Louisiana Law Review

Volume 22 | Number 2
The Work of the Louisiana Supreme Court for the 1960-1961 Term
February 1962

Liability In Left Turn Collisions

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vast imponderable is still present whether the problem be viewed by seconds, days, or years. Thus a policy objection to the per diem approach is that it is essentially a trial tactic, which confuses the jury, and at the same time does nothing to assist in the solution of the actual problem. It is therefore suggested that per diem arguments should not be permitted when the quantum for pain and suffering damage is at issue.[17]

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Liability In Left Turn Collisions[1]

Louisiana courts are frequently called upon to decide the issue of liability for damages arising out of automobile collisions where, at the moment of impact, one of the parties was attempting to turn to his left. In this Comment, it is sought to derive the prevailing attitudes of the Louisiana appellate courts concerning what constitutes negligence on the part of the motorist turning to his left, what constitutes negligence on the part of the non-turning motorist involved in a left turn collision, and the interrelationships of their two patterns of conduct in deciding the issue of liability.

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injury or suffering, and the various factors involved are not capable of proof in dollars and cents. For this reason, the only standard for evaluation is such amount as reasonable persons estimate to be fair compensation. Botta v. Brunner, 26 N.J. 82, 138 A.2d 713 (1958).

17. As juries are seldom used in Louisiana civil cases, the damage problem will usually be handled by a judge. Due to the experience of trial judges, per diem arguments are not as likely to influence their decisions as they would a juror's. However, it seems that per diem arguments should still be condemned in Louisiana for the same reasons mentioned in the text. If for no other reason, such tactics should not be permitted as they do nothing to assist in the solution of the damage issue, and serve only to delay the trial.

1. As used by the Louisiana courts, the term "left turn" incorporates a variety of maneuvers, in all of which a motorist changes course more or less to his left. The term is most commonly applied where a motorist turns across the opposite lane of traffic in order to enter an intersecting street or a private drive. However, the courts also characterize as a left turn such maneuvers as turning onto a street from a private drive or parking lot with intention to travel in the far lane. Zurich Fire Ins. Co. v. Thomas, 49 So.2d 460 (La. App. 2d Cir. 1950). The motorist who turns left across the neutral ground of a boulevard and stops before crossing the opposite lane is considered to be turning left after having stopped, even though after stopping he is in the same position as one who crosses the boulevard on the intersecting street. Wilson v. Southern Farm Bureau Cas. Co., 275 F.2d 819 (5th Cir. 1960); Terrell v. Fargason, 67 So.2d 771 (La. App. Orl. Cir. 1953). A recent case characterized a motorist as turning left when he was changing from the right to the left lane of a multiple roadway, preparatory to making a left turn. Mock v. Savage, 123 So.2d 806 (La. App. 2d Cir. 1960).

Motorists Turning Left

The duty of care. All of the recent decisions stress that the left turn is a highly dangerous maneuver, not to be undertaken without a very high degree of care.[2] Notwithstanding the dangers attendant upon turning left, it remains that every motorist must frequently execute this basic and essential maneuver. The Highway Regulatory Act[3] provides that one turning left must "see that the movement can be made in safety"[4] without unduly delaying normal traffic from either direction.[5] The proper signal must be given[6] and one turning left must yield the right-of-way.[7] He must turn from the lane nearest the centerline in such a manner as to pass to the right of the centerpoint of the intersection.[8] To these, the courts have added a further requirement, that a left turn signal be given in time for other motorists to govern their conduct accordingly,[9] the Supreme Court going so far as to require the turning driver to ascertain that his signal has actually been heeded.[10]

Presumption of negligence from involvement in collision. While perhaps the cautious driver should follow most of the above steps in executing a left turn, it has become most difficult to convince the Louisiana courts that one has done so, if involved in a collision. In some instances, the courts have pinpointed specific infractions of the Highway Regulatory Act as acts of negligence,[11] but in the majority of cases negligence has been speci-

2. Though no court has specifically stated why the turn is so inherently dangerous, anyone who drives can readily appreciate some of the hazards involved. One driving on a two-lane highway must necessarily assume that oncoming vehicles will not turn across his path without warning. Even if warning is given, he must necessarily assume that such vehicles will not turn so as to endanger his safety. Similarly, the overtaking motorist must necessarily rely upon the forward driver not to turn to the left before he has passed in safety.

