INDEMNIFICATION OF TRAFFIC INJURIES THRU COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE

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The constantly increasing use of motor vehicles has posed the problem, serious but less distinctly appreciated, of securing indemnity to the injured. Much is being said and done of late about the elimination of the causes of traffic accidents. Little, unfortunately, is being heard about the securing of compensation for the traffic accident victims. It is perhaps generally assumed that, after the maximum of accident prevention shall have been accomplished, the need for indemnification will be correspondingly reduced to the minimum, if at all necessary, in the end.

But the fallacy of this complacent assumption has long become apparent. Despite our implacable enforcement of regulatory measures and administrative controls, the toll of traffic injuries and deaths has been increasing instead of decreasing; and as put by one writer, "only the type of blind who will not see can deny that, when everything practicable has been done, serious and fatal accidents will still occur in large numbers."[1] While it must be admitted that prevention of loss is always preferable to indemnification of those suffering from preventable loss, and, necessarily, any effort to provide for the latter must not interfere with, much less impair, but should encourage the former, yet both programs should, be pursued together. The two are complementary, not antagonistic.[2]

THE INADEQUACY OF LEGAL RECOURSE

Obviously there is need of some measure to secure indemnity for the victim of traffic accident. But does not the machinery of the law provide for adequate remedies to protect the right of any such person to recover damages for his injuries? Apparently it does. It is evident, however, that the effort of an injured claimant at recovery in pursuing any of these remedies, if not destined to be baffled at the outset, is certainly not without difficulties whichever way he turns. To prove this observation, let us first examine briefly the law on the point.

Liability to respond in damages attaching to the operation and maintenance of motor vehicles arises from distinct sources, and the

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1 MOWBRAY, A. H., INSURANCE: ITS THEORY AND PRACTICE IN THE UNITED STATES 588-9 (3d ed. 1946).

2 *Id.*, at 599.

plaintiff has generally a choice of remedies. Under the Civil Code, he may file an action for damages based on quasi-delict against the driver by whose fault or negligence the damage was caused;[3] or he may enforce the vicarious civil liability of the employer for the tortious act of his driver by bringing the action directly against the former.[4] If the injuries were sustained by him while a passenger of a public utility, he may sue his carrier on its contractual obligation of safety in the transportation of passengers.[5] Under the Revised Penal Code, he may institute a criminal action against the driver and, upon conviction of the latter, hold the employer subsidiarily answerable for the civil liability arising from the offense.[6]

LIABILITY FOR QUASI-DELICT UNDER THE CIVIL CODE.

More often than not, resort against the driver in the first instance proves futile and unavailing, "it being a matter of common knowledge," as our Supreme Court had occasion to point out, "that professional drivers of taxis and similar conveyances usually do not have sufficient means with which to pay damages."[7] The same goes without saying in the case of the family chauffeur. This is so, unless the defendant be himself the owner of the car he was operating; or the owner was in the vehicle at the time of the mishap, in which case he is held solidarily liable with his driver for the consequences of the accident.[8]

In the latter two instances, therefore, it may be said that the case for the plaintiff, in so far as the financial ability of the defendant to respond in damages is concerned, would be no different than where the action is brought directly against the employer, in a proper case, upon his vicarious liability. The need of proving fault or negligence of the driver, as well as to hold the latter liable as to give rise to the vicarious liability of the employer,[9] however, is often frustrating, the difficulty of procuring witnesses being peculiarly

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[3] Art. 2176, Civil Code.
[4] Art. 2180, pars. 4 and 5, *id.*
[5] Arts. 1733, 1755, 1756, *id.*; Lasam v. Smith, 45 Phil. 657 (1924).
[6] Art. 103, Rev. Penal Code.
[7] Barredo v. Garcia and Almario, 73 Phil. 607, 620 (1942).
[8] Art. 2184, Civil Code. It will be observed, however, that the evidential requirement, in order to hold the owner solidarily liable with his driver under this article, that such owner could have prevented the misfortune by the use of due diligence, is difficult to establish, for the owner, granting that he was in the vehicle, was not in control of the machine.
[9] See note 4 *supra.*

characteristic of motor vehicle accident litigations.[10] Indeed, it is said that fault, or negligence, is playing an increasingly insignificant role in the determination of automobile accident disputes, being but a recognition of the fact that modern traffic and transportation are a source of increased peril to the safety of human beings and that, consequently, the operation of motor vehicles, must pay for the damages and injuries brought about by such activity, whether or not fault or negligence has intevened.[11]

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[10] Report by the Columbia Committee to Study Compensation for Automobile Accidents (1932): "The burden of proof is often difficult to carry. The very injury for which compensation is sought has often hindered or prevented the gathering of evidence. Some days or even weeks will ordinarily elapse before the plaintiff or his attorney begins to prepare his case. Meanwhile, the defendant, unless he is also injured, has often been able to gather the names of the witnesses at the scene of the accident and to notify his insurance company or employ his attorney immediately. These considerations apply peculiarly to motor vehicle accidents. The suddenness with which such accidents occur and the fact that the participants are usually unknown to each other and to all the bystanders, make the plaintiff's task harder than in the case of many other accidents."

[11] Malone, W. S., *Damage Suits and the Contagious Principle of Workmen's Compensation*, 12 LOUISIANA L. REV. 231, 253 (1952).

As early as 1919, there had grown an advocacy in the United States for the extension of the workmen's compensation principle of absolute liability into the field of motor vehicle accidents by imposing liability without regard to fault or negligence upon owners and operators of motor vehicles for injuries to third persons. See Carman, *Is A Motor Vehicle Compensation Act Advisable?* 4 MINN. L. REV. 1 (1919); Rollins, *A Proposal to Extend the Compensation Principle to Accidents in the Streets*, 4 MASS. L.Q. 392 (1919); Marx, R., *Compulsory Compensation Insurance*, 25 COL. L. REV. 165 (1925); Elsbree and Roberts, *Compulsory Insurance Against Motor Vehicle Accidents*, 76 U. OF PA. L. REV. 690 (1928); Lilly, *Compensation for Automobile Accidents: A Symposium*, 32 COL. L. REV. 803 (1932).

In 1932, the Columbia Committee to Study Compensation for Automobile Accidents, composed of selected judges, lawyers, scholars, and insurance experts appointed by the Columbia University Council for Research in the Social Sciences, after three years of extensive investigation and survey, recommended in its report the adoption of such a plan and the consequent abandonment of the negligence or fault doctrine in the field of traffic accidents. "The prestige and practical soundmindedness of this committee carried some weight in legislative halls throughout the country. In New York, Connecticut, Wisconsin, and Virginia, serious consideration was given to the adoption of the compensation principle for all automobile accidents, and a constitutional amendment to make possible such a scheme was introduced in the New York State Constitutional Convention of 1938." (Malone, *supra* at 236). In England, a plan similar to that recommended by the Columbia Committee was adopted by the House of Lords in 1932, but was not acted upon in the House of Commons. See Butterworth, *Road Accidents: The Compensation Problems*, 14 J. COMP. LEG. & INT'L L. 189 (1932).

In France, owners and operators of motor vehicles are held by the courts liable to pay for damages caused by such vehicles irrespective of whether the driver or owner was or was not at fault. "The prevailing principle is the same as in workmen's compensation. It is a recognition of the fact that the presence of motor vehicles on the highways creates a peril for all persons who are exposed to their operation, and that those who get the benefit of such vehicles must be prepared to pay the accident cost which is necessarily involved, just as the consumer or user of goods or services produced by industry must bear the inevitable risk of accident that follows in the wake of industrial operations." (Malone, *supra*, at 264). Finland, Norway, and Denmark are said to have enacted statutes imposing liability without fault for injuries caused by motor vehicles. See Deak, *Automobile Accidents: A Comparative Study of the Law of Liability in Europe*, 79 U. OF PA. L. REV. 271, 301 (1913).

Manifestly the retention of the orthodox theory of liability based upon fault or negligence in the new Civil Code is "a serious limitation on the social utility of our tort law,"[12] all the more so in the field of motor vehicle accident litigations. The Code Commission adopted the term "quasi-delict" instead of "Aquilian fault" because "it was thought inadvisable to refer to so ancient a law as the Lex Aquilia."[13] In so doing, however, it only effected a change in nomenclature, but reincorporated in the new Code the very same "fault" principle of the Lex Aquilia, a Roman plebiscite attributed to the year B.C. 287,[14] obviously when the motor vehicle was yet an undreamed of possibility. It is submitted that this requirement of fault has long outlived its usefulness and should now be discarded, if not altogether, in motor vehicle accidents, at least.

