Pedestrian claims

1 Introduction

a. Vulnerability

Pedestrians are the most vulnerable of all road users. This is because:

- When crossing a road, they are at risk from contact with a moving vehicle
- They often find it difficult to anticipate the speed of oncoming traffic
- They lack the speed that may enable them to take evasive action
- Apart from those at work, they seldom wear clothing or carry equipment that enhances their visibility
- If a moving vehicle strikes them, they have no external protection and may suffer serious injuries
- Children, the elderly and disabled persons are particularly at risk

b. Accident statistics

The table below summarises reported pedestrian casualties in Great Britain for the five-year period from 2002 to 2006. [Source: Department for Transport: Road Accidents Great Britain 2007.]

<table>
<thead>
<tr>
<th>Year</th>
<th>Killed</th>
<th>Killed or seriously Injured</th>
<th>All severities</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>767</td>
<td>8472</td>
<td>37,489</td>
</tr>
<tr>
<td>2003</td>
<td>769</td>
<td>7803</td>
<td>35,075</td>
</tr>
<tr>
<td>2004</td>
<td>666</td>
<td>7344</td>
<td>33,638</td>
</tr>
<tr>
<td>2005</td>
<td>667</td>
<td>6981</td>
<td>31,975</td>
</tr>
<tr>
<td>2006</td>
<td>673</td>
<td>6872</td>
<td>29,905</td>
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</tbody>
</table>

2 The driver’s duty of care

a. General duty of care

The driver of a motor vehicle owes a duty to use reasonable care and skill towards other road users whom he could reasonably foresee as likely to be affected by his actions. This is derived from the judgment of Atkin LJ in the landmark case of Donoghue v Stevenson [1932] AC 562, who said: ‘You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.’ He defined ‘neighbour’ as: ‘... persons who are so closely and directly affected by my act that I ought to reasonably have them in contemplation when I am directing my mind to the acts or omissions which are called into question.’
Although this case was concerned with product liability it has application to all cases based on negligence. The primary requirements are:

- A duty of care owed between the parties;
- A breach of that duty; and
- A foreseeability of damage (including injury) arising from the breach

b. Status of the Highway Code

The Highway Code is a useful guide to the conduct of a reasonable road user (driver or pedestrian). Section 38(7) of the Road Traffic Act 1988 states: ‘A failure on the part of a person to observe a provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind but any such failure may in any proceedings (whether civil or criminal…) be relied upon by any party to the proceedings as tending to establish or negative any liability which is in question in those proceedings.’

In *Wakeling v McDonagh* [2007] EWHC 1201(QB), Mackie J said (relying on *Powell v Phillips* [1972] 3 All ER 864) that a breach of the Highway Code, if established, did not create a presumption of negligence but was merely a factor to be taken into account when considering the issue.

c. Pedestrian crossings

In addition to rules in the Highway Code, there are also certain statutory requirements for drivers approaching pedestrian crossings. Failure to comply with the statute is a criminal offence. These include:

- Drivers *must* give way when someone has moved onto a zebra crossing. [Reg. 25, Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997 (SI 1997/2400)]
- Drivers *must* stop when the red light shows on a Pelican crossing and *must* give way to pedestrians on the crossing if the amber light is flashing. [Regs. 23 and 26]

3 Res ipsa loquitur

a. The legal maxim

 Literally translated, *res ipsa loquitur* means ‘the situation speaks for itself’. There are three criteria involved (see *Scott v London and St Katherine’s Docks* (1865), a case where some bags of flour fell out of an upper window and injured the claimant):

- The happening of an occurrence which cannot easily be explained and the cause of it is unknown;
- The occurrence would not have happened had it not been for the lack of proper care;
- The defendant must have been in control of the situation
In *Ratcliffe v Plymouth and Torbay HA* [1998] Lloyd’s Rep Med 162, Hobhouse LJ said: ‘Res ipsa loquitur is not a principle of law; it does not relate to or raise any presumption. It is merely a guide to help identify when a prima facie case is being made out.’

b. The effect of the maxim

It is sometimes claimed that *res ipsa loquitur* effectively reverses the burden of proof but this view is now questioned. It is perhaps more correct to say that it raises an inference that the defendant may have been negligent and that he should provide an explanation as to exactly what happened. An example of this is in *Ward v Tesco Stores* [1976] 1 WLR 810, where a customer slipped on spilled yoghurt on the supermarket floor. Tesco were unable to explain how long the yoghurt had been on the floor.

