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to design legislation around the commerce clause.<sup>53</sup> Surely it is more forthright to base civil rights legislation on the reconstruction amendments which, after all, were designed to protect human rights than it is to base such acts on the commerce clause.

*J. Brooks Greer, III*

#### TORTS—STATUTORY VIOLATIONS AND NEGLIGENCE PER SE

Defendant motorist Guidry, after passing defendant McFarlain's car while approaching an intersection, stopped on the wrong side of the two lane highway. As a result defendant McFarlain's view to the left was obscured so that she failed to see plaintiff motorcyclist approaching on the intersecting street. She ventured into the intersection and collided with plaintiff. The trial court entered judgment against both defendants. On appeal the judgment was upheld against Mrs. McFarlain but reversed as to Mr. Guidry, the court stating that as between the two defendants Guidry's negligence was passive and not the moving cause of the accident. *Monger v. McFarlain*, 204 So.2d 86 (La. App. 3d Cir. 1967).

Defendant Guidry violated two provisions of the Highway Regulatory Act. He passed another car at an intersection and drove on the left side of the road.<sup>1</sup> Violation of a criminal statute, although characterized as negligence per se, will not usually occasion civil liability unless it is deemed to be the "proximate cause" of some resultant injury.<sup>2</sup> In determining proximate cause in cases of statutory violation it must be found that the injury which in fact occurred was within the range of risks from which the legislature intended to afford protection.<sup>3</sup>

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53. See *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964), which upheld the Civil Rights Act of 1964 on the basis of the commerce clause. See also *Katzenbach v. McClung*, 379 U.S. 294 (1964).

1. LA. R.S. 32:75 (1950): "No vehicle shall be driven to the left of the center of the highway."

*Id.* 32:76 provides in part: "No vehicle shall at any time be driven to the left side of the highway under the following conditions:

"(2) When approaching within one hundred feet of or traversing any intersection or railroad track . . ."

2. *Theunissen v. Guidry*, 244 La. 631, 153 So.2d 869 (1963); *Cavalier v. Peerless Ins. Co.*, 156 So.2d 105 (La. App. 1st Cir. 1963); *Moses v. Mosley*, 146 So.2d 263 (La. App. 3d Cir. 1962).

3. *Dartez v. City of Sulphur*, 179 So.2d 482 (La. App. 3d Cir. 1965); *Moses v. Mosley*, 146 So.2d 263 (La. App. 3d Cir. 1962); Comment, 16 LA. L. REV. 391, 395 (1956).

Statutory prohibition against passing at an intersection appears to be designed to minimize the risk of collision between the overtaking car and either turning vehicles or vehicles passing in the intersecting road. A survey of the cases involving violations of this kind indicates that the accidents were invariably of this type.<sup>4</sup> Defendant Guidry's overtaking truck did not collide with any other vehicle; hence this statute seems inapplicable to the question of Guidry's civil liability.

Guidry also drove on the left side of the road, violating R.S. 32:75. Here it appears that the risk of actual collision between the car in the wrong lane and another was the primary concern of the legislature. An examination of cases allowing recovery under this statute indicates that such was indeed the legislative purpose.<sup>5</sup> Defendant's truck did not crash into the plaintiff. It would therefore appear improper to base tort liability on R.S. 32:75.

What hazard did Guidry in fact create in the instant case? His coming to a halt when and as he did presented an obstruction to the lateral vision of defendant McFarlain. It would certainly seem that the policy underlying the statutes violated did not envision this particular risk. Obstruction of lateral vision at intersections is an almost ever present risk in highway travel. The person whose vision is obstructed is normally expected to adjust to the situation through increased vigilance. Seldom is liability imposed against one who has obscured lateral vision.<sup>6</sup> Had these same events occurred on a four lane highway, there can be little doubt that Guidry would be exonerated from liability.<sup>7</sup>

The method of analysis employed above was not utilized in the case at bar. Instead the majority relied on a rubric of proximate cause—passive negligence.<sup>8</sup> Both defendants, declared the

4. *Gendron v. Traders & General Ins. Co.*, 200 So.2d 774 (La. App. 3d Cir. 1967); *Gautreaux v. Faucheaux*, 105 So.2d 537 (La. App. Or. Cir. 1958); *Breaux v. LeBlanc*, 92 So.2d 112 (La. App. 1st Cir. 1957); *Grigsby v. Employers Liab. Assur. Corp.*, 57 So.2d 910 (La. App. 2d Cir. 1952); *Thorgrimson v. Shreveport Yellow Cab, Inc.*, 161 So. 49 (La. App. 2d Cir. 1935).

