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Meanwhile Back at the Courthouse

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Introduction

The title of this paper calls attention to the fact that, amid the swirl of controversy over no-fault auto insurance and other proposals that have been made for reform of the auto accident reparations system, automobile tort law is being developed, expanded and improved on a daily basis.

We will highlight a few selected areas of automobile tort law, illustrating, with reference to some recent cases, the continuing vitality of the common law as it is shaped by the trial bar and the judiciary in resolving disputes between individual parties. Some recent legislative activity affecting, not necessarily the fundamental concepts of tort law but the rules to be applied in cases involving private litigants, will be considered. My discussion will deal with such areas as: contributory negligence; comparative negligence; assumption of risk and last clear chance; conflict of laws; financial responsibility laws; uninsured motorist coverage; key ordinance violations; as well as some miscellaneous aspects of auto negligence, including the standard of care to be applied to youthful drivers and the question of safety standards applicable to snowmobiles.

Comparative Negligence

The widespread adoption of the doctrine of comparative negligence has accelerated in recent years. While having the obvious effect upon the traditional defense of contributory negligence as a complete bar, the development of comparative negligence has also resulted in critical review, and frequently abolition, of such traditional doctrines as assumption of risk and last clear chance.

The comparative negligence rule and procedure which evolved in Wisconsin over a period of nearly 40 years of practical operation and judicial interpretation was recognized in the 1969 Report of the American Bar Association Special Committee on Automobile Accident Reparations as the most just and workable of the various types of comparative negligence. The Wisconsin type, or "less-than" rule, lowered the arbitrary bar of contributory negligence so that the jury could measure and proportion individual fault and assess damages as proved by the evidence; at the same time it retained the fundamental theory of the fault system, that one may not recover if equally or more at fault than the party against whom recovery is sought. The "less-than" rule is one

of the two basic systems of comparative negligence which has developed. The other is the Mississippi type,[1] which allows one of greater fault to recover from one of lesser fault, in effect completely abolishing a plaintiff's greater negligence as a bar to recovery.

There are now 18 jurisdictions that have some form of comparative negligence.[2] A review of recent legislation suggests that, of the states that have recently adopted a system of comparative negligence, most have adopted the "less-than" rule. These jurisdictions include, for example: Colorado, Idaho, Maine, Massachusetts, Minnesota and Oregon.[3] The state of Rhode Island has adopted a form of Mississippi-type comparative negligence, its statute providing that the injured party's negligence does not bar recovery and that damages shall be diminished by the jury in proportion to the amount of negligence attributable to the plaintiff.[4]

Several jurisdictions, including Wisconsin (by recent amendment of its comparative negligence statute), Vermont and New Hampshire have adopted a "greater-than" rule.[5] This rule permits recovery if the contributory negligence of a plaintiff was not greater than the negligence of the defendant.

Very recently, the Connecticut legislature adopted a no-fault auto insurance act that incorporates still a different form of comparative negligence.[6] It provides that contributory negligence shall not bar recovery if such negligence was not greater than the combined negligence of the person or persons against whom recovery is sought. Thus, a plaintiff bringing an action against two or more defendants might recover even though his negligence was greater than that of any one defendant. The Connecticut act also embodies the controversial "jury enlightenment" provision which allows the court, in its instructions to the jury, to include an explanation of the effect on awards and liabilities of the percentage of negligence found by the jury to be attributable to each party. It should be noted that the Connecticut comparative negligence statute applies only to causes of action based on negligence arising out of ownership, maintenance or use of a private passenger motor vehicle.

