University of Miami Law Review

Volume 4 | Number 4 Article 9

6-1-1950

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Recommended Citation
Richard W. Rodgers, *The Principles of Financial Responsibility for Private Motor Vehicles*, 4 U. Miami L. Rev. 502 (1950)
Available at: https://repository.law.miami.edu/umlr/vol4/iss4/9

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COMMENT

THE PRINCIPLES OF FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR VEHICLES

"Legal liability without financial responsibility is a barren right to one who sustains injury by the wrongful act of another."[1] That principle has been accepted as the premise of two kinds of modern legislation, which are analogous insofar as each endeavors to remedy or to mitigate the loss to an individual from a danger arising out of an industrial motorized society. The earlier remedial statutes created a scale of payments based upon injury or death, without reference to liability for negligence,[2] as compensation for persons harmed in dangerous occupations.[3] During the past quarter-century,[4] another kind of law has been adopted in the attempt to lessen the dangers of the highways. Almost as soon as the negligent operation of motor vehicles caused such an "appalling toll of human life and suffering"[5] that public action became necessary, the state legislatures began passing laws intended to increase safety on public roads. Yet, the harm to life and to property was not lessened but rather constantly increased, so that it became more important for the injured party to be compensated not merely in law but also in fact.[6]

To achieve those related purposes, and especially to satisfy the demand that a right of recovery should be one of substance rather than one merely of form,[7] a Motor Vehicle Financial Responsibility Law has been generally adopted in this country. This law, while it is similar to the same kind of legislation concerning vehicles used for hire, applies primarily to the operation and ownership of motor vehicles by private persons. All except four

1. Opinion of the Justices, 251 Mass. 569, 598, 147 N.E. 681, 694 (1925).

2. See Opinion of the Justices, 271 Mass. 582, 589, 171 N.E. 294, 297 (1930); Opinion of the Justices, *supra*.

3. See Arizona Employers' Liability Cases, 250 U.S. 400 (1919).

4. Comment, 33 IOWA L. REV. 522, 525 (1948). In 1925, Connecticut passed a Financial Responsibility Law proper, and Massachusetts enacted the only Compulsory Liability Insurance statute for private motor vehicles. In 1950, the former kind of law became effective in Oklahoma and in Washington. See notes 29, 32, *infra*.

5. O'Roak v. Lloyds Casualty Co., 285 Mass. 532, 189 N.E. 571, 572 (1934); *cf.* Rose v. Franklin Surety Co., 281 Mass. 538, 540, 183 N.E. 918, 919 (1933); Opinion of the Justices, *supra* note 1.

6. See *Compensation for Automobile Accidents, a Symposium*, 32 COL. L. REV. 785 (1932); Feinsinger, *The Operation of Financial Responsibility Laws*, 3 LAW AND CONTEMPORARY PROBLEMS 519 (1936); Comment, *The Need for Revision of Financial Responsibility Legislation*, 40 ILL. L. REV. 237 (1945).

7. Opinion of the Justices, 81 N.H. 566, 568, 129 Atl. 117, 118 (1925).

states[8] have passed some type of the law; the Florida statute, first passed in 1947, was revised and re-enacted by the 1949 legislature with only a few modifications of the substantive provisions.[9] Those alterations did not affect the fundamental intention of these statutes, which is simply to ensure payment for injury or damage by requiring that adequate provision be made for the compensation of the injured party.[10] The method, a preventive one, no more than facilitates the obtaining of compensation by forestalling a deficiency in funds which would thwart the collection of payment.[11] In comparison, a curative means is provided by other legislation which is designed to frustrate the evasion of payment.[12] The analogy to these statutes is imperfect, in view of the differentiation between the two methods.

Yet, both kinds of law merely vary in the exemplification of the same principle, that financial responsibility should follow legal liability, which the distinction between them indicates to be fundamental for discussing these statutes.[13] And since the common premise is not altered by the difference of two methods, the narrower position may be taken that the intention and the inherent purposes of one of the methods are not changed by the variations in detail and in scheme of the provisions composing the numerous statutes. Instead, the identical or similar terms, and the typical schemes of drafting these acts, constitute a basic Financial Responsibility Law which may be studied as though there were a uniform statute construed by the courts. Further, legislative regulation of the use of the highways generally is to prohibit or to prescribe modes of behavior for motorists, so as to lessen the dangers to life and to property. This law is intended to make more certain the collection of compensation for injury or damage. Still, the doubly analogous nature of this law demonstrates that it is within the broad power of the legislature to act for the safety of travelers and the welfare of the people.[14]

The judicial interpretation and construction of these Financial Responsibility statutes has been both to achieve and to further the legislative intention and the dual purposes of safety and compensation. Also, the constitutionality of the basic features of this law has been uniformly upheld by the courts of last resort. In these two problems, the underlying concep-

8. Louisiana, Mississippi, South Carolina, and Texas, as of February, 1950.

9. FLA. STAT. § 324 (Cum. Supp. 1947); Fla. Laws 1949, c. 25050, F.S.A. § 324 (1949).

10. See notes 1, 5, 7 *supra*.

11. See note 7 *supra*; Current Legislation, *Financial Responsibility Act for the Operation of Motor Vehicles*, 16 ST. JOHN'S L. REV. 269 (1942); Note, 20 N.C.L. REV. 198 (1942).