A motor case in a similar situation was *In Widdowson v Newgate Meat Corporation* (1997), The Times, 4 December 1997, PIQR P138. The claimant was walking along a dual carriageway when he was knocked down by the defendant’s van. The Court of Appeal held that the defendant had failed to explain away the *prima facie* inference of negligence. They found for the claimant but subject to 50% contributory negligence.

4 Contributory negligence

a. The Law Reform (Contributory Negligence) Act 1945

Section 1(1) of the Act says: ‘Where any person suffers damage as the result of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage.’

In *Davies v Swan Motor Co Ltd* [1949] CA, 1 All ER 620, Lord Denning said there are two aspects of apportioning responsibility between the claimant and defendant:

- The respective *causative potency* of what they have done; and
- Their respective *blameworthiness*

In *Pitts v Hunt* [1990] 3 All ER 344, the Court of Appeal held that a finding of 100% contributory negligence is logically unsupportable. The 1945 Act operates on the premise that there is fault on both parties, therefore responsibility should be shared.

b. Pedestrian’s duty to take care

In *Davies v Swan* (see 4.1) Lord Denning said that in considering contributory negligence on the part of a pedestrian, the appropriate test was said to be: ‘When a man steps into the road he owes a duty to himself to take care for his own safety…’
c. Apportioning blame

In *Baker v Willoughby* [1969] 3 All ER 1528, the claimant pedestrian saw a car approaching 100 yards away from his right and thought he had time to cross. He walked to centre of road and paused to look left when he was hit by defendant’s car travelling from his right. The Court of Appeal apportioned liability 50/50 on the basis that each party should have seen the other, but the House of Lords allowed the claimant’s appeal and changed the apportionment to 75/25 in favour of the claimant.

This was on the basis that a pedestrian was rarely a danger to anyone else and that he had to look to both sides as well as forwards. A motorist did not have to look sideways and if he failed to keep a look out the consequences could be disastrous. *It was quite possible therefore for a motorist to be much more to blame than the pedestrian.*

In *Eagle v Chambers* [2003] EWCA Civ 1107, Hale LJ said:

- ‘A car can do so much more damage to a person than a person can usually do to a car’
- ‘The potential ‘destructive disparity’ between the parties can be readily taken into account as an aspect of blameworthiness’
- ‘It is rare indeed for a pedestrian to be found more responsible than a driver unless the pedestrian has moved suddenly into the path of an oncoming vehicle’

In *Lunt v Khelifa* [2002] EWCA Civ 801, Latham LJ said: *‘The court has consistently imposed upon the drivers of cars a high burden to reflect the fact that the car is potentially a dangerous weapon.’*

d. Reaction time

When assessing the respective blameworthiness of the parties it is often relevant to consider how much time the driver had to react to the presence of the pedestrian. The normal thinking and stopping distances are shown in the table below [source: Highway Code, rule 126].

<table>
<thead>
<tr>
<th>Vehicle speed (mph/kph)</th>
<th>Thinking and braking distance (feet/metres)</th>
<th>No. of car lengths</th>
</tr>
</thead>
<tbody>
<tr>
<td>20/32</td>
<td>40/12</td>
<td>3</td>
</tr>
<tr>
<td>30/48</td>
<td>75/23</td>
<td>6</td>
</tr>
<tr>
<td>40/64</td>
<td>118/36</td>
<td>9</td>
</tr>
<tr>
<td>50/80</td>
<td>175/53</td>
<td>13</td>
</tr>
<tr>
<td>60/96</td>
<td>240/73</td>
<td>18</td>
</tr>
<tr>
<td>70/112</td>
<td>315/96</td>
<td>24</td>
</tr>
</tbody>
</table>

These distances should be increased in adverse weather conditions. The vehicle figures should be compared to a normal walking speed which is about 1.5 metres per second. Where this may be a crucial factor on liability, a defendant may wish to instruct an accident reconstruction expert to make the necessary calculations.