5. *Wilhite v. Gilmore*, 91 So.2d 461 (La. App. 2d Cir. 1957); *Woodward v. Wight & Co.*, 75 So.2d 896 (La. App. 1st Cir. 1954); *Bivins v. Peterson*, 55 So.2d 300 (La. App. 2d Cir. 1952); *Gomolsky v. Kihneman*, 16 La. App. 304, 134 So. 266 (2d Cir. 1931).

6. *Cf. Allen v. Louisiana Creamery*, 184 So. 395 (La. App. 1st Cir. 1938) (illegal parking creating obstruction of view would not in the absence of other factors cause liability).

7. LA. R.S. 32:76 (1950) states: "The foregoing limitations shall not apply upon . . . a multiple lane highway."

8. *Shaw v. Missouri Pac. R.R.*, 39 F. Supp. 652 (W.D. La. 1941) (decedent killed sitting on railroad track—not drunk, therefore not "in" passive negligence);

court, were negligent. However Guidry is to be relieved from liability because he was only "passively" negligent. Passive characterization would seem to be improper, analytically, as a means of limiting liability. It is well established in the jurisprudence that a failure to act or a previous negligent act can occasion civil liability.<sup>9</sup> The court declared: "To be actionable, the negligent act must be the moving cause."<sup>10</sup> This statement implies that, to be actionable the injury must have been caused by a force which was in motion at the time of the injury. In nearly every instance a previous negligent act involves some force or motion. At what point does an act, once negligent, become a condition of mere "passive negligence"? Reliance on a passive negligence-condition theory serves only to confuse the issues and "distort and draw out of focus the duty which the law" places upon the defendant.<sup>11</sup>

In cases of statutory violations there is no need to conceal basic policy questions behind confusing proximate cause language.<sup>12</sup> The court need only inquire whether or not the risk presented by the case is within the scope of hazards contemplated by the legislature.<sup>13</sup>

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Manning v. Fortenberry Drilling Co., 107 So.2d 713 (La. App. 2d Cir. 1958) (plaintiff collided with truck parked partially on highway); Burris v. City of New Orleans, 86 So.2d 549 (La. App. Orl. Cir. 1956) (pool of water); Hayes v. Oertel, 195 So. 388 (La. App. Orl. Cir. 1941) (warped wooden boardwalk).

9. Woods v. Employers Liab. Assur. Corp., 172 So.2d 100 (La. App. 1st Cir. 1965); Bertrand v. Trunkline Gas Co., 149 So.2d 152 (La. App. 3d Cir. 1963); Larned v. Wallace, 146 So.2d 434 (La. App. 3d Cir. 1962); Austin v. Sumrall, 141 So. 772 (La. App. 2d Cir. 1932).

10. Monger v. McFarlain, 204 So.2d 86, 90 (La. App. 3d Cir. 1967).

11. Moses v. Central La. Elec. Co., 324 F.2d 69, 72 (5th Cir. 1963).

12. L. GREEN, RATIONALE OF PROXIMATE CAUSE 143 n.11 (1927): "If these terms were used as mere figures of speech to describe vividly various situations, they would not be hurtful. . . . The moment they are crystallized into a formula trouble necessarily begins. They then become not the means of communicating thought but the subjects of interpretation."

13. James, *Statutory Standards and Negligence in Accidents Cases*, 11 LA. L. REV. 95, 99 (1950): "Similarly the effect of broad provisions may be cut down because the harm (though it happened to one of the protected class) was not brought about through the mischief which the statute was designed to prevent. . . ."; W. PROSSE, *LAW OF TORTS* 196 (3d ed. 1964): "[T]he harm suffered must be of the kind which the statute was intended, in general, to prevent."