

E-scooters and e-bikes: Liability in the e-mobility era

Thinking beyond the accident scene to find responsible parties and theories of liability

By James G. Perry

There are, unquestionably, strong public opinions about the use of e-scooters and e-bikes (also referred to as micro-vehicles). Many find these forms of e-mobility righteous and a necessary component of society. After all, micro-vehicles are arguably better for the environment than automobiles, eliminate traffic congestion to varying degrees, offer young persons and those of lesser means the ability to expand their employment opportunities, reduce overhead, and are far more efficient for certain life activities (e.g., traveling to a doctor's appointment on the other side of town during rush hour). On the other hand, micro-vehicles create other issues that did not exist a decade ago, including walkway hazards, (frequently) greater harm during vehicle collisions, tension between automobile and micro-vehicle drivers, and more uncertainty on the roadways.

Given that micro-vehicles are here to stay, though the numbers have dropped a bit in recent years, understanding potential liability stemming from a vehicle collision involving an e-scooter and/or e-bike is important for those that handle personal-injury matters. In many cases, these micro-vehicle collisions involve various actors and theories of liability that may, and often do, go unnoticed. From riders, owners and delivery companies to manufacturers, government agencies and rideshare companies, finding liability requires not only an understanding of the circumstances behind the injury-cause event, but also a bit of out-of-the-box thinking. This article introduces the applicable e-mobility laws, the potential parties to your micro-vehicle collision, and theories of liability that may be applicable.

The foundation of an e-scooter or e-bike case

The use of common micro-vehicles (e-bikes, e-scooters, hoverboards) jumped roughly 70% from 2017 to 2020, with sales in 2021 eclipsing prior records for certain micro-vehicles. As e-mobility use grew, so too did injuries from their use. For example, from 2017 to 2022, 46% of e-bike injuries occurred in 2022 alone. The types of injuries sustained by micro-vehicle users are often serious and include head injuries, broken jaws/teeth, and tibia-fibula fractures. This only makes sense, since, unlike an automobile, there is often virtually zero protection for a rider during an accident, other than, hopefully, a helmet. When automobiles are introduced to the equation, what little protection a micro-vehicle rider may have becomes insignificant. While this article focuses on liability created *by* micro-vehicle users, much of the following could also be used for a client injured by another vehicle while operating a micro-vehicle.

After a collision involving a micro-vehicle occurs, it is critical to begin with an understanding of what *type* and *class* of micro-vehicle is involved. E-bikes, per California Vehicle Code ("CVC") section 24016, are not a "motor vehicle," but rather a bicycle (CVC 231) with "fully operable" pedals and a motor that must produce less than one horsepower (CVC 312.5). The three classes of e-bikes are: Class (I), motor assists when rider is peddling and stops assisting when 20 mph is reached; Class (II), has a "motor that may be used exclusively to propel" the bike, but ceases when 20 mph is reached; and, Class (III), same as Class I, but permits up to 28 mph and has a speedometer. (CVC 312.5.) No person under the age of 16 years may operate a Class III e-bike (CVC 21213(a)) and "financial responsibility, driver's licenses, registration, and license plate requirements" are not required (CVC 24016(b)).

An e-scooter ("motorized scooter"), on the other hand, is a two-wheeled device with handlebars, a floorboard or with seats and footrests, possibly human powered, but it must also have a motor. (CVC 407.5(a).) An e-scooter is subject to "all provisions" of the CVC, except those which, "by their very nature, can have no application." (CVC 21221.) Unlike e-bikes, e-scooter riders must possess a driver's license, are prohibited from tandem riding (CVC 21235) and, the e-scooter itself, must display that owner's insurance may not cover use (CVC 407.5(c)).

When evaluating liability in a micro-vehicle collision case, the use and restriction laws and regulations must be your starting point. For example, both e-bikes and e-scooters have very specific braking and lighting/reflector requirements (see e.g., CVC 21201(d) [front light "visible from a distance of 300 feet" for e-bike], 21223 [same for e-scooter]); and permissible use laws (see e.g., 21207.5 [e-bike must be operated "within or adjacent to roadway"], 21235(b) [e-scooters restricted use in designated "bikeway[s]"], 21229 [e-scooters must travel

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within class II bicycle lane if established, with exceptions], 21228(b) [e-scooter riders prohibited from making left turn without dismounting]), CVC 22411 [e-scooter prohibited from traveling faster than 15 mph]).