Briefly, the various arguments advanced by a respectable number of writers in support of the abolition of the requirement of fault or negligence and the imposition of absolute liability in the operation of motor vehicles were summed up by Prof. Malone thus—

> "Negligence in traffic has long ceased to be regarded as a conduct which is morally condemned by society. Often, it is nothing more than a violation of some arbitrary traffic regulation which has little moral significance. We cannot hope that by imposing liability for these shortcomings we will encourage drivers to be more careful. Neither can we maintain with frankness that it is fair to hold the negligent driver in expiation for his sins.
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> "It has been pointed out that the effort to determine who was at fault in a typical automobile accident is largely a matter of guesswork engaged in by judge and jury after listeninng to unreliable testimony of witnesses whose attention at the moment of accident was probably not close, whose estimates of speed and distance are notoriously inaccurate, whose memory of what they did see is not dependable, and whose statements are often in hopeless conflict with each other.
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> "The practice of attempting to fix liability in terms of who was to blame is wasteful and is productive of no benefit to society which can offset the disadvantage of delay, expense, and the capricious character of the outcome, all of which follow in the wake of the use of the fault or negligence concept . . ."[15]

The disputable presumptions of negligence on the part of the driver may be of aid to the plaintiff, if ever, only in a few isolated instances; and it would seem that, even in those instances, they do not in practice relieve the plaintiff of the burden at all, for according to the very provisions that establish the presumption, before such presumption of negligence can arise, it must first be shown that the driver had been guilty of reckless driving or other traffic

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[12] Comments, *On the Vicarious Liability of the Employer*, 26 PHIL. L.J. 413, 420 (1951).

[13] Report of the Code Commission 161-2 (1948).

[14] LEE, R. W., THE ELEMENTS OF ROMAN LAW 386 (3d ed. 1952).

[15] Malone, *supra* note 11, at 255-6.

violations at least twice within the next preceding two months,[16] or was otherwise violating any traffic regulation at the time of the accident.[17]

Moreover, the availability of the defense of a good father of a family in the selection and supervision of employees[18] gives the employer a convenient exit from liability in most if not all cases. Employment of "precisely one who is duly licensed to drive a car" has been deemed sufficient compliance with the standard of diligence required in the selection of a driver;[19] while the issuance of "suitable rules, regulations, and instructions" has been accepted to satisfy the requirement of diligence in supervision.[20] Surely, it is not to be supposed that an employer would deliberately hire as driver a person who is not duly licensed to operate a motor vehicle, or that the issuance of suitable rules and regulations for their conduct would be neglected or overlooked, aware as he must be that by simply meeting these nominal obligations his vicarious liability for the negligence of his employees would thereby be avoided.

LIABILITY OF COMMON CARRIERS FOR DEATH OF OR INJURIES TO PASSENGERS.

Common carriers or public utilities are bound to observe extraordinary diligence for the safety of their passengers for reasons of public policy.[21] This obligation is contractual,[22] and is excused only where it can be shown that the proximate cause of the injury was the passenger's own negligence, the same not being merely contributory,[23] or caused by a fortuitous event.[24] Upon the carrier rests the burden to affirmatively prove, in case of injury or death of a passenger, that it exercised this degree of diligence, failing which it shall be liable for damages.[25] Although the death or injury may

16 Art. 2184, Civil Code.
17 Art. 2185, *id.*
18 Art. 2180, par. 8, *id.*
19 Marquez v. Castillo, 68 Phil. 568, 572 (1939).
20 Bajia v. Litonjua and Leynes, 30 Phil. 624, 627 (1915).
21 Art. 1733, Civil Code; Report of the Code Commission 66-67 (1948).
22 Castro v. Acro Taxicab Co., 46 O.G. 2123 (1948); Del Prado v. Manila Electric Co., 52 Phil. 900 (1929); De Guia v. Manila Electric Railroad & Light Co., 40 Phil. 706 (1920); Cangco v. Manila Railroad Co., 38 Phil. 768 (1918). See IV PADILLA, CIVIL CODE ANNOTATED 172 (1953 ed.).
23 IV PADILLA, *id.*, at 204. "The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier, but the amount of damages shall be equitably reduced." Art. 1762, Civil Code.
24 Ampang, et al. v. Guinco Transportation Co., et al., G.R. No. L-5044, April 30, 1953. Note, however, that an accident caused by defects in the vehicle, such as defective engine, is not a fortuitous event and hence does not excuse the carrier from liability for death of or injuries to passengers. See Son v. Cebu Autobus Co., G.R. No. L-6155, April 30, 1954; Lasam v. Smith, *supra* note 5.
25 IV PADILLA, *op. cit. supra*, at 200.

have been caused by the negligence or willful acts of the carrier's employees, and although such employees may have acted beyond the scope of their authority or even in violation of the carrier's orders, the common carrier is liable nevertheless.[26] This liability does not cease upon proof of due diligence in the selection and supervision of employees.[27]

The law therefore is most exacting in regard to the contractual liability of common carriers to their own passengers, unlike in quasi-delict where it is a requisite for the liability of the employer that the employee be acting within the scope of his assigned task, and the employer is excused by proof of due diligence to prevent the damage.[28] According to the Code Commission, this strict accountability is "calculated to protect the passengers from the tragic mishaps that frequently occur in connection with rapid modern transportation," and is "imperatively demanded by the preciousness of human life and by the consideration that every person must in every way be safeguarded against all injury."[29] But does it follow that it is relatively easier to secure indemnity from a common carrier for injuries to passengers? Nothing would indicate so.

One of the principal factors taken into consideration in the granting of certificates of public convenience for the business of public transportation is the financial ability of the grantee to meet contingent liabilities such as those arising from accidents.[30] What is colloquially known as the "kabit" system, whereby a person who has been granted a certificate of public convenience allows other persons who own motor vehicles to operate under said license for a fee or percentage of the profits, to mention only one prevalent practice, defeats this safeguard. In a recent case, the Court of Appeals said of this system:[31]

> "It is a pernicious system that cannot but be too severely condemned. It constitutes an imposition on the good faith of the government. It un-

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[26] Art. 1759, par. 1, Civil Code.

[27] Art. 1759, par. 2, *id.* See cases cited note 22 *supra.*

[28] IV PADILLA, *op cit. supra*, at 202.

[29] Report of the Code Commission 35-36 (1948). "'Extraordinary diligence' is thus required from carriers for reasons of public policy for the benefit of passengers and owners of goods transported. But what about the pedestrian? Is he on a lesser position in law than the passenger or freight owner? The common practice of land transportation companies and 'jeepney' operators is to make the wages of drivers and conductors, over and above a small basic salary, depend on the number of passengers transported. The result is fierce competition even among employees of the same employer, profitable perhaps to the carrier but extremely hazardous and dangerous to pedestrians. The latter sorely need the protection that the imposition of vicarious liability without fault of the employer can give them." Comments, *On the Vicarious Liability of the Employer, supra* note 12, at 426.

[30] Dizon v. Octavio and Gamu, (C.A.) 51 O.G. 8, 4059, 4061 (1955). See Manila Yellow Taxicab v. Austin Taxicab Co., 59 Phil. 771 (1934).

[31] Dizon v. Octavio and Gamu, *supra* note 30.

doubtedly is the cause of a major share of traffic accidents in our streets and highways, for when different motor vehicle owners, who have competing interests and are presumably not responsible enough, financially or otherwise, to be able to obtain the necessary permission from the Public Service Commission, operate on the same lines under one certificate of public convenience granted to another person altogether, the result is overspeeding, wrong parking, overloading, use of defective vehicles, and a host of other transgressions of the motor vehicle law—all for the single purpose of getting as much fare as possible. And when an accident does happen, more often than not a judgment for damages against the vehicle owner cannot be satisfied, because he is insolvent."

CIVIL LIABILITY UNDER THE REVISED PENAL CODE.

