

Direct Compensation Agreement

for the Settlement of Automobile Claims



Direct Compensation Agreement for the Settlement of Automobile Claims

Automobile Insurance Act (R.S.Q., chapter A-25, sections 116 and 173)
(13th edition)

This brochure represents the Direct Compensation Agreement updated as of May 18, 2009 as published and modified in the following regulations:

(1978) 110 G.O. 2; (1980) 112 G.O. 2; (1981) 113 G.O. 2 (Erratum);
(1984) 116 G.O. 2; (1986) 118 G.O. 2; (1986) 118 G.O. 2 (Erratum);
(1987) 119 G.O. 2; (1990) 122 G.O. 2; (1990) 122 G.O. 2; (1991) 123 G.O. 2;
(1994) 126 G.O. 2; (1994) 126 G.O. 2 (Erratum); (2001) 133 G.O. 2;
(2001) 133 G.O. 2 (Erratum); (2007) 139 G.O. 2; (2008) 140 G.O. 2;
(2009) 141 G.O., 2 in accordance with the Automobile Insurance Act (R.S.Q., chapter A-25,
sections 116 and 173).

Introduction

As provided in section 173 of the Automobile Insurance Act, the Groupement des assureurs automobiles must establish a Direct Compensation Agreement. Section 116 also provides that:

"The recourse of the owner of an automobile by reason of property damage sustained in an automobile accident shall not be exercised except against the insurer with whom he subscribed his automobile liability insurance, to the extent that the Direct Compensation Agreement contemplated in section 173 applies.

However, the owner may, if he is not satisfied with the settlement made in accordance with the Agreement, exercise such recourse against the insurer in accordance with the ordinary rules of law to the extent that sections 108 to 114 do not derogate therefrom."

Section I

Definitions

1. In this Agreement, unless otherwise provided

"Act" means the Automobile Insurance Act (R.S.Q., chapter A-25).

"Collision" means

- a) contact (including any type of impact) between two or more vehicles or parts of vehicle being detached without the involvement of the insured;
- b) contact (including any type of impact) between the vehicle and the load of another vehicle while being transported by, falling from or fallen from such vehicle;
- c) contact (including any type of impact) between two or more vehicles attached to each other and caused by a jack-knife.

"Damage" means

- a) any damage caused to the insured vehicle;
- b) loss of use;
- c) loss of or damage to property owned by the insured while being transported in the vehicle.

"Load" means any property in, on, or transported by an automobile.

"Owner" means a person who acquires or possesses an automobile under a title of ownership, under a title involving a condition or a term giving him the right to become the owner thereof, or under a title giving him the right to use it as the owner thereof charged to deliver over, and a person who leases an automobile for a period of not less than one year.

"Vehicle" means an automobile as defined in section 1 of the Act.

Section II

Application

Parties

2. This Agreement applies

- a) to all authorized insurers, to parties referred to in section 175 of the Act and all parties having voluntarily subscribed to this Agreement. However, it does not apply to insurers of owners of automobiles exempted from section 84 of the Act (see section 196c) except if such vehicles are insured by a motor vehicle liability policy;
- b) to insurers of a motor vehicle dealer as defined in the Highway Safety Code (R.S.Q., chapter C-24.2) with respect to owned vehicles whether or not they are operated on a public highway.

Accidents

3. This Agreement applies to all property damage resulting from a collision occurring in the province of Quebec involving two or more vehicles or a vehicle and the load of another vehicle, if the owners have been identified.

However, it does not apply to any property damage to an owned vehicle caused by the owner while operating another vehicle, or collisions involving only vehicles owned by the same persons or corporations.

Section III

Indemnity rules

Application provisions

4. The insured is indemnified by his own insurer to the extent of the liability of the operator of the other vehicle subject to the following:
 - a) the liability of the operators is determined in accordance with the Driver's Fault Chart appended hereto;
 - b) where the following operators are driving customers' automobiles in their care, custody or control:
 - i) any garage operator or his employees;
 - ii) any parking lot operator or his employees;
 - iii) any motor vehicle dealer referred to in the Highway Safety Code (R.S.Q., chapter C-24.2) or his employees;
 - iv) any towing business operator.

The insured shall be fully indemnified by his automobile liability insurer if at the time of the accident he had no control over the automobile, and the accident did not result from the condition of the automobile or from the way it was secured. This rule also applies whenever the insured's vehicle is being towed by a third party.

Payments (automobile liability and collision coverages)

5. When an insured has automobile liability and collision coverage, the following rules apply:
 - a) if both coverages are provided by the same insurer:

the insurer must first indemnify its own insured in accordance with its contract and then shall apply the Direct Compensation Agreement with respect to any sum payable under such Direct Compensation Agreement;
 - b) if the coverages are provided by different insurers:

damage to the automobile shall be covered by the collision insurer, which shall then recover from the automobile liability insurer any sum payable by the latter on the basis of the apportionment of liability shown in the appended Driver's Fault Chart.

Limitations

6. a) *Property transported*
The insured shall be indemnified by the liability insurer for loss of or damage to property being transported in the vehicle and owned by the named insured or the operator to a maximum amount of \$3,000 per vehicle. The indemnity to the named insured is primary.
- b) *Loss of use*
Indemnity for loss of use is limited to all necessary and reasonable expenses, costs and losses incurred which are recoverable under ordinary rules of law and for which proof satisfactory to the insurer has been provided.

Deductible

7. Payments by the automobile liability insurer shall be made regardless of any deductible.

The collision deductible is equal to the proportion of damage to the vehicle for which the insured is responsible in relation to all damage, multiplied by the deductible.

Apportionment of liability

8. Whenever more than one situation described in the attached Driver's Fault Chart applies and the total of the apportionment of liability between the motorists is more than 100%, the portions of liability stated in the Chart shall be reduced accordingly.

