

E-scooter accidents

Scooter laws, scooter malfunctions, rider injuries and issues associated with scooter collisions with pedestrians and vehicles

By Catherine Lerer

The e-scooter landscape has changed dramatically since rentable scooters arrived in late 2017. Santa Monica was the first U.S. city to have shared electric scooters appear on its streets. Choosing to act first and ask later, Bird Rides, Inc., flooded the city with scooters, without bothering to obtain business licenses or vendor permits. As a result, the City of Santa Monica criminally charged Bird, which was forced to pay a fine of over $300,000. And so it began.

You need to first understand how renting an e-scooter works. Scooter companies charge a fixed cost to unlock a scooter (approximately $1) and a per-minute rate when you ride (ranging from $0.30 to $0.52, depending on the city). In order to unlock a scooter, riders must download an app on their phone and upload their driver's license and credit card information. Riders must agree to a user agreement which includes draconian clauses designed to insulate the scooter companies from liability. The scooters have built-in GPS technology, allowing riders to locate available nearby scooters and allowing the companies to always know where their scooters are.

After Bird scooters arrived, other scooter companies (Lime, Spin, Jump, Lyft, and Veo) jumped on the bandwagon, littering sidewalks with their scooters. While some cities banned the scooters, most allowed them, buying into the scooter company talking points that electric scooters would provide a less expensive and more environmentally friendly mode of transportation, as well as provide cities with a revenue source from the fees paid by scooter companies.

Soon after shared e-scooters appeared, havoc ensued. Riders did not know how tricky the scooters were to ride, nor the laws that applied. The early scooter models were consumer grade as opposed to commercial grade, i.e., not designed for mass-fleet usage. They were subject to malfunctions due to failure to maintain by the scooter companies, defects in the design or manufacturing, and abuse by the public. Motorists were unfamiliar with sharing the road with scooter riders. Pedestrians were suddenly forced to navigate sidewalks cluttered with these new hazards.

Early on, our law firm decided to dip our toes into the scooter-accident pool. We were quickly inundated with scooter-accident claims. This article will provide an overview on how the electric scooter-accident landscape has changed since scooters appeared almost a decade ago. We will cover scooter laws, scooter malfunctions, rider injuries and issues associated with scooter collisions with pedestrians and vehicles.

E-scooter laws

When electric scooters first appeared, nobody knew the laws that applied because e-scooters were not around when most of us took driver's ed. Cities attempted to get the word out to the public by posting rules on city buses and elsewhere. The problem is that riders have little incentive to follow the rules because police officers generally ignore violators.

In California, electric scooter rules are codified in the Vehicle Code. E-scooter riders must follow the same rules as

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motor vehicle drivers, with some differences. Riders are not required to have insurance, registration, or a license plate. (Vehicle Code § 21224.)

Riders are required to comply with the following Vehicle Code sections:

- Minors must wear helmets. Vehicle Code § 21235(c)
- Riders must have a driver's license. Vehicle Code § 21235(d)
- Tandem riding is prohibited. Vehicle Code § 21235(e)
- Sidewalk riding is prohibited except as necessary "to enter or leave adjacent property." Vehicle Code § 21235(g)
- Speed limit of 15 mph. Vehicle Code § 22411
- Riders must comply with Vehicle Code § 21223's lighting and reflector requirements.
- Riders must not leave an e-scooter lying on its side on a sidewalk or park an e-scooter on a sidewalk without leaving an adequate path for pedestrian traffic. Vehicle Code § 21235(i)
- Riding on a roadway which has a speed limit in excess of 25 mph is prohibited unless the scooter is operated in a bike lane. Vehicle Code § 21235(b)
- When turning left, riders must dismount as close as practicable to the right-hand curb or roadway edge and complete the turn by crossing the roadway on foot. Vehicle Code § 21228

Rider injuries due to scooter malfunctions or defects

Scooter riders are at risk of injury due to e-scooter malfunctions and defects which have been widely reported.

Brake failure

The early scooter models were particularly prone to brake issues. The brakes would not slow the scooter down quickly enough. Even worse, if the rider was going down a moderate-to-steep incline, the brakes could completely fail. This finding was confirmed by an expert who performed testing for our firm. More recent scooter models do not have the same braking issues seen with the early models.

Throttle sticking

Again, this was an issue early on. The rubber hand grip to the right of the throttle would become loose over time and slide to the left, wedging into the throttle. This would cause the throttle to become stuck in the downward, full speed, position.

Geofencing issues

Geo-fencing allows scooter companies and cities the ability to create no-ride and no-parking zones. Using GPS, the scooter companies broadcast an electronic fence around a designated area. If a rider enters a geo-fenced area, which is marked as a red zone on the scooter app's map, the scooter will abruptly stop or slow. Geofencing was intended to protect pedestrians and prevent riders from traveling where they were not allowed, but it created collateral harm. When a scooter unexpectedly stops or slows, it can cause the rider to lose balance and crash.

