

*DEAR READERS: Do you have a legal question that has been burning on your mind (but are hesitant to ask an attorney...cha-ching; cha-ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.*

**Q: My 13-year old son was riding his bicycle in our neighborhood and a car proceeded through an unmarked intersection, without even looking. Fortunately, the car was going slowly and my son was only bruised and “shaken up”, but his bike wheel was totally “smashed”. The driver of the car refused to even pay for a new bike—saying that my son was riding on the “wrong side” of the street and he did not yield to traffic. How can that be? Should I sue?**

### **Miffed Mom in Sebastopol**

A: Dear Miffed Mom:

The best advise, for all of us...is SLOW DOWN and remember the ancient-mantra-of-by-gone-high-school-driving classes: “Look. Listen. Then Proceed”. That way, a collision is prevented, no one get hurts, and we all can spend our hours being grateful and happy—as we are designed to be.

With that said, time for my “lawyer brain” to kick in. The laws relating to bicycles are a bit tricky. If you a riding the bike, you must obey the traffic rules as if you are driving a car. So, a bike rider should always ride with traffic, even on a sidewalk (or bike lane). If a bicyclist is determined to be riding on the “wrong side” of the street, he or she may be found to be “contributory negligent”...meaning that the bike rider may be found to be partially at fault for not obeying the traffic laws. So, if the “value” of the case (compensation for medical bills, pain and suffering, property damage) is, say, \$8,000, and the bike rider is found to be 50% contributory negligent, then only \$4,000 can be recovered. It doesn’t sound fair, I know...but that is the law.

Bicyclists should bone-up on the laws, especially with Sonoma County becoming a bicyclist paradise. Our local Sonoma County Bicycle Coalition offers outstanding bicycle safety courses (half-price for SCBC Members). Call 545-0153 or check out [www.bikesonoma.org](http://www.bikesonoma.org) for more information.

I advise all my bike-riding clients to always WALK their bike through a crosswalk, not ride it. That simple act gives you power of a pedestrian—the ultimate ruler of the laws of the road.

The driver of the car, though, is not totally off the hook. If your son was in the intersection first, he had the right of way and the car should have yielded at the intersection. Get the automobile insurance information from the car driver and ask the

insurance company to open a claim file. Stand tall and true as your son's advocate as you are "haggling" with the insurance company. Don't let the adjuster intimidate you. Once your son is totally recovered from his injuries, try to settle the claim on your own. You have two (2) years from the date of the collision to settle the claim.

Another clear and inexpensive option is to file a small claims action. If you establish fault and injury, then you can recover up to \$7,500 (legislation is pending to increase it to \$10,000, but for now, the limit is \$7500). The filing fee ranges from \$30-\$75, and you will get a hearing before a judge usually within 30-60 days. Need help with small claims? The law students at Empire Law School, under the supervision of a licensed attorney, offer help at the Small Claims Advisory Clinic. Call ahead at 707-565-6457---they have limited hours for either walk-ins or telephone appointments. You can also check out [www.courtinfo.ca.gov/selfhelp/smallclaims](http://www.courtinfo.ca.gov/selfhelp/smallclaims) for forms and general information.

Good luck. Hope you pursue one, or some, of the suggested actions (and hope your son recovers swiftly)!

***Debra A. Newby is a resident of Monte Rio and has practiced law for 27 years. She is a member of the California, Texas and Sonoma County Bar Associations and currently maintains an active law office in Santa Rosa. Her law practice emphasizes personal injury law (bicycle/motorcycle/motor vehicle accidents, dog bites, trip and falls, etc.) and expungements (clearing criminal records). Debra can be reached via email ([debra@newbylawoffice.com](mailto:debra@newbylawoffice.com)), phone (707-526-7200), fax (526-7202) or pony express (930 Mendocino Avenue, Suite 101; Santa Rosa, 95401).***