12. See note 7 *supra*.

13. See Opinion of the Justices, 81 N.H. 566, 568, 129 Atl. 117, 118 (1925).

14. *Ibid.*; Opinion of the Justices, 251 Mass. 569, 569-590, 147 N.E. 681, 681-691 (1925); *accord*, Rosenblum v. Griffin, 89 N.H. 314, 197 Atl. 701 (1938).

tion is that the public roads shall at all times be reasonably safe for travelers who, exercising due care, should be protected from preventable dangers.[15] And the second problem, in addition to the extension of the exertion of the police power in enacting these statutes,[16] is founded on the meaning of the constitutional guarantees of the reasonableness and the equality of state legislation.[17] Even the initial classifications which limit the scope of this law have been decided to be valid. Motor vehicles properly and reasonably form a separate class for legislation;[18] and the injury or damage which occurs on private property may be excluded from the application of a statute to protect travelers on the public highways.[19]

The supposed increase of safety on the public roads has been relied upon by the courts, not only in upholding the validity of these statutes, but also to justify the two assumptions on which the actual effectiveness of this law depends.[20] One is the belief that " . . . there is no more certain way of securing attention to the safety of human beings than by holding those responsible for dangers to heavy and certain liability for injuries arising therefrom."[21] When the common law imposes liability upon the operator, who may or may not be the owner, for the negligent use of a motor vehicle, to make more *certain* the pecuniary responsibility is thought to promote the exercise of due care by him.[22] Still, the owner may not be the only person to operate the vehicle; and then the rationale of this law is to deter the giving of permission by the owner for the use by a financially irresponsible person, unless the owner has confidence in the operator's carefulness.[23]

Following that idea, these statutes would require only financial responsibility of the owner who would be liable under the common law, for the harm caused by his vehicle.[24] But when there otherwise would not be a legal liability of the owner for another person's negligent use of the ve-

15. Opinion of the Justices, 251 Mass. 569, 595, 147 N.E. 681, 693 (1925).

16. *Ibid.*

17. See Reitz v. Mealey, 314 U.S. 33, 36 (1941); Sheehan v. State Div. of Motor Vehicles, 140 Cal. App. 200, 35 P.2d 359 (1934); Watson v. State Div. of Motor Vehicles, 212 Cal. 279, 298 Pac. 481 (1931); Opinion of the Justices, 81 N.H. 566, 129 Atl. 117 (1925); Opinion of the Justices, 251 Mass. 569, 147 N.E. 681 (1925).

18. Watson v. State Div., 212 Cal. 279, 285, 298 Pac. 481, 483 (1931).

19. Opinion of the Justices, 251 Mass. 569, 603, 147 N.E. 681, 696 (1925).

20. See Montgomery v. Keystone Mutual Casualty Co., 357 Pa. 223, 227, 53 A.2d 539, 541 (1947); Garford Trucking Co. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935).

21. Opinion of the Justices, 251 Mass. 569, 598, 147 N.E. 681, 694 (1925); *see* Opinion of the Justices, 271 Mass. 582, 589, 171 N.E. 294, 297 (1930).

22. Guerin v. Mongeon, 49 R.I. 414, 143 Atl. 674 (1928); Opinion of the Justices, 251 Mass. 569, 594, 147 N.E. 681, 694 (1925).

23. Guerin v. Mongeon, *supra*; Mason v. Automobile Finance Co., 121 F.2d 32, 35 (D.C. Cir. 1941).

24. Opinion of the Justices, 251 Mass. 569, 598, 147 N.E. 681, 694 (1925).

hicle,[25] many of these acts go so far as to make the owner liable on the basis of his implied or express consent for its operation.[26] Both provisions accept, as the principle of liability, the doctrine that a motor vehicle is a dangerous instrumentality for the use of which the owner shall be held accountable.[27] Thus, the requirement of financial responsibility should add to public safety by reasonably regulating a dangerous undertaking,[28] and is founded on a reasonable classification insofar as the provision may apply only to the owners, and not to operators who are not owners, of motor vehicles.[29] Again, the extension of the doctrine of vicarious liability, even though the operator is not the servant or agent of the owner, and the consequential requirement of financial responsibility, are a reasonable and uniform means to lessen the dangers of the highways.[30] Therefore, on the one assumption are based the primary feature of this law—financial responsibility—and the secondary feature that ownership alone is sufficient as the ground of liability.[31]

Next, the two facets of the primary feature of this law are derived from the other assumption, which is that a direct correlation exists between the failure to exercise due care and the non-payment of compensation for injuries due to negligence. Most of these statutes require the giving of some security for, or the satisfaction of, a final judgment awarding compensation for *past* injury or damage arising from the negligent operation of a motor vehicle.[32] All of the acts impose, as a prerequisite for the issuance or the retention of a license, the need of proof of the financial ability to respond in damages for *future* harm caused by the use of a motor vehicle.[33] Since those provisions are an appropriate means to bring about the exercise of care by motorists,[34] the requirements operate as

25. Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 412 (1943); Guerin v. Mongeon, 49 R.I. 414, 415, 143 Atl. 674, 675 (1928).