3. La. Acts 1938, No. 286, incorporated as Title 32 of the Revised Statutes. This is the basic statute which regulates execution of the left turn. Though there are concurrent city ordinances, the act is as applicable in metropolitan areas as on the open highway. Holliday v. Hartford Accident & Indemnity Co., 38 So.2d 235 (La. App. 2d Cir. 1949).

4. LA. R.S. 32:236(A) (1950).

5. *Id.* 32:235(A). This section specifically refers to vehicles "turning around" upon the highway, presumably executing a "U-turn," but it is uniformly considered as regulating right angle left turns as well.

6. *Id.* 32:236.

7. *Id.* 32:235(A).

8. *Id.* 32:235(B).

9. Aetna Cas. & Sur. Co. v. Crow, 86 So.2d 212 (La. App. 1st Cir. 1956); Vigilant Ins. Co. v. Lumberman's Mutual Cas. Co., 85 So.2d 87 (La. App. 1st Cir 1955).

10. Washington Fire & Marine Ins. Co. v. Firemen's Insurance Co., 232 La. 379, 94 So.2d 295 (1957).

11. *E.g.*, failure to render a proper signal as required by LA. R.S. 32:236(B)

fied simply as a breach of the duty to "see that the movement is made in safety."[12] Though this statutory language could be construed merely as requiring a careful lookout, the courts have assigned an interpretation making it incumbent upon the motorist turning left virtually to "see to it" that his turn is made in safety.[13] If not negligence *per se*,[14] involvement in a collision while turning left at least gives rise to a rebuttable presumption of negligence.[15] In one case a court went so far as to indicate that a plaintiff motorist turning left is required to absolve himself of negligence as a requisite to making out his case against the defendant non-turning driver.[16]

Non-Turning Motorists

In the majority of reported cases, the motorist turning left has collided either with a vehicle approaching from the opposite

(1950). De la Vergne v. Employers Liability Assurance Corp., 4 So.2d 66 (La. App. 1st Cir. 1941); Slocum v. Hawn, 155 So. 24 (La. App. 2d Cir. 1934). Mere blinking of the brake lights does not suffice. Parker v. Home Indemnity Co., 41 So.2d 783 (La. App. 2d Cir. 1949). Nor does a hurried dropping of the hand out the window. Martin v. Globe Indemnity Co., 64 So.2d 257 (La. App. Orl. Cir. 1953).

12. LA. R.S. 32:236(A) (1950); Holden v. Rester, 66 So.2d 366 (La. App. 1st Cir. 1953); Lane v. Bourgeois, 28 So.2d 91 (La. App. 1st Cir. 1946); Home Ins. Co. v. Warren, 29 So.2d 551 (La. App. 1st Cir. 1947); Harris v. Bigby, 29 So.2d 805 (La. App. 2d Cir. 1947).

13. See Cassar v. Mansfield Lumber Co., 35 So.2d 797 (La. App. 2d Cir. 1948), overruled on another point, 215 La. 533, 41 So.2d 209 (1949); Owen v. O. K. Storage & Transfer Co., 10 So.2d 649 (La. App. Orl. Cir. 1942); Parker v. Employers' Casualty Co., 152 So. 373 (La. App. 2d Cir. 1934).

14. Day v. Roberts, 55 So.2d 316, 318 (La. App. 2d Cir. 1951): "In the event that he [the motorist turning left] collides with traffic from either direction while attempting to make a left turn, he *is* guilty of negligence." (Emphasis added.) This result has been questioned. "We very much fear that our courts may have been guilty of some overemphasis in the establishment and reiteration of this rule, which has resulted in the assumption that the driver of a vehicle who undertakes a left hand turn is guilty of negligence, per se, in the event an accident occurs. Certainly, this result was never intended." Paggett v. Travelers Indemnity Co., 99 So.2d 173, 176 (La. App. 2d Cir. 1957).

