The Unification of Maritime and Commercial Law through the Comité Maritime International. Sir Leslie Scott, President d'honneur of the Comité, and Mr. Cyril Miller, an Honorary Secretary of the Comité. 1 International Law Quarterly: 482–497.

Commercial law tended in early times to remain uniform because it originated in the custom of merchants of different countries who were linked by sea transport. The Rolls of Oleron, a collection of decisions of a Bordeaux commercial tribunal, formed part of the maritime law in Italy, Spain, Holland and Germany. The law of general average, from the ancient law of Rhodes, was generally adopted and bills of exchange, introduced into England by the Lombards in the early middle ages, became an essential instrument of international trade.

Changes were brought about in commercial law systems by national legislation designed to foster particular trade interests. Another cause of divergence was the growth of the common law in England while the law of continental countries "derived mainly" from Roman law. Methods of interpretation of documents are different under the two systems and such differences developed as that in the law of negligence, where by the common law a plaintiff guilty of contributory negligence recovered nothing while on the continent the proportional rule applied.

Such "wide and inconvenient divergences" of commercial law, even between Britain and the United States, had become manifest that some fifty years ago the great Belgian advocate and statesman, Louis Franck, conceived the idea of forming an international body to unify commercial and maritime law. The Comité Maritime International first met in Brussels in 1897, nine nations being represented. It has its permanent seat in Antwerp, its President has always been Belgian and its constituents are associations which have been established in the principal maritime countries. The Comité selects a particular branch of maritime law, ascertains the law of each country and, after discussion by delegates at a conference, agrees on the best rules. The Permanent Bureau puts these in the form of a draft convention, which is circulated among the national associations. Their reports are discussed at a second conference and the amended approved draft is sent to the Belgian Government; this government convenes a diplomatic conference where a convention is agreed on. The convention is ratified by the coun-
tries concerned, within two years, and each country passes legislation to bring it into effect.

The first branch of law considered was that of collisions at sea and salvage. As a result of the work of the Comité the proportional rule of division of loss was established in England in 1911 by the Maritime Conventions Act. The Comité has also brought about the unification of the law relating to carriage of goods by sea, although credit here must be given also to the International Law Association. The doctrine of frustration of contract was developed between the two wars and, among its first tasks since the second world war, the Comité has set consideration of immunity from legal process of state-owned vessels, and the "Gold Clause", whereby attempts are made to deal with the effects of fluctuation of rates of exchange on payment of claims and on limitations of liability. Two conventions were signed in Brussels in 1926 and 1934, providing for arrest of state-owned vessels and actions against the state, but only a few countries have implemented their provisions. The Comité in its 1947 meeting resolved to request the Belgian government to convene a diplomatic conference to put these conventions into effect.

The Comité at that same meeting examined the question of "Equiparating" the payment of claims and damages so that the "same relative value" might be recovered regardless of differences in exchange rates. A typical claim would be that of the owners of a French vessel suing in the English Admiralty Court for damages suffered in a collision with a Swedish ship. The English court would give judgment in sterling, but the sum in francs ultimately recovered would for several reasons be different from that which would have been recovered in the courts of another country. Foreign Exchange Control varies in different countries, exchange rates are artificial and the English, and perhaps the American, courts apply the rate of exchange current when repair accounts are paid, while continental courts prefer the date when judgment is given or when payment of the claim is made. The Comité decided that it would be imprudent to anchor payment of claims to a "new and untried adventure", such as the International Monetary Fund, and could see "no safe solution" for the exchange problem. However, it was decided that a sub-committee should be appointed to consider it.

Other questions were considered, such as the liability of ship owners for the cost of removal of wrecks and the revision of rules as to interest on general average disbursements and air
and sea rescues. The conference was “essentially a meeting of business men directly concerned in maritime commerce and got through a heavy agenda with real understanding and expedition”.


Double indemnity is the special benefit provision under which double the face amount of a life insurance policy is payable when death has resulted “directly from bodily injury caused solely by external violent and accidental means and was not due directly or indirectly to disease or bodily or mental infirmity”. Sometimes death must occur before a certain age or within a certain number of days after the accident and there is generally no coverage when it results from one of certain causes such as suicide and military service. Double indemnity is intended to assist the beneficiary “at the time of greatest need”. A group of companies in 1946 considered claims of this kind for over seventeen million dollars and paid out over fourteen millions.