Combination of vehicles

9. In any collision caused by two or more vehicles attached to each other involving automobiles, each of such vehicles shall be an automobile within the meaning of the Agreement and the insurers of each vehicle shall settle their respective insured's damages in accordance with the Agreement.

Appraisal

10. Damage to the vehicle shall be appraised by the collision insurer. In the absence of collision coverage the automobile liability insurer shall appraise the damage.

Section IV

Subrogation

11. Automobile liability insurers are subrogated in the rights of their own insureds against all third parties at fault, whether insured or not, to the extent of the payments made by them.

However insurers waive subrogation against each other except in the following situations:

- a) any settlements made with the owners of vehicles in the care, custody and control of the following persons:
 - i) any garage operator or his employees;
 - ii) any parking lot operator or his employees;
 - iii) any motor vehicle dealer referred to in the Highway Safety Code (R.S.Q., chapter C-24.2) or his employees;
 - iv) any towing business operator;
- b) any settlement with the owner of a towed vehicle;
- c) any settlement with the owner of an automobile exempted, other than those provided for in section 11 b), except if such automobile is insured under an automobile liability policy.

In subparagraphs a) and b), subrogation can be exercised only against the insurer of the operator of a customer's vehicle under his care, custody and control or of the operator of a tractor towing such a vehicle.

Section V

Arbitration

12. Any dispute between the parties bound by this Agreement and resulting from its application shall be determined by the Arbitration Board of the Groupement des assureurs automobiles.

The Arbitration Board shall comprise at least seven members appointed every year by the Board of Directors of the Groupement des assureurs automobiles. The Board of Directors shall designate the chairman and the two vice-chairmen of the Arbitration Board. The Arbitration Board shall meet within sixty days after receipt of the allegations of the parties by the Groupement des assureurs automobiles.

A majority of the serving members of the Arbitration Board shall constitute a quorum for a session.

The decisions of the arbitration board are taken on a simple majority vote by the members present and forming a quorum.

Decisions rendered by the Arbitration Board are final.

Section VI

Effective date

13. This Agreement shall come into force on May 18, 2009 and shall apply to all accidents occurring on or after that date.

Appendix

Driver's Fault Chart

Chart

1. Liability shall be apportioned as shown in the Driver's Fault Chart. Any admission of liability or prior agreement in this respect shall be null and void.

Collisions subject to the Agreement but not provided for in the Chart shall be settled in accordance with ordinary rules of law.

Note

2. Except as otherwise provided in the Chart, liability shall be apportioned regardless of the point of contact of the vehicles and of the following circumstances:
 - actions of pedestrian;
 - speed;
 - weather conditions;
 - visibility;
 - road conditions;
 - light, sound or hand signals;
 - marked or unmarked road lines.

Definitions

3. As used in this Agreement:

"Centerline" means

- a single or double, full or broken line in the middle of the roadway; or
- the middle of the roadway or of that portion of the roadway that is left unobstructed by parked vehicles, a snow bank, or other object blocking traffic on an extended portion of the roadway, insofar as two-way traffic in that portion of the roadway is still possible without any difficulty.

"Chain reaction"

means a series of successive contacts (including any type of impact) between three or more vehicles travelling in the same direction one behind the other in the same lane.

"Intersection"

means a place where several public roads, alleys, streets, avenues, boulevards lanes between buildings intersect, including lanes in parking lots. The dotted lines in the diagram indicate the limits of such intersection.

"Lane change"

means any move whereby a vehicle leaves its own lane to enter another lane.

"Limited access highway"

means a public highway that may be entered or left only at the specially provided entrances or exits (sections 288 and 319, Highway Safety Code, R.S.Q., chapter C-24.2).

"Line of vehicles"

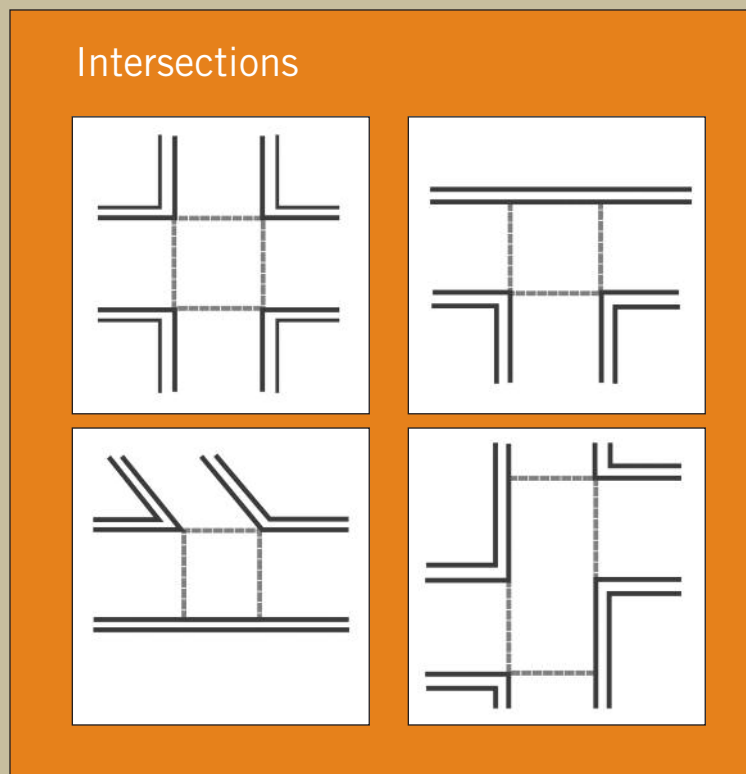
means two or more vehicles, one behind the other. Vehicles partly behind one another shall be deemed to be in the same line of vehicles.