In *Ehrari v Curry* Moses J said that the judge was entitled to rely on the Highway Code but if defendants wished to challenge the thinking and braking distance, they should introduce expert evidence to prove that the Code was in error.
Reaction times may be relevant in the following circumstances:

- A defendant might not be liable if he can show that there was insufficient reaction time from the moment when he should have first been aware of the pedestrian.
- Even if the defendant's speed was excessive, he might be able to argue that the accident would still have occurred at a lower speed.
- A defendant is likely to be found liable if he was not keeping a proper lookout for pedestrians.
- A driver should be aware of children hovering by the side of the road.
- If a driver is in collision with someone on a pedestrian crossing, he may still be liable even if there was no opportunity to avoid a collision.
- A defendant may still be liable if his speed was less than the maximum limit.

**e. Negligence of children**

Contributory negligence by children is a difficult area. Children are not expected to be as careful as adults and the consequent standard of care to be expected of them may not be as high. The age of the child is obviously an important factor but no clear line is drawn. As Butler-Sloss LJ remarked in *Mullin v Richards* [1998] 1 All ER 920: ‘The law does not arbitrarily fix upon any particular age for this purpose and tribunals of fact may well give effect to different views as to the age at which normal adult foresight and prudence are reasonably to be expected in relation to any particular sets of circumstances.’

The test of foreseeability of damage is an important consideration. In *Mullin*, two schoolgirls were involved in a play sword fight with plastic rulers, one of which broke and damaged the sight of the claimant. The Court of Appeal considered an Australian case: *McHale v Watson* (1996), where it was stated:

‘. . . the standard by which his conduct is to be measured is not that of a reasonable adult but of a child of the same age, intelligence and experience.’

The court also considered the words of Salmon LJ in *Gough v Thorne* [1996] 1 WLR 1387: ‘The question of whether the [claimant] can be said to have been guilty of contributory negligence depends on whether any ordinary child of 13 can be expected to have done any more than this child did. I say ‘ordinary child’. I do not mean a paragon of prudence; nor do I mean a scatter-brained child; but an ordinary girl of 13.’ In *Mullin*, the appeal court held there was no negligence on the part of the defendant child and no contributory negligence by the claimant.

**f. Road traffic cases concerning child pedestrians**

In *James v Fairley*, EWCA Civ. 162, the claimant, who was 8 years old at the time, was attempting to cross a 3-lane A road. She had crossed the first lane safely but was hit by the defendant’s car as she attempted to cross the second one. The claimant had left a friend and her younger brother on the pavement but the Court of Appeal said that they were doing nothing that would cause a prudent driver to brake. They supported the trial judge’s finding that the defendant was not negligent in failing to see the child until she was virtually in his path. The trial judge had said that if he had found for the claimant, he would have apportioned blame with 60%
contributory negligence. Ward LJ said that this assessment may be unsupportable but it by no means tainted the judgment as a whole. It is not clear what he had in mind when he used the word ‘unsupportable’. Did he mean that 60% was too high or that a child of eight should not be held to be negligent? Regrettably, the claimant sustained such severe injuries that she was unable to give evidence at trial about her education and experience in road safety. Although most primary schools teach the Green Cross Code, it is difficult to imagine a situation where a child of eight would be blamed.

In J (A Child) v West, CA, 12 July 1999 (judgment available on Lawtel), the claimant, aged 9 at the time, had been larking about on a narrow pavement with other children. He reacted to the possibility of being hit by one of them by jumping off the kerb into the path of a truck driven by the defendant. On appeal, the defendant accepted the trial judge’s finding that he had been driving too fast and too close to the kerb and that a reasonable motorist would have guarded against the well-known risk of children larking around. The issue before the Court of Appeal was whether there was any contributory negligence. Two of the appeal judges found that a nine-year-old should not be to blame for jumping into the road as he did. Judge LJ said that at worst it was momentary inadvertence and he did not consider that such behaviour in a boy of nine and a half should be criticised as negligent.

In a dissenting judgment, May LJ said that larking around was an obvious risk and the claimant, young though he was, should have appreciated this if he had stopped to think about it. He assessed the boy’s fault at 20%.

In Morales v Eccleston [1991] RTR 151, CA, an 11-year-old boy was playing with a football adjacent to a busy street. He lost control of the ball and followed it into the street without looking in either direction. The defendant was driving at 20 mph on the opposite side of the road to which claimant was walking. The trial judge had found the defendant 80% to blame for failing to keep a proper lookout and the child 20%. But the Court of Appeal said that this apportionment was wholly and substantially wrong. McCowan LJ said that the claimant’s actions showed a reckless disregard for his own safety and his blameworthiness, even taking account of his age, was considerably greater than that of the defendant. The apportionment was changed to 25/75 in favour of the defendant driver.