It is true that under the Revised Penal Code, conviction of the driver renders the employer who is engaged in business or industry[32] *ipso facto* subsidiarily liable upon a showing of the driver's insolvency,[33] the defense of diligence in the selection and supervision of employees being of no avail.[34] To follow this process, that is, to sue the driver and exhaust his property first, or otherwise show his insolvency, and then proceed against the employer to enforce the latter's subsidiary civil liability, however, is, to say the least, "a devious and cumbersome method of obtaining relief," productive in many instances of "unvindicated civil wrongs," because there "are numerous cases of criminal negligence which cannot be shown beyond reasonable doubt, but can be proved by a preponderance of evidence."[35] Institution of criminal proceedings, furthermore, is dependent largely on the discretion of the fiscal, particularly in chartered cities[36] where most accidents in fact occur due to serious traffic congestions; and although mandamus may lie to compel the fiscal to file the informaion in very rare cases,[37] his remedy, instead of being a speedy aid to the complainant, is in reality an additional burden that would not make the case any more expeditious.

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[32] Note that the subsidiary civil liability of the employer under Art 103 of the Revised Penal Code arises only when the employer is engaged in some kind of industry. See Steinmetz v. Valdez, 72 Phil. 92 (1941). On the other hand, the new Civil Code has extended the vicarious civil liability of the employer to include employers not engaged in any business or industry. See Art. 2180, par. 5, Civil Code.

[33] Nagrampa v. Mulvaney, McMillan & Co., G.R. No. L-8326, Oct. 24, 1955; Martinez v. Barredo, *et al.*, 45 O.G. 4922 (1949).

[34] Yumul v. Juliano and Pampanga Bus Co., 72 Phil. 94 (1941); Arambulo v. Manila Electric Co., 55 Phil. 75 (1930). IV PADILLA, *op. cit. supra*, at 841.

[35] Barredo v. Garcia and Almario, *supra* note 7.

[36] Montelibano, *et al.* v. Hon. F. Ferrer, *et al.*, G.R. No. L-7899, June 23, 1955, is authority for the proposition that in all chartered cities whose charter provisions concerning the prosecution of criminal actions are similar to or patterned after that of the City of Manila (R.A. 409, § 38), only the city fiscal or city attorney has the authority to commence criminal proceedings, as the latter has been consistently construed to mean that criminal complaints in the City of Manila may be filed only with the city fiscal. See Notes, 30 PHIL, L.J. 672 (1955).

[37] See Notes, 29 PHIL, L.J. 515 (1954).

THE NEED OF ASSURING FINANCIAL RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

But even if a suit is brought to a successful termination, still more frequently, and after further delay, execution of the judgment is returned unsatisfied, because the defendant is insolvent, the vehicle having in the meantime or previously been conveyed fraudulently or otherwise, and the defendant retaining only a small equity in what apparently was his own property.[38] It is undoubtedly of the utmost importance to the injured that the tortfeasor be financially able to respond in damages, for in every case it is ultimately the financial resources of the defendant that determines whether recovery can be had, and if so, to what extent.[39]

Hence, the Civil Code requires every owner of a motor vehicle to file a bond to answer for damages to third persons.[40] But this is

[38] Report by the Massachusetts Committee to Investigate Compulsory Liability Insurance (1921): "It unfortunately appears to be a fact that a not inconsiderable proportion of automobile operators are without sufficient financial responsibility to meet a judgment even of moderate size, and that frequently they own only a small equity in the machine they are operating, the title remaining in a person or corporation which has advanced money for the purchase of the car. That under these circumstances many injured persons are entirely without legal redress is to be expected, and a number of instances have been brought to our attention where such redress has in fact proven inadequate."

Marx, *supra* note 11, at 172, has this to say about fraudulent conveyances of motor vehicles: "It is a well known fact that a large proportion of automobiles are sold on time and that the owners frequently have only a small equity in the cars which they drive. Many automobilists protect themselves by placing mortgages upon their automobiles to prevent the collection of an adverse judgment in case of accident."

Moreover: "There is scarcely a lawyer who has not declined to bring legal action although the evidence of negligence is clear, because the collection of a judgment will be hopeless."

[39] MOWBRAY, *op. cit. supra* note 1, at 589.

[40] Art. 2186, Civil Code.

In the wake of the appalling loss of lives caused by traffic mishaps lately, Dr. Jorge Bocobo, Chairman of the Code Commission, said of this article:

> "Another provision of the new Civil Code which has been overlooked or neglected is Art. 2186, which provides as follows:
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> "Art. 2186. Every owner of a motor vehicle shall file with the proper government office a bond executed by a government-controlled corporation or office, to answer for damages to third persons. The amount of the bond and other terms shall be fixed by the competent public official.
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> "When the Code Commission drafted this article, it intended it to be self-executing, without the need of further legislative action. The Commission intended that it was enough for the President of the Philippines to designate a government controlled corporation such as the Government Service Insurance System, to issue the bond referred to in said Art. 2186. But granting that there is need for further legislation to implement said article, no such legislation has yet been passed. In most countries, so far as I know, every owner of a motor vehicle is required to file such a bond or take out a policy, for the protection of the public." (The Manila Times, Aug. 22, 1956, p. 4, col. 4).

Granting without necessarily conceding that the Government Service Insurance System, which appears to be the only government corporation engaged in the bonding or insurance business, has corporate authority to execute the bond contemplated in the above article, which is clearly in favor of non-governmental persons and entities, the propriety of giving the Government exclusive authority to sell the bond referred to would seem open to grave doubts, as will be considered later.

precisely "an inadequate, and so far a dead measure, for recovery on the bond is naturally contingent on the attachment of liability which can easily be defeated."[41] As we have seen, in order to impose liability upon the vehicle owner, it is necessary to establish first the fault or negligence of the driver, and this can only be done in an expensive and protracted lawsuit with an uncertain and at times disappointing outcome. As said by one writer in connection with a similar requirement of liability insurance—

> "If we are not to abandon the principle of 'no liability without fault,' our problem does not seem to me to be with the 'uninsured motorist,' but rather with the 'financially irresponsible uninsured motorist.' As firmly as I believe in insurance, I can conceive of no reason why a motorist, able to pay for the consequences, must purchase liability insurance if he prefers to bear the risk of liability himself. Society's concern is that motorists have such ability—not how they have acquired it."[42]

Apparently, there is a vicious interdependence between the imposition of absolute liability upon owners and operators of motor vehicles on the one hand, and the utility of liability insurance on the other. If owners and operators of motor vehicles are held liable to third persons even without fault, the medium of liability insurance must perforce be available to absorb and distribute the cost of this risk so as not to unduly impose upon them the consequent enormous burden. Conversely, if in order to hold them liable proof of fault or negligence is a prerequisite, then liability insurance would not seem to be of much consequence to motor vehicle owners since fault is not easy to establish.

Aside from the obvious difficulty of ascertaining accurately who are the financially responsible vehicle owners and who are not, it is not safe to conclude that by simply imposing absolute liability on the operation of motor vehicles, car owners would naturally and voluntarily procure liability insurance for their own protection, and that therefore, to compel them by law to carry liability insurance would be unnecessary. A financially irresponsible operator will lose nothing by the imposition upon him of absolute liability, just as he will gain nothing but on the contrary only stands to pay premiums by procuring liability insurance, since, until his vehicle injures some person, liability on the insurance does not attach, and in any event the proceeds should not inure to him but to the injured person.[42a]

But compulsory liability insurance is only one of several measures designed to insure financial protection for the traffic accident

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[41] Comments, *On the Vicarious Liability of the Employer*, *supra* note 12, at 424.

[42] Moser, H. S., *The Road for the Uninsured Motorist*, A.B.A. (SEC. OF INSURANCE LAW) PROC. 27, 28 (1951).

[42a] See note 83 *infra*.

victim. There are at least two other measures that have been proposed: financial responsibility legislation and compensation insurance.[43] Although liability insurance appears to be the most satisfactory, and therefore the most widely employed, of the three, let us first consider financial responsibility legislation, which appears to have been earlier conceived.