"Pile-up"

means a series of contacts (including any type of impact) between several vehicles travelling in different lanes or lines.

"Roadway"

means that part of a public highway ordinarily used for vehicular traffic (R.S.Q., chapter C-24.2, section 4).



Driver's Fault Chart

Cases 1 to 3



Vehicles travelling in the same direction on the same roadway

Cases 4 to 6



Vehicles travelling in the same direction in two different lanes of traffic

Case 7



Vehicles travelling in opposite directions

Case 8



Vehicles entering from side roadways or crossroads

Cases 9 to 15



Other cases

Driver's Fault Chart

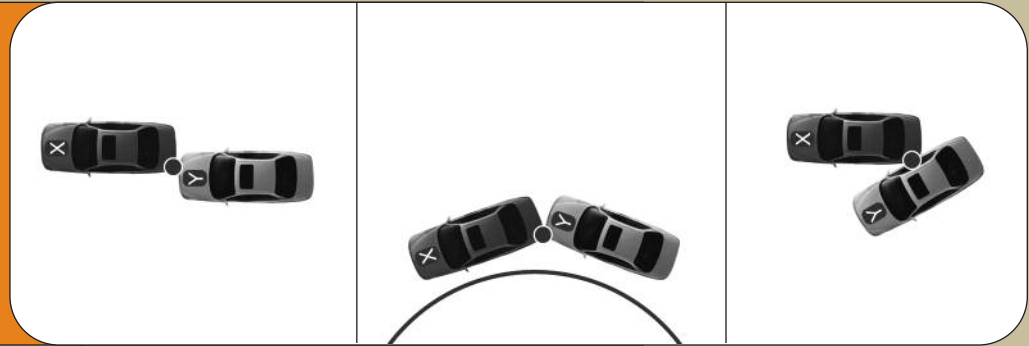
Cases 1 to 3



Vehicles travelling in the same direction on the same roadway

1

Collision between vehicles in the same lane of traffic



Portion of liability

X	Y
0%	100%

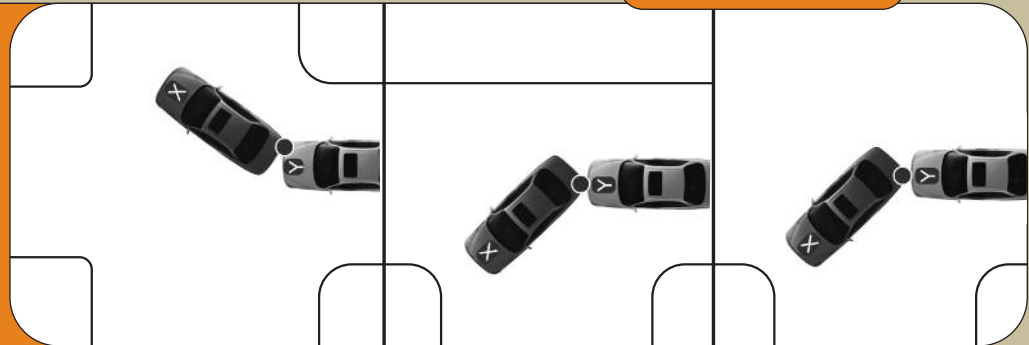
In this case, the liability of "Y", which strikes preceding "X" from the rear, is total, because of lack of proper control of vehicle.

When vehicle "X" is backing, this shall be used against "X" under CASE 11.

2

Vehicle turning into a side roadway or driveway

One way << << <<



Portion of liability

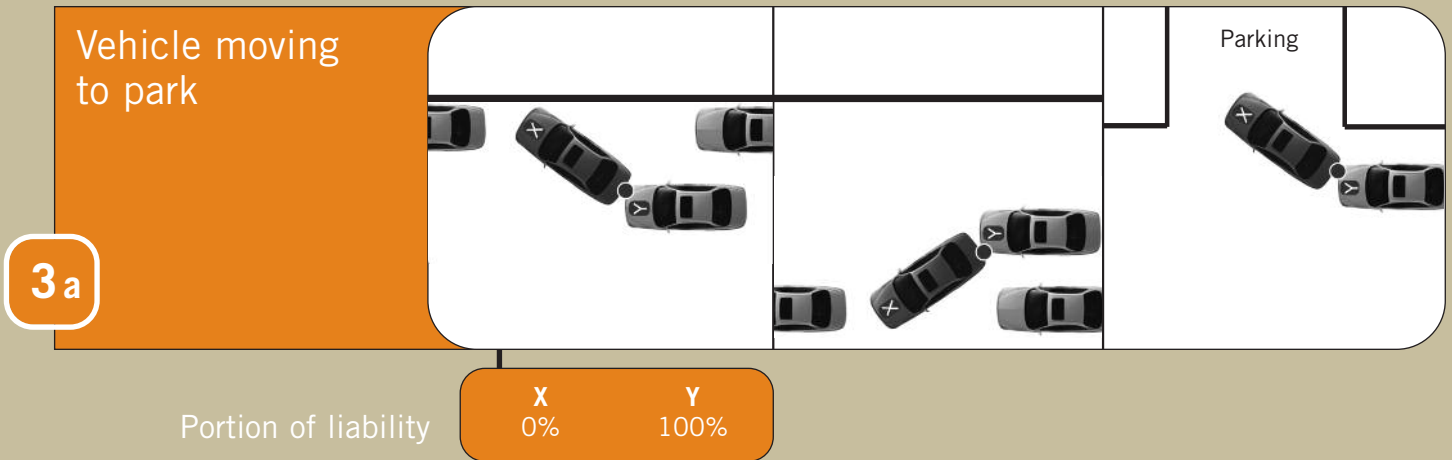
X	Y
0%	100%

This case applies when "X" swerves to the right or to the left to enter a side roadway or driveway and is struck from the rear by "Y".