To add to the complexity of laws related to micro-vehicles, the CVC permits "public agenc[ies], including, but not limited to, the Regents of the University of California and the Trustees of the California State University" to "adopt rules or regulations" for property under their jurisdiction. (See CVC 21113(g).) Although a bit overwhelming at first glance, the Orange County Transit Authority created a helpful (though unclear if exhaustive) list of bike and e-bike ordinances within various cities throughout California. (See https://www.octa.net/pdf/E-BikeRegulation.pdf.) For example, Orange County Code of Ordinances section 2-5-29(n) prohibits Class III e-bikes from "parks, beaches and recreational areas." I would caution, however, that it is not wise to rely solely on a list created by any particular entity and that it is necessary to have a look for yourself. After all, you may find a specific ordinance directly on point for your case.

To pull everything together, when I evaluate a micro-vehicle collision case, I'm first looking to see whether the micro-vehicle was properly visible based upon the circumstances, lawfully being used in the location of the collision, being operated appropriately by the rider, and, of course, whether any of these observations contributed to the accident. I regularly hear stories from my friends and family about micro-vehicles being operated in lanes of traffic, with little in the way of reflectors to be seen at night, and, seemingly, at excessive speeds in hilly areas. If this type of use causes a motor-vehicle collision (e.g., automobile v. micro-vehicle, micro-vehicle v. micro-vehicle, micro-vehicle v. pedestrian, etc.), you are well on your way to establishing liability. The next question is, of course, who are my responsible parties?

Potentially responsible parties in a micro-vehicle case

When analyzing liability in a micro-vehicle collision case, do not get tunnel vision and focus solely on the parties at the scene of the accident. There are several categories of parties removed from the scene that may very well bear substantial responsibility. The first category is the owner of the micro-vehicle. This may require some digging or very early discovery on this issue. An owner could be: (i) the operator himself/herself; (ii) a friend or family member; (iii) a delivery company if your micro-vehicle operator was on the job; or (iv) rideshare service company, such as Lime. As discussed below, your theory of liability (e.g., negligent entrustment or negligent maintenance), and this third party's involvement in your case, rests heavily on knowing the answer to the ownership question.

The second category of potential parties are your products-liability (chain-of-distribution) actors. From a manufacturer of the micro-vehicle (or potentially defective part supplier) to the local dealership from which the owner purchased the micro-vehicle, generally "all suppliers in the chain of getting goods from the manufacturer to the consumer should be held" strictly liable for defective products. (*Barth v. B.F. Goodrich Tire Co.* (1968) 265 Cal.App.2d 228, 306.) In other words, even if, for example, you determine that the micro-vehicle operator failed to use adequate reflectors to the vehicle to permit your client to avoid the nighttime collision, don't stop there. Was the reflector defective? Did the front light defectively fail to illuminate 300 feet in front of the micro-vehicle? Did the steering column on the micro-vehicle become loose due to faulty design, causing the micro-vehicle operator to lose control?

The final category of parties that must be considered are governmental agencies. This is one that I'm confident will be the subject of substantial litigation. Think about all the infrastructure throughout California that was *designed* and *constructed* decades before micro-vehicles were ever a blip on the radar. From sharing the roadway and sidewalks to visibility issues in congested downtown metropolitan areas, there are bound to be locations where the as-built plans do not account for changed circumstances (e.g., heavy micro-vehicle usage). Local agencies, from governing bodies to transportation authorities, should certainly be considered and investigated as potential parties and contributors to the underlying accident.

Causes of action and theories of liability

Certainly, negligence is going to be your bread and butter regarding the micro-vehicle operator. (See CACI 401, et seq.) Focusing early on the type, class, and restrictions re: the micro-vehicle will give you a solid foundation upon which to argue the operator deviated from the standard of care. Beyond the operator, if the owner of the micro-vehicle is a different party, you have several potential causes of action available to you. If the micro-vehicle operator is effectuating delivery of a product/good for a particular company, course and scope opens the door to vicarious liability. (See CACI 3700, et seq.)

For all non-operator owners, negligent entrustment can be an invaluable cause of action. (See generally *Flores v. Enterprise Rent-A-Car Co.* (2010) 188 Cal.App.4th 1055, 1063 ["[I]t is generally recognized that one who places or entrusts his [or her] motor vehicle in the hands of one whom he [or she] knows, or from the circumstances is charged with knowing, is incompetent or unfit to drive, may be held liable for an injury inflicted by the

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use made thereof by that driver, provided the plaintiff can establish that the injury complained of was proximately caused by the driver's disqualification, incompetency, inexperience or recklessness . . . ."] (internal quotations omitted); see also CACI 724.)