15. Codifer v. Occhipinti, 57 So.2d 697, 699 (La. App. Orl. Cir. 1952) is most frequently cited for this proposition: "The State Highway Regulatory Law . . . makes it clear that a driver attempting to turn to his left on a public highway must make certain that it is safe to do so. When such a left hand turn is being made and an accident occurs, *the burden rests heavily on the driver who is making the left-hand turn to explain how the accident occurred and to show that he was free from negligence.*" Cited with approval in Wilson v. Southern Farm Bureau Cas. Co., 275 F.2d 819 (5th Cir. 1960); Capone v. Cotton Trade Warehouses, 215 La. 692, 41 So.2d 505 (1949). See also Strug v. Travelers Indemnity Co., 53 So.2d 437 (La. App. 1st Cir. 1951); Sumrall v. Myles, 51 So.2d 411 (La. App. 1st Cir. 1951).

16. Castille v. Houston Fire & Cas. Ins. Co., 92 So.2d 137 (La. App. 1st Cir. 1957). Such is contrary to the fundamental principle that contributory negligence is a defense, the burden of proving plaintiff's negligence resting upon the defendant.

direction or with a vehicle in the process of attempting to overtake him as he is turning.[17]

The standard of care. To the motorist turning left, a motorist approaching from the opposite direction owes a duty of maintaining a reasonable lookout,[18] though it is sometimes indicated in the decisions that he may presume that the right-of-way will be accorded to him.[19] By comparison, the overtaking motorist owes, to the motorist turning left, a more onerous duty. The Highway Regulatory Act requires that he indicate his intention to pass by sounding his horn[20] after ascertaining that the left lane is clear[21] and that he not attempt to pass at an intersection, identifiable as such.[22]

Contributory negligence. From the above, it would appear that each motorist involved in a left turn collision owes to the other some obligation of care and that neither bears the entire responsibility for the other's safety. Be that as it may, the courts ordinarily find the motorist turning left to have been negligent, while they seem reluctant to find negligence on the part of the non-turning motorist.[23] It is suggested that this result stems, in part, from judicial reluctance to apply the doctrine of contributory negligence to bar recovery by a party whose duty of care is lesser by comparison. Strictly applied, the doctrine of contributory negligence would bar recovery by a plaintiff whose

17. Because only a handful of left turn cases involve other factual patterns, this Comment is limited to a consideration of only these two.

18. Samples v. Strait, 36 So.2d 856 (La. App. 1st Cir. 1948); Deffez v. Stephens, 30 So.2d 154 (La. App. 1st Cir. 1947); Shirley v. Caldwell Bros. & Hart, 183 So. 581 (La. App. 1st Cir. 1938).

19. Sullivan v. Locke, 73 So.2d 616 (La. App. 2d Cir. 1954); Michelli v. Rheem Mfg. Co., 34 So.2d 264 (La. App. Orl. Cir. 1948); Gaines v. Standard Accident Ins. Co., 32 So.2d 633 (La. App. 1st Cir. 1947). In the *Sullivan* and *Michelli* cases, *supra*, it was held that, at a controlled intersection, the driver not turning is not negligent in failing to note the presence of another vehicle turning left in front of him while he is proceeding with the right of way under a favorable light.

20. LA. R.S. 32:233(B), (C) (1950).

21. *Id.* 32:233(A).

22. *Id.* 32:233(E). In Holden v. Rester, 66 So.2d 366 (La. App. 1st Cir. 1953), the motorist turning left was held to a duty to anticipate the possibility that reduction of speed by the car preceding him might indicate an intention to turn left.