The Nebraska and South Dakota comparative negligence rules are

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[1] MISS. CODE ANN. § 1454 (1942).
[2] *See* DRI pamphlet, Ghiardi & Hogan, Comparative Negligence—The Wisconsin Rule and Procedure (1969 with 1971 Addenda). The jurisdictions are: Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, New Hampshire, Oregon, Puerto Rico, South Dakota, Rhode Island, Vermont and Wisconsin.
[3] COLO. REV. STAT. § 41-2-14 (1971); IDAHO CODE § 6-801 (1971); ME. REV. STAT. Title 14 § 156 (1969); MASS. GEN. LAWS Ch. 761 § 85 (1969); Minn. Stat. § 604.01(1) (1969); ORE. LAWS § 668 (1971).
[4] R.I. GL § 9-20-4 (1971).
[5] WIS. STAT. § 895.045 (1971); 12 VT. STAT. ANN. § 1036 (1971); N.H. REV. STAT. ANN. § 507.7a (1969).
[6] Conn. Substitute HB 5479 "An Act Concerning No-Fault Motor Vehicle Insurance" (1972).

somewhat unusual in that they allow recovery by the contributorily negligent plaintiff if his negligence was "slight" and, in Nebraska, if the negligence of the defendant "was gross in comparison."[7] Degrees of negligence rules have resulted in numerous confused decisions in several states. South Dakota has sought to eliminate the problem by refusing to recognize degrees of negligence as such, and requiring that the plaintiff's negligence is to be compared with that of the defendant, with the conduct of the reasonable man under the circumstances as the basis or norm of comparison. In the recent decision in *Corey v. Kocer,*[8] a case arising out of a motor vehicle collision, the South Dakota Supreme Court seemed somewhat troubled by the difficulty of application of the state's comparative negligence doctrine. It said:

> Our cases do not spell out any rule of thumb to be followed in applying our comparative negligence law; to the contrary, the non-existence of such rule is made clear. Each case must be determined upon the facts presented and the result seems to depend upon the composite judgment of the members of the court as to whether reasonable men might differ upon whether the plaintiff's acts constitute negligence more than slight in comparison with the negligence of the defendant.[9]

The New York Court of Appeals in *Dole v. Dow Chemical Co.,* has apparently judicially adopted a form of pure comparative negligence as between co-defendants.[10] The plaintiff claimed that her husband's death was caused by the defendant's failure to label its fumigant properly. The defendant's third party complaint was that the damage was the result of the "active and primary negligence" of his employer, third party defendant. In the event of plaintiff's recovery, the defendant asked judgment over against the employer for the full amount of any such judgment against it. The court held that where a third party is found to have been responsible for a part, but not all, of the negligence for which a defendant is liable in damages, the responsibility for that part is recoverable by the prime defendant against the third party.

One observer assessed the impact of the decision as follows:

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[7]NEBR. REV. STAT. § 25-1151 (1943); S.D. COMP. L. § 20-9-2 (1967).
[8]193 N.W.2d 589 (SD 1971).
[9]*Id.* at 596.
[10]331 N.Y. S.2d 382 (N.Y. 1972). Followed in *Kelly v. Long Island Lighting Co.,* ____ N.Y. S.2d ____ (N.Y. 1972), where the Court of Appeals allowed apportionment of damages among joint tortfeasors, based on the relative percentage of fault attributable to each defendant.

As the writer understands the *Dole* opinion, the New York Court of Appeals has now adopted the concept of comparative negligence as between co-defendants. In other words, if A and B jointly or severally commit a tort, the plaintiff may still sue one or the other, or both. If the plaintiff sues both A and B, the jury will be charged that it may apportion the damages between the co-defendants in accordance with their culpability.

If, on the other hand, the plaintiff sues only A, A may now implead B and seek to have the jury apportion the damages between himself and B. If A follows the latter course, he may not thereafter seek contribution under CPLR 1401. The crucial point, however, is that A is now entitled under *Dole* to bring B into the action and to obtain contribution based upon the jury's notion of legal culpability despite the fact that CPLR 1401 had consistently been read in the past to forbid such impleader.

Potential of Doctrine. The potential of the *Dole* doctrine is astounding. Where there are multiple defendants, a jury will henceforth be permitted to assign each defendant a proportionate part of the responsibility, arriving at this decision by some sort of moral consensus. If the Court of Appeals has now in effect sanctioned the doctrine of comparative negligence as between co-defendants, why should there be a difference as between plaintiff and defendant?

