

The Citizen, Traffic Accidents, and the Law

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In this issue we are continuing with the second part of a Lecture delivered by Dr. J. Galea Debono B.A., LL.D. at the University of Malta in the course of a series of talks for lay men on a number of legal subjects. Dr. Galea is one of the Court Appointed Traffic Experts and, in the second part of his article, analyses a number of typical traffic accidents and some of the means how the victim or the damaged party can obtain redress.

Fig. 4. The tail-end collision or "tamponamento" as the Italians call it, is caused by the following car bumping into the rear of the car in front, which has stopped or slowed down for some reason.

The leading principle here is that it is the duty of the tailing car's driver always to keep at a safe distance from the car in front, to enable him to stop even in an emergency without, naturally, hitting such car.

The driver of a tailing car will have an uphill climb trying to prove that he was not to blame or that the driver in front was also partly to blame. It is incumbent on the tailing driver to co-ordinate his car's movement with those of traffic ahead of him, which he is in a better position to see. It often happens that the driver of the tailing car is momentarily distracted. However, if it results that the driver in front pulled up for some capricious or frivolous reason, as where he stops on the spur of the moment and abruptly, to give a lift to someone waiting on a Bus stop or to chat with a friend, thereby obstructing the free and smooth circulation of traffic, then it might be possible to pin part of the responsibility on him as well.

Fig. 5 & 6 show two somewhat similar cases where the same principles apply, namely, a right turn either in performing a U turn into another road across the path of oncoming traffic or of a vehicle bearing down from the rear, usually during an overtaking manoeuvre.

The investigator would in such

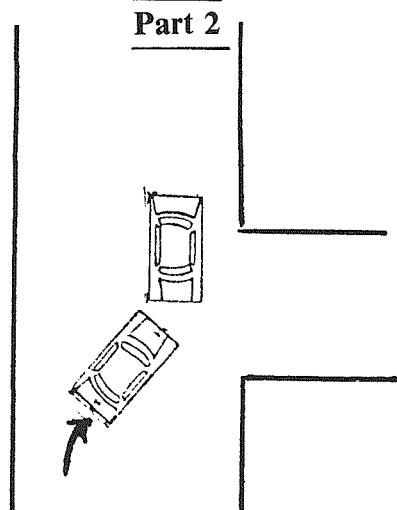
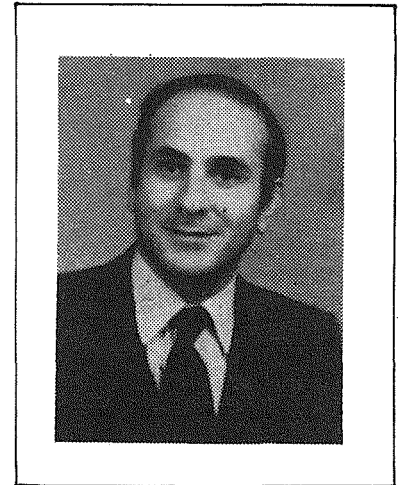


FIG 5

cases normally ask whether the driver making the right turn, had given the appropriate signal; whether he kept a look out for oncoming traffic and traffic approaching from the rear (by using his rear view mirror) before attempting the turn, and whether the other vehicle was in plain view if one had cared to look.

Indeed the factor of lookout or lack of it is one of the most important in deciding upon blame. It is obviously the duty of a driver to keep a proper lookout at all times. 'Keeping a proper lookout' has been defined by case law as meaning "more than looking straight ahead - it includes awareness of what is happening in one's immediate vicinity. A motorist shall have a view of the whole road, from side to side and, in the case of a road passing through a built up area, of the pavements on the side of the road as well." Failure to see what is in plain view constitutes failing to keep a proper look out. Many a time an unsuspecting driver giving evidence will take refuge in the allegation that he did not see the other car, hence arguing that he was not to blame for the accident. Little would he know that he has probably made the statement most demanding to his case, eliciting the wry remark from opposing counsel "He did not come from the clouds by any chance, did he?"

Coming back to figures 5 & 6,



the driver of the vehicle making the right turn is usually to blame. However, if he can prove that the other driver also contributed, such as, for instance, because the oncoming driver failed to stop in time due to excessive speed or that the driver of the car approaching from the rear was overtaking near a road junction, he might be able to shove part of the blame, albeit a lesser part, on the other driver. One must always remember that the giving of the appropriate signal does not convert right of way in one's favour.

As more of our thoroughfares are widened, improved and divided into opposite carriageways and lanes, the importance of strict lane discipline is all too obvious. Figure 7 illustrates typical cases where a driver changes