FINANCIAL RESPONSIBILITY LEGISLATION

The demand for some kind of compulsory motor vehicle insurance in the United States culminated in the enactment by most of the state legislatures as early as 1924 of the so-called financial responsibility laws.[44] These statutes invariably require the owner of a motor vehicle which had caused injuries to persons or property involving an amount of damage over a certain fixed minimum, or upon conviction of the driver for a serious traffic violation, to prove that he is financially responsible to pay for damages in future accidents which might be occasioned by his vehicle, usually by filing a liability insurance policy, under penalty of revocation of his driver's license or motor vehicle registration.[45] Said to be "based on the assumption that "Every dog is entitled to one bite,' and if either we are the victims or the dog is mad, that is one too many,"[46] the ineffectiveness of these statutes was at once apparent. For as one writer put it, "they insure the horse after the stable has burned down."[47]

To remedy this patent absurdity, a new type of financial responsibility law was introduced by New Hampshire in 1937,[48] which required the owner of a motor vehicle involved in any accident causing personal injuries or damage to property exceeding in value a certain amount, to make a security deposit, to answer for damages, not any more for future accidents, but for those arising in the instant accident up to the statutory limit. Whereas the earlier financial responsibility legislation had for its principal purpose accident prevention, and only secondarily, to secure compensation for the vitcims, this new legislation was intended in a way to encourage the procurement of liability insurance in that a vehicle owner who held a policy of insurance in force at the time of the accident could present his policy in lieu of making the required

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43 MOWBRAY, *op cit. supra* note 1, at 599.

44 See generally Moser, *supra* note 42. *E.g.*, § 94 NEW YORK VEHICLE AND TRAFFIC LAW.

45 Grad, F., *Recent Developments in Automobile Accident Compensation*, 50 COL. L. REV. 300, 305 (1950).

46 MOWBRAY, *op. cit. supra* note 1, at 680.

47 Deak, *Liability and Compensation for Automobile Accidents*, 21 MINN. L. REV. 123, 124 (1937).

48 N.H. Rev. Laws c. 122 (1942).

deposit.[49] It seemed, however, that this legislation, just like the earlier ones, did not have sufficient compelling force on the part of vehicle owners to carry insurance, for unless his case was brought to court, "his lack of financial responsibility protected him from the operation of a statute intended to bar him from the road because of his financial irresponsibility."[50]

The only American jurisdiction that required at the time every owner of a motor vehicle to file a liability policy before being allowed to register and operate his vehicle, without regard to any accident in which the vehicle might have been previously involved, was Massachusetts.[51] The Massachusetts plan, while it did not escape criticisms of all sorts, apparently became the pattern of similar proposals that have spread in other states lately.

COMPULSORY LIABILITY INSURANCE PLAN

The basic purpose of compulsory motor vehicle liability insurance laws is to require, as a condition precedent to the registration and operation of motor vehicles, the filing of liability insurance policies issued by authorized private insurers to answer for damages to persons and property arising from their use and maintenance. In England, the Road Traffic Act of 1930[52] makes it an offense to operate a motor vehicle on the roads unless there is in force in relation thereto such a policy of insurance. In the United States, apart from the compulsory insurance laws of the different states, the Motor Carrier Act of 1935[53] imposes as prerequisite to the registration and operation of interstate motor carriers compliance with the regulations of the Interstate Commerce Commission relative to the filing and approval, among others, of liability insurance policies. The Tasmania Traffic Act of Australia contains compulsory insurance provisions similar to those of the British Road Traffc Act.[54] Most European countries in fact have enacted such statutes even earlier, including Austria, Norway, Sweden, Finland, Denmark, Switzerland, Czechoslovakia, and New Zealand.[55] The Commission

[49] Grad, *supra* note 45, at 308.

[50] Johnson, *The Modern Trend in Financial Responsibility Legislation*, A.B.A. (SEC. OF INSURANCE LAW) PROC. 67, 69 (1944).

See *Symposium on Financial Protection for the Motor Accident Victim*, 3 LAW & CONTEMP. PROB. 464-608 (1936) for an extended discussion of the historical development of financial responsibility legislations.

[51] Mass. Ann. Laws c. 90, § 24A-J, Jan. 1, 1927; c. 175, § 113A-c (1946).

[52] 20 & 21 Geo. 5, c. 43 (1930). See MACGILLIVRAY, INSURANCE LAW 1179 (3d ed. 1947). Also Deak, *Compulsory Liability Insurance Under the British Road Traffic Acts of* 1930 *and* 1934, 3 LAW & CONTEMP. PROB. 565 (1936).

[53] 49 Stat. 543, 49 U.S.C. Supp., § 301 (1935). See Anderson, *The Future of State Regulation of Interstate Motor Carriers*, 7 GEO. WASH. L. REV. 1, 15 (1938).

[54] MACCILLIVRAY, *op cit. supra* note 52, at 1183.

[55] See Deak, *Liability and Compensation for Automobile Accidents*, 21 MINN. L. REV. 123 (1937).

for the Revision of the French Civil Code was reported at one time to be considering compulsory liability insurance for all automobiles, in spite of the fact that as of 1938 it had been estimated that ninety-five per cent of all French automobiles were voluntarily carrying liability insurance.[56]

Constitutionality of Compulsory Insurance Statutes.

Legislations imposing this requirement upon owners and operators of common carriers had been uniformly sustained by the various state supreme courts in the United States as a valid exercise of the police power.[57] In the early federal case of *Continental Banking Co.* v. *Woodring*,[58] involving the constitutionality of the Motor Vehicle Act of Kansas requiring, among others, the filing of liability insurance policies, Chief Justice Hughes for the Court said: "The insurance policy is to protect the interest of the public by securing compensation for injuries to persons and property from negligent operation of the carriers."[59]

In *Packard* v. *Banton*,[60] which upheld a statute of New York requiring every person engaged in the business of carrying passengers for hire in any motor vehicle to file either a liability insurance policy or surety bond to answer for damages to third persons, Justice Sutherland, speaking for the Court, said:

> "Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance or permission. In the latter case, the power to exclude altogether generally includes the lesser power to condition and may justify a degree of regulation not admissible in the former."[61]

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56 Malone, *supra* note 11, at 246.

57 *Arkansas* — Willis v. City of Fort Smith, 121 Ark. 606, 182 S.W. 275 (1916); *California* — *In re* Cardinal, 170 Cal. 519, 150 P. 348 (1915); *Georgia* — Hazleton v. City of Atlanta, 141 Ga. 775, 87 S.E. 1043 (1915); *Iowa* — Houston v. City, 176 Iowa 455, 156 N.W. 883 (1916); *Louisiana* — New Orleans v. LeBlank, 137 La. 113, 71 So. 248 (1916); Lutz v. New Orleans, 235 F. 978 (1916); *Massachusetts* — Commonwealth v. Slocum, 230 Mass. 180, 119 N.E. 687 (1918); Commonwealth v. Theberge, 231 Mass. 386, 121 N.E. 30 (1918); *Nevada* — *Ex parte* Cunts, 39 Nev. 61, 153 P. 93 (1915); *New Jersey* — West v. Asbury Park, 89 N.J.L. 402, 99 A. 190 (1916); *Tennessee* — Memphis v. State, 155 Tenn. 831 (1915); *Texas* — *Ex parte* Sullivan, 77 Tex. Cr. R. 72, 178 S.W. 537 (1915); Auto Transit Co. v. City of Forthworth, 182 S.W. 685 (1916); *Washington* — State v. Seattle Taxicab & Transfer Co., 90 Wash. 416, 156 P. 837 (1916); *West Virginia* — *Ex parte* M. T. Dickey, 76 W. Va. 576, 85 S.E. 781 (1915).

58 286 U.S. 352 (1932).

59 *Id.*, at 365.

60 264 U.S. 140 (1924).

61 *Id.*, at 145.

While that is true with common carriers, there appears to be no reason, why the same requirement may not likewise be imposed upon owners of motor vehicles not for hire.[62]

State laws requiring so-called "cargo" insurance to answer for a common carrier's liability to the owners of goods transported have been held invalid as interference with interstate commerce and not within the power of the state to promote public safety;[63] and it has been suggested that insurance to protect passengers may not on the same principle be required of common carriers.[64] This objection to passenger liability insurance being made compulsory, it is submitted, does not hold true in the Philippines because of the unitary system of government that we have, unlike in the United States where the feeling that orderly trade among the states could be maintained only by establishing a central authority to enforce uniform regulations led to the inclusion in the Federal Constitution of the "commerce clause" giving Congress complete power to regulate commerce among the several states.[65] This question cannot possibly arise under our Constitution.

Social Justification of Compulsory Motor Vehicle Insurance.

