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Traffic Accident Compensation: Tort Law vs. No-Fault Systems.

A Comparative Law and Economics Analysis.

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Abstract

This presentation focuses on the tort law crisis (and third party insurance) in the field of traffic accidents and identifies, first of all, the limits and the inefficiencies of the tort law and third party insurance from the standpoint of compensation and costs, and then analyzes, in a comparative perspective, alternative compensation systems, such as first party no-fault insurance. In this perspective the common law experience is interesting as the legal discourse showed some sensibility in seeking alternative solutions to the tort liability rule (for example, Green, Carman, Grad, Ehrenzweig, Columbia University Council for Research in the Social Sciences, Report by the Committee to study compensation for Automobile Accidents; Keeton and O'Connell). Fifteen States in the US, as well as Quebec, New Zealand and Israel have replaced the traditional tort law and third party insurance with no-fault systems. Under third party insurance the injured person has the right to sue the injurer (and its insurer) to collect compensation for damages; on the contrary under no-fault system the wrongdoer is never liable for damages and the victims recover their own damages or compensation from their own insurance company. As a matter of fact, the two primary characteristics of no fault systems are: compulsory first party insurance for personal injury and restriction in the rights to sue for damages.

There are different types of no-fault systems:

Pure No-Fault System (Quebec, New Zealand, Israel): Under pure no-fault, victims must always collect compensation from their own insurance; there is no compensation

for pain and suffering; there are also limits to recover economic damages such as lost wages and medical expenses.

Hybrid (or mixed or partial) No-Fault Systems: Victims collect compensation from their own insurance if the losses do not exceed a given threshold (the damages are covered by first party insurance); if the losses exceed the threshold, the victims are allowed to opt out of no-fault and sue the injurer under the tort system (third party insurance).

‘Choice’ No-Fault System (Kentucky and New Jersey): Under this system, victims could choose between tort and no fault.

The no-fault system is more effective than the tort system in compensating victims of auto accidents, brings a more efficient and equitable distribution of benefits and also reduces the administrative costs. Opponents of a no-fault system argue that it reduces drivers’ incentives to drive carefully (because no-fault lowers the cost of driving negligently by limiting first party liability for the injuries suffered by a third party in auto accident) and thereby increases the accident rate.

In this presentation we will analyze advantages and drawbacks of no-fault insurance and we will compare incentives and efficiencies under tort law and under no-fault.

The purpose of this presentation is not to offer a final answer to the no-fault insurance, but to contribute to the debate about no-fault.

This presentation will be divided into 5 parts:

- 1) Introduction: the inefficiency of tort law (and third party insurance) in the field of traffic accidents.
- 2) The taxonomy of no-fault systems: pure no-fault; partial no-fault; and ‘choice’.
- 3) The effects of no-fault insurance.
 - A) Cost reduction.
 - B) Litigation costs.
 - C) Compensation.
- 4) Deterrence and Fairness in no-fault systems:
 - A) The impact of no-fault insurance on deterrence and the role of first party safety incentive.
 - B) Some empirical evidence: the effect of no-fault insurance on driver behaviour and on automobile accident rates.
- 5) Conclusion: Tort law vs no-fault and problems in perspectives.

References:

- ABEL R. L., *A Critique of Torts*, 37 *UCLA L. Rev.* 785 (1990).
- ABEL R.L., *The Real Tort Crisis –Too Few Claims*, 68 *Ohio State L. J.* 443-447 (1987).
- ATIYAH P. S., *The Damages Lottery*, Oxford, 1997.
- CALABRESI G., *The Decision for Accident. An Approach to No-Fault Allocation of Costs*, 78 *Harv. L. Rev.* 739 (1965).
- CALABRESI G., *Costo degli incidenti e responsabilità civile*, 1975, MILANO, 17 s.
- DUFF D., M. TREBILCOCK, *Exploring the Domain of Accident Law: Taking the Facts Seriously*, Oxford U. P., 1996.
- FLEMING J., *Is there a future for tort?*, 44 *La. L. Rev.* 1193 (1983-1984).
- KEETON R. E., O'CONNELL J., *Basic Protection for the Traffic Victim*, Boston- Toronto, 1965, 2 ss. KEETON R., O'CONNELL J., *A Basic Protection Insurance Act for Claims of Traffic Victims*, 2 *Harv. J. on Leg.* 41(1965).
- KEETON R., O'CONNELL J., *Alternative Paths Towards Non Fault Automobile Insurance*, 71 *Colum. L. Rev.* 241 (1971).
- ISON T. G., *The Forensic Lottery: a Critique on Tort Liability as a System of Personal Injury Compensation*, 1967, London.
- JOOST R., *Automobile Insurance and No-fault*, New York, 2002.
- LELIEVRE - BOUCHART M., *Le régime québécois d'indemnisation des victimes d'accident de la route est –il un exemple a suivre pour le droit français?*, in *Rev. int. droit. comp.*, 2003,180.
- SUGARMAN S., *Doing away with the Personal Injury Law*, New York, 1989, 4 ss.
- SUGARMAN S., *Doing away with the Tort Law*, 73 *Cal. L. Rev.* 555 (1985).
- SUGARMAN S., *Serious Tort reform*, 24 *San Diego L. Rev.* 795 (1987).
- SCHWARTZ G. T, *Reality in the Economic Analysis of Tort Law: Does Tort Really Deter?* 42 *UCLA Law Rev.* 263 (1994).
- SCHWARTZ G. T, *Auto No-fault and First Party Insurance: Advantages and Problems*, 73 *Southern California L. Rev.* 615 (2000).
- WEINRIB E., *Tort Law*, Dartmouth, 1991.