In short, if the plaintiff is contributorily negligent, but his contributory negligence was only 5 percent responsible for the damage caused by the defendant, should not the plaintiff, by parity of reasoning from *Dole,* now be entitled to recover 95 per cent of his damages from the more culpable defendant?[11]

Clearly, if not comparative negligence, this case establishes comparative contribution as adopted by the Wisconsin Supreme Court in *Bielski v. Shulze.*[12]

Assumption of Risk and Last Clear Chance

Obviously, relevant to a discussion of contributory and comparative negligence are the traditional doctrines of assumption of risk and last clear chance. In *McConville v. State Farm Mut. Auto. Ins. Co.,*[13] Wisconsin abolished the concept of implied assumption of risk. A plaintiff's voluntary, unreasonable exposure to a known risk is treated as negligence for purposes of comparison.

Minnesota, which has a comparative negligence statute modeled after the former Wisconsin statute, also recently abolished implied assumption of risk. In *Springrose v. Welmore,*[14] the Minnesota Supreme Court held that the doctrine of implied assumption of risk, as an absolute defense separate from contributory negligence, should be abolished and ruled that the doctrine will be limited to those situations in which the voluntary encountering of a known and appreciated risk is unreasonable. Such conduct is to be considered a phase of contributory negligence, to be submitted and apportioned in accord with the rules of the comparative negligence statute.

Pre-examination of the assumption of risk doctrine is not confined to comparative negligence jurisdictions.

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[11]McLaughlin, *Dole v. Dow Chemical Co.—Impleader,* N.Y. LAW J. 1 (May 12, 1972).
[12]14 N.W.2d 105 (Wis. 1962).
[13]113 N.W.2d 14 (Wis. 1962).
[14]192 N.W.2d 826 (Minn. 1971); *see* McGraw v. Wooley, Denver District Court, Civil Action No. C-27178, Div. 7, May 18, 1972 for a similar result.

The New Mexico Supreme Court recently reviewed the doctrine and abolished assumption of risk as an affirmative defense; the court, in *Williamson v. Smith,*[15] stated that a set of facts formerly characterized by the assumption of risk label would henceforth be treated in terms of contributory negligence.

The 1972 Connecticut statute,[16] instituting comparative negligence, also expressly abolished the legal doctrine of assumption of risk and last clear chance in actions based on negligence arising out of the ownership, maintenance or use of a private passenger motor vehicle.

Wisconsin has long held, since the decision in *Switzer v. Detroit Inv. Co.,*[17] that the doctrine of last clear chance would not be recognized.

Other jurisdictions have recently reaffirmed their adherence to the doctrine of last clear chance. In *Evans v. Johnson,*[18] for example, a Lousiana Appellate court affirmed a judgment against a defendant, holding that had the defendant kept a proper lookout as he was stopped for a red light, he could have discovered the peril of the plaintiff one block ahead and avoided the subsequent collision. The plaintiff was forced to stop with the back half of his car extending into the roadway because a truck had stopped in front of him.

Contributory Negligence—Safety Devices

Numerous cases have dealt with the question of failure to use available seat belts or shoulder harnesses as contributory negligence either to bar recovery or reduce the damages. The efficacy of the use of seat belts and shoulder harnesses in preventing or reducing the injuries has been the subject of numerous research studies as well as widespread highway safety publicity campaigns.[19] The courts, however, remain divided. In *Mays v. Dealers Transit, Inc.,*[20] the Seventh Circuit Court of Appeals took note of the widespread dissemination of information and scientific data on this subject in relation to the law of Indiana, the jurisdiction whose substantive law applied to the case. The court held that failure to use available seat belts raises an issue of contributory negligence under Indiana law and that the law of that jurisdiction does not preclude the trier of fact from considering the seat belt issue. The court noted that the issues presented in the case related to a logical and necessary extension of well established rules pertaining to contributory negligence.

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[15]491 P.2d 1147 (N.M. 1971).
[16]*Supra,* note 6.
[17]206 N.W. 407 (Wis. 1925).
[18]236 So.2d 285 (La. App. 1970); *see also* Puckett v. Emmons, 231 So.2d 671 (La. App. 1970).
[19]*See generally* DRI monograph, The Seat Belt Defense in Practice (Vol. 1970 No. 6, July 1970). A recent study conducted by the Highway Safety Research Center, Chapel Hill, N.C., indicated that drivers using safety belts sustained injuries 30% to 40% below the level of unbelted drivers.
[20]441 F.2d 1344 (7 Cir. 1971).