26. See Forrester v. Jerman, 90 F.2d 412 (D.C. Cir. 1937); *cf.* Gulla v. Reynolds, 151 Ohio St. 147, 85 N.E.2d 116 (1949); Dickinson v. Great American Indemnity Co., 291 Mass. 368, 6 N.E.2d 439 (1937).

27. Opinion of the Justices, 251 Mass. 569, 597-603, 147 N.E. 681, 694-696 (1925); Opinion of the Justices, 81 N.H. 566, 567, 129 Atl. 117, 118 (1925).

28. *Ibid.*; Sheehan v. State Div., 140 Cal. App. 200, 204-206, 35 P.2d 359, 361-362 (1934).

29. See note 27 *supra.*

30. See notes 27, 28 *supra.*

31. *See* Opinion of the Justices, 251 Mass. 569, 600, 147 N.E. 681, 695 (1925).

32. See note 65 *infra; see* Rikowski v. Fidelity Casualty Co. of N.Y., 117 N.J.L. 407, 189 Atl. 102, 104 (1937); Samson v. State, 55 Cal. App.2d 194, 197, 130 P.2d 452, 453 (1942).

33. See notes 38, 39, 40 *infra; see* Shuba v. Greendonner, 271 N.Y. 188, 2 N.E.2d 536, 538 (1935).

34. Reitz v. Mealey, 314 U.S. 33 (1941); Heart v. Fletcher, 184 Misc. 659, 53 N.Y.S.2d 372, 373 (1945); Ohlson v. Mealey, 179 Misc. 13, 37 N.Y.S.2d 123 (1942); Nulter v. State Road Comm'n, 119 W.Va. 312, 193 S.E. 549, 550-552 (1937); Sheehan v. State Div., 140 Cal. App. 200, 204, 35 P.2d 359, 361 (1934); Opinion of the Justices, 251 Mass. 569, 695, 147 N.E. 681, 693 (1925).

conditions for the granting or the continuance of the privileges[35] to operate a motor vehicle or to utilize the public highways. The proper[36] suspension or revocation of a license, for failure to fulfill those conditions, has been unhesitatingly upheld by the courts in order to attain the desired result.[37]

However, whether these statutes actually accomplish any increase in safety, by barring negligent operators from the public roads, depends upon the typical schemes embodied in this law. Most of the statutes exact proof of financial responsibility for both the past and the future,[38] although two acts offer the alternative between proof for the past or for the future.[39] The others require the proof to be given only for the future, not for harm which has already been inflicted.[40] So, the nature of the assumed direct relationship is twofold. As to the past, the requirement of proof and the punitive provisions are applied by the criterion of negligence, not of financial inability to pay for injury or damage,[41] accompanied by the failure to pay compensation.[42] As to the future, the same standard functions to indicate the probable recurrence of negligence and failure to pay by a particular motorist.[43] Insofar as the assumption is valid, then, the past-and-future-proof type of this law is the most effective both to single out and to bar from the highways a potentially negligent and irresponsible operator. The future-proof type and, to a lesser extent, the alternative-proof type, work primarily to prevent the probability of the recurrence of a failure to make payment, since the motorist need fulfill only one of the two provisions.

Therefore, the provisions for requiring proof of financial responsibility and for the withholding of a license, in effect, regard the financially irresponsible motorist as one who is more likely to be negligent, and treat him as a member of a group which should be prevented from adding with impunity to the dangers of the highways.[44] Because the criterion is

35. Reitz v. Mealey, *supra*; Heart v. Fletcher, *supra*; Nulter v. State Road Comm'n, *supra*; Garford Trucking Co. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935).

36. Ragland v. Wallace, 35 Ohio St. 523, 70 N.E.2d 118 (1946); Heart v. Fletcher, *supra*; Nulter v. State Road Comm'n, *supra*; Garford Trucking Co. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882, 887 (1935); *see* Opinion of the Justices, 271 Mass. 582, 171 N.E. 294, 300 (1930). See Comments, 22 MINN. L. REV. 264 (1937); 44 W. VA. L.Q. 401 (1938); 22 FLA. L.J. 17 (1948).