"Insurance," said Justice Cardozo in referring to a motor vehicle liability policy, "instead of prejudicing the victim of an accident, is seen to supply in many cases the only fund from which the victim

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[62] The first legislative attempts to require all owners of automobiles used for private purposes to procure liability insurance are furnished by Massachusetts and New Hampshire. In 1925, pursuant to the usual procedure in those states when a doubt exists as to the constitutionality of a proposed statute, the legislature of Massachusetts, followed by the legislature of New Hampshire, submitted such statute to the supreme judicial court of that state, with a command to pass upon the consitutionality of the various provisions thereof and answer questions in connection therewith. Briefly, the Massachusetts act required, as a condition precedent to registration, an applicant for a motor license either to procure a liability bond or policy, or to make a deposit in a specified amount with the state, as security for the payment of all judgments for accidental bodily injury or death arising from the operation of the licensed car. The court, expressly recognizing the fact that the statute is an extension of the police power into a new field, first broadly declared that it falls within the limits of the constitutional power of the legislature, stating that it could be justified on several grounds, the most important of which was said to be "the great uncompensated damage now caused by motor vehicles to innocent travellers upon the public ways." Another ground, it was said, is that the motor vehicle is of itself a dangerous instrumentality which, unless kept in good repair and driven with a high degree of care and skill, is bound to become a source of imminent danger to other travellers. 5 COUCH, CYC. INSURANCE LAW § 1175 at 4196-97 (1929). See *in re* Opinion of the Justices, 251 Mass. 569, 147 N.E. 681 (1925).

[63] Hicklin v. Coney, 290 U.S. 169 (1933); Smith v. Cahoon, 283 U.S. 553 (1931); Sprout v. South Bend, 277 U.S. 163 (1928); Clark v. Poor, 274 U.S. 554 (1927).

[64] Anderson, *supra* note 53, at 14.

[65] MUNRO, W. B., THE GOVERNMENT OF THE UNITED STATES 399 (5th ed. 1949).

can be paid."[66] From a broad social viewpoint, then, the desirability of compulsory liability insurance is easily demonstrated. Just as the workmen's compensation acts create a form of state-imposed liability insurance by which the loss due to personal injuries suffered by the individual workman is ultimately distributed by a process of price adjustment to all those members of society who profit by the injured man's labor,[67] so also compulsory motor vehicle liability insurance seeks to distribute the cost of automobile accidents to those who enjoy the facilities of the motor vehicle. "The analogy is plain: if we want to enjoy the use and consumption of industrially manufactured products, we must be willing to pay the cost of industrial accidents as part of the cost of production; if we want to enjoy the use and benefit derived from the motor vehicle, we must be willing to pay the cost of motor vehicle accidents as part of the cost of enjoying that benefit."[68]

Of course it may be argued that the relation of employer and employee which makes workmen's compensation laws workable and which gives the employers the opportunity to improve working conditions and make them safer is absent in this case.[69] But if it is socially expedient to spread and distribute throughout the community the inevitable losses occasioned by injuries sustained by workmen in industrial accidents, there seems to be no reason why it should not be considered equally socially expedient to spread and distribute the losses due to injuries sustained in motor vehicle accidents which are just as inevitable.[70]

Nevertheless, the enactment of a compulsory liability insurance law is by no means a simple matter of legislation. It presents several problems, and there are apt to arise a few objections to it, not only in its formative stage but also throughout its subsequent operation, of which actuarial computations and legislative drafting are but a truncated aspect. It will be seen, however, that these problems are nowise difficult of solution.

1. *Right of Injured Person to the Insurance Proceeds.*

Since the motive behind a system of compulsory liability insurance is to benefit the public generally and not the vehicle owners, the first question that comes to the mind is whether, there being absolutely no privity or contractual relation between the nominal

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66 Messersmith v. American Fidelity Co., 232 N.Y. 161, 133 N.E. 432, 433 (1921).

67 VANCE, LAW OF INSURANCE 100 (3d ed., Anderson, 1951).

68 Grad, *supra* note 45, at 326.

69 MOWBRAY, *op cit. supra* note 1, at 602.

70 Comments, *On the Vicarious Liability of the Employer, supra* note 12, at 423.

parties to the contract on the one hand and the injured claimant on the other, such injured person or his dependent has a right to claim the benefits of the policy directly from the insurer without the necessity of obtaining a previous assignment from the assured vehicle owner.

A statute which merely requires every motor vehicle to carry liability insurance in a specified amount does not create, in behalf of any person injured by a vehicle so operated, any civil liability against the insured or his insurer, beyond what it would be in the absence of statute.[71] Indeed, in the absence of a special contract or statutory provision, the person actually injured is not the party insured, and has no right, legal or equitable, or any title or interest against the insurer.[72]

Of course the policy may expressly provide that it is for the benefit of any person who might be injured by the assured, in which case the injured person will have a right to claim the benefits of the policy from the insurer.[73] Likewise, if the intent to benefit the injured person can be inferred from a reasonable construction of the policy, such person has a right of action thereon.[74] In such cases, it has been held that the relation between the parties is properly that of principal and surety—the real debtor is the insurance company and the real creditor is the injured claimant, the assured vehicle owner occupying the position of a mere surety.[75]

Where, however, it is stipulated that no action shall lie against the insurer unless it shall be brought by the insured, and then only for loss or expense actually sustained and paid in money after actual trial, or some similar provisions, third persons have no interest whatever in the policy.[76] It is most important in this connection to note the distinction between a "liability policy" properly so called, and a mere "indemnity policy." In a liability policy, the cause of action is complete when the liability attaches, whereas in an indemnity policy, an action cannot be brought and recovery had until the liability is actually discharged by the assured.[77] Hence, an indemnity policy

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[71] 5 COUCH, *op. cit. supra* note 62, §§ 1175d at 41-83-4.

[72] *Id.*, § 1165 at 4084.

[73] Slavens v. Standard Accident Ins. Co., 27 F. 2d 859 (1938); Finkelberg v. Continental Cas. Co., 126 Wash. 543, 219 P. 12 (1932); Gugliemetti v. Graham, 50 Cal. App. 268, 196 P. 64 (1921); Harrison v. Southern Transit Corp., 192 N.C. 545, 135 S.E. 460 (1921).

[74] VANCE, *op. cit. supra* note 67 at 800.

[75] Beacon Lamp Co. v. Travellers Ins. Co., 61 N.J. Eq. 59, 46 A. 579 (1900); *accord*, Travellers Ins. Co. v. Moses, 36 N.J. Eq. 260, 49 A. 720 (1901).

[76] 5 COUCH, *op cit. supra* note 62, §1165 at 4084.

[77] American Employers' Liability Ins. Co. v. Fodyce, 62 Ark. 562, 36 S.W. 1051 (1896). See also Malley v. American Indemnity Corp., 297 Pa. 216, 146 A. 571 (1929); Shea v. U.S. Fidelity & Guaranty Co., 98 Conn. 447, 120 A. 286 (1923); Maryland Cas. Co. v. v. Peppard, 53 Okl. 515, 157 P. 106 (1915); Frye v. Bath Gas & Electric Co., 97 Me. 241, 54 A. 395 (1903); Fenton v. Fidelity & Cas. Co., 36 Or. 283, 56 P. 1096 (1899).

is for the exclusive benefit of the assured vehicle owner to reimburse him for actual loss suffered under which a third party claimant has no interest whatever.[78]

Here, the principle of subrogation cannot be availed of by the injured person, since the liability of the insurer to the assured under an indemnity policy becomes fixed only after actual payment by the assured, before which the assured has no right of action against the insurance company to which the injured person can be subrogated.[79] Neither will garnishment lie against the insurer for the reason that, until actual payment is made by the assured to the injured, there is no money due the assured from the insurer which could be garnished.[80]

In case of insolvency of the assured, moreover, the insurer is released from all liability under an indemnity policy in view of the obvious inability of the assured to comply with the condition of pre-payment.[81] And in any event, if the insurer should elect to settle with the assured, the former is likewise released from liability, while the assured receives the insurance money unimpressed with any trust in favor of the injured person.[82]

It would seem best, therefore, to provide for concrete safeguards against policy provisions calculated to defeat the purpose to principally benefit accident victims by requiring a strictly liability policy free from the condition of pre-payment by the assured, and expressly giving the injured person a right to claim the insurance benefits directly from the insurer, irrespective of the solvency or de-

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[78] Ohio Cas. Ins. Co. v. Beckwith, 74 F. 2d 75 (1934); Goodman v. Georgia Life Ins. Co., 189 Ala. 130, 66 So. 649 (1914).