In Armstrong v Cottrell [1993] PIQR 109, the claimant, a 12-year-old girl attempted to cross a busy main road. She hesitated in middle of road before suddenly darting into path of defendant’s vehicle. The trial judge had found the claimant totally to blame but this was challenged on appeal. Russell LJ said that the defendant had already seen the claimant and her friends hovering at the side of the road, obviously intent on crossing about 400 yards before the collision took place. This was a situation fraught with danger and she could have sounded her horn, slowed down and applied the brakes moderately. He would bear in mind the age of the claimant but assumed she would be familiar with at least the basic elements of the Highway Code. (She was not able to give evidence because of her severe injuries). But the culpability of the claimant is not realistically compared with that of the defendant. The claimant’s contribution was assessed at one third.

In Melleney v Wainwright [1997] EWCA Civ 2884, the claimant, aged 11, had attempted to cross a main road with two friends. The two friends ran across the road whilst he stayed on the kerb. Then suddenly, he dashed out in front of the defendant, as he was about to drive past. The driver was doing 30 mph. in a 60 mph. zone. The Court of Appeal held that a very high standard of care is needed when motorists drive by young children, as there is a risk of them doing something silly. They supported the trial judge’s decision in finding for the claimant, subject to a deduction of one third for contributory negligence, having regard to the decision in Armstrong.
In *Honnor v Lewis* [2005] EWHC 747 (QB), the claimant was an 11-year-old boy who was seriously injured when crossing a road. Silber J held that the car driver was negligent for failing to see the boy standing on the pavement and then starting to cross the road when he had a clear view. He should have slowed down and sounded his horn. But the claimant was also negligent for failing to see the approaching car. A child of his age should have realised the need to keep a careful lookout and/or misjudging the distance. *Armstrong* and *Melleney* were considered. The claimant was found to be 20% to blame.

In *Britland v East Midland Motor Services Ltd* [1998] EWCA Civ 590, the claimant, a 12-year-old boy ran along pavement for between 10-12 yards before veering right through parked cars to run across road. He would have been well aware that there were a number of children around at the time. The claimant was reckless but the defendant driver of a school bus ought to have noticed the claimant running on the pavement and slowed accordingly. The appeal court did not interfere with the trial judge’s finding that the defendant was 25% to blame.

In *Rooke v Liston*, [1999] EWCA Civ 749, a 16-year-old boy was seriously injured when attempting to cross the main A2 road in Kent. The defendant car driver had admitted that he had not seen the claimant until his car hit him. Witnesses said that he had not braked until after the collision. The Court of Appeal held that the defendant should have seen the claimant well within the time needed to brake and stop and held the driver primarily to blame. But the claimant was neglectful of his own safety in going on to the roadway when he knew that he could not get off it and he was found to be one-third to blame.

In *Ehrari v Curry* [2007] EWCA Civ 120, the claimant, a 13-year-old girl, stepped out from between parked cars in a busy street and was in collision with a lorry. The Court of Appeal upheld the trial judge's finding of 70% contributory negligence on the part of the pedestrian. Although the lorry driver was faced with an emergency, it was held that as other children were present on the pavement, he should have kept a careful lookout and could have swerved to avoid or lessen the impact.

g. Adult pedestrians

In *Kozimor v Adey* [1962] 106 Sol Jo 431, the claimant ran on to an uncontrolled crossing in front of vehicle travelling at about 25mph and about 15 yards away. The defendant braked but could not avoid the claimant. The defendant should have anticipated such an occurrence but the claimant was found 75% to blame.

In *Jamnezhad v Smith*, CA, 30 November 1998 (judgment available on Lawtel), the defendant motor cyclist was making a left turn out of Kensington High Street as the claimant was attempting to cross the main road from the defendant’s offside. There was a pedestrian crossing nearby and the Court of Appeal thought that he should have used it. He should also have kept a proper look out. The trial judge’s assessment of contributory negligence (15%) was increased to 40%.