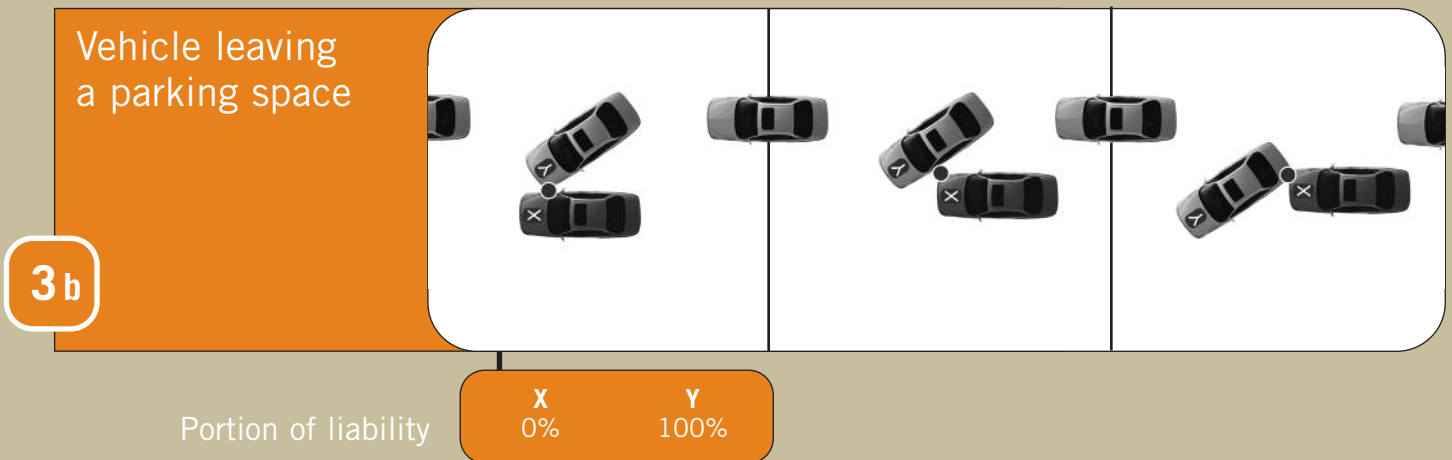
Driver's Fault Chart

Cases 1 to 3

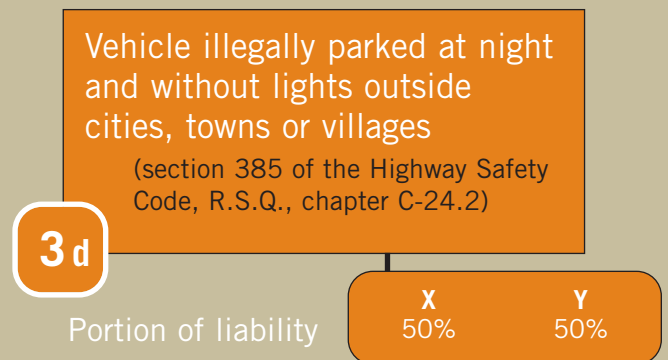
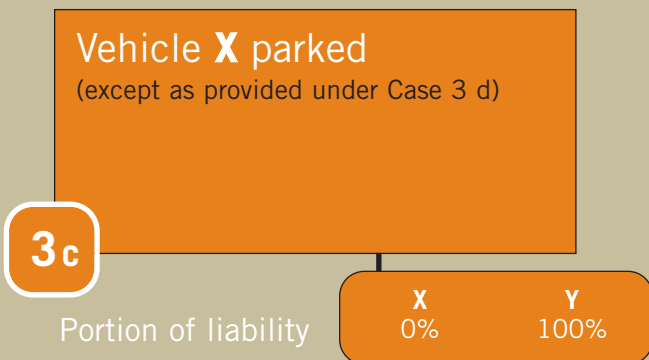
Parking situations



This case applies when "X", in forward motion, enters a parking space on either the right or left side of the roadway, or a parking lot on either side.



In this case, the action of "Y" leaving the parking space is the determinant cause of the accident.