The Washington Supreme Court, in *Durheim v. N. Fiorito Co., Inc.*,[21] reviewed the authorities relative to the seat belt defense and rejected it. The court concluded that the cases in those jurisdictions rejecting the seat belt defense are the better reasoned decisions. The court stated "It seems extremely unfair to mitigate the damages of one who sustains those damages in an accident for which he was in no way responsible, particularly when, as in this jurisdiction, there is no statutory duty to wear seat belts."

Conflict of Laws

The complex problems of the conflict of laws area have occupied the attention of courts more and more in recent years. In the last decade, many courts have had to decide between the traditional "place of the wrong" rule, with its supposed virtues of certainty and ease of application, and on the other hand, the "significant contacts" or "interest analysis" rule which allegedly permits a more flexible approach and a greater emphasis on the underlying policy issues in a conflicts case. Three recent cases illustrate the way various courts have resolved the problem of choosing a choice of law rule.

The Texas Supreme Court, in *Click v. Thurson Industries, Inc.*,[22] reaffirmed the "place of the wrong rule" in a wrongful death action stemming from deaths of Texas residents in a Missouri accident. In adhering to the traditional "place of the wrong" rule, the Texas court stated that, absent legislative direction, the court would not give extraterritorial effect to the Texas wrongful death statute.

Similarly, in *Heidemann v. Rohl*,[23] the South Dakota Supreme Court weighed the various factors bearing upon whether the "place of the wrong" or the more modern "contacts" approach should govern the rights of the parties in a wrongful death action. Rejecting the newer approach, the court noted that the variants of the modern approach set forth theory and concepts rather than followable rules; the court predicted that a satisfactory substitute for the "place of the wrong" rule would eventually be developed but, until then, expressed its preference for retaining the traditional rule with its built-in virtues of certainty, simplicity and ease of application.

A contrary result was reached by the North Dakota Supreme Court in *Issendorf v. Olsen*,[24] in which North Dakota residents were injured in an auto accident during a short shopping trip into Minnesota. The court adopted the "significant contacts" rule as the choice of law rule to be applied in tort litigation where the tort occurred in a foreign state, abandoning the "place of the wrong" rule. In examining the contacts involved in this situation, the court determined that the contacts with North Dakota were more signif-

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[21]492 P.2d 1030 (Wash. 1972).
[22]475 S.W.2d 715 (Tex. 1972).
[23]194 N.W.2d 164 (S.D. 1972).
[24]194 N.W.2d 750 (N.D. 1972).

icant than those with Minnesota; it applied the North Dakota law of contributory negligence and assumption of risk rather than the Minnesota comparative negligence law.

Even in those jurisdictions which have long since adopted a "significant contacts" or "interest analysis" rule, the rule does not always permit ease or simplicity of application. As one authority recently noted, with reference to certain types of troublesome conflicts cases, "New York continues to spawn a large number of conflicts decisions that focus on that state's public policy of opposition to the exoneration of liability for guests which some other jurisdictions' guest statutes extend to automobile operators."[25] In *Pryor v. Swarner*,[26] a New York resident was injured in an Ohio crash while a guest passenger in a car registered and insured in Florida and driven by a Florida resident. Ohio and Florida both have guest statutes. The Second Circuit, applying New York law, held that the New York conflict of laws rules precluded application of New York law, allowing recovery for simple negligence. In *Pahmer v. Hertz Corp.*,[27] the plaintiff, a New York resident, was injured while riding as a guest in a co-employee's rented car while both were in California on temporary assignment for their New York employer. The defendant and its insurer's principal offices were in New York. The court held that under the applicable "dominant interest" test the defense of the California guest statute should be stricken.