E.g., Frye v. Bath Gas & Electric Co., *supra* note 77: "In this case, as we have seen, the contract was one of indemnity only. It was not obtained by the gas company for the benefit of its employees, but for its own benefit exclusively, to reimburse it for any sum that the company might be obliged to pay, and had paid, on account of injuries sustained by an employee through its negligence. Independently of the condition in the contract of insurance above quoted, we should be compelled to construe this contract as one of indemnity only."

[79] Pfeiler v. Penn Allen Portland Cement Co., 240 Pa. 468, 87 A. 623 (1913); Allen v. AEtna Life Ins. Co., 145 F. 881 (1906).

[80] "To support a writ of garnishment, the garnishee must be indebted to the principal debtor. If the policy is a liability policy, then such indebtedness exists as soon as the liability is established, and may be reached by garnishment as any other credit belonging to the judgment debtor. If, on the other hand, the policy be one of indemnity, the judgment debtor must first pay the judgment before he is entitled to maintain an action on the policy, and there is no indebtedness due him until he has paid the judgment; consequently, garnishment cannot lie in favor of a judgment creditor, since his claim must be satisfied before there is any thing due on the policy." Landaker v. Anderson, 145 Wash. 660, 261 P. 388 (1927). *But cf.* Elliott v. AEtna Life Lns. Co., 100 Neb. 833, 161 N.W. 579 (1917); Maryland Cas. Co. v. Peppard, 53 Okl. 515, 157 P. 106 (1917); Paterson v. Adan, 199 Minn. 308, 138 N.W. 281 (1912).

[81] VANCE, *op. cit. supra* note 67, at 801.

[82] Hollings v. Brown, 202 Ala. 504, 80 So. 792 (1919); Bain v. Atkins, 181 Mass. 240, 63 N.E. 414 (1902).

fault of the assured, subject only to reasonable policy provisions such, for instance, as to the giving of notice of accident to the insurer. Statutory provisions designed to give the injured persons the full benefit of the assured's liability policy have met with approval in the United States.[83]

2. *The Uninsured Motorist, the Unidentified Vehicle, and the Insolvent Insurer.*

Perhaps a more interesting problem is that presented by the uninsured motorist or the unidentified vehicle. Assuming that a compulsory insurance law is in force, there can be no guaranty that no vehicle owner can escape the requirement of insurance. In the event that a person in injured by a vehicle whose owner has not taken out an insurance policy for any reason, it is obvious that the injured person can look to no one for the insurance benefits to which he would have been entitled under ordinary circumstances. Similarly, if the vehicle which had caused the injury cannot be identified, as in the many so-called hit-and-run cases, the injuries person is likewise deprived of the protection of insurance.

A number of European countries where compulsory motor vehicle insurance laws have been in force have made provisions for compensation in these cases. In Sweden, the burden of indemnifying the person injured under such circumstances is shifted by statute to the insurance companies issuing motor vehicle insurance policies, such companies being jointly liable therefor.[84] In Switzerland, the federal government is required by statute to conclude a contract with insurance companies for the payment of such claims, the premiums being paid by the government from funds collected as duty on gasoline.[85] The New Zealand government has likewise concluded a similar agreement with insurance companies for the settlement of claims for injuries caused by unidentified vehicles.[86] In Czechoslovakia, a special fund has been established for the purpose, maintained partly

[83] See VANCE, *op cit. supra* note 67, at 802-5; 44 C.J.S. § 64 at 543; 29 AM. JUR. § 1081 at 811-13.

"According to the Massachusetts insurance law, policies must meet certain statutory requirements. The insurance liability must become absolute whenever there occurs loss or damage for which the insured is liable. Satisfaction by the insured of a final judgment for such loss cannot be a condition precedent to the insurer's liability; rather, the policy must provide that the judgment creditor shall be entitled to have the insurance proceeds applied to the satisfaction of his judgment by a suit in equity. Perhaps most significant for the protection of the injured is the prescribed policy provision that no statement by the insured, either in securing the policy or in registering his car, and no act or default by the insured shall bar a recovery by the judgment creditor in such a suit in equity against the insurance company." Grad, *supra* note 45, at 313.

[84] Deak, *Liability and Compensation for Automobile Accidents*, 21 MINN. L. REV. 123, 140 (1937).

[85] *Ibid.*

[86] *Ibid.*

by fine collected from vehicle owners found violating the insurance requirements, and partly by annual contributions of insurance companies consisting of a certain percentage of their net premium income[87]

Again, the insolvency of the insurance company issuing the policy will frustrate the protection afforded by the the accident victims. A safeguard against this contingency is found in the New York Insurance law which provides for a Motor Vehicle Liability Security Fund calling for the payment of one per cent of the net premium of insurance companies on liability policies covering motor vehicles, until the net value of the Fund equals 15 per cent of the outstanding claims reserves of all authorized insurer.[88]

3. *Alleged Tendency to Increase Accidents.*

The fear has also been expressed that a system of compulsory liability insurance will have a tendency to increase road accidents. It is claimed that, on the part of the vehicle driver, his consciousness that the insurance policy will relieve him from pecuniary liability to third persons whom he might injure will cause him to drive less carefully, and, on the part of third persons, a similar awareness of insurance protection will no longer make them take the usual precaution to prevent injury to themselves. This criticism, preposterous as it is, was first directed against the Massachusetts law, but had lost any semblance of validity when in 1932 the Columbia Committee reported that no increase in traffic accidents had resulted from the operation of compulsory insurance laws; on the contrary, accident statistics showed that Massachusetts, the first to enact such a law, had one of the top safety records through the United States.[89] Indeed, it is one of the arguments for compulsory insurance that reckless drivers, unable to get insurance, will be driven from the roads.[90]

COMPENSATION INSURANCE

The compensation insurance plan envisages the application of the principle of state-operated workmen's compensation in its entirety to motor vehicle accidents. Although this plan had been strongly advocated in the United States even before 1920, in no American jurisdiction has such a measure however been adopted.[91] In England, a proposal to establish this system was approved by

87 *Ibid.*

88 Leavey, H. H., *Retaliatory Laws in the U.S. Relating to Insurance*, A.B.A. (SEC. OF INSURANCE LAW) PROC. 180, 189 (1952).

89 Grad, *supra* note 45, at 320-1.

90 MOWBRAY, *op. cit. supra* note 1, at 595.

91 Malone, *supra* note 11, at 236.

the House of Lords in 1932, but was tabled in the House of Commons.[92] It seems that only in Saskatchewan, a remote province of Canada, has this plan so far been adopted; it follows that, if we are to inquire into its workings, we have no alternative but to turn to Saskatchewan.

Under the Saskatchewan Automobile Insurance Act of 1946,[93] every vehicle owner and driver is required, as a prerequisite to the registration of his vehicle or the issuance and renewals of driver's license, to pay a premium into an exclusive state insurance fund in addition to the regular registration and license fees. Instead of being issued a policy, he is given a certificate, and the terms of the insurance are all prescribed in the statute itself, the beneficiaries being all persons who sustain bodily injuries arising out of the operation of a motor vehicle, including the driver himself, the occupants or passengers, and third persons, all of whom are deemed ipso facto insured and "a party to the contract and to have given consideration therefor."[94] This means in effect that every person injured by a motor vehicle has a right to claim indemnity whether or not the vehicle causing the injury is actually "insured."[95]

The claim is not to be asserted against the driver or car owner but against the state insurance fund, although the injured person's action in court for recovery of his legal damages, deducting whatever he may have actually recovered from the fund, remains unaffected.[96] Benefits fall into four groups: weekly indemnity for loss of income, supplementary allowance for medical expenses, arbitrary lump sum payments for loss of eye or limb, and death benefits.[97]

But a unique feature of the Saskatchewan plan is that its compulsory provisions are not limited to personal injuries caused by the vehicle; it also provides for compulsory collision, theft, and fire coverages for the protection of the car owner himself on account of damage to or loss of his vehicle.[98] The premium for these combined coverages for a private car ranges from four to ten dollars annually, depending on the age of the vehicle, and this is supplemented by a special license assessment of one dollar from each driver.[99]

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[92] Butterworth, *supra* note 11.
[93] Saskatchewan Stats. 1946, c. 11, as amended by Saskatchewan Stats. 1947, c. 15; 1948, c. 15; and 1949, c. 11.
[94] Saskatchewan Stats. 1947, §§ 3(1) and 16(1); See Grad, *supra* note 45, at 314; Malone, *supra* note 11, at 256.
[95] Grad, *supra* note 45, at 314.
[96] Malone, *supra* note 11, at 257.
[97] *Ibid.*
[98] Saskatchewan Stats. 1947, Part III.
[99] Malone, *supra* note 11, at 261.

