elements essential to the existence of actionable negligence: First, the existence of a duty on the part of the Defendant to protect the Plaintiff from injury; Second, failure of the Defendant to perform the duty; Third, injury to Plaintiff from such a failure of Defendant.

*Green*

*W.H.G.*

REQUESTED CHARGE NO. 2  
for Plaintiff, Celia Lopez

Negligence is the failure to do what a reasonable and prudent person would have done under the circumstances or the situation, or doing that which a prudent person under existing circumstances would not have done.

G. Cuel

W. K. -

REQUESTED CHARGE NO. 5  
for Plaintiff, Celia Lopez

The Court charges the jury that the following is the law of the State of Alabama:

"MEETING OF VEHICLES - drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving the other at least one half of the main traveled portion of the roadway as nearly as possible." Code of Alabama 1975 Section 32-5-130

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant, Michael Tidmore, violated the statute just quoted and that such action on the part of Michael Tidmore was the sole proximate cause of the injuries and damages, if any, sustained by Mrs. Lopez, and if you further find that Mrs. Lopez was not guilty of any negligence herself, then in that event, the Court charges the jury that you should return a verdict in favor of Mrs. Lopez for her injuries and damages against the Defendant, Michael Tidmore, under that Count of her Complaint alleging simple negligence.

*Defendant*  
*W. H. G.*

REQUESTED CHARGE NO. 6  
for Plaintiff, Celiz Lopez

The Court charges the jury that the following is the law of the State of Alabama:

"OVERTAKING A VEHICLE - (a) the driver of any vehicle overtaking another proceeding in the same direction shall pass at a safe distance to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. (b) the driver of an overtaking motor vehicle not within a business district... shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction." Code of Alabama 1975 Section 32-5-131

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant, Michael Tidmore, violated the statute just quoted and that such action was the sole proximate cause of the injuries and damages sustained by Mrs. Lopez, if any, and if you further find from the evidence that Mrs. Lopez was not guilty of any negligence herself, then in that event, the Court charges the jury that you should return a verdict in favor of Mrs. Lopez for her injuries and damages against the Defendant, Michael Tidmore, under the Count of her Complaint alleging simple negligence.

*R. Refused*  
*W. H. H. -*

REQUESTED CHARGE NO. 7  
for Plaintiff, Celia Lopez

The Court charges the jury that the following is the law of the State of Alabama:

"LIMITATIONS ON PRIVILEGE OF OVERTAKING AND PASSING - the driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of on coming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety." Code of Alabama 1975 Section 32-5-132 (a)

In the suit brought by Mrs. Lopez for her personal injuries, if any, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant, Michael Tidmore, violated the statute just quoted and that such action was the sole proximate cause of the injuries and damages sustained by Mrs. Lopez, if any, and if you further find from the evidence that Mrs. Lopez was not guilty of any negligence herself, then in that event, the Court charges the jury that you should return a verdict in favor of Mrs. Lopez for her injuries and damages against the Defendant, Michael Tidmore, under the Count of her Complaint alleging simple negligence.

*R* Referred  
*W. H. -*

REQUESTED CHARGE NO. 8  
for Plaintiff, Celia Lopez

The Court charges the jury that the following is the law of the State of Alabama:

"LIMITATIONS ON PRIVILEGE OF OVERTAKING AND PASSING - the driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the drivers view along the highway is obstructed within a distance of 500 feet." Code of Alabama 1975 Section 32 - 5 - 132 (b)

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant, Michael Tidmore, violated the statute just quoted and that such action was the sole proximate cause of the injuries and damages sustained by Mrs. Lopez, if any, and if you further find from the evidence that Mrs. Lopez was not guilty of any negligence herself, then in that event, the Court charges the jury that you should return a verdict in favor of Mrs. Lopez for her injuries and damages against the Defendant, Michael Tidmore, under that Count of her Complaint alleging simple negligence.

*R. Defendant  
W. H. —*

REQUESTED CHARGE NO. 9  
for Plaintiff, Celia Lopez

The Court charges the jury that the following is the law of the State of Alabama:

"RESTRICTIONS AS TO SPEED IN CERTAIN LOCATIONS - any person driving a vehicle on the highway shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of any other conditions then existing and no persons shall drive any vehicle upon a highway at such a speed as to endanger the life, limb or property of any person." Code of Alabama 1975 Section 32 - 5 - 91 (a)

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant, Michael Tidmore, violated the statute just quoted and that such action on the part of Defendant Michael Tidmore was the sole proximate cause of the injuries and damages sustained by Mrs. Lopez, if any, and if you further find from said evidence that Mrs. Lopez was not guilty of any negligence herself, then in that event, the Court charges the jury that you should return a verdict in favor of Mrs. Lopez against the Defendant, Michael Tidmore, for her injuries and damages under that Count of her Complaint alleging simple negligence.