A typical case is that of an elderly man who falls on a floor, fractures a hip and dies in a few days. He has for years had difficulty in walking. There is no witness to the fall. Some courts hold in such a case that the beneficiary has not sustained the burden of proof. A Missouri court, on the other hand, held in favour of the beneficiary in a case where the insured, a man subject to dizziness, nervous and with a tendency to fall down while walking, fell, fractured a hip and died. In a Florida case a young man, who had a “seven year history of convulsions”, drove off the road for no apparent reason and was killed. The court held that the inference of accidental injury was greater than that of death due to disease.

In several cases exertion has precipitated heart attacks. A Washington court held in a case of death from coronary thrombosis, after pushing an automobile, that “accidental means were never present when a deliberate act is performed”, unless something additional and unforeseen has occurred. However, recovery was allowed in New York where a man had trudged through snow to get a shovel, commenced to dig out his car and died. The court refused to recognize a distinction between “accidental death” and “death by accidental means” or between “accidental means” and “accidental result”.

A man of sixty-two died of a pulmonary collapse twenty-four hours after an operation necessitated by chronic gall-bladder infection. Recovery of double indemnity was refused.
Death in such circumstances may be rare but is recognized as possible. A Utah court upheld the claim in a case where death had resulted from a pulmonary embolism following an operation, this being “an unexpected result of an intended act”. Some policies contain a limitation that there must be a “visible contusion or wound”. Pallor, blueness of the lips, dilated pupils, a bluish tint in the skin, have all been held not to constitute contusions, but a Texas court decided in 1944 that, since in Texas “heatstroke may be an accidental death”, contusion or wound “must mean the kind of external evidence that would be produced by a heatstroke”.

Mr. Kelly suggests that some of these cases show a tendency to reach unrealistic and extreme conclusions “on rather tenuous legal grounds”. An Oregon court stated that there could be no inference of death by accidental means where there was evidence that a fall might have been caused by mental or physical impairments. Recovery in over-exertion cases is another example of “an extreme interpretation”; it has been held that deaths from over-exertion while doing “natural and customary acts” are not the result of accidental means, but in a recent New York case the act of sandpapering a bathroom panel has been declared not to be a natural and customary act. Recovery for death after a major operation performed without mishap and occasioned by disease is said to be another “unrealistic extension of the coverage”. Perhaps “every unexpected result of a technically correct operation” might be an accident.

The desire to construe the wording of an insurance policy against the insurer seems to have been carried to an illogical extreme and extending the coverage of a policy deliberately is “a sort of judicial larceny”. Permitting the establishment of an “unwarranted liability by a tortured construction of the policy provisions is an ultimate detriment to the insuring public as a whole”.


Jeremy Bentham, who, “among English lawyers, ranks in world-wide reputation with Thomas More and Francis Bacon”, was born in 1748, the son and grandson of attorneys. His great literary achievements were made possible by an unusual combination of circumstances. His father was willing and able to support him and left him half his property; he had a “superb constitution which allowed him to work incessantly”; he did not
marry and so was spared the cares of family life; and an
“enthusiastic henchman”, Etienne Dumont, published much of
his work in France. He was educated at Westminster School
and Oxford and was called to the Bar by Lincoln’s Inn, but
decided to devote himself to the advocacy of law reform and
did not practise.

His guiding principle was that of “utility”, “the greatest
happiness of the greatest number”. His first important work
seems to have been a study of offences and punishments, but
about the same time, 1772-1774, he was studying chemistry,
translating Voltaire and making a critical study of Blackstone’s
Commentaries. The Comment on the Commentaries led to a
Fragment on Government. The most read of all his writings,
the Principles of Morals and Legislation, was printed in 1780.
Others of his more important works were a five-volume Rationale
of Judicial Evidence and a Constitutional Code.