23. In the following cases, the non-turning driver was barred by his contributory negligence: Hollabaugh-Seale Funeral Home v. Standard Acc. Ins. Co., 215 La. 545, 41 So.2d 212 (1949); Allstate Insurance Co. v. Employers' Liability Assurance Corp., 98 So.2d 852 (La. App. 2d Cir. 1957); Callia v. Rambin, 78 So.2d 44 (La. App. 2d Cir. 1955); Sullivan v. Locke, 73 So.2d 616 (La. App. 2d Cir. 1954); Owen v. O. K. Storage & Transfer Co., 10 So.2d 649 (La. App. Orl. Cir. 1942); Drake v. Hardware Mut. Cas. Co., 194 So. 70 (La. App. 2d Cir. 1940).

own negligence, even if slight by comparison with that of defendant, was a contributing cause of his injury.[24] Thus an overtaking motorist who neglects to sound his horn, or an approaching motorist who is somewhat lax in keeping a lookout ahead, would be precluded from recovery. Because the courts place higher *responsibility* for mutual safety on the motorist turning left, they seem reluctant to lift the burden of *liability* from his shoulders merely on a showing that the other driver has violated some traffic regulation. This is not to say, however, that the non-turning motorist always escapes a finding of negligence.

Perhaps minimizing the negligence of the non-turning motorist is warranted in the meeting situation where the turning vehicle suddenly obstructs the opposite lane without warning. However, it would seem that this tendency would be less warranted in the overtaking situation where both motorists are attempting dangerous maneuvers on the left side of the highway. The Highway Regulatory Act provides that when an overtaking vehicle collides with another, "the responsibility shall rest prima facie on the driver of the vehicle doing the overtaking."[25] It is noteworthy that this presumption has been rarely applied by the courts of appeal where the overtaking motorist collides with another turning left.[26] However, in the recent case of *Thomas v. Barrett*,[27] the Supreme Court employed this statutory presumption to defeat recovery by an overtaking motorist injured in a collision with the overtaken motorist who was turning left at the time. The court held that the plaintiff was negligent in not insuring his safe passage around defendant's truck, while the defendant was negligent in not determining that his way was clear to turn left. In essence, this decision says that since each owed to the other a duty of not becoming involved in a collision, neither can recover for his injuries. It is submitted that this is an unfortunate result. It is presumed that a motorist involved in a collision while turning left is negligent, that his judgment that the movement could be made in safety was erroneous, and that this error in judgment was unreasonable. By employing a statute, the Supreme Court has applied the same principle to the

24. See 2 HARPER & JAMES, TORTS § 22.1 *et seq.* (1956).
25. LA. R.S. 32:233(C) (1950).
26. In one case the statutory presumption applied against an overtaking motorist involved in a left turn collision, and in that instance he had attempted to pass at an intersection. Greengus v. Manufacturing Cas. Ins. Co., 71 So.2d 611 (La. App. 2d Cir. 1954).
27. 240 La. 363, 123 So.2d 87 (1960).

overtaking motorist. Thus where the two collide, the result is a stalemate. Certainly it is possible that the accident could be caused by only one having made an error in judgment; further, it is possible that though each erred in thinking his maneuver could be made safely, only one was unreasonable in so concluding. It is submitted that to generalize mutual fault from the types of maneuvers undertaken and so preclude recovery by either motorist is to find negligence and contributory negligence on an insubstantial basis. It is suggested that even if both are presumed negligent, each should be allowed to rebut this presumption by showing either that he did not err in judgment or if there was error, that it was not unreasonable.

Perhaps underlying the *Thomas* case was the fact that the testimony was in hopeless dispute and therefore the court was unwilling to shift the burden of liability to the defendant on the basis of the plaintiff's evidence. If this is so, then perhaps the door remains open in future cases involving collisions between overtaking motorists and overtaken motorists turning left, to rebut the presumptions arising from the circumstances of the collision by introducing persuasive evidence of the other's want of care or of his own exercise of reasonable care under the circumstances. Apparently, this position has been taken by subsequent cases in the courts of appeal.[28]