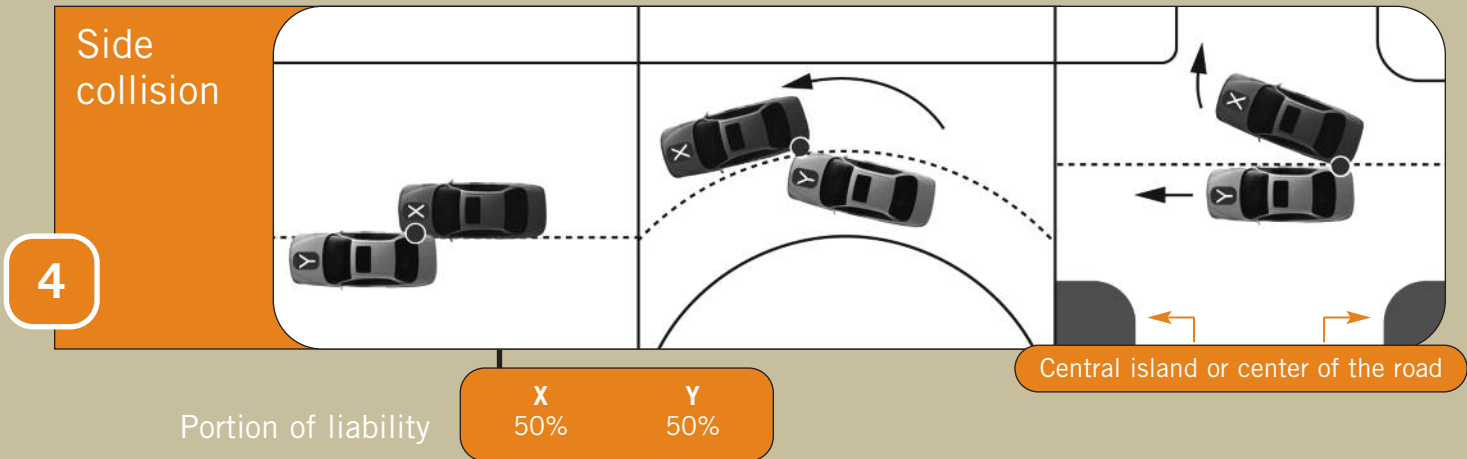


Driver's Fault Chart

Cases 4 to 6

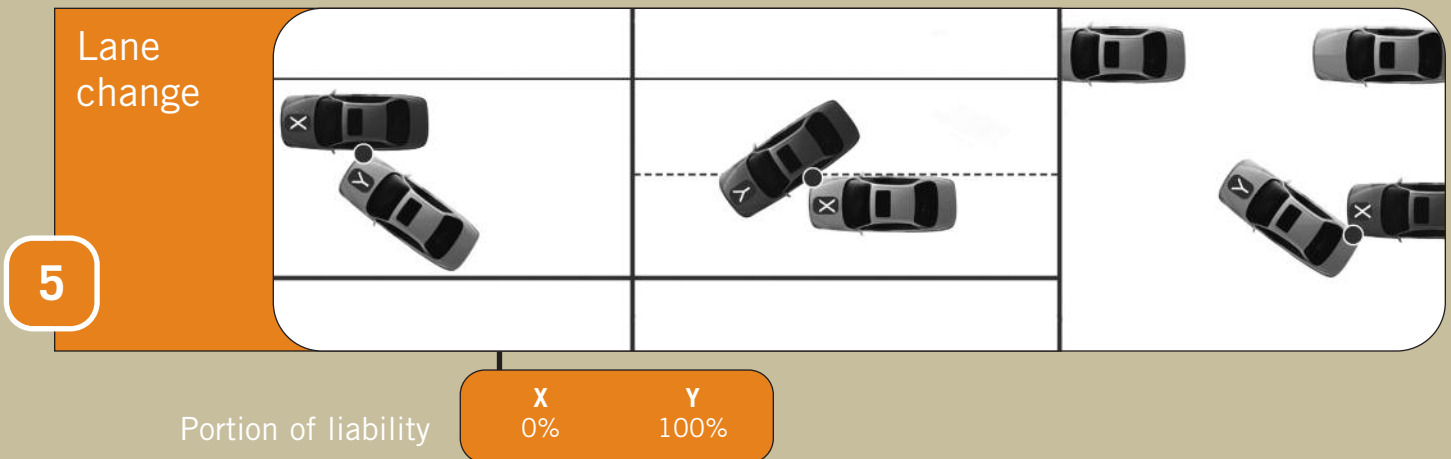


Vehicles travelling in the same direction in two different lanes of traffic



"X" and "Y" travelling in different lanes sideswipe without changing lanes.

This case applies particularly in cases of passing without changing lanes or in cases where roadway narrows, unless one of the drivers has violated a no passing sign or solid line, in which case, CASE 9 applies against such driver.



This case applies when "Y" changes lanes for whatever reason.

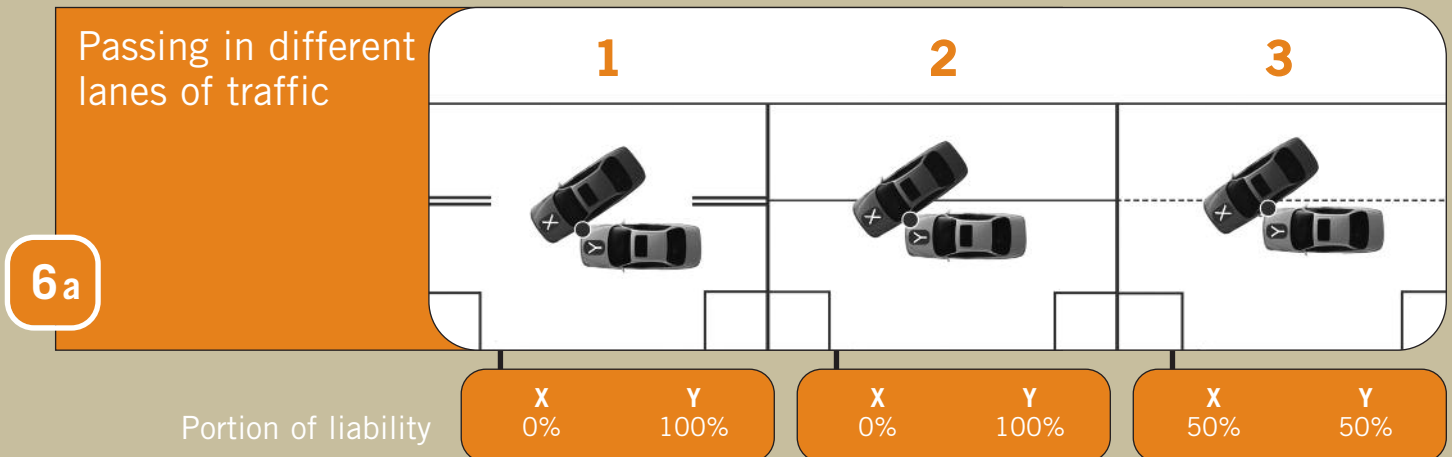
EXCEPTION

On a public highway where the maximum speed allowed is less than 70 km/h, the driver of a road vehicle must yield the right of way to a bus when the driver of the bus is flashing his turn-signal lights for re-entering the lane in which he was moving before he stopped (section 407 of the Highway Safety Code, R.S.Q., chapter C-24.2).