R

Refer  
with Key -

REQUESTED CHARGE NO. 10  
for Plaintiff, Celia Lopez

In the suit brought by Mrs. Lopez for her personal injuries,  
the Court charges the jury that a will to injure is not necessary  
to constitute wantonness.

*H R Repard*  
*W. H. —*



REQUESTED CHARGE NO. 11  
for Plaintiff, Celia Lopez

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that if you are reasonably satisfied from the evidence that the Defendant, Michael Tidmore, had knowledge that some person was likely to be in position of danger and with conscious disregard of such known danger Defendant Michael Tidmore recklessly proceeded on a dangerous course which caused disaster and resulted in injuring the Plaintiff, Celia Lopez, then this is a wonton injury and you must find a verdict for Mrs. Lopez.

*Refered*  
*W. B. H. —*

REQUESTED CHARGE NO. 12  
for Plaintiff, Celia Lopez

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that if you find for Mrs. Lopez under the Counts of her Complaint charging simple negligence, it is your duty to assess such damages as will compensate her for such wrongs which the evidence proves she suffered and which are complained of in her complaint; and if you further find from the evidence that the Defendant, Michael Tidmore, was guilty of wantonness ~~conduct~~ on the occasion complained of then the Court charges the jury that you are authorized to assess punitive damages against said Defendant under the portion of her Complaint charging wantonness ~~conduct~~.

6 Given  
W. H. Hays

REQUESTED CHARGE NO. 13  
for Plaintiff, Celia Lopez

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that Mrs. Lopez is not chargeable with any negligence, if there be any, on the part of Mr. Lopez, in whose automobile she was riding.

*6* *Grice*  
*W. E. May*

REQUESTED CHARGE NO. 15  
for Plaintiff, Celia Lopez

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that in order for one to be guilty of wanton conduct, the party doing the act or failing to act must be conscious of his conduct, and, without having the intent to injure, is conscious from his knowledge of existing conditions and circumstances that injury will likely or probably result from his conduct, and, with a reckless disregard of consequences, does some act or <sup>omits</sup> ~~admit~~ some known duty that results in injury.

G. Griner  
W. H. King

REQUESTED CHARGE NO. 16  
for Plaintiff, Celia Lopez

In the suit brought by Mrs. Lopez for her personal injuries, the Court charges the jury that Mrs. Lopez was under no duty to assume or anticipate that Defendant, Michael Tidmore, would not give his care and attention to his driving and if you are reasonably satisfied from the entirety of the evidence that Defendant, Michael Tidmore, did not give his care and attention to his driving on the occasion complained of and if you further find that the failure of the Defendant, Michael Tidmore, was the sole proximate cause of injuries and damages sustained by Mrs. Lopez, if any, and if you further find from ~~some~~<sup>the</sup> evidence that Mrs. Lopez was not guilty of any negligence herself, then in that event, the Court charges the jury that you should return a verdict in favor of Mrs. Lopez for her injuries and damages against the Defendant, Michael Tidmore, under that Count of her Complaint alleging simple negligence.

R. *Referred*  
*Wick*

REQUESTED CHARGE NO. 1  
for Margarito Lopez, Jr.

The Court charges the jury that the following is the law of the State of Alabama:

"MEETING OF VEHICLES - drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving the other at least one half of the main traveled portion of the roadway as nearly as possible." Code of Alabama 1975 Section 32-5-130

In the suit brought by Mr. Lopez, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant Michael Tidmore violated the statute just quoted and that such action was the sole proximate cause of the damages sustained by Mr. Lopez, if any, and if you further find from said evidence that the Plaintiff was not guilty of any negligence, then in that event, the Court charges the jury that you should return a verdict in favor of Mr. Lopez for his damages against the Defendant Michael Tidmore under the Count of his Complaint alleging simple negligence.

R. Refused  
with

REQUESTED CHARGE NO. 2  
for Margarito Lopez, Jr.

The Court charges the jury that the following is the law of the State of Alabama:

"RESTRICTIONS AS TO SPEED IN CERTAIN LOCATIONS - any person driving a vehicle on the highway shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of any other conditions then existing and no persons shall drive any vehicle upon a highway at such a speed as to endanger the life, limb or property of any person." Code of Alabama 1975 Section 32 - 5 - 91 (a)

In the suit brought by Mr. Lopez, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant Michael Tidmore violated the statute just quoted and that such action was the sole proximate cause of the damages sustained by Mr. Lopez, if any, and if you further find from said evidence that the Plaintiff was not guilty of any negligence, then in that event, the Court charges the jury that you should return a verdict in favor of Mr. Lopez for his damages against the Defendant Michael Tidmore under the Count of his Complaint alleging simple negligence.