For starters, ask the most obvious question: Is there a reason the operator of the micro-vehicle is not driving a car? Has their license been suspended for multiple DUIs and/or traffic collisions? Has this person ever held a license/driven a car such that he/she would know how to negotiate traffic safely in that area? Another favorite: Has the operator been trained or educated on how to safely operate a micro-vehicle and/or in the area where the collision occurred? As the above should make clear, because there are numerous applicable laws related to micro-vehicle use, much like driving a car, the operator, reasonably speaking, should have received at least basic training on how to safely operate the micro-vehicle, including in that area.

In the same vein as sufficient training, a negligent hiring, retention, or supervision cause of action could certainly be applicable in the case of delivery drivers for the same reasons as above. (See generally *Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139 ["Negligence liability will be imposed on an employer if it 'knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes'"]; CACI 426.) In addition, this cause of action opens the door to what the delivery company knew or reasonably should have known about the applicable micro-vehicle laws. For example, because e-scooters are not permitted to be operated "on a highway with a speed limit in excess of 25 [mph]" unless it is "operated within a Class II or Class IV bikeway," should an employer be expected to ensure that the routes taken by its operators comply with this law to avoid the anticipated hazards? I'm not sure how the answer can be anything other than yes.

As discussed above, products-liability causes of action – design and manufacturing defect and failure to warn – should be on the table until ruled out. (See generally CACI 1200, et seq.) To briefly illustrate, e-bikes have certain specific design requirements that must be followed. (See CVC 24016(a)(1) [providing that manufacturers must "[c]omply" with 16 C.F.R. 1512, et seq.].) Though too complex of an area to comprehensively address in this article, two thoughts will help guide your initial inquiry. First, check for recalls related to your micro-vehicle to see if you have a defect. (See https://www.cpsc.gov/Recalls.) Second, do a quick Google search to see what consumers have said about the micro-vehicle at issue. If you find that there is, in fact, a recall or consumer complaints about a component part that could have led to your injury-causing event (e.g., defective brakes or lights), you might consider bringing in an expert immediately to give you a preliminary analysis. Seemingly, the worst-case scenario is that your expert can rule out a defect (or related argument) that could be used by a defendant to avoid liability.

Finally, government liability causes of action will likely come in two forms: (1) Liability for dangerous condition of public property pursuant to Government Code section 835, et seq.; and (2) Failure to warn of a (concealed) dangerous condition pursuant to Government Code section 830.6 and 830.8, et seq., and *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639. Also, a topic too complicated to fully explore herein, there are several initial steps that I always take when evaluating whether government liability is an issue.

The first step is to send a California Public Records Act request, pursuant to Government Code section 7920.000, et seq., and Vehicle Code section 20012, asking for all as-built design plans, collision history, surveys and studies, maintenance/work, and complaints from the public related to the subject location. Second, I'll jump on the Statewide Integrated Traffic Records System (SWITRS) to understand the number and types of collisions at the subject location. And, finally, I will either drive to the location or use Google Maps Streetview to see if I can spot any immediate issues (e.g., curve in the roadway creating sightline issues).

Because any government-liability cause of action will be from the standpoint of involvement of a micro-vehicle in your collision, bringing on an appropriate expert (e.g., traffic engineer) will be necessary. While you may have a run-of-the-mill dangerous condition case, such as sightline issues for all vehicles, you want to understand whether micro-vehicle usage at your subject location created changed circumstances (e.g., an added bike lane in a congested area or substantial increase in micro-vehicle usage) not subject to immunity or, at least, a dangerous condition that should have been remedied or warned about. (See generally CACI 1100, 1102, 1123, 1124.) Finding, for example, a pattern of collisions at the subject location through your public records or a repaving plan that includes a new bike lane but neglects a visibility analysis could get you to where you want to be.

Bear in mind that even if your micro-vehicle operator was in violation of the law (e.g., operating the vehicle in a prohibited area or manner), this use in "combination" with a "defect in the property" (e.g., blind intersection) can still result in liability on the part of the government agency in control of the area. (See *Hayes v. State of California* (1974) 11 Cal.3d 469, 472.)

Conclusion

Although this article is far from a comprehensive script on how to approach finding liability in the e-mobility era, the above should nonetheless get you thinking beyond the scene of the

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accident. There are far too many potential parties and theories of liability to limit your chances of recovering adequate damages for your client to those parties listed in a traffic collision report.

Though the work needed to identify all necessary parties could be substantial in certain cases, the above discussion should illustrate that, given your client's damages, you may need only one or more potential parties beyond the culpable on-scene party to satisfy the damages your client is entitled to. In other words, it is better to have options and the ability to rectify the harm to your client than be stuck with a policy limit that does nothing more than add insult to injury.

In most circumstances, I would trade, and I suspect you would too, clear liability for the chance to fully recover for my client every day of the week.



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