Driver's Fault Chart

Cases 4 to 6

Passing a vehicle



Liability is determined in accordance with the diagrams.

Diagram 1

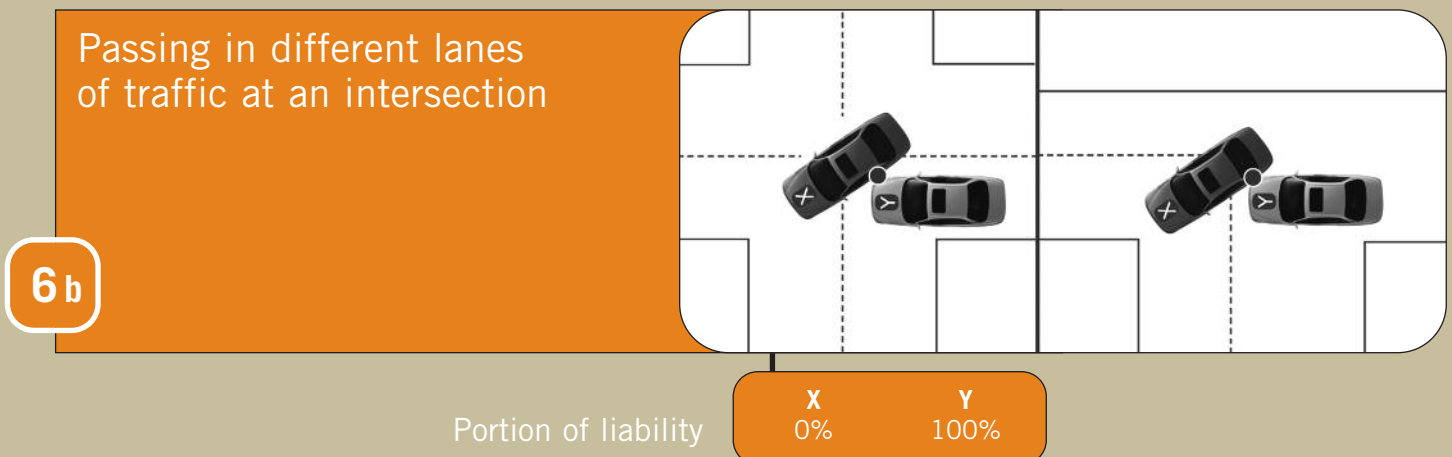
"X" making a proper left turn into an entranceway while "Y" is attempting to pass despite a solid single or double line.

Diagram 2

"X" turning left into an entranceway, over a solid single or double line or a double line consisting of a broken line and a solid line, the latter being adjacent to the lane in which "X" is moving (section 326.1 of the Highway Safety Code, R.S.Q., chapter C-24.2), while "Y" is attempting to pass.

Diagram 3

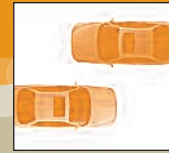
"X" travelling on a roadway having no determined centerline or having a broken line, and turning left into an entranceway while "Y" is attempting to pass.



"Y" going over the centerline in an intersection, while "X" is turning left, is fully responsible.

Driver's Fault Chart

Case 7

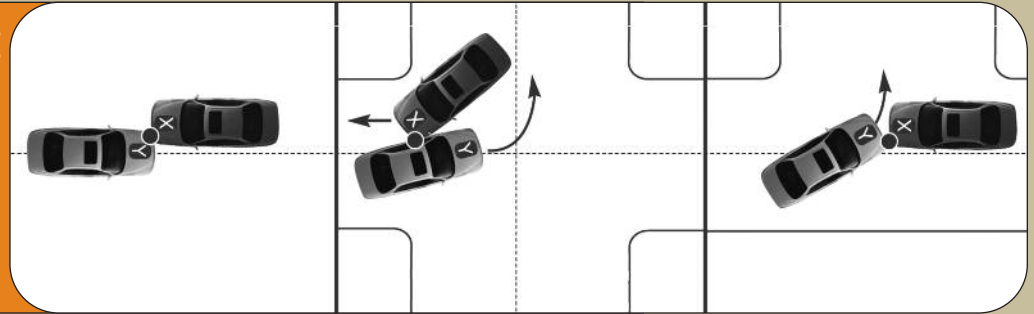


Vehicles travelling in opposite directions

Encroachment on the centerline of the roadway

Vehicle encroaching on the centerline

7a



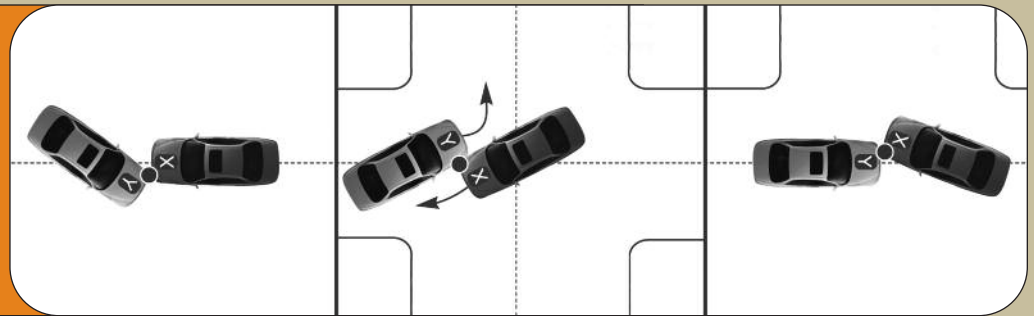
Portion of liability

X	Y
0%	100%

This case applies when "X" is travelling in its own lane and "Y" encroaches on the centerline of the roadway, whether to turn left or not.