There is a further reason why this decision is unfortunate. It is likely that the presumption of fault on the part of the overtaking motorist was not intended to apply in left turn collisions, but to attach primarily where an overtaking motorist has collided head-on with an oncoming vehicle. On the other hand, it is probable that the statutory prohibition against passing at intersections was designed, in part, to reduce collisions between overtaking vehicles and those being overtaken while in the process of turning left. This is the view the courts of appeal have generally taken and, in spite of the onerous duty placed upon the motorist turning left, the motorist who attempts to overtake

28. In North River Insurance Co. v. Allstate Insurance Co., 132 So.2d 90 (La. App. 3d Cir. 1961), the plaintiff-overtaking motorist was able to recover by proving that the motorist turning left had attempted to turn knowing that the plaintiff was only one car-length behind him in the left lane. In two cases decided subsequent to *Thomas v. Barrett*, courts of appeal have awarded recovery to the overtaking motorist without adverting to that case: Ruple v. Traveler's Indemnity Co., 129 So.2d 240 (La. App. 2d Cir. 1961); Hornosky v. United Gas Pipeline Co., 127 So.2d 287 (La. App. 4th Cir. 1961).

him at an intersection is usually found to have himself been negligent.[29]

Last clear chance. The doctrine of last clear chance — said to have developed out of judicial distaste for strict application of the doctrine of contributory negligence[30] — holds that where an accident happens through the combined negligence of two persons, he alone is liable to the other who had the last opportunity to avoid the accident.[31] As applied in Louisiana the doctrine has posed yet another obstacle in the path of the motorist turning left seeking to escape liability. In the reported cases the courts have not permitted him to invoke last clear chance but have permitted it to be used against him. As plaintiff, he has sought to employ the doctrine by urging that in spite of his contributory negligence in failing to "see that his turn is made in safety," the overtaking motorist had the last opportunity to avoid the collision by turning hard right and passing to plaintiff's rear.[32] This argument has been dismissed with the observation that the overtaking motorist faced with a "sudden emergency" created by plaintiff's obstructing the highway in front of him is not to be held to the standard of ordinary care under the circumstances.[33]

Last clear chance has been urged successfully by the overtaking motorist. The doctrine has been recognized as applicable in Louisiana where a plaintiff is shown to have been in helpless peril and the defendant actually "discovered the peril" in time to avoid the accident by proper care. Thus in *Cassar v. Mans-*

29. Cassar v. Mansfield Lumber Co., 215 La. 533, 41 So.2d 209 (1949); Hollabaugh-Seale Funeral Home v. Standard Acc. Ins. Co., 215 La. 545, 41 So.2d 212 (1949); Nichols v. Everist, 80 So.2d 199 (La. App. 2d Cir. 1955); Callia v. Rambin, 78 So.2d 44 (La. App. 2d Cir. 1955); Greengus v. Manufacturing Cas. Ins. Co., 71 So.2d 611 (La. App. 2d Cir. 1954). Overtaking motorist has been held contributorily negligent where passing on a hill in violation of LA. R.S. 32:233(C) (1950), where he collided with motorist turning left at its crest, Sumrall v. Myles, 51 So.2d 411 (La. App. 1st Cir. 1951).

30. 2 HARPER & JAMES, TORTS § 22.3 (1956).

31. SALMOND, TORTS 525 (11th ed. 1953).

32. Martin v. Globe Indemnity Co., 64 So.2d 257 (La. App. Orl. Cir. 1953); Harris v. Bigby, 29 So.2d 805 (La. App. 2d Cir. 1947). The "sudden emergency" doctrine has also been applied in meeting situations so as not to require ordinary care of the non-turning motorist where contributory negligence is alleged, making it unnecessary for the plaintiff non-turning motorist to utilize the doctrine of last clear chance: Tally v. Howard, 65 So.2d 395 (La. App. 2d Cir. 1953); Myers v. Maricelli, 50 So.2d 312 (La. App. 1st Cir. 1951); Fidelity & Guaranty Fire Corp. v. Ritter, 37 So.2d 349 (La. App. 2d Cir. 1948); Home Ins. Co. v. Warren, 29 So.2d 551 (La. App. 1st Cir. 1947).