In *Spiller v Brown* [1999] EWCA Civ 1890, the claimant attempted to cross a road directly in front of stationary bus and had not waited until the bus moved off. The defendant was driving in the same direction as the bus and overtook whilst it was stationary at bus stop. The defendant had failed to keep a proper look out but the claimant had not heeded the Highway Code, which warns against crossing behind or in front of a bus. The Court of Appeal held that both parties were equally to blame.

In *Ingram v Woodhouse* [2001] EWCA Civ 1057, the claimant was walking along the grass verge of an A road and, when the verge ended, she attempted to cross the road. As she did so,
she saw the defendant’s car approaching round the bend. She paused but then continued to cross. The defendant driver saw the claimant and, instead of taking emergency braking action, tried to steer around the claimant but collided with her in the middle of the road. The Court of Appeal considered that the defendant was primarily to blame as her reaction was not that of a reasonably competent driver. The claimant was found 30% to blame.

In White v Chapman, QBD, 15 May 2001 (judgment on Lawtel), the defendant was primarily liable but the High Court judge found that the claimant was 20% to blame for the manner in which she crossed the road. It appeared that she attempted to do so in stages. Whilst she was not negligent for failing to use a crossing, she was negligent for crossing the road where there was no central island or marked neutral zone, without ensuring that she could cross without pausing in the middle of the road (where her safety depended wholly on the skill of approaching drivers).

In Goddard & Walker v Greenwood [2002] EWCA Civ 1590, the two claimants were jogging on the A20 in Dover. They were crossing the road at a light-controlled crossing (not a pelican crossing with a flashing amber sequence). The lights changed to green in favour of the defendant’s vehicle, but his view to the nearside was restricted by a lorry on the inside lane. As he passed the lorry, its driver sounded his horn and at that point, he saw the two pedestrians, but was too late to avoid hitting them. The Court of Appeal held that the fact that the lights were on green did not exonerate the defendant, especially as the lights had just changed and the lorry had not moved. A reasonably careful driver would have anticipated that there may have been a pedestrian on the crossing in these circumstances. The defendant was at fault but the contributory negligence of the claimants, who had crossed against the lights, was of a very high order and they were held to be 80% to blame.

In Wells v Trinder [2002] EWCA Civ 1030, the claimant was struck by the defendant’s car whilst crossing a road in the dark. The defendant was primarily liable as he was travelling too fast and should have been using full beam headlights at the time. He also failed to see the claimant until he was about 10m away from her. However the claimant was also criticised for failing to see the vehicle when she crossed. The Court of Appeal apportioned liability on a 75/25 basis in favour of the claimant on the ‘lethal machinery’ principle in Baker v Willoughby.

In Adjei v King [2003] EWCA Civ 414, the deceased was killed when in collision with a coach as he attempted to cross the A5 in London. Although the coach was not being driven too fast (about 25 mph), a motorist travelling in the same direction had seen the deceased in the road and the coach driver should have slowed down or given some warning. But the Court of Appeal said that the deceased’s manner of crossing the road was inconsistent with a reasonable regard for his own safety. Contributory negligence was assessed at 40%.

In Rose v South East London and Kent Bus Co Ltd [2004] EWHC 1106 (QB), the claimant was attempting to cross a busy main road divided by a traffic island. There was a pelican crossing nearby but the claimant chose to cross elsewhere. When she reached the traffic island she found it was railed off except for the gap at the pelican crossing, so she decided to walk along a narrow raised strip to reach the gap. The bus driver, who was in a queue of heavy traffic noticed her doing this and as she reached the gap, she slipped into the roadway and was struck by the bus. The Deputy High Court Judge said that the driver should have checked to see if she had moved out of the roadway before moving forward. But the claimant was also blamed for putting herself at risk in this way. Liability was apportioned on a 50/50 basis.
h. Drunken pedestrians

The vulnerability of pedestrians is heightened when they are affected by too much alcohol. The problem is that in their drunken state they probably think that they are invulnerable and take little heed of normal road safety precautions. Unfortunately for the driver, they are just one more hazard to be aware of, perhaps regarding them in the same light as young children. Furthermore, the courts seem unwilling to place all the blame on the pedestrian, even in cases of extreme drunkenness. The following cases are examples of the attitude taken by the courts in these situations.