Position of vehicles undetermined

7b



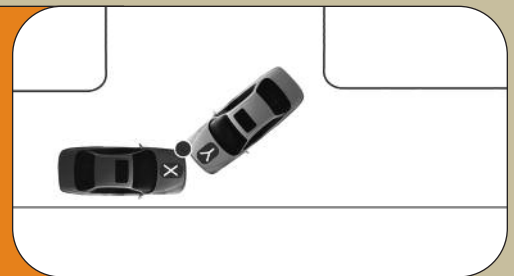
Portion of liability

X	Y
50%	50%

This case must apply wherever the position on the roadway in respect to the centerline is undetermined or if it cannot be established that a specific vehicle was travelling to its left of the centerline. The mere fact of skidding, when other precise information is lacking, is not sufficient to establish that a vehicle was encroaching on the centerline.

Vehicle encroaching on solid line

7c



Portion of liability

X	Y
50%	50%

This case applies when "Y" leaves a roadway (a parking lot, an alley or a place not open to public traffic) and "X", travelling in the opposite direction, encroaches on or crosses a solid line. Settlement is based on an equal division of liability in view of equal fault of both.

Driver's Fault Chart

Case 8

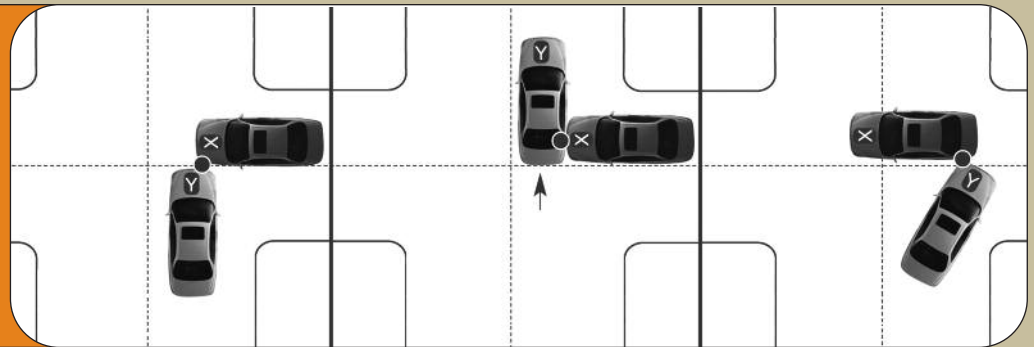


Vehicles entering from side roadways or crossroads

Intersections

Right of way in own lane

8 a



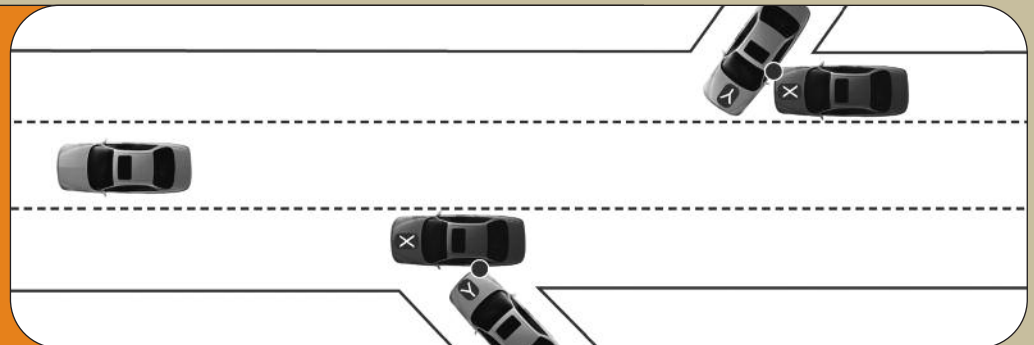
Portion of liability

X	Y
0%	100%

At an intersection where there are no traffic signs, "X" has the right of way in own lane (if remaining within its own lane), and "Y" is therefore fully responsible.

Right of way

8 b



Portion of liability

X	Y
0%	100%

The driver entering a roadway or leaving a limited access highway must yield to other vehicles.

Stop sign and defective or inoperative traffic lights

8 c



Portion of liability

X	Y
0%	100%

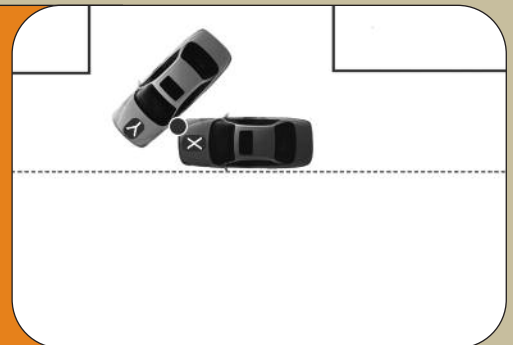
In case of an accident occurring at an intersection equipped with a stop sign on each corner, defective or inoperative traffic lights, the driver of the vehicle first in the intersection has the right of way unless it is proven:

- that "X" failed to stop ("X" to be held fully liable); or
- that both "X" and "Y" failed to stop (both to be held equally liable);

(sections 367 and 368 of the Highway Safety Code, R.S.Q., chapter C-24.2).

Vehicle leaving a side roadway

8 d



Portion of liability

X	Y
0%	100%

This case applies when "Y" leaves a roadway with no traffic signs or lights (a parking lot, an alley or a place not open to public traffic) and "X" is travelling in its own lane. "Y" is fully responsible.