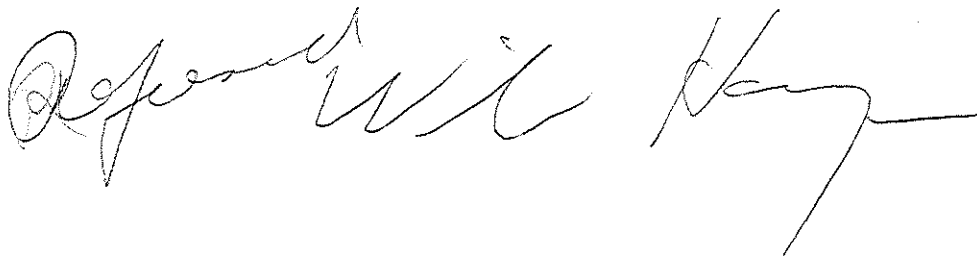
*A Refused*  
*W. H. H.*

REQUESTED CHARGE NO. 3  
for Margarito Lopez, Jr.

The Court charges the jury that the following is the law of the State of Alabama:

"OVERTAKING A VEHICLE - (a) the driver of any vehicle overtaking another proceeding in the same direction shall pass at a safe distance to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. (b) the driver of an overtaking motor vehicle not within a business district ... shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction." Code of Alabama 1975 Section 32-5-131

In the suit brought by Mr. Lopez, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant Michael Tidmore violated the statute just quoted and that such action was the sole proximate cause of the damages sustained by Mr. Lopez, if any, and if you further find from said evidence that the Plaintiff was not guilty of any negligence, then in that event, the Court charges the jury that you should return a verdict in favor of Mr. Lopez for his damages against the Defendant Michael Tidmore under the Count of his Complaint alleging simple negligence.





REQUESTED CHARGE NO. 5  
for Margarito Lopez, Jr.

The Court charges the jury that the following is the law of the State of Alabama:

"LIMITATIONS ON PRIVILEGE OF OVERTAKING AND PASSING - the driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the drivers view along the highway is obstructed within a distance of 500 feet." Code of Alabama 1975 Section 32 - 5 - 132 (b)

In the suit brought by Mr. Lopez, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant Michael Tidmore violated the statute just quoted and that such action was the sole proximate cause of the damages sustained by Mr. Lopez, if any, and if you further find from said evidence that the Plaintiff was not guilty of any negligence, then in that event, the Court charges the jury that you should return a verdict in favor of Mr. Lopez for his damages against the Defendant Michael Tidmore under the Count of his Complaint alleging simple negligence.

*R. DeLeon*  
*W. H. G.*

REQUESTED CHARGE NO. 7  
for Margarito Lopez, Jr.

The Court charges the jury that the following is the law of the State of Alabama:

"LIMITATIONS ON PRIVILEGE OF OVERTAKING AND PASSING - the driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of on coming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety." Code of Alabama 1975 Section 32-5-132 (a)

In the suit brought by Mr. Lopez, the Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the Defendant Michael Tidmore violated the statute just quoted and that such action was the sole proximate cause of the damages sustained by Mr. Lopez, if any, and if you further find from said evidence that the Plaintiff was not guilty of any negligence, then in that event, the Court charges the jury that you should return a verdict in favor of Mr. Lopez for his damages against the Defendant Michael Tidmore under the Count of his Complaint alleging simple negligence.

*Refered  
with*

REQUESTED CHARGE NO. 17  
for Margarito Lopez, Jr.

The Court charges the jury that if you are reasonably satisfied from the entirety of the evidence that the peril of the Plaintiff's, Cecil Lopez and Margarito Lopez, Jr., was discovered by the Defendant Michael Tidmore in time for him to avoid the injury by the exercise of due care on the part of said Defendant, and the injury was the result of the Defendant, Michael Tidmore's failure to perform his duty in this respect, then the Plaintiffs would be entitled to recover, although the Plaintiffs may have been guilty of culpable negligence in the first instance.

*a Refused  
with Hy-*

DEFENDANTS' CHARGE NO. 1

I charge you, members of the jury, that you are the sole judges of the evidence and of the credibility of the witnesses. You may accept or reject any part of the testimony of any witness and you should accept only the testimony you consider worthy of belief. In determining the weight to be accorded the testimony of any witness, you may consider the demeanor of the witness while on the witness stand, his apparent candor or evasion and the existence or non-existence of any bias of interest.