However, there is a serious objection to this setup, to wit, that it is social insurance, a government monopoly suitable only in socialistic states. In fact, the adoption of this plan in Saskatchewan is attributed to the political party known as he Cooperative Commonwealth Federation which has been in power in the province since 1944, and which represents a coalition between advocates of an agrarian movement and certain labor groups supporting socialistic principles, such as government ownership of public transportation and public utilities, as well as of insurance.[100]

The government, no doubt, is in a position to underwrite the whole business, and reasons apparently valid have been advanced to support the proposition that a state insurance would better serve the purpose of giving maximum protection to accident victims. Some of these arguments are the following.[101]

1) Private insurance companies reject the so-called poor risks who are thought likely to cause accidents. Hence, the uninsured vehicle owners include the poor risks and the financially irresponsible who are the most likely to inflict injuries.

2) Handling of the business by private companies would make it more difficult for those who are injured to secure compensation because of the necessity of fighting a well financed and highly organized insurance company, equipped to defend to the limit a personal injury suit.

3) The premium which the vehicle owners would be compelled to pay to the government would be considerably less than the premium charged by private companies because the element of commission, etc., can be eliminated.

4) The reporting of thousands of accidents to a central authority would place the state in possession of scientific data as to the principal causes of road accidents and enable proper safety measures to be taken.

5) The possibility of insolvency upon the part of some of the private companies exists.

The alleged disinclination of private insurance companies to accept poor risks may however be remedied. Statutory provisions giving a right to compel insurance companies to issue compulsory insurance policies with a view to precluding discrimination in regard

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[100] *Id.*, at 255.

[101] These arguments are taken from Marx, R. S. *Compulsory Compensation Insurance*, 25 COL. L. REV. 165 (1925).

to accepting risks have been upheld.[102] Moreover, if it should be claimed that the so-called poor risks are those vehicles which, because of the failure of their owners to keep them in suitable repair in accordance with safety regulations, are more of a menace to life and property, or those vehicles whose operators are financially irresponsible to meet the liabilities incident to the business, then, certainly, such vehicles should not be allowed to operate on the roads in the first place.

The alleged difficulty that claimants are bound to encounter in prosecuting a lawsuit against a well financed and highly organized company is rather imaginary than real. On the contrary, in competitive private insurance, prompt payment of claims and avoidance of litigations would be the norms that each company should naturally pursue, at least if it were to survive the competition, it being true in the insurance business that companies which delay payment of claims, much more those which refuse to make settlement except by court order, are looked upon with devastating disfavor.

Premium rates may likewise be regulated. Significantly, the British and European experience under compulsory insurance laws shows that the state has not even found it necessary to regulate premium rates;[103] and it has been said that probably the mere threat of such regulation is sufficient to keep rates reasonable.[104] This is moreover expected to follow as a matter of course as one of the beneficial effects of free competition.

The reporting of accidents to a central authority with a view to the consolidation of scientific information is a minor matter which can be required even without compulsory insurance. And as we have seen, the possibility of insolvency on the part of some private companies can be safeguarded, as in the New York statute.[105]

But whatever may be said in support of state insurance, the seamy side of such a scheme, it bears repetition, is that it promotes

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[102] 29 AM. JUR. § 29 at 66. "A statute which gives to applicants the right to compel insurance companies to issue compulsory motor vehicle liability policies imposes serious limitations on the customary methods of conducting the insurance business, and a company which has been licensed to engage in the business, of issuing insurance under such a statute must surrender its own judgment on the question whether or not it has a sound reason for refusal to the determination of the state board and of the court on appeal. The board or court in passing on the reasonableness of a refusal to issue a policy under the act must approach each case from a broad viewpoint and consider all pertinent facts to the end that the companies will not be encouraged to avoid the less profitable types of risk, and the motor vehicle owners will not be encouraged to be lax or careless and thereby allow the risks to become greater than need be." 44 C.J.S. § 64 at 543.

[103] Grad, *supra* note 45, at 314.

[104] *Id.*, at 316.

[105] See note 88 *supra*.

government monopoly enforced by law with its concomitant evils. Apprehension in regard to such a scheme was expressed by one writer thus—

> "This would be socialized insurance, and the consequent creation by statute of various bureaus, commissions, or boards to hear and adjudicate claims thereunder. In the words of Superintendent Bollinger of New York, 'Government has a way of moving in when private enterprise fails to meet the need.' In this event, the word 'insurance' as we know it will no longer have the same meaning. It will mean compulsory and semi-compulsory taxes collected and administered by bureaucrats and politicians some of whom are unfortunately, and historically, too often actuated by political motives rather than the true interest of the general public."[106]

The GSIS Compensation Plan

It is indeed surprising that, albeit compulsory insurance against motor accident liability has been in existence in a number of countries, as noted earlier, for long as the past three decades or so, Philippine attitude toward such measure seems to have been inertial until quite recently. But even more surprising is that, when of late concern and interest in the formulation of some adequate measure of financial protection for motor accident victims was roused, any looking forward this end should assume the form of an insistent proposal for compensation insurance.

An attempt to experiment in this field can be attributed to a controversial measure drafted and presented in a series of public hearings by the Government Service Insurance System (GSIS), preparatory to its submission to Congress, late in 1955.[107] This proposed measure seeks to create a "Motor Vehicle Liability Insur-

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[106] Sedzwick, W. E., *Automobile Insurance Litigation Today*, A.B.A. (SEC. OF INSURANCE LAW) PROC. 29 (1952).

[107] The Manila Times, Nov. 11, 1955, p. 15; The Manila Chronicle, Nov. 24, 1955, p. 7. This GSIS-proposed measure is said to have been induced by a presidential directive addressed to the GSIS in 1954 to study the implementation of Art. 2186 of the Civil Code, requiring vehicle owners to file a bond executed by a government-controlled corporation or office to answer for damages to third persons. (The Manila Times, Oct. 23, 1955, p. 8; The Manila Chronicle, Dec. 11, 1955, p. 16). It is claimed that, because the said Art. 2186 does not specify which "government-controlled corporation or office" is referred to, the GSIS was left with no alternative but to prepare the said measure, having previously "indorsed the proposal to the Motor Vehicles Office and the Insurance Commissioner, the two other existing government agencies whose functions might be said to coincide with the purpose and spirit of Art. 2186. Unfortunately, these offices refuses to implement the law, thereby compelling the GSIS to reconsider its position on the matter." (Andal, R., *The GSIS System*, The Manila Chronicle, *Letters to the Editor*, Dec. 12, 1955, p. 4).

ance Fund"[108] to be placed under the exclusive administration of the GSIS itself.[109]

Unfortunately, this plan is nothing more than perfunctory. All that it amounts to, envisioning as it does an ambitious program of monopolized state insurance, is a requirement that every owner of a motor vehicle must pay a premium into the exclusive state insurance fund to be established, before such vehicle is registered, licensed or permitted to operate by the Motor Vehicles Office. And its queerness lies in that it attempts to establish a system of compensation insurance withiut providing for the imposition of absolute liability.[110]

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[108] Note that the GSIS bill entitled, "An Act Creating and Establishing a "Motor Vehicles Liability Insurance Fund' and Providing for its Administration" falls into semantic error in employing the term "liability insurance" when in reality the system that it seeks to establish is one of "compensation insurance" to be undertaken by the government. It will be observed, in this connection, that where the scheme adopted is state-operated, the proper term to use is "compensation insurance", and "liability insurance" where the coverage is provided through private insurance carriers.

[109] Initial reaction to this plan was one of unstudied approval. For example, The Manila Chronicle, *Editorial*, Nov. 24, 1955, p. 4, stated: "The GSIS proposal is timely due to the mounting incidence of deaths and serious injuries resulting from recklessness on the highways" and "is a wise measure and Congress should enact it into law." However, no sooner had the government-monopoly feature of the bill been exposed and decried by private insurance circles (The Manila Chronicle, Nov. 30, 1955, p. 6) than the same newspaper, it is interesting to note, unhesitatingly reversed its previous editorial stand by another editorial comment stating that "It is certainly illogical to believe that the GSIS would be able to handle a nation-wide third party liability insurance of motor vehicles, when it cannot even show with satisfactory results that it can handle the insurance of government employees who are already members of the system" and therefore "the GSIS proposal should be amended so that motor vehicles should be compelled to take third party liability, but each motor vehicle owner should not be compelled to take such insurance exclusively with the GSIS," that is, "if it is to evade the charge that the government is invading fields which can very easily be taken care of by private enterprise." (*Editorial*, The Manila Chronicle, Dec. 6, 1955, p. 4).