37. See notes 34, 35, 36 *supra*; Steinberg v. Mealey, 263 App. Div. 479, 33 N.Y.S.2d 650 (1942).

38. See notes 66, 67 *infra*.

39. N.M. STAT. ANN. § 68-1007 (1947); OKLA. STAT. § 47-524 (1947).

40. See notes 65, 68 *infra*.

41. Garford Trucking Co. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935).

42. Sheehan v. State Div., 140 Cal. App. 200, 35 P.2d 359 (1934).

43. Opinion of the Justices, 251 Mass. 568, 147 N.E. 680 (1925).

44. Gulla v. Reynolds, 151 Ohio St. 147, 85 N.E.2d 116, 122 (1949); Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 415 (1943); Reitz v. Mealey,

negligence and the failure, rather than the inability, to pay for harm, those provisions are within the scope and are a reasonable exercise of the police power of the state.[45] Also, the classification of this law is based on the proper use of a privilege;[46] so that there is no discrimination between rich and poor motorists which violates the constitutional guarantee of equality, not of enjoyment or of ability but of opportunity or of right or burden.[47] Moreover, even though the enforcement of this law " . . . may not render the highways of the state perceptibly safer, that being its object it meets the sanctions of the Constitution."[48]

There has not been a factual showing that this law does not aid in the endeavor to lessen the danger due to the use of motor vehicles by negligent and irresponsible operators. Still, neither is there any evidence that these statutes have lowered the toll of injury and damage on the public highways. Instead, it is common knowledge that the number and rate of motor vehicle accidents, and the cost in life and in property, have continually increased during the twenty-five year period in which all of these statutes have been enacted. While there are other reasons for the ineffectiveness of this law,[49] at least one lies in the nature of the law itself.

Inasmuch as the operator or the owner may retain or regain the license to use the public roads, by a showing of financial responsibility, any increase in safety is limited, if not defeated, by the other purpose of this law. An operator or an owner who has been found to be negligent must also have been found to be irresponsible, before the punitive provisions are applicable. But, whatever validity there may be to the view that the irresponsible motorist is probably a negligent one, it does not follow that the financially responsible operator will thereby become a careful one, or that the financially responsible owner will never allow a careless person to use his vehicle. Thus the result, and the dominant intention of this law, is to ensure payment to the injured party of the money due to him as compensation for damages from the negligent

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314 U.S. 33, 36 (1941); Munz v. Harnett, 6 F. Supp. 158, 160 (S.D.N.Y. 1933); *In re* Perkins, 3 F. Supp. 697 (N.D.N.Y. 1933).

45. Garford Trucking Co. v. Hoffman, *supra*.

46. Sheehan v. State Div., *supra*.

47. State v. Price, 49 Ariz. 19, 63 P.2d 653, 656 (1937); Nulter v. State Road Comm'n, 119 W. Va. 312, 193 S.E. 549 (1937); Watson v. State Div., 212 Cal. 279, 284, 298 Pac. 481, 483 (1931); Opinion of the Justices, 81 N.H. 566, 570, 129 Atl. 117, 120 (1925).

48. State v. Price, *supra*; Rosenblum v. Griffin, 89 N.H. 314, 197 Atl. 701 (1938).

49. See Note, 16 N.Y.U.L.Q. REV. 126 (1938); Comment, 16 ST. JOHN'S L. REV. 269 (1942); Braun, *The Need for Revision of Financial Responsibility Legislation*, 40 ILL. L. REV. 237 (1945); cf. *Effect of and Problems Arising from Financial Responsibility Laws*, A.B.A. PROC. INS. LAW SEC. 45, 47 (1944).

operation of a motor vehicle by another person.[50] A statute to attain that purpose is within the power of the legislature to act reasonably for the welfare of the people.[51]

This law, upon the principle that the liability for a wrong should be borne by the party who caused it,[52] and in keeping with the legislative function to remedy public evils, embodies a public policy against financially irresponsible motorists.[53] While not intended merely to assist the injured party,[54] nevertheless the judicial interpretation and construction of these statutes clearly has been in favor of the party to whom this method provides security for the collection of recompense.[55] As between the two parties, the legislative intent is to aid the injured resident, and is not to benefit the tortfeasor,[56] nor the non-resident motorist who absents himself from the jurisdiction so as to prevent recovery of damages.[57] Also, the liability insurance which fulfills the requirement of proof of responsibility is not intended solely to indemnify the owner or operator against personal liability for negligence,[58] but is to protect the public from loss. The insured party should not be allowed to circumvent the compensatory purpose by having contracted insurance with a corporation which itself is financially unable to satisfy the judgment. Accordingly, the requirement that the insurer be authorized to transact business in the state has been construed strictly; so that it is not modified by another statute permitting the placement of insurance with a non-admitted insurer by a resident surplus line broker.[59] This law, then, exacts from the motorist a trustworthy proof of financial responsibility.

The tendency of the judicial opinions construing these statutes has been at once to rely upon the safety purpose in order to sustain the effectiveness and the validity of this law, and to extend the compensatory purpose so as to achieve the fundamental intention of the legislature.