Green v Bannister [2003] EWCA Civ 1819 is probably the most extreme example. The defendant had reversed at night from a parking spot outside her home in a cul-de-sac. The road was lit by a single sodium street lamp and as she reversed for about 35 yards, she was looking over her right shoulder (i.e. on the offside) to avoid parked cars. As she did so, she reversed over the claimant, who was lying in the road way in a drunken stupor. The defendant was criticised for not paying particular attention to what might have been in the car’s path. She ought also to have checked her nearside mirror and looked over her left shoulder. However the claimant was the more blameworthy of the two and the court made a 60/40 apportionment in the defendant’s favour.

Parkinson v Dyfed Powys Police [2004] EWCA Civ 802 was an application by the Chief Constable to appeal against the trial judge’s apportionment of liability. The claimant walked out past a parked taxi into the path of a car driven by a police officer. The claimant was under the influence of alcohol and stepped out when he could and should have been aware of the vehicle. On the other hand, the police officer was driving at 40 mph late at night past a parked car in a built-up area and should have anticipated that there may have been pedestrians about in this condition. The trial judge apportioned responsibility at 65/35 in favour of the claimant. The judge had said that in terms of relative causative potency, the police officer’s fault was significantly greater. Without fault on the claimant’s part there would have been no accident but the more serious injuries would have been avoided altogether if the police car had been driven at an appropriate speed. The Court of Appeal said that the trial judge had not erred and permission to appeal was refused.

In Eagle v Chambers, the claimant, a drunk and emotional 17-year-old girl, was weaving along the side of the road. Other drivers had seen her and had urged her to stop. The defendant, who was just on the drink driving limit, collided with her. The Court of Appeal changed a contributory negligence assessment of 60% down to 40%.

In Lunt v Khelifa the claimant stepped out into the road when the defendant’s car was about 20 to 25 yards away. The police evidence showed that the claimant had a blood-alcohol level that was about 3 times the permitted limit for drivers. The trial judge found that the claimant was one-third to blame and the Court of Appeal declined to interfere with this apportionment.

In Cook v Thorne and Parkinson [2001] EWCA Civ 81, the claimant got out of the second defendant’s car to be sick due to excess alcohol. It was dark and the road was straight and unit. The driver also got out of the car but left his headlights on full beam and did not switch on his hazard lights. The claimant, who was in the roadway, was struck by a car coming in the opposite direction, driven by the first defendant. The Court of Appeal upheld the trial judge’s apportionment of liability. The claimant was found to be 30% to blame, and the balance of liability was shared on a 70/30 basis between the two defendants with the first defendant taking the major share.
5 ‘All or nothing’ cases

This chapter reviews case law involving injury to pedestrians where the driver was not found to be at fault or where the driver was 100% to blame (i.e. there was no contributory negligence of the part of the pedestrian).

a. Driver 100% to blame

In *M v Rollinson*, York County Court, 14 March 2002, the father of the claimant (who was 5 years old at the time) had taken her to buy an ice cream from a van. He had given the ice cream to her and she had run around the front of the van whilst he was paying for it. The defendant had been travelling at only 15 mph but the County Court judge felt that this was not slow enough in the circumstances.

In *Thomas v Kostanjevec* [2004] EWCA Civ 1782, the pedestrian, who was killed in the accident, was crossing a road near a bend when he was in collision with a motorcycle. It was agreed that this was a safe place to cross and when the claimant started off, the road was clear. The motorcyclist should have anticipated possible obstacles when negotiating the bend in the road and should have reduced his speed accordingly.

In *Sang v Cornes* [2005] EWHC 203 (QB), the claimant was crossing a road when she was in collision with a van driven by the defendant. He was convicted of careless driving and admitted liability but alleged contributory negligence. Dobbs J said there was no contributory negligence as she had crossed at the safest place and had exercised reasonable care.

In *Dawes v Aldis* [2007] EWHC 1831 (QB), the defendant, who was disqualified from driving, was in a stolen car and was trying to elude the police. He collided with the claimant when driving at 50 mph on the wrong side of the road. He alleged that the claimant was standing in the road and he could not take evasive action, but Eady J said there was insufficient evidence to decide what happened and the court was unable to draw an inference of contributory negligence.

b. Driver not at fault

In *Norris v Tennant-Smith*, CA, 17 July 1998 (judgment on Lawtel), the defendant driver braked and swerved to try and avoid hitting a pedestrian who had walked out into the road in front of him. The Court of Appeal said that the driver would have had only 1 to 1.5 seconds in which to react. It was unrealistic to expect him to have sounded his horn. He had faced an emergency and had done what any prudent motorist would have done. The first instance decision to dismiss the claim was upheld.