Another problem with geofencing is that it can be imprecise. A geofencing field can drift and affect scooter riders outside but near the geofence boundaries, catching unaware riders in its snare.

Scooter breaking apart

The handlebars can become loose or detach completely, the handlebar post can collapse, and the baseboard can snap in half. These issues were more common with the early-generation e-scooter models.

Tire issues

Early e-scooter models had solid rubber tires rather than air-filled tires. This saved scooter companies money because it eliminated the downtime caused by a flat tire or by vandals slashing the tire. Solid rubber tires were much less forgiving on roadway imperfections than air-filled tires. A small rock or height differential could cause a scooter rider to lose control and crash.

Insufficient headlights

E-scooters can lack sufficient headlights, resulting in riders being unable to see or appreciate a roadway danger ahead.

Scooter rider injuries – not just broken bones, but shattered bones

Following the emergence of shared e-scooters, emergency rooms began filling up with injured riders. Hospital representatives across the U.S. issued warnings about the frequency and severity of the rider injuries they were seeing.

The most common e-scooter rider injuries include:

- Head injuries. Interestingly, before Bird entered the shared e-scooter market, California law required that e-scooter riders wear helmets. But in a move that would prove calamitous for riders, Bird convinced a California state legislator to sponsor a bill which became a law, removing the helmet requirement for adults.
- Broken jaws and teeth (when the rider goes flying over the handlebars).
- "E-scooter tib-fib special." Our firm saw this injury so often that we gave it a name. The tib-fib special occurs when a rider, traveling at a high rate of speed, puts one foot down on the ground to try to stop (aka, the "Fred Flintstone stop") causing the tibia and fibula to snap.

Two professions benefited enormously by the arrival of e-scooters: orthopedic surgeons and oral surgeons.

Rider lawsuits against scooter company

Despite the liability waiver contained in scooter-user agreements, injured riders have sued the scooter companies, with varying degrees of success. Bird Rides, Inc., filed for Chapter 11 bankruptcy in December 2023. As a result, the lawsuits against Bird are currently stayed.

Our firm represents many riders in a mass tort against Lime e-scooter company. We are in the process of mediating these claims and so far, have been successful in resolving some of them.

If you are considering taking one of these cases, know that you will have to deal with a forced arbitration clause that is

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contained in the scooter-user agreement. Also be mindful of the myriad of comparative negligence issues you may need to contend with, including:

- No helmet – If your client rider was not wearing a helmet and suffered a head injury, the lack of helmet use will be used against the rider, even if it the rider was an adult, and thus not required to wear a helmet.
- Drunk rider – It is not uncommon for riders to be inebriated (e.g., leaving a bar, they choose to hop on a scooter instead of driving home).
- Sidewalk rider
- No driver's license
- Tandem rider

Pedestrian trip-and-fall lawsuit against scooter rental company

From the first day scooters were deployed on city sidewalks, they became the bane of pedestrians. Elderly pedestrians are most at risk of tripping on a scooter due to seniors' diminished agility, poorer eyesight, and slower reaction time.

Do scooter companies owe a duty to pedestrians? Our law firm represented an elderly woman who was injured after tripping on a Bird e-scooter that was partially obstructing the sidewalk. Bird contended that it owed no duty to protect pedestrians from negligently parked scooters. Ruling in favor of pedestrians, the court held in *Hacala v. Bird Rides, Inc.* (2023) 90 Cal.App.5th 292, that having deployed dockless scooters onto public streets, Bird has an obligation to remove or relocate a scooter that poses a risk of harm to others. The court stated, "[t]o hold otherwise would be tantamount to declaring Bird bears no legal responsibility to retrieve or remove its property, even under the most egregious set of conceivable circumstances, such as when a scooter lies abandoned for long stretches on a public sidewalk in an especially dangerous and conspicuous location."

Pedestrian trip-and-fall cases are challenging. To hold the shared scooter company responsible, you will still have to prove that the scooter was improperly parked such that it posed a tripping hazard. Scooter companies will attempt to deny or diminish their responsibility by denying it was their scooter, denying that they had notice it was improperly parked, blaming the last rider for improperly parking it, and blaming the pedestrian for inattentiveness. On a positive note, the public bias against e-scooter companies may inure to a pedestrian's favor.

Pedestrian lawsuit against e-scooter rider and scooter-rental company if pedestrian is struck by a scooter rider

Our firm has also represented many pedestrians struck by e-scooter riders on the sidewalk. The scooter rider's auto insurance will generally deny coverage for the pedestrian's claim because auto policies do not cover vehicles with fewer than four wheels. And the scooter rider's homeowner's or renter's insurance will also likely deny coverage because it was a motorized scooter.