50. State v. Price, 49 Ariz. 19, 63 P.2d 653, 656 (1937); Opinion of the Justices, 271 Mass. 582, 590, 171 N.E. 294, 297 (1930); Opinion of the Justices, 251 Mass. 569, 594-598, 147 N.E. 681, 693-694 (1925). See Feinsinger, *The Operation of Financial Responsibility Laws*, 3 LAW & CONTEMP. PROB. 519, 522-523 (1936); Comment, *New Approach to Problems of Financial Responsibility Misses Mark*, 1 STAN. L. REV. 263, 264 (1949); Comment, *Motor Vehicle Financial and Safety Responsibility Legislation*, 33 IOWA L. REV. 522, 538 (1948).

51. Rosenblum v. Griffin, 89 N.H. 314, 197 Atl. 701 (1938).

52. Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 417-418 (1943).

53. Gulla v. Reynolds, 151 Ohio St. 147, 85 N.E.2d 116, 122 (1949).

54. *Ibid.*

55. Reitz v. Mealey, 314 U.S. 33 (1941); *In re* Egan, 265 App. Div. 44, 37 N.Y.S. 2d 983 (1942), *aff'd*, 290 N.Y. 790, 50 N.E.2d 108 (1943); see Steinberg v. Mealey, 263 App. Div. 479, 33 N.Y.S.2d 650 (1942).

56. *Ibid.*

57. Seymour v. Hawkins, 133 F.2d 15 (D.C. Cir. 1942).

58. Gulla v. Reynolds, 151 Ohio St. 147, 85 N.E.2d 116, 122 (1949).

59. Samson v. State, 55 Cal. App. 2d 194, 197, 130 P.2d 452, 453 (1942).

The latter trend is founded upon the usual rule that remedial legislation should be construed liberally, both for the suppression of the evil and for the better application of the remedy.[60] But that rule is subject to qualification insofar as the construction of a statute should not interpolate purposes other than those for which it was enacted.[61] Also, it is limited by the equally familiar rule that a statute in derogation of the common law should be strictly construed.[62] Those maxims of statutory construction are exemplified primarily in cases arising under provisions concerned with the purpose of compensating the injured party by ensuring payment of damages.

To the extent that this law accomplishes that purpose, its effectiveness is derived from the validity of the common law concept of pecuniary compensation for injury or damage due to the negligence of another person. This is presupposed by the dominant intention. Both the safety and the compensatory purposes assume a direct relationship between the non-payment of damages and the failure to exercise due care on the highways; both aspects are subserved by the same requirement of financial responsibility for the harm caused in the past or the future by the negligent operation of a motor vehicle. Hence these statutes are in essence a legislative assurance that the injured party shall collect what is his due, from another person whose liability is predicated upon fault.[63]

Further, the common law concept of liability for fault underlies the criterion by which it is determined that an owner or operator of a motor vehicle shall be required to furnish the proof of financial responsibility. When the common law imposes liability upon the operator, who may or may not be the owner, for the negligent use of a motor vehicle, to make more certain the pecuniary responsibility is thought to promote the exercise of due care by him.[64] And, with only three exceptions, the test of applicability of the requirement of proof is the same in each one of the two types of these acts. Many of the statutes exact proof only for the future; but most require proof for both the past and the future, or offer the alternative between proof for the past or for the future.

In the first type, the general criterion is either or both the non-

60. Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 416 (1943); O'Roak v. Lloyds Casualty Co., 285 Mass. 532, 189 N.E. 571, 572 (1934); *see* Gochee v. Wagner, 232 App. Div. 401, 403, 250 N.Y.S. 102, 105 (1931), *rev'd on other grounds*, 257 N.Y. 344, 178 N.E. 553 (1931).

61. Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 416 (1943).

62. Wood v. White, 97 F.2d 646, 648 (D.C. Cir. 1938).

63. Ruel v. Langelier, 299 Mass. 240, 12 N.E.2d 735 (1938); Opinion of the Justices, 271 Mass. 582, 590, 171 N.E. 294, 297 (1930). *But cf.* Senator Cab Co. v. Rothberg, 42 A.2d 245 (Munic. Ct. D.C. 1945). See Note, 16 N.Y.U.L.Q. REV. 126, 134 (1938); Feinsinger, *supra* note 50 at 505, 518.