In *Ray v Adlem*, QBD, 10 February 1999 (judgment on Lawtel), the claimant had stepped out into the road very quickly and had probably broken into a run just before the point of impact. Garland J said that the behavior of the claimant was the equivalent of someone emerging unexpectedly from between parked cars. There may have been a fraction of a second in which the defendant should have started braking but it was unrealistic to argue that, because she might theoretically have been able to brake earlier, she should be held partly to blame. The defendant had been travelling at a reasonable speed (about 25 mph.), had kept a proper lookout and had reacted within acceptable limits. Claim dismissed.

*Re N (a Child)*, CA, 5 July 2000, CLW 8, 42/2000, was a case where a child was injured by a vehicle passing a stationary ice cream van. The claimant alleged that the driver failed to sound
his horn when passing. The Court of Appeal said that where the road was so narrow, sounding the horn did not place an unreasonable burden on a driver. But in this case, the child’s grandmother had already screamed a warning, which had been ignored, so the failure to sound a horn would have made no difference.

In Barlow v Smith, CA, 15 May 2000 (judgment on Lawtel), a group of adult males were larking about at the side of the road. The claimant, who was one of the group, suddenly ran out into the road as the defendant was travelling at about 25 mph. through a green light. The Court of Appeal said that it was unrealistic to expect that one of those men would run out.

In Scutts v Keyse, CA, 18 May 2001 (judgment on Lawtel), the claimant, aged 17, was crossing the road to catch a bus when a police car struck him as it accelerated through a green light. The police driver was travelling at above the speed limit. The Court of Appeal said that speed alone was not decisive of negligence. Emergency vehicles were exempt from prosecution for exceeding speed limits. A driver was entitled to expect other road users to note signs of his approach (sirens and flashing lights). Liability had not been established.

In North v TNT Express [2001] EWCA Civ 853, the claimant and a group of friends had been drinking in a nearby wine bar and were waiting by a roundabout for a taxi to pick them up. The defendant’s lorry was negotiating the roundabout when the claimant stepped into the road in front of the lorry and asked the driver for a lift. When he refused the claimant climbed onto the front bumper and grabbed hold of the windscreen wiper. The driver asked the claimant twice to get down but this was ignored so he drove off slowly and shortly afterwards the claimant fell off and was injured. The trial judge found that the driver was 25% to blame but the defendants appealed. The appeal court said that the driver was placed in a difficult dilemma by the claimant’s actions. The claimant had acted in an irresponsible way with no consideration for his own safety or for others. The driver had no alternative but to drive off and had done all that was reasonable in the circumstances. The event occurred as a result of the claimant’s stupid act and the defendants were not liable.

In Sparrow v Mark [2002] EWHC 23 (QB), Owen J held that, although the defendant had been driving too fast for the conditions, the cause of the accident had been the claimant’s failure to look to his left before he started to cross the road. The driver had no chance of avoiding him and he would have hit the claimant even if he had been driving at a safe speed.

Sharpe v Addison, QBD (Newcastle), 25 November 2002, was a professional negligence claim against former solicitors for their conduct of the personal injury action. The claimant had started to cross the road at the rear of a bus as it pulled away from a stop. A taxi travelling in the opposite direction struck him. The taxi was travelling within the speed limit and the claimant was hidden from the driver’s view as the bus pulled away. The defendant only saw the claimant when he was well out onto the taxi’s side of the road. Judge Langan QC concluded that there was no prospect of the original action succeeding. It was not incumbent on the driver to slow down or sound his horn when approaching a bus where there was no suggestion that anyone had got off.

In Goundry v Hepworth [2005] EWCA Civ 1738, the four-year-old claimant was one of a group of adults and children who had crossed to the middle of a road and who were waiting for oncoming cars to pass. One car passed by but as the defendant’s car approached, the claimant ran into the road and was hit by the car. The appeal court said that the defendant was faced with an orderly group apparently waiting for her to pass and she had not been negligent for failing to stop in these circumstances, although some motorists might have done so.