*Given*  
*W. K. King*

DEFENDANTS' CHARGE NO. 2

I charge you, members of the jury, that Michael Tidmore, as a person operating a motor vehicle on the public highways or streets, has a right to assume that other persons also using the highways or streets will obey the law and the Rules of the Road relating to such use; and he has a right to proceed on such assumption until the contrary is clearly evident to him or by the exercise of reasonable care should have been clearly evident to him.

Given  
W. H. H. H.

6

DEFENDANTS' CHARGE NO. 3

I charge you, members of the jury, that the burden is upon the plaintiffs to reasonably satisfy you from the evidence of the truthfulness of the matters and things claimed by them before they would be entitled to recover anything against either one of the defendants.

*Given*  
*W. L. Day -*

*6*

REQUESTED CHARGE NO. 3  
for Plaintiff, Celia Lopez

Negligence may consist in the omission to act as well as  
in acting.

*G. Giver*  
*Wilkey*

DEFENDANTS' CHARGE NO. 4

I charge you, members of the jury, that as a driver of a motor vehicle, Margarito Lopez was on the occasion in question under a duty to keep a lookout for those who were also using the highway and to exercise due care to anticipate the presence of others upon the highway. A motor vehicle driver is chargeable with knowledge of what a prudent and vigilant operator would have seen, and is contributory negligent if he fails to discover a vehicle which he could have discovered in time to avoid the injury or damage. A driver is also contributory negligent if he sees a vehicle located in a dangerous situation upon a highway and does not then exercise due care to avoid damage.

*Griner*  
*Will Hay -*

*6*



REQUESTED CHARGE NO. 4  
for Plaintiff, Celia Lopez

The Court instructs the jury that negligence is the failure to do what an ordinarily prudent person would have done under the circumstances, or the doing of that which an ordinarily prudent person would not have done.

6 *Grice*  
*W. H. H. H.*

DEFENDANTS' CHARGE NO. 5

I charge you, members of the jury, that a driver of a motor vehicle is presumed to know that a vehicle approaching a street intersection from the right has the right-of-way, and he is under the duty of looking to the right for automobiles approaching from that direction. Observation should be made at the first opportunity and at a point where observation will be reasonably efficient for, and conducive to, protection.

*Given*

*W.C. King*

*5*

DEFENDANTS' CHARGE NO. 6

I charge you, members of the jury, that if you are reasonably satisfied from the evidence that defendant Michael Tidmore was not negligent or if you find that defendant Michael Tidmore's negligence was not the proximate cause of the plaintiff's injury or damage, then the plaintiffs would not be entitled to recover.

G Given  
W. H. Day -

DEFENDANTS' CHARGE NO. 67

I charge you, members of the jury, that if you are reasonably satisfied from the evidence that Margarito Lopez was guilty of contributory negligence, then Margarito Lopez cannot recover for any simple negligence of the defendant Michael Tidmore or B. E. Tidmore, even if such negligence exists.

6 Given  
W. L. Hay

DEFENDANTS' CHARGE NO. 8

I charge you, members of the jury, that contributory negligence is the negligence on the part of Margarito Lopez that proximately contributed to his alleged damages.

*Referred with by -*

DEFENDANTS' CHARGE NO. 9

I charge you, members of the jury, that the Alabama Rules of the Road consist of a number of statutes enacted into law by your legislature regulating the flow of traffic upon the highways of this State.

The violation of certain of these Rules of the Road by persons using the public highways is prima facie negligence only. This means that the violation of such a rule is presumed to be negligence but such violation is not under all circumstances negligence, and it is a jury question whether such a violation in a particular case is negligence. Should you determine that the violation of such a statute is negligence, such negligence in order to be actionable on the part of the plaintiff or a defense on the part of the defendant must proximately cause or proximately contribute to the injuries complained of by the plaintiff.

I will now read certain of these statutes to you. The fact that I read these statutes is no indication that any of these statutes has been violated or that such violation is negligence, or that any such violation proximately caused or proximately contributed to the injury complained of by the plaintiff. It is for you to decide whether or not the statutes are applicable, whether or not they have been violated, and whether or not any such violation proximately caused or proximately contributed to the injury complained of by the plaintiff, depending on what you find the facts to be.

§32-5-110(a). When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right, except as otherwise provided in §32-5-57.

§32-5-112(a). The driver of a vehicle entering a public highway from a private road or drive shall yield the right-of-way to all vehicles approaching on such public highway.



§32-5-112(c). The driver of a vehicle shall stop as required by this chapter at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection through said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.

§32-5-112(d). The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but then may proceed.

*Given*

*W. C. King*