For several years he worked on the plan of a circular prison
building with cells on the circumference and a guard house at
the centre. The Government made a contract with him for a
prison, but repudiated it and Parliament voted him £23,000 as
compensation. A Cuban penitentiary and Joliet penitentiary in
the United States are models of Bentham’s Panopticon.

In the latter part of his life he became a Radical and advo-
cated universal suffrage, the ballot and annual parliaments.
He prepared codes of laws and corresponded with public men
in many different countries, especially in South America, about
constitutional questions. He took great interest in education,
wrote treatises on language and grammar and was a founder
of the University of London.

Bentham’s primary rôle is said to have been “the very
unusual one of legal seer”. He could free himself from the
influences of time and place, could see abuses which others
“accepted uncritically” and could visualize rules which should
obtain “in a perfected legal system”. Dicey called him the
first and greatest of legal philosophers and Maine said that he
did not know a single law reform effected since Bentham’s day
which could not be traced to his influence. A few of the many
reforms made because of him are: the provision of county courts,
the abolition of fictions from writ process, from the barring of
estate tail and from ejectment, abolition of the usury laws and
of arrest in mesne process and the removal of “exclusionary
rules” in evidence. English penal science began with his teach-
ing; his arguments brought about the abolition of the pillory,
of whipping of women and of transportation; the modern system of local government in England, and the modern science of administration, come from his teaching. He coined the expression "International Law" and his few writings on the subject "show amazing prescience". For example, he advocated the institution of a Common Court for the decision of differences between nations, and liberty of the press in each state, which he felt should obviate the necessity of using force to carry out the Court's decrees. Bentham's work in economics was important and he ranks "among the great thinkers of history"; some of his suggestions as to verbs were used recently in the creation of Basic English.

Lord Brougham, defending himself against an attack by Bentham, described him as "a personal friend of mine—a man of extraordinary learning, the father of the English Bar, and the father of law reform".


The chief function of the judge is to see that justice is done, the trial judge by settling litigation and the appellate judge by settling the law. The trial judge has a very important place in the administration of justice; "more than any other public officer, he embodies the dignity of the state and the majesty of the law". Appellate courts, on the other hand, by their interpretation of the rules of law make it possible for law to develop in an orderly way. A third function of the judiciary is to uphold the Constitution as the supreme law. The judge stands between individual and government, between state and nation and between departments of government.

To perform these duties a judge must have character and ability, he must be absolutely honest, both financially and intellectually, and must have the moral courage to risk unpopularity, ridicule or danger. Besides all this he should be a "kindly man". He must know the law and be able to apply it, but the "mere legal scholar without practical experience" and the "legal ignoramus" are both out of place on the bench. Under our system, unlike that of European countries, judges are chosen from the ranks of practising lawyers. They should have practised long enough to have become familiar with life and its problems but not long enough for their minds "to have become warped" by "specialized practice". They must, of course, be independent, "absolutely free of all influence and control".
The judge is primarily responsible for the administration of justice and "cannot use the jury as an alibi". He should be ready to set aside an unjust verdict and so conduct trials that such verdicts will not be rendered. Unfortunately, in many states his power in trials has been limited; in some he must give his charge before the arguments of counsel; in others he must read it to the jury, while in still other states he may not sum up or comment on the evidence or state the issues. These restrictions should not exist, since the judge is "the only disinterested lawyer" in the trial.

Efficient administration is an important factor in connection with the discharge of judicial duties. The judiciary should have the power of self-regulation so as to use the judicial manpower to the best advantage, to see that judicial business is efficiently handled and to modernize procedure. The Chief Justice, an "administrative judge" or a council of judges should have power to assign judges to official work and there should be councils to see that court business is "effectively and expeditiously transacted". There seems no sensible reason why the judiciary should not prescribe its own rules. Judicial conferences at stated intervals are of great assistance to judges in bringing about exchanges of views, keeping them abreast of changes in the law and dispelling provincialism.