Will a pedestrian's uninsured motorist coverage apply if the pedestrian is struck by a rider who has no applicable liability insurance? It can go either way. We have had first-party insurance carriers deny UM coverage, taking the position that a scooter does not meet the Insurance Code's definition of a motor vehicle because scooters are not required to be registered under the law. But we have also had UM carriers extend coverage. Make sure to get a copy of your client's policy and be prepared to fight for coverage.

Is the shared e-scooter company liable if a pedestrian is struck by a scooter rider? Our firm has had success in settling these claims against scooter companies. We have argued:

- Scooter companies are liable for negligent entrustment to inexperienced riders.
- Scooter companies are negligent for misfeasance if the scooter was made available to rent on a roadway on which it is illegal to ride scooters (e.g., the speed limit is over 25 mph and there is no bike lane). In this scenario, our argument is that the rider chose to illegally ride on the sidewalk to avoid the danger of riding next to fast-moving vehicles on the roadway, and the accident would not have happened but for the scooter company deploying the scooter on a street on which it is illegal to ride.
- The rider's negligence of illegally riding on the sidewalk is foreseeable. The chain of causation is not broken because the rider's intervening negligence was reasonably foreseeable. Riding on sidewalks is a foreseeable misuse of a rented e-scooter.

E-scooter rider vs. auto collisions

Our firm has seen a steady uptick in accidents involving motorists colliding with electric scooter riders. The most common collisions involve accidents in crosswalks or on sidewalks. Because e-scooter riders often do not know the rules that apply to them, there can be a comparative-negligence component if that rider's failure to follow the law is a contributing cause of the accident. When deciding whether to take one of these cases and when assessing the case's value, the comparative negligence component needs to be weighed and factored in.

Another factor to consider is that the public has generally negative feelings about e-scooters and their riders. Like the biases held against motorcycle riders, jurors may assume that a scooter rider bears some, if not all, fault for an accident because e-scooters are dangerous.

E-scooter rider hit by auto on sidewalk

The most common accident we see involving a collision between an electric scooter rider and a motor vehicle occurs when an electric scooter rider on the sidewalk is struck by a motorist exiting a driveway. The motorist is looking left at traffic approaching on the roadway, and never sees the e-scooter rider who is approaching from the motorist's right.

Rentable e-scooters usually say in large letters on the scooter's floorboard or stem that sidewalk-riding is illegal. Yet scooter riders do it anyway, often because they feel safer on the sidewalk than on the roadway. Unfortunately, riding on the roadway next to fast-moving vehicles is

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the risk that scooter riders must take if they chose to ride an e-scooter.

The motorist's auto insurance carrier will likely dispute liability because e-scooter riding is prohibited on a sidewalk, except as necessary "to enter or leave adjacent property." Unless the scooter rider was only on the sidewalk in order to enter or leave adjacent property, it was illegal to ride on the sidewalk.

Despite an adverse police report that puts the scooter rider at fault, our firm has successfully settled many claims involving e-scooter sidewalk collisions. Comparative negligence will impact value, but with serious injuries, carriers will pay, especially if the claim's value threatens the defendant's policy limit.

E-scooter rider hit by auto in crosswalk

The second leading type of e-scooter vs. auto accident we see involves an e-scooter rider colliding with a motorist in a crosswalk. Is it legal to ride an e-scooter across a crosswalk? No. Under Vehicle Code section 275, crosswalks are considered sidewalks. Since it is illegal to ride an e-scooter on the sidewalk, it is also illegal to ride it in a crosswalk. Again, comparative negligence will apply, but if your client has serious injuries, the carrier will pay.

Every rider I have ever asked had no idea that it is illegal to ride an electric scooter in a crosswalk. Concerned about the frequency of the calls we have received involving this accident scenario, I have even reached out to local municipalities, asking them to put up street or bus signage informing the public that scooter crosswalk-riding is illegal and dangerous. Perhaps if enough of these collisions occur, cities will make an effort to inform the public that crosswalk-riding is illegal.

Bottom line

Will e-scooters even be around in another 10 years? Only time will tell. The burst of scooter accidents seen early on has subsided. There are many reasons for the drop-off: the newest generation scooters are better designed, fewer scooters on the street because some scooter companies have gone out of business, and fewer riders because the rental cost has increased, the novelty has worn off, and there is a greater awareness of how dangerous scooters are. I have certainly done my part to get the word out. (Google "e-scooter accident stories," visit the page our firm put up, and trust me, you will never go near a scooter.)

Scooter-accident claims most certainly have their liability and coverage challenges. As personal-injury attorneys, we know that the more serious the injury, the greater the risk our firms are willing to take. Because of the severity of injuries suffered by e-scooter riders, these cases can be worth taking, despite their challenges.

Catherine Lerer is a founding partner of McGee, Lerer & Associates, *a personal injury law firm in Los Angeles, and has developed an expertise in e-scooter litigation. She may be contacted via email at clerer@mcgeelerer.com or www.mcgeelerer.com.*


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