[110] In fairness to the GSIS, it should perhaps be stated in passing that to it goes the credit of inviting public attention to the undisputed proposition that insurance, for this purpose, is much more favorable to motor accident victims than a bond such as is contemplated by Art. 2186 of the Civil Code.

However, the position that the GSIS "Motor Vehicles Liability Fund" bill in question is to be an implementation of and amendatory to said article of the Code seems untenable, because the bill in itself is an entirely different measure that does not need Art. 2186 of the Civil Code for a foundation. Moreover, to say that a compulsory motor vehicle insurance law is to be incorporated by amendment in a civil code is simply absurd.

(The explanatory note to the bill concludes: "In order to implement the aforequoted provision of law [referring to Art. 2186, Civil Code] and thereby provide indemnity to the victims of motor vehicle accidents or their heirs for injuries or damages, approval of this bill creating the Motor Vehicles Liability Insurance Fund is urgently necessary."

Sections 3 and 4 of the bill provides:

"SECTION 3. *Amendment to Article Twenty-one hundred eighty-six of the Civil Code.* Article Twenty-one hundred eighty-six of the Civil Code is amended to read as follows: 'Art. 2186. Every owner of a motor vehicle shall INSURE SUCH MOTOR VEHICLE [file] with the proper government office OR AGENCY [a bond executed by a government-controlled corporation or office], to answer for damages to third persons. The amount of the INSURANCE [bond] and other terms shall be fixed by the GOVERNMENT OFFICE OR AGENCY CONCERNED [competent public office].' "

CONCLUSION

But a piece of legislation treating of the subject discussed would hardly accomplish its social end if it were to be so unreasoning and vacuous as almost to leave to peradventure the consequences of the manifold factual situations which, experience has shown, are necessarily involved in its operation. From all that we have gathered from the foregoing observations, enactment of a compulsory motor vehicle insurance statute should be subject to certain considerations, among which are the following:[111]

"SECTION 4. *Establishment of the Motor Vehicles Liability Insurance Fund.* For the purpose of implementing the provisions of Article Twenty-one hundred eight-six of the Civil Code and of insuring the speedy payment of indemnity to third persons, as defined in this Act, for any injury or damage arising out of the use or operation of a motor vehicle, there is hereby established the 'Motor Vehicles Liability Insurance Fund' which shall be financed by premiums paid under Section 5 hereof and their accretions and other moneys accruing to it.")

The remark, consequently, has been made that "Because it found that its charter prohibits it from executing or issuing any bond for private persons, the GSIS now proposes that the limitation imposed by the civil code and its charter be circumvented through a legislative act, giving it 'exclusive' authority to issue third party liability insurance and compelling every car owner to secure such insurance before he could register his vehicle with the motor vehicles office." (Ilustre, E., *Business of the Times*, The Manila Times, Dec. 10, 1955, p. 19). It was even charged that the whole scheme was "hatched up by the GSIS" in order to "create a new monopoly for the government to a tune of an estimated ₱50-million business annually." (Bigay, S., *Today's Business*, The Manila Chronicle, Dec. 1, 1955, p. 11).

A bill seeking to amend Article 2186 of the Civil Code is now pending in Congress. Said bill provides:

AN ACT TO AMEND ARTICLE 2186 OF THE CIVIL CODE SO AS TO REQUIRE EVERY OWNER OF MOTOR VEHICLE TO FILE BOND TO ANSWER FOR DAMAGES TO THIRD PERSONS AND PROPERTY, AND TRANSPORTATION OPERATOR TO SECURE INSURANCE TO ANSWER FOR DAMAGES TO PASSENGERS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Article 2186 of the Civil Code of the Philippines is hereby amended to read as follows:

ART. 2168. (a) Every owner of a motor vehicle OTHER THAN FOR TRANSPORTATION OF PASSENGERS shall, BEFORE BEING ALLOWED BY THE BUREAU OF LAND TRANSPORTATION TO REGISTER THE SAME, file (with the proper government office) a bond WITH THE SAID BUREAU (executed by a government-controlled corporation or office) IN THE AMOUNT OF ₱5,000.00, to answer for damages to third persons OR PROPERTY, OR SHOW PROOF THAT HE HAS SECURED A THIRD PARTY LIABILITY INSURANCE IN A SIMILAR AMOUNT. (The amount of the bond and other terms shall be fixed by the competent official).

(b) Every Operator of MOTOR LAND TRANSPORTATION VEHICLE, SUCH AS BUS, JEEPNEY, TAXI, AUTO-CALESA, ETC., SHALL, BEFORE BEING ALLOWED BY THE BUREAU OF LAND TRANSPORTATION TO REGISTER THE SAME, PRESENT PROOF THAT HE HAS SECURED AN INSURANCE TO ANSWER FOR DAMAGES UP TO ₱5,000.00 FOR EACH PASSENGER, AND INSURANCE TO ANSWER FOR DAMAGES TO THIRD PERSONS OR PROPERTY IN THE CEILING AMOUNT OF AT LEAST ₱30,000.00 PER ACCIDENT. THIS AMOUNT OF THE INSURANCE SHALL BE THE LIMIT OF THE OPERATOR'S LIABILITY TO HIS PASEENGERS.

(c) THE BOND OR INSURANCE MENTIONED ABOVE SHALL BE EXECUTED BY ANY INSURANCE OR SURETY COMPANY DULY AUTHORIZED TO TRANSACT BUSINESS IN THE PHILIPPINES BY THE INSURANCE COMMISSIONER.

[111] These suggestions are of course offered on the assumption that the statute to be enacted is one of *compulsory liability insurance* and not one of *compensation insurance.*

(1) A technical liability policy, not merely one of indemnity, should be clearly required by prescribed policy provisions that the insurance liability shall become fixed whenever loss or damage is caused by the vehicle so operated, and giving the injured the right to claim the insurance benefits directly from the insurer. This should preclude the insurer defense of pre-payment by the assured vehicle owner as a condition precedent to recovery, and the consequent necessity of obtaining a previous assignment of the insurance proceeds by the injured from the assured vehicle owner.

(2) Liability on the policy should be made absolute irrespective of whether the driver or owner of the vehicle involved in the mishap was or was not at fault, thereby excepting claims for injuries sustained in motor vehicle accidents from the operation of the traditional concept of liability founded upon fault or negligence.

(3) Discrimination in regard to accepting risks should be forestalled by resorting to such devices as the organization of a "bad risks pool" among authorized insurers, and giving applicants the right to compel issuance of compulsory insurance policies upon a showing of unreasonable refusal.

(4) Provisions should be made for the payment of indemnities for injuries inflicted by unidentified vehicles (hit-and-run cases) or by vehicles whose owners escape for one reason or another the insurance requirement, as well as in the case of insolvency of the company which has issued the policy on the vehicle causing the injury.

Undoubtedly, motor vehicle liability insurance has now proved to be of social utility in no small measure.[112] As yet, but a comparatively meager volume of this type of coverage has been written in the Philippines, reflecting an apparent indifference of a large section of our insurance industry to explore its vast possibilities. Philippine jurisprudence on the subject is, consequently, wanting. Enactment of such a law as is advocated above would therefore serve a further purpose of opening to Philippine business a field that has proved socially and economically fertile in more progressive countries.

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[112] "The rapid increase in the volume of liability insurance written in recent years has been due not only to the remarkable growth of manufacturing and industry, but also the constantly increasing use of automobiles, resulting in a loss of life and property that is appalling in its aggregate." VANCE, *op. cit. supra* note 67, at 1000. "Indeed, it has been well said that, although there was a time when all insurance was looked upon with suspicion and disfavor, being regarded as a species of wagering contracts, that time has gone by, and the attitude does not apply to automobile liability." 5 COUCH, *op. cit. supra* note 62, § 1175 at 4174. See also justice Cardozo in Messesmith v. American Fidelity Co., *supra* note 66.