In the federal courts in the United States and in a few states, judges are appointed and hold office during good behaviour, but in most states they are elected for a term by popular vote. It is said that the tendency under the appointive system is "to make judges out of politicians", while the elective system tends "to make politicians out of judges". The former seems preferable "since the purpose of the process is the making of judges". It is very difficult for a judge elected for a brief term to maintain his independence, but there is no hope that the appointive system will be generally adopted. The Missouri plan may spread. There, a number of persons are nominated for a judgeship by a committee of judges, lawyers and laymen and one of the nominees is appointed by the Governor for one term. His name is submitted to the electors for approval or disapproval at the next election and succeeding elections as long as he is approved. There is no contest.

A solution of the retirement problem is suggested here, whereby a judge at 70 years would retire at full pay or might continue to hold office and do only such judicial work as he wished to do, his successor assuming "the full responsibility of the judgeship". This is "infinitely better" than compulsory
retirement, no retirement, or retirement with an inadequate allowance. A judiciary should have power to "purge itself of unworthy members".

A judge must never forget that on the bench or off "he never ceases to be a judge", but he should remember too that members of the bar also are officers of the court and "entitled to courtesy and respect". He need not "retire from the life of his community"; it is much better that he should take his full part in it and perhaps provide "intellectual leadership". And, finally, he should not hesitate to undertake unusual tasks when called on by his government. For example, "no one of less stature than a Justice of the Supreme Court" could have undertaken such a task as the setting up of an international tribunal for the trial of war criminals with any hope of success.


As negligence law developed, tort liability was looked on as "shifting a loss" from the person who suffered it to the person who caused it. Only plaintiff and defendant were supposed to be involved and attention became focused on their moral conduct. The result was the general principle of no liability without fault.

Another way to administer losses "of life, limb and property" is by the distribution of loss over society as a whole. The principle of social insurance has been accepted in the industrial accident field but elsewhere the old idea of "liability based on fault" remains in theory. Actually the incidence of tort liability has been greatly changed by the development of liability insurance; the whole group of policy holders pays the greater number of claims now being made against motorists.

Insurance is the dominant factor in inter-family negligence suits and in actions against infants. The cost of the extra risk caused by the "short-comings of youth" has been borne by the insured motoring public generally but this tends now to be thrown on parents by new practices under which higher rates are charged where cars are driven by young members of a family. Insurance companies may shift liability back on individuals by contribution or subrogation, but in many cases, such as employer and employee ones, indemnity claims are rarely pursued.

There is little direct evidence as to whether insurance "dilutes" the deterrent effect of liability. However, other factors
than fear of liability tend to curb carelessness, such as fear of physical injury, bad public or labour relations and fear of discipline. Insurance companies have made great contributions to the work of accident prevention by analyzing past accidents and the working out of safety devices, adjustment of rates and selection of risks. In many fields the effect of liability insurance has been to promote safety and there is no indication that it "leads to increased carelessness".

Accident victims now have greater assurance of compensation as a result of certain developments in insurance policies. Instead of the old strict indemnity policies where liability of the insurer was avoided in many cases, policies now tend to wider coverage; any driver of a car, and members of an insured's family driving other cars, are covered in some automobile policies, and there is also a tendency to give victims "less qualified and more direct access to the insurance itself".

Most accident claims never reach the courts, so that the law that governs them consists of the settlement practices of insurance companies. Studies of these reveal that something is paid in about 85% of motor vehicle accident, death or injury cases where there is insurance. Certainly a very much smaller proportion of claims would be paid if "text book rules of tort law" were applied. Companies and defendants pay small claims rather than defend. On the other hand, while small losses are overpaid, permanent disability victims are greatly underpaid. Their bargaining position is poor, they being generally from the lower income groups and less able to wait for the outcome of litigation.

In conclusion the author of this article says that our accident problem calls for prevention of accidents and compensation for them; that insurance probably furthers the cause of safety and that the main object of accident law therefore is "to promote the well-being of accident victims" if the social cost of this is not too great. Social insurance, he feels, can do this, and only the great development of liability insurance has prevented the "horse and buggy rules of tort law" from going "to the scrap heap". However, what we have is still only partially satisfactory, since many victims still fail for various reasons to receive compensation. It is likely that it will, sooner or later, depending on how progressive the insurance companies are and on the success of "such legislative half measures as compulsory insurance and financial responsibility laws", yield to a system of full social insurance.

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