33. See note 30 *supra*.

field Lumber Co.,[34] a collision ensued when plaintiff sought to overtake defendant at an intersection just as defendant commenced a left turn. The defendant had seen the overtaking vehicle in his rear-view mirror but thought he could clear the intersection in time to avoid a collision. The Supreme Court viewed the plaintiff-overtaking motorist as having been in helpless peril due to his own negligence in passing at the intersection. The court found, however, that the defendant had had the last opportunity to avoid the accident by "restraining his impulse to turn" and that failure to do so constituted failure to take the last clear chance. Therefore, he was held liable even though the overtaking motorist was clearly contributorily negligent.

Under the doctrine of "unconscious" last clear chance as recognized in some jurisdictions, a plaintiff, himself contributorily negligent, may nevertheless recover from a defendant who did not actually discover plaintiff's peril but who, with proper vigilance, *should* have discovered it in time to avoid the harm.[35] In *Hollabaugh-Seale Funeral Home v. Standard Accident Insurance Co.*,[36] the Supreme Court declined to apply the doctrine of "unconscious" last clear chance where defendant, turning left, had *not* seen the plaintiff overtaking him because of failure to look in his rear-view mirror. The court there expressly limited the doctrine of last clear chance to instances where the motorist turning left has actually "discovered the peril" of the overtaking motorist.

There does not seem to be a compelling reason why, in a torts scheme based on fault, the driver heavily charged with responsibility for safe execution of a left turn is any more culpable in erroneously estimating his chances of clearing an intersection knowing that another is attempting to overtake him, than is the motorist who attempts to turn left without looking to the rear at all. It is submitted that, at least for the sake of consistency, the doctrine of "unconscious" last clear chance should be applied to impose liability on the motorist who turns without taking precautions if it is to be applied to the motorist who takes precautions but makes an error in judgment.

The non-turning motorist — conduct bordering on wilful and

34. 215 La. 533, 41 So.2d 209 (1949).
35. See PROSSER, TORTS § 52 (2d ed. 1955).
36. 215 La. 545, 41 So.2d 212 (1949).

wanton indifference to the safety of others. The courts seem less ready to minimize contributory negligence where it is shown that the non-turning motorist has exhibited indifference towards the safety of others. Thus contributory negligence has been found where, just prior to the collision, the non-turning motorist was looking to the rear waving at a pedestrian[37] and where he was grossly exceeding a municipal speed limit.[38]

Conclusions

The Louisiana courts, viewing the left turn as a highly dangerous maneuver, have placed a high degree of responsibility upon a motorist turning left to "see to it" that his turn is safely made. So onerous is this standard of care that involvement in a collision while turning left gives rise to a presumption of fault. In absence of a showing that the conduct of the non-turning motorist bordered on "wilful and wanton" indifference to the safety of others, the courts tend to minimize negligence on the part of the non-turning driver except where he was attempting to overtake at an intersection. Even then, the doctrine of last clear chance may be available to him.

It is suggested that this approach towards left turn collisions has developed because it is rather simple to administer and because in most cases it seems to do justice between the parties. Evident, however, is a judicial distaste for the doctrine of contributory negligence as a complete bar to recovery by a plaintiff-non-turning motorist whose standard of care is rather slight as compared to the motorist turning left. Perhaps the courts would prefer to compare negligence and reduce plaintiff's damages accordingly,[39] but such is not permissible so long as the strict doctrine of contributory negligence remains a part of Louisiana law.

Gerald Le Van

Rights and Duties of Riders in Private Automobiles

The development of the automobile industry has not only revolutionalized transportation, but has brought about develop-

37. Massicot v. Nolan, 65 So.2d 648 (La. App. 1st Cir. 1953).

38. Short v. Baton Rouge, 110 So.2d 825 (La. App. 1st Cir. 1959); Hardin v. Yellow Cab Co., 38 So.2d 814 (La. App. 2d Cir. 1949).

39. See Malone, *Comparative Negligence — Louisiana's Forgotten Heritage*, 6 LOUISIANA LAW REVIEW 125 (1945).