CORRESPONDENCE

CORRESPONDANCE

TO THE EDITOR:

The seat belt issue continues to occupy the attention of both the courts and the legislature in the United Kingdom.[1] In this country legislative proposals on road safety seem to be somewhat accident prone. Two earlier attempts to provide for the compulsory use of seat belts by front seat occupants having been defeated or withdrawn, the present government now hopes to prove the adage "third time lucky" with the re-introduction of its Road Traffic (Seat Belts) Bill 1976.[2] This enabling measure will render motorists liable on conviction to a maximum fine of £50 sterling. It is proposed that regulations will cover initially only cars and light vans, ninety-five per cent of which are already fitted with belts, and will exempt some individuals from the obligation altogether, probably on certified medical grounds such as severe obesity and pregnancy. If successful these proposals will bring the United Kingdom into line with the majority of her European Economic Community partners.[3]

In the meanwhile, the Court of Appeal has resolved the sharp differences of opinion expressed by judges at first instance by holding that, in the ordinary way, those who travel as front seat occupants, but who fail to wear an available seat belt so that any injuries suffered would otherwise have been avoided or reduced, must bear some responsibility for those injuries. The court, moreover, gave guidance as to the general level of percentage reductions which should be imposed, whilst rejecting as inadequate various reasons commonly proferred as justification for the failure to adopt this "sensible practice".

Froom v. *Butcher*[4] was an appeal from the refusal of Neild J. to apply the apportionment rules in the Law Reform (Contributory Negligence) Act 1945[5] where the unbelted plaintiff car driver suffered head and chest injuries in an accident attributable wholly to the defendant's negligent driving. The trial judge had been much impressed by the plaintiff's honest, if mistaken, belief that he was less at risk if thrown clear rather than if strapped in,[6] saying that the courts were not "justified in invading the

[1] See my earlier comment in (1975), 53 Can. Bar Rev. 113.

[2] Published February 18th, 1976.

[3] The use of belts is in some sense compulsory, though in varying degrees, throughout France, West Germany, the Benelux countries, Sweden and Switzerland and now in Ontario.

[4] [1975] 3 W.L.R. 379, [1975] 3 All E.R. 520.

[5] 8 & 9 Geo. 6, c. 28.

[6] In fact the chance of injury here is increased fourfold.

freedom of choice of motorists by holding it to be negligence . . . to act on an opinion firmly and honestly held and shared by many other sensible people". The Court of Appeal, in the single short judgment of Lord Denning M.R., disposed of this view by reminding us that in determining responsibility the law eliminates the personal equation, the idiosyncratic, to concentrate upon such precautions as would be adopted by the hypothetical reasonable man. In their Lordships' view the scientific evidence as to the value of belts was all one way. Sensible, prudent practice means that they should be worn not only on long trips but also on short trips and whatever the road and weather conditions, both by fast drivers and by the cautious. Nor could the law, given this overwhelming case, admit forgetfulness as an excuse. The high risk argument, namely that contributory negligence was only made out where some peculiarity in the circumstances, such as ice or fog, indicated extra hazard was rejected with equal briskness. In modern traffic conditions, the prudent motorist will appreciate and guard against the risk of accident, however carefully he personally may drive.[7] Almost by definition an accident is a sudden occurrence which is not anticipated so that to attempt to belt up only at this stage will be far too late. Finally the court turned to the degree of contribution. Clearly the driver who negligently caused the accident must bear the greater share of the responsibility, since he is also the *prime* cause of the whole damage. Accordingly, assuming that the defendant is 100% responsible for the accident, it would generally be proper to reduce the plaintiff's damages by twenty-five per cent where the damage would have been prevented altogether had a seat belt been worn.[8] Often, however, the evidence will show no more than that the failure made a considerable difference to the severity of the injuries suffered. Here a reduction of fifteen per cent would generally be proper.

Froom v