64. See note 22 *supra*.

payment of a final *judgment* for past injury or damage, or the conviction of a *violation* of certain major traffic laws.[65] Under the other type of these acts, the main standard is whether the owner's vehicle or the operator has been involved, in any manner, in an *accident* resulting in personal injury or death or in property damage.[66] The three variations from type are that two of the past-and-future-proof statutes are applicable upon the test used in the future-proof acts;[67] and one future-proof statute calls for fulfillment of the requirement as a condition precedent to obtaining a *license* to operate or to own a motor vehicle.[68] All of the other statutes, then, concern a motorist or a vehicle owner who has been exercising the privileges to use the public highways. Those differences between the types of this law do not affect its validity.[69]

Thus, when an adjudication is the basis of requiring the proof of financial responsibility the standard is the substantive law which prescribes the duties of a motorist. A judgment of private liability is tantamount to a declaration of fault, either personally or vicariously,[70] of the party against whom it is rendered. For the adjudication to be subject to this law, the complaint must have made allegations sufficient to charge the defendant with liability,[71] and the kind of harm for which compensatory damages are awarded must be within the coverage of

65. ALA. CODE tit. 36 § 74 (1940, Supp. 1947); ARIZ. CODE ANN. §66-248 (1939, Supp. 1949); ARK. STAT. ANN. § 75-14 (Supp. 1949); CONN. GEN. STAT. tit. 17, § 2457 (1949); DEL. REV. CODE c.165, § 5705 (1935, Amend. 1937, 1941, 1945); D.C. CODE, § 40-401 (1940), § 1-1009 (Supp. VII 1941-1949); KAN. GEN. STAT. § 8-701 (Supp. 1947, Cum. Supp. 1949); MO. REV. STAT. ANN. § 9470.12 (1949); MONT. REV. CODES ANN. § 53-401 (1947); N.J. STAT. ANN. § 39:6-1 (1940, Supp. 1947); N.C. GEN. STAT. ANN. § 20-198 (1943, Supp. 1949); OHIO GEN. CODE ANN. § 6298-1 (1938, Supp. 1949); PA. STAT. ANN. tit. 75, § 1253 (1939, Supp. 1949); R.I. GEN. LAWS c.98, §1 (1938); W.VA. CODE § 1721.1 (1949).

66. CALIF. VEHICLE CODE ANN. c.2, § 410 (1947, Supp. 1949); COLO. STAT. ANN. c.16, § 39 (1935, Supp. 1947); F.S.A. § 324 (1949); IDAHO CODE ANN. § 49-1101 (1948, Supp. 1949); ILL. ANN. STAT. c.95½, 586 (Smith-Hurd 1934, Supp. 1948); IND. STAT. ANN. § 47-1023 (Burns 1940) repealed, § 47-1044 (Supp. 1949); IOWA CODE ANN. § 321.275 (1946), repealed, 321 A.1 (1949); KY. REV. STAT. § 187.010.280 (Supp. 1948); ME. REV. STAT. c.19 § 64 (1944); MD. ANN. CODE GEN. LAWS art. 56 § 164 (1939), art. 66½, § 85-87, 109-130 (Supp. 1947); MICH. COMP. LAWS § 256.251 (1948); MINN. STAT. ANN. § 170.21 (Supp. 1948); NEB. COMP. STAT. § 60-601 (Supp. 1941); NEV. COMP. LAWS ANN. § 4439.01 (1949); N.H. REV. LAWS, c.122, p.475 (1941); N.M. STAT. ANN. § 68-1007 (1947); N.Y. CONSOL. LAWS art. 1-A, § 94 (1941, Supp. 1949); N.D. REV. CODE § 39-14 (1943); OKLA. STAT. ANN. § 47-524 (1947); VA. CODE § 46-455 (1950), 2154 (Supp. 1948); WIS. STAT. §85-09 (1947); WYO. COMP. STAT. ANN. art. 16 § 60-1601 (1947).

67. PA. STAT. ANN. tit. 75, § 125-3 (1939, Supp. 1949); VT. STAT. § 10,163 (1947).

68. MASS. LAWS ANN. c.90, § 34 B-J (1946, Supp. 1948).

69. Reitz v. Mealey, 314 U.S. 33 (1941); Heart v. Fletcher, 184 Misc. 659, 53 N.Y.S.2d 372 (1945); Ohlson v. Mealey, 179 Misc. 13, 37 N.Y.S.2d 123 (1942); Nulter v. State Road Comm'n, 119 W.Va. 312, 193 S.E. 549 (1937); *cf.* Opinion of the Justices, 251 Mass. 569, 601, 147 N.E. 681, 696 (1925).

70. Except as the rules of liability may have been modified by statute.

71. Commonwealth v. Maryland Cas. Co., 112 F.2d 352 (6th Cir. 1940).

the statute.[72] A judgment for contribution, obtained by one co-defendant against the other, is based on the negligence of the other co-defendant and is subject to this law.[73] The compensatory purpose apparently extends to an award of costs which, while otherwise incidentally given to repay the expense of asserting rights,[74] is handed down as an essential part of the liability imposed by the judgment.[75] A total amount of damages and costs may be more than the minimum specified by the statute, so that the requirement of proof of financial responsibility is applicable even when the sum of actual damages is less than the minimum.[76]

Again, the usual rule is that the violation of a major traffic law, which was intended to protect the injured party against the harm inflicted, either is negligence in law or is evidence of negligence,[77] for a suit to recover damages. Even apart from a civil action, the conviction of a violation would indicate a lack of due care in the operation of a motor vehicle, especially in view of the purpose of this law and the assumption that probable negligence is correlated with financial irresponsibility. So, in addition to being a decisive factor in the imposition of liability on a motorist, a judgment of conviction is one criterion in the applicability of the requirement of proof of financial responsibility.