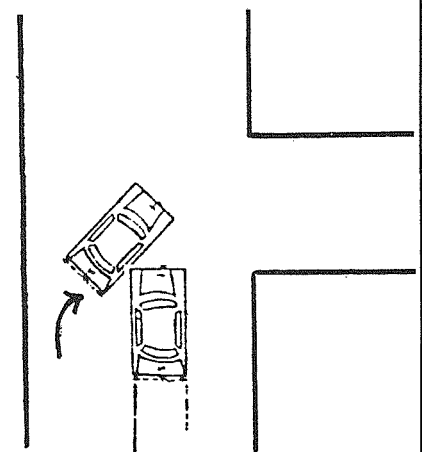


FIG 6

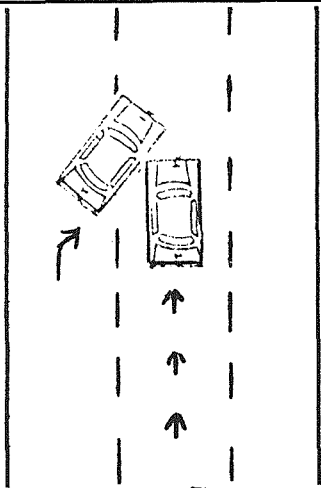


FIG 7

lanes and provokes an accident very often in an attempt at overtaking a slower car in his lane. The principle in such cases is that in changing lanes a driver must do nothing to inconvenience road users in the other lanes, or indeed to force them to slow down or stop. An abrupt changing of lanes without being preceded by careful exploration of the other lane and the adequate signalling of intention well in advance before the manoeuvre, will, normally, weigh very heavily against the driver changing lanes in such a fashion and is likely to saddle him with all the responsibility of a resulting collision.

Up to now we have concerned ourselves with accidents involving vehicles where the first contact, at least, is between metal and metal and not human bones and tissue. Unhappily, running down cases involving pedestrians, very often have longer and far reaching ill effects on the victim and the incidence of permanent disability resulting from bodily injury and indeed death is much higher. In these cases the following factors are usually taken into account in establishing responsibility.

1. How much of the road had the pedestrian crossed before being hit? — The obvious implication being that the longer the pedestrian has been in the carriageway, the more opportunity the motorist would have had to notice him and avoid him.

2. Did the pedestrian create an emergency for the driver?

a) by crossing from behind some other vehicle?

b) by suddenly stepping off the pavement into the car's path?

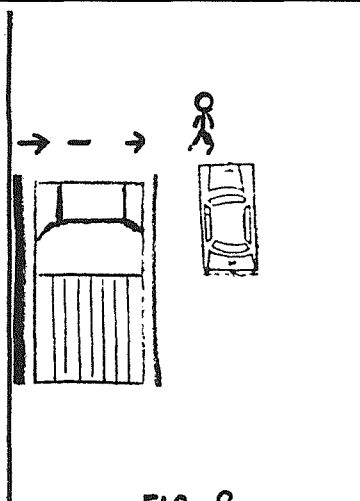


FIG 8

c) by making some abrupt or unexpected move such as turning back suddenly while crossing on one direction?

If the driver can prove a sudden emergency created by the pedestrian and no flaw in his own driving, such as excessive speed or lack of proper look out, he might well be declared completely exempt from any responsibility. Should contributory negligence or bad driving also result on the driver's part, then the blame is likely to be apportioned. In such cases there is no hard and fast rule and everything depends on the particular circumstances of the case.

We have up to now dealt with the most common and recurring types of accidents. These examples are by no means exhaustive. The combinations and permutations are legion and every case has its very own particular aspects. There are of course accidents solely due to mechanical fault or defect where brakes, suspension or steering systems fail suddenly often when they are needed most, resulting in totally unexpected accidents with unpredictable results not uncommonly very serious if not indeed fatal.

The law prohibits any person from driving or allowing another person to drive a motor vehicle with brakes, springs or other mechanical vital parts which are defective and the owner or driver is responsible for making sure that the motor vehicle is kept in a good state of repair.

Consequently, if an accident occurs because of a mechanical

breakdown, the driver will be very hard put to escape liability unless perhaps he can prove Act of God or indeed sabotage in his defence or that the part would have been broken down even with proper and regular maintenance. The burden of proof in these cases will be on the driver or owner.

Before passing on to the procedural aspect of the subject a brief reference must be made about SKIDDING. Our case law has ruled that a skid is in itself neither evidence of guilt nor a defence. In determining the responsibility to be borne by the driver of a skidding car one has to inquire whether he was guilty of any bad driving of a skidding car one has to inquire whether he was guilty of any bad driving just prior to or even during the skid itself, which has brought about or aggravated the skid.

PART II

The second part of this article deals with the legalistic aspect of the subject and particularly the various ways of obtaining redress for the damage suffered.

Before matters reach this stage, however, there is a very important matter that has to be given immediate attention by any driver or owner of a vehicle in the hours following the accident. This consists in the prompt reporting of the accident to one's insurance firm. Many have the mistaken idea that they are bound to report only if they think they are to blame, confusing the accident report with making a claim and all its lurking implications of loss of no claim bonus. They are therefore somewhat reluctant to do so. But as stated, by making this report, one is not admitting liability. However, if one is held to be liable later on, failure to make such a timely report might be used to his great disadvantage by an insurance firm not to keen to meet its liabilities under the policy.

There are two types of redress available to the victim of a traffic accident or the party sustaining damages, viz: (1) Criminal Prosecution and (2) Civil redress for reimbursement of damages. The

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first is much less resorted to by the individual as it brings him nowhere near financial redress. The only party to gain from such proceedings is the State to whom guilty defendants' fines are paid.

In any case, in fatalities, cases or greivous bodily harm and other accidents where manifest and serious breaches of the Traffic Regulations result, the Police usually take it upon themselves to arraign the culprit before the Magistrate's Court. The snag here often is that the Police Sergeant,

who has investigated the accident, will play safe and charge both drivers, leaving the Magistrate to decide who is to blame. A conviction in the Magistrate's Court in connection with a traffic accident, be it a result of proceedings instituted on the complaint of the injured party, or, as is more often the case, by the Police themselves, can bring with it a fine or a suspension from driving for a time. Prison sentences are seldom given except in cases of manslaughter and, even here, very rarely.

(TO BE CONTINUED)