Driver's Fault Chart

Cases 9 to 15



Other cases

Failure to obey signs or signals

Portion of liability

9

"Y" neglects or leaves:

- a) a police officer's signal
- b) a stop sign, a yield sign, a flashing red light or other similar sign, particularly flares and other signals on the ground
- c) a traffic light (where there is lack of proof, liability is equally divided)
- d) a do not enter sign (one way)
- e) a no passing sign
- f) a no turn sign, either left or right
- g) a turn-signal light of a bus in accordance with section 407 of the Highway Safety Code (R.S.Q., chapter C-24.2)
- h) a reserved lane sign indicating that the lane is reserved for use by specific classes of vehicles and prohibiting other vehicles from using it, where applicable, in accordance with sections 17 and 36 of the Regulation respecting road signs
- i) a sign or control signals displaying a downward green arrow to indicate lanes open to traffic and an X to indicate lanes where traffic is prohibited, in accordance with section 365 of the Highway Safety Code (R.S.Q., chapter C-24.2)

X

Y

0%

100%

0%

100%

0%

100%

0%

100%

0%

100%

0%

100%

0%

100%

0%

100%

0%

100%

Vehicle turning on a green arrow

Portion of liability

X

0%

Y

100%

10a

This case applies when "Y" is turning left on a non-flashing green arrow while "X" is proceeding on green light (section 364 of the Highway Safety Code, R.S.Q., chapter C-24.2).

Driver's Fault Chart

Cases 9 to 15

Right turn on red light

10b

Portion of liability

X
0%

Y
100%

This case applies when "Y" is turning right on red light in a municipality or administrative area designated by an order-in-council published in the *Gazette officielle du Québec* while "X" is proceeding on green light (section 359.1 of the Highway Safety Code, R.S.Q., chapter C-24.2).

Backing up or making a U turn

11

Portion of liability

X
0%

Y
100%

This case applies when "Y" is backing up or making a U turn. When two or more vehicles are backing up, liability shall be apportioned equally among all motorists.

Opening a door

12

Portion of liability

X
0%

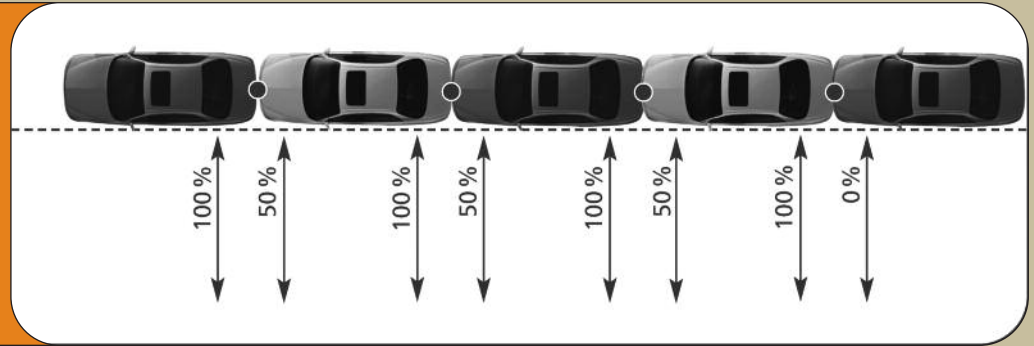
Y
100%

This applies when the door of "Y" is in motion or when the action has just been completed, unless it is proven that the door of "Y" was left open to let a person enter into or alight from the vehicle or to place or remove an item after having ascertained that this could be done safely (sections 430 and 431 of the Highway Safety Code, R.S.Q., chapter C-24.2).

Driver's Fault Chart

Cases 9 to 15

Chain reaction



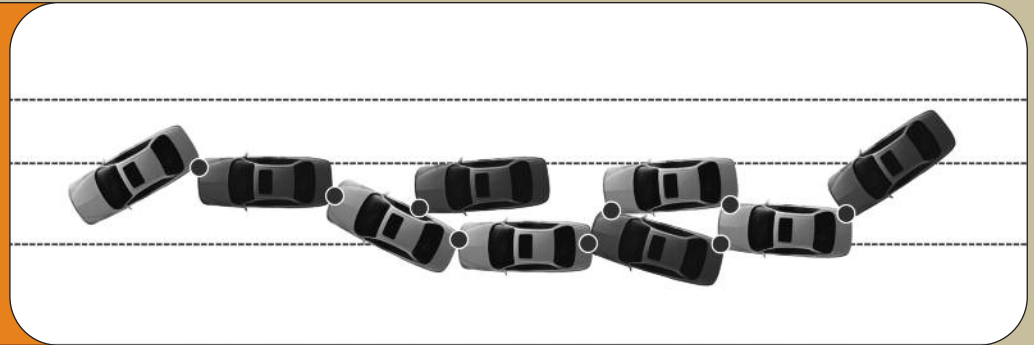
13

In chain reaction accidents, the owner of the leading vehicle not having had prior contact with another vehicle or object, is completely indemnified for the physical damage sustained by his vehicle.

Owners of all other vehicles following are indemnified for 50% of the front and 100% of the rear end damage, except however the last vehicle for which no indemnity is payable.

Note: A series of successive contacts between parked or stopped vehicles occurring when a moving vehicle strikes the last vehicle in the line, causing the vehicles to smash into each other, is not considered a chain reaction.

Pile-up



14

In all pile-ups where liability is undetermined, the owner of each vehicle is indemnified for 50% of his damage.

Driver's Fault Chart

Cases 9 to 15

Collision in a parking lot with no traffic signs

15

"Main alley" means a main thoroughfare used in a parking lot with no traffic signs.

"Side alley" means a cross lane feeding another cross lane or a main alley.

Liability for each driver involved in a collision on a main or side alley shall be determined as follows:

- 1) Vehicle "Y" leaving a side alley must yield to vehicle "X" travelling on a main alley.

Portion of liability

X
0%

Y
100%

- 2) Vehicle "Y" leaving a parking space must yield to vehicle "X" travelling on a side or main alley.

Portion of liability

X
0%

Y
100%

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