

COMMON LAW DUTY TO SOUND HORN IN PASSING.<sup>1</sup>

The law<sup>2</sup> requires the operator of a vehicle to sound *his* horn when overtaking and passing another vehicle if, under the same or similar circumstances, a reasonably careful and prudent operator would have done so.

(The operator must sound *his* horn in a timely manner, that is, the operator must sound *his* horn in reasonable time to afford the operator ahead an opportunity to avoid injury or damage.<sup>3</sup>)

Thus, when one overtakes and attempts to pass a vehicle traveling in the same direction, without (timely) sounding the horn when a reasonably careful and prudent operator under the same or similar circumstances would have done so, such failure would be negligence.<sup>4</sup>

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<sup>1</sup>This instruction should not be used when there is an ordinance prohibiting horn blowing.

<sup>2</sup>Bell v. Wallace, 32 N.C. App. 370, 232 S.E.2d 305, disc. rev. denied, 292 N.C. 466 (1977); Lowe v. Futrell, 271 N.C. 550, 157 S.E.2d 92 (1967).

<sup>3</sup>Use this paragraph and the parenthetical reference to "timely" in the last paragraph only when the horn was blown but a question of timeliness is raised.

<sup>4</sup>For an instruction on the duty to sound a horn to warn a child or a confused or intoxicated person on a roadway see N.C.P.I.--Civil 211.45.