Finally, the requirement of proof is based on the occurrence of an accident causing personal injury or death or property damage, or on merely the likelihood that a motorist will be held liable for the harm caused by the use of a motor vehicle. When the criterion is the former, the implicit notion would seem to be that "accidents do not 'happen,'" and that one or both of the persons was careless. While the vehicle or the operator need only have participated "in any manner" in the accident, that clause has been construed to mean no more than would ordinarily be regarded as proximate cause.[78] A more liberal interpretation of that

72. Macheras v. Syrmopoulos, 319 Mass. 485, 66 N.E.2d 351 (1946); Mullen v. Hartford Accident Indemnity Co., 287 Mass. 262, 191 N.E. 394 (1934); Opinion of the Justices, 251 Mass. 569, 603-604, 147 N.E. 681, 696-697 (1925).

73. *In re* Egan, 265 App. Div. 44, 37 N.Y.S.2d 983 (1942), *aff'd*, 290 N.Y. 790, 50 N.E.2d 108 (1942).

74. Stevens v. Central National Bank of Boston, 168 N.Y. 560, 61 N.E. 904 (1901); *see* Steinberg v. Mealey, 263 App. Div. 479, 33 N.Y.S.2d 650, 655 (3d Dep't 1942) (dissenting opinion).

75. Steinberg v. Mealey, 263 App. Div. 479, 33 N.Y.S.2d 650 (3d Dep't 1942).

76. *Ibid.*

77. Guinan v. Famous Players-Lasky Corp., 267 Mass. 501, 167 N.E. 235 (1929); Carlson v. Meusberger, 200 Iowa 65, 204 N.W. 432 (1925); Annis v. Britton, 232 Mich. 291, 205 N.W. 128 (1925); Martin v. Herzog, 228 N.Y. 164, 126 N.E. 814 (1920); Stevens v. Luther, 105 Neb. 184, 180 N.W. 87 (1920); Shell v. DuBois, 94 Ohio St. 93, 113 N.E. 664 (1916); see note, 32 COL. L. REV. 712 (1932); Evers v. Davis, 86 N.J.L. 196, 90 Atl. 677 (1917).

78. Baker v. Fletcher, 190 Misc. 40, 79 N.Y. Supp. 580 (2d Dep't 1948); Mullen

phrase, so as to include a parked vehicle against which a pedestrian was crushed by another vehicle,[79] appears to go beyond the purpose of this law.[80] Accordingly, in order to achieve the dominant intention of these statutes, there may be assurance of the payment of compensation regardless of *which* party is later determined to have negligently caused the harm and to be liable for damages.[81]

The same notion, slightly broader, underlies the one statute in which the requirement of proof is founded on the likelihood that the motorist will be held liable. This act, compelling the proof of financial responsibility as a condition precedent to the issuance of a vehicle registration or an operator's license,[82] would seem to be predicated upon a non-fault theory of liability and of responsibility. However, the statute may be better understood by the truism that every motorist probably will be negligent and cause harm to another at some time. Then, in keeping with the compensatory purpose of this law, the proof of responsibility should be exacted from all motorists who are lawfully exercising the privileges of the highways.[83] Since this statute does not change the established rule of due care,[84] it is based upon the usual concept of liability for fault; and the real standard of applicability is the assumption that probable negligence is directly related to financial irresponsibility. Therefore, all of these statutes extend the presupposed common law theory, so as to encompass ensuring the payment of pecuniary compensation, by virtue of at least a probability or at best the certain adjudication that the person required to prove financial responsibility is the one liable for the fault and the harm.

This Financial Responsibility law is one recent form of legislation which exemplifies the principle that the financial ability should accompany the legal duty to recompense the injured party. In developing that premise, some of these statutes have been drafted to be applicable by a criterion which is little more than the probability that a motorist will be held liable for the injury or damage caused by the negligent operation of a motor vehicle. To that extent, this law may be said to represent a deviation from the common law, by imposing a duty to be *able* to make

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v. Hartford Acc. and Indemnity Co., 287 Mass. 262, 191 N.E. 394 (1934); Perry v. Chipouras, 319 Mass. 473, 66 N.E.2d 361 (1946); Caron v. American Motorists Ins. Co., 277 Mass. 156, 178 N.E. 286 (1931).