Miller v C & G Coach Services Ltd [2003] EWCA Civ 442 was a case initially heard in the High Court in 2002 in respect of an accident that took place in 1988. At the time of the accident, the claimant was aged 15 and had alighted from a school bus and passed behind it to cross the
road when she was struck by the defendant’s coach. As a result she sustained severe brain injury. The trial judge came to the conclusion that there was no proof, after so many years had passed, that the coach had been driven negligently. The driver’s speed was appropriate and he was keeping a proper lookout. This was an accident for which no one could be blamed. The Court of Appeal agreed with this decision.

In Maranovska v Richardson [2007] EWHC 1264 (QB), the claimant was seriously injured when in collision with a bus whilst using a pedestrian crossing. The claimant’s case was that she had used the light-controlled crossing with the lights in her favour but the court accepted that the crossing was split into two separate parts and she was using the second part when the lights were in favour of the bus. Several witnesses confirmed that she stepped into the bus lane without attempting to see if it was safe to do so. The bus was travelling at no more than about 10 mph at the time and no blame could be attached to the driver.

Another case alleging negligence of a bus driver was Ahanonu v South East London and Kent Bus Co Ltd [2008] Civ 274. The bus was making a sharp turn out of a bus station when the claimant had walked up behind it and he was squashed between the rear end of the bus and a bollard. The carriageway was enclosed by railings and there was a pedestrian crossing nearby but the claimant had deviated from this. The trial judge found that the parties were equally liable and that the driver should have checked in his rear view mirror. But the Court of Appeal said that there was no reason for the driver to expect pedestrians to take the dangerous path taken by the claimant and for a driver to keep looking in his rear view mirror was a counsel of perfection and ignored reality. The judge’s finding of negligence by the driver was flawed.

6 Other parties to blame

a. Other drivers

Where a pedestrian is injured following a collision between two or more vehicles, or where the vehicle colliding with a pedestrian has swerved due to the negligence of another driver, consideration may be given to joining the other driver(s) in the action if there is supporting evidence. It should be noted that if damage is caused concurrently (as is often the case in road traffic accidents), each tortfeasor is jointly and severally liable (see Associated Newspapers v Dingle [1961] 1 All ER 897). The effect of this is that each defendant is liable to settle the claim in full unless they can agree an apportionment or if the court decides this issue. A defendant may blame others who are not sued in his defence, perhaps hoping that the claimant will join them, but the claimant may not do so and may leave it to the defendant to join others in the action.

This joint tortfeasor situation is also of importance where the MIB Uninsured Drivers Agreement operates. The MIB considers that it is a body of last resort and will not make any contribution to a claim against an uninsured driver if there is also an insured driver who is liable to satisfy a judgment. If the insured driver is not currently a party to the action, the Bureau may use its powers under clause 14.1 of the 1999 Uninsured Drivers Agreement to require the claimant to join others who are responsible.
b. Highway authorities

It may be possible to argue that a highway authority was wholly or partly to blame for an accident (e.g., if a pothole has caused a driver to swerve or lose control). The authority has a strict statutory duty to maintain the public highway under s. 41(1) of the Highways Act 1980. However in relation to snow and ice, section 41(1A) provides that the duty is qualified by the words ‘so far as is reasonably practicable’.

c. Street lighting

The absence of adequate street lighting may be a factor in pedestrian accidents. Local authorities have powers to provide street lighting but have no duty to do so. In Sheppard v Glossop Corporation [1921] 3 KB 132 (CA), the local authority decided to extinguish its street lights at 9pm. The Court of Appeal held that the authority, having begun to light the road, was under no obligation to continue to light it, having done nothing to make the road dangerous. However, where the absence of lighting constitutes a danger, the authority may be found liable for failure to warn [Whiting v Middlesex CC [1948] 1 KB 162 (QBD)].

d. Persons in charge of young children

Having regard to rules 4 and 7 of the Highway Code (see 4 b of these notes), there may be a possibility of blaming a person in charge of a child if:

- The child is very young (say under 5) and is not restrained in some way; or
- The child is allowed out alone but has not yet mastered the Green Cross Code (this may be difficult to prove).

The negligent adult may also be the child’s litigation friend. If so one should consider whether the cost involved in the adult having to be separately represented and another litigation friend appointed is justified. One should also consider whether the adult has either the means or insurance (consider household policy, credit card insurance, and trade union membership) to satisfy a judgment.