As complex as the conflict of laws area is, it may be that we have hardly seen the beginning of all the possible convolutions that current and coming changes in tort law may breed. The enactment of no-fault laws will doubtless create conflicts problems in litigation, for example, arising out of accidents between motorists from states with no limitation on tort recovery and those from states with limitations such as Connecticut's general damages limitation and the Massachusetts threshold limitation. To pose only one or two of the multitude of questions that may arise, how will courts in litigation involving residents of two states with conflicting policies on tort recovery weigh these policy factors—especially under an "interest analysis" or "significant contacts" type of approach? How will subrogation problems be handled as to insurers who had paid out benefits under another jurisdiction's no-fault plan? A prognosis would indicate a tendency for courts to apply their own law "as the better rule" leading us more and more to the "forum rule," once widely rejected.

Insurance Problems

The scope of our discussion excludes any greatly detailed examination of automobile insurance problems. However, a discussion of current developments in automobile tort

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[25]*See* Miller, *Torts—1971*, 39 INS. COUNSEL J. 78,115 (Jan. 1972); *see also, generally*, Twerski, *The Jurisdictional Defense*, 13 FOR THE DEFENSE 17 (Feb. 1972) and Twerski, *Modern Choice of Law in Wrongful Death*, 13 FOR THE DEFENSE 41 (Apr. 1972).

[26]445 F.2d 1272 (2 Cir. 1971).

[27]319 N.Y.S.2d 929 (N.Y. App. Div. 1971).

law can hardly leave insurance developments entirely aside, so I will touch upon one or two areas which have been a source of recent litigation.

The United States Supreme Court decided two cases in 1971 which have had, and will continue to have, a significant impact upon state financial responsibility regulatory schemes. In *Perez v. Campbell,*[28] the court held that the Arizona financial responsibility law violates the Supremacy Clause of the Constitution insofar as it conflicted with federal bankruptcy law by requiring cancellation of licenses and vehicle registration of petitioners for unpaid judgments, even though they had been discharged from debts and claims under the bankruptcy act.

In a related decision, the court, in *Bell v. Burson,*[29] held that suspension of driving privileges involved state action that adjudicates important interests of a licensee; the state of Georgia must therefore afford procedural due process by providing a forum for inquiry into fault or liability prior to suspension.

Many states have regulatory schemes similar to that of Georgia and other decisions, following *Bell,* have held that those statutes as applied are unconstitutional. An Ohio court considered the issue in State Bureau of *Motor Vehicles v. McEntush.*[30] The court held that Ohio's financial responsibility law, providing for suspension of license and motor vehicle registrations without a hearing for the purpose of determining liability for an accident, violates the 14th Amendment. A federal district court in Illinois, examined the Illinois statute in *Pollion v. Lewis.*[31] The court noted that the Supreme Court, in *Bell,* had pointed out several alternative measures that a state might undertake to avoid the impact of the court's decision. The district court noted that a cure for the constitutional infirmities can be feasibly accomplished by the expedience of administrative regulation, providing for a threshold liability inquiry at a hearing prior to any suspension.

As a result of the high court's action, it would appear that the regulatory schemes of many states will call for a close review and some administrative adjustment, if not a substantial overhaul.

Lest we forget that first party insurance coverage is no simple and universal remedy for the ills of the tort system and society as a whole, we should note that uninsured motorist coverage is still a lively source of litigious controversy.

One of the problem areas is the question of what statute of limitations should apply. In *Sahloff v. Western Casualty & Surety Co.,*[32] the Wisconsin Supreme Court considered the question of whether an uninsured

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[28] 91 Sup.Ct. 1704 (1971).
[29] 91 Sup.Ct. 1586 (1971).
[30] 278 N.E.2d 383 (Ohio Com. Pl. Ct. 1971).
[31] 332 F.Supp. 777 (N.D. Ill. 1971). *See also, generally, F.R. Laws Still Valid,* 12 FOR THE DEFENSE 74 (Sept. 1971) and Hayes, *Are The Financial Responsibility Laws in Need of Revision?,* 38 INS. COUNSEL J. 617 (Oct. 1971).
[32] 171 N.W.2d 914 (Wis. 1969). *See generally,* DRI monograph, Uninsured Motorist Protection (1968).

motorist claim sounds in tort (because the elements of fault must be present) or in contract. The court concluded that an action by the insured against his insurer, whether by judicial process or arbitration, is an action on the policy and sounds in contract.

Problems relative to "stacking," "other insurance" and "reduction clause" under the UM endorsement continue to create problems for the bar and the courts.

In *Doerpinghaus v. Allstate Insurance Co.*,[33] the Georgia Appellate Court held that a policy covering two cars upon which separate premiums are paid provided only one $10,000 coverage to one person injured by an uninsured motorist. The policy unambiguously stated that coverage was $10,000 for injuries to one person and $20,000 to injuries to two or more persons.

The Texas Court of Civil Appeals considered an "other insurance" question in *American Liberty Ins. Co. v. Ranzau.*[34] The court held that the appellee's prior recovery of $10,000 from the insurer of a car in which she was a passenger when struck by an uninsured motorist, did not bar further recovery under her father's policy which contained an "other insurance" clause. The court held that the UM statute set only a minimum coverage and did not limit total recovery so long as it did not exceed the total damages sustained.

The Illinois Supreme Court faced a somewhat different "other insurance" or "stacking" situation in *Morelock v. Millers Mutual Insurance Association of Illinois.*[35] The court held that the driver, who, with other victims of an uninsured motorist, had available the limits of her father's policy, could not recover under her UM policy which had limits equal to her father's policy. The requirements of the UM statute were satisfied where a policy in limits required by the financial responsibility law was available or where the victim of an uninsured motorist had available compensation equal to that available to one injured by motorist insured in compliance with the Financial Responsibility Law.

The Alabama and Arkansas Supreme Courts, in considering the validity of reduction losses under the UM endorsement, reached similar conclusions. In *Preferred Risk Mutual Insurance Co. v. Holmes,*[36] the Alabama court voided the UM endorsement reduction clause for workmen's compensation benefits received, holding that the reduction clause would reduce below the statutory minimum the UM minimum coverage required in every policy. The Arkansas Court in *Heiss v. Aetna Casualty & Surety Co.*,[37] held that the UM endorsement

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[33] 185 S.E.2d 615 (Ga. App. 1971). On "stacking" and "other insurance" problems, *see* Pouros, *Multiple Uninsured Motorist Coverage under More than One Policy,* 10 FOR THE DEFENSE 65 (Oct. 1969).
[34] 473 S.W.2d 249 (Tex. Civ. App. 1971).
[35] 274 N.E.2d 1 (Ill. 1971).
[36] 251 So.2d 213 (Ala. 1971).
[37] 465 S.W.2d 699 (Ark. 1971).

reduction clause for medical payments paid under the policy was void; the purported reduction would reduce coverage below the minimum requirements of the uninsured motorist and financial responsibility statute.

Key Ordinance Violation

The "key" cases, and the often complicated questions of standard of care and proximate cause that they raise, are a continuing source of litigation.

These cases frequently raise issues such as: whether a driver parking on the street owes a duty not to leave the key in his ignition in violation of an ordinance; whether his action in doing so is the proximate cause of a collision following a theft; and whether the theft is an intervening cause severing the causal relationship between the plaintiff's injuries and the defendant's conduct. The Michigan Supreme Court in *Davis v. Thornton*,[38] reversing a grant of summary judgment, held that all these issues were proper questions of fact for the consideration of a jury.

A Florida Appellate Court reached the opposite result in *Clements v. Barber*.[39] A summary judgment was upheld in favor of the defendant who allegedly left his car unlocked on a street with the keys in the ignition, permitting a thief to steal the car and damage the plaintiff's while operating the vehicle.

A recent annotation, noting a difficult-to-rationalize split in the New York authorities, notes that these key cases "have plagued and perplexed litigants and courts for years—and continue to do so."[40] A judgment involving a recovery was affirmed in *Guaspari v. Gorsky*,[41] by a divided New York Appellate Court. The court held that the jury could have found that the keys were left in the ignition and that in light of the New York statute, the intervention of an unauthorized person no longer operated (as it did in the earlier New York decisions determined under common law) to break the chain of causation. The majority noted that the statutory purpose is two-fold: (1) as a public safety measure designed to protect life and property of others by conferring a cause of action upon anyone damaged as a consequence of its violation, and (2) as a deterrent to theft. A New York trial court denied recovery in *General Accident Group v. Noonan*.[42] The owner had left the key in the ignition while the car was standing in the driveway of his house, about 30 feet away from the public highway. The car was stolen and involved in a collision. The court noted that, although the same harm may ultimately result whether the car is left parked on a public highway or any private driveway, there are competing policy considerations of at least equal significance; these involve the

[38]180 N.W.2d 11 (Mich. 1970).
[39]258 So.2d 465 (Fla. App. 1972).
[40]15 Pers. Inj. Newsletter 183 (1972).
[41]319 N.Y.S.2d 708 (N.Y. App. Div. 1971).
[42]321 N.Y.S.2d 483 (N.Y. Sup. Ct. 1971).

right of people to use their private property as they see fit.

Miscellaneous Aspects of Auto Negligence

Many of the points I have touched upon up to now have been concerned with negligence in one way or another. The bar and the judiciary continue to wrestle with an unimaginable variety of questions relative to negligence, evidence of negligence, causation, duty and standard of care. Before closing, I would like to touch briefly on a small sampling of a few of the problems that have been dealt with in recent cases.

The New York Court of Appeals, in *Tormos v. Rivera,*[43] considered the question of *the propriety of and rationale for cross-examination of a plaintiff concerning previous accidents.* Defense counsel elicited testimony from the plaintiff that he had been involved in four accidents (after the date of the accident in issue), each of them involving a vehicle operated by the plaintiff. The court upheld the defense contention that the cross-examination was proper since the plaintiff had placed his credibility in issue and since it would establish a basis for the jury to determine the causal relationship between his injuries and the accident in question.

The *standard of care to be applied to youthful drivers* was considered by courts in Arkansas and New York. In *Purtle v. Shelton,*[44] the Arkansas Supreme Court affirmed the lower court's refusal to instruct the jury that a minor hunting deer with a high powered rifle must in all instances be held to an adult standard of care. A dissent pointed to the inadequate basis for the majority holding, pointing out that the court had previously taken judicial notice of the hazards of auto traffic, the frequence and seriousness of accidents and the fact that immature individuals are no less prone to accidents than adults, concluding that a minor must be required to observe the same standard of care as an adult when operating an automobile. In drawing its analogy, the dissent concluded that an even higher standard should be applied with respect to firearms than to motor vehicles. In the New York case, *Edwards v. Pickens,*[45] a young driver overturned a car due to his inexperience and incompetence as a driver. The court held that his inexperience and incompetence, as an unlicensed driver with only a learner's permit, was a proximate cause of the accident and his conduct constituted contributory negligence as a matter of law, barring any recovery.

The increasingly widespread use of unusual, hybrid types of vehicles such as snowmobiles, mini-bikes and other similar vehicles, will undoubtedly be a fertile source of future litigation. Safety standards and insurance coverage issues will be crucial issues. In

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[43]30 N.Y.2d 528 (N.Y. 1972).
[44]474 S.W.2d 123 (Ark. 1971).
[45]320 N.Y.S.2d 857 (N.Y. Sup. Ct. 1971); *see also* 15 Pers. Inj. Newsletter 88 (1971).

State v. Carkhuff,[46] a case which may be a harbinger of much future litigation, an Ohio court held that a snowmobile is a "motor vehicle" within the meaning of the Ohio safety statutes applicable to such vehicles and was required to comply with statutory safety standards. This case dealt with a question of ordinance violation. However, there would seem to be an obvious relevance of the issues to civil litigation concerning negligence and insurance coverage.

Conclusion

This brief presentation illustrates that courts and lawyers are faced with numerous challenges to provide justice for clients on a day-to-day basis in the automobile field. The patterns of conflict provide for a steady growth in the law without disruption and by the establishment of chartered routes for future conduct. The changes are substantial but not disruptive of fundamental rights and responsibilities.

[46]270 N.E.2d 379 (Ohio Mun. Ct. 1971); *see also*, Bardenwerper, *Snowmobile Litigation and Insurance Coverage*, 13 FOR THE DEFENSE 29 (Mar. 1972) for discussion of safety standards, accident statistics, negligence issues and insurance coverage issues.