79. Ohlson v. Mealey, 179 Misc. 13, 37 N.Y.S.2d 123 (3d Dep't 1942).

80. FLA. STAT. § 324.04 (2)(b), (2)(2) (1949).

81. *Compare* Baker v. Fletcher, *supra*, Ohlson v. Mealey, *supra*, *with* Mullen v. Hartford Acc. and Indemnity Co., *supra*, Perry v. Chipouras, *supra*, Caron v. American Motorist Ins. Co., *supra*.

82. MASS. LAWS ANN. c.90, § 34 B-J (1946, Supp. 1948).

83. Mullen v. Hartford Acc. and Indemnity Co., 287 Mass. 262, 191 N.E. 394 (1934).

84. Ruel v. Langelier, 299 Mass. 240, 12 N.E.2d 735, 736 (1938).

payment prior to the certain existence of the legal duty to make compensation.

However, when the operator is not the owner of the motor vehicle, the rationale of this law is to deter the giving of permission by the owner for the use of the vehicle by a financially irresponsible person.[85] In order to do so through requiring the proof of financial responsibility, some of these statutes create a liability of the owner by an extension of the doctrine of vicarious liability.[86] While this may be in derogation of the common law, especially when the provision is liberally construed,[87] generally it also is in keeping with the common law rules which the doctrine presupposes.[88] And again the vital principle is that the loss should be borne by the party whose lack of due care was the cause of the harm.[89]

Accordingly, on one hand a part of this law slightly deviates from the common law notion of a certain duty to pay money for damages, and another part somewhat derogates from the common law view of not imposing that duty vicariously for the fault of a person whose actions could not well be controlled. Each one of those positions is a development from one of the assumptions of this law. The latter follows from the belief that the certain way to increase the safety of human beings is to increase the certainty of pecuniary liability and responsibility for injury,[90] even when the exaction is from a party who most probably was not at fault.[91] And the former is a consequence of the dominant intention of this law, to make certain the collection of payment by the injured party, regardless of an uncertainty as to which party shall

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85. See note 23 *supra*.

86. See note 30 *supra*; *see* Senator Cab Co. v. Rothberg, 42 A.2d 245, 247 (Munic. Ct. D.C. 1945).

87. Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406 (1943); O'Roak v. Lloyds Casualty Co., 285 Mass. 532, 189 N.E. 571 (1934).

88. Rice v. Simmons, 53 A.2d 587 (Munic. Ct. D.C. 1947); Gasque v. Saidman, 44 A.2d 537 (Munic. Ct. D.C. 1945); Senator Cab Co. v. Rothberg, 42 A.2d 245 (Munic. Ct. D.C. 1945); Schwartzback v. Thompson, 33 A.2d 624 (Munic. Ct. D.C. 1943); Champ v. Atkins, 128 F.2d 601 (D.C. Cir. 1942); Hiscox v. Jackson, 127 F.2d 160, 161 (D.C. Cir. 1942); Mason v. Automobile Finance Co., 121 F.2d 32 (D.C. Cir. 1941); Rosenberg v. Murray, 116 F.2d 552 (D.C. Cir. 1940); Forrester v. Jarman, 90 F.2d 412 (D.C. Cir. 1937); McNeil v. Powers, 266 Mass. 466, 165 N.E. 385 (1929); Lennon v. L.A.W. Acceptance Corp., 48 R.I. 363, 138 Atl. 215 (1927); *cf.* St. Joseph v. Grantham Motor Sales, 29 Mich. 260, 257 N.W. 701 (1934).

89. See Sky v. Keystone Mut. Casualty Co., 150 Pa. Super. 613, 29 A.2d 230 (1943); White v. Standard Accident Ins. Co., 202 Mass. 474, 19 N.E.2d 702 (1939); Dickinson v. Great American Indemnity Co., 291 Mass. 368, 6 N.E.2d 439 (1937); Frankel v. Allied Mutuals Liability Ins. Co., 288 Mass. 218, 192 N.E. 517 (1934).

90. See notes 21, 23 *supra*.

91. See notes 31, 87 *supra*.

have that right to be enforced.[92] From the premise of certainty, this law in part comes to a result of uncertainty.

Still, in other respects the fundamental provisions of all of these statutes, which constitute the basic Financial Responsibility Law, have not fallen into that inconsistency. The part of this law which is applicable on the basis of an adjudication reaches a certainty that the pecuniary liability and responsibility is imposed upon the party who was at fault in favor of the party who has a right to enforce the payment of compensation. True, there is an uncertainty in the effectiveness of the requirement of proof of financial responsibility to accomplish an increase of safety on the highways. Yet, that is due to the fallacy in the position which has been summarized in the assertion that while an irresponsible motorist may probably be a negligent one, it does not follow that a financially responsible owner or operator will not at some time negligently cause harm by the operation of a motor vehicle. That reasoning does not detract from the usefulness of these statutes to achieve the dominant intention of ensuring payment to the injured party of the money due to him as compensation for damages from the negligent operation of a motor vehicle by another person.[93]

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92. See note 81 *supra*.
93. See note 50 *supra*.