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Traffic Victims—Tort Law and Insurance, by Leon Green (1958)

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BOOK REVIEW

TRAFFIC VICTIMS—TORT LAW AND INSURANCE, by Leon Green, Evanston, Northwestern University Press, 1958, 127 pp., $4.00.

In a book which has already received much comment and surely will receive more, one of America's leading authorities on the law of torts has reviewed the historic development of principles for determining liability and explored the inadequacies of the existing legal system for distributing the enormous losses caused by modern traffic. The conclusion he reaches is that a system of compulsory liability insurance must be substituted for present-day negligence law. He then sets out the basic features of such a system.

A busy practitioner will find in the first chapters a useful short history of the development of current doctrines of tort liability, and thus obtain a better understanding of them, though some readers may differ with the details of Professor Green's analysis of the interplay of changing doctrines during the last century and one half. In any event the book offers a challenging evaluation of present necessities and future developments.

Professor Green believes that modern tort principles, which began to develop in the early 1800's, have been largely shaped by what he calls "horse-and-buggy" law. The strict liability of the earlier period, in which recovery could be had upon a showing that the defendant's act caused the injury in issue, gave way to a system which made recovery by victims more difficult. The change occurred, not because an awakening sense of morality demanded that liability be based on fault, but because the opening of highways and development of industries required a system giving greater freedom to a growing economy. Members of a society enjoying the benefits of these new activities were required to bear the risks they involved. On this basis Professor Green makes the novel observation that the law of the nineteenth century was the law of group welfare, protecting society from the claims of those who by fault or misfortune fell behind or beneath the advancing body. The law of the twentieth century, on the other hand, has exalted the individual, giving him protection from the collective action which has produced his injuries.

A survey of the multitude of factors involved in a traffic accident lays the basis for the conclusions that negligence law is an inadequate means for distributing losses and that juries are incompetent as fact finders. Moreover, though trial and appellate judges have attempted to control injustice and limit the jury function by using the magic words, "proximate cause," Professor Green believes courts are incapable of providing a satisfactory substitute for the existing system. Accordingly, a system of compulsory liability insurance must be provided by statute.

The plan which he advances is one requiring insurance, by private insurance companies, of all vehicles rather than drivers. Consistent with his insistence that a state-administered program patterned after workmen's compensation schemes would be inadequate and unworkable, Professor Green proposes that the program be administered by the courts, utilizing the services of specially qualified masters. The issues involved would, however, be limited to determination that the claimant suffered injury as a result of the use of a motor vehicle, and of the extent of the injury, the amount of the loss, and the identity of the vehicle involved. Liability would be established upon proof that the injury, whether to property, pedestrians, drivers, or occupants of vehicles, was caused by operation of a vehicle. A special fund would cover claims in which the particular causing vehicle could not be identified.

The damages awarded would be determined by orthodox rules, except that damages for pain and suffering would be excluded and the first one hundred dollars of damages would not be compensable. Working from statistics of the National Safety Council, Professor Green estimates that such a program could be financed at an average annual premium charge of one hundred dollars per vehicle. With additional experience, it is suggested, maximum coverage limits and the one-hundred-dollar deductible feature might be eliminated.

Such a sweeping proposal is, of course, challenging when it comes from one eminent in a field of law which would be so drastically reduced in importance if the proposal were adopted. Some doubts and inquiries come to mind immediately. For example, it does not seem feasible to require court administration of each of the claims for the 1,400,000 injuries suffered during a year such as 1956, but the proposal apparently envisages such control by the courts. Likewise, one may query the justice as well as the popular appeal of a proposal to eliminate damages for pain and suffering. Professor Green believes that his proposal would greatly limit the amount of time spent in litigation and that it would eliminate the specialized personal injury bar which now handles most of the traffic cases. Consideration of the amount of time spent, at least at the trial level, in developing the damage aspect of a case today, and more particularly the specialization and expertness necessary to develop the medical aspects of causation and damages, casts doubt on the validity of these conclusions.

Despite these and other weaknesses, Professor Green's proposal undoubtedly furnishes a basis for discussion and development of a solution to a problem which is presently inadequately treated. His avoidance of a scheme patterned after workmen's compensation awards, the insistence upon insurance of the vehicle rather than the driver, and limitation of the issue of liability to a determination of whether the injury was caused by the operation of a motor vehicle appear to this reviewer to be sound basic principles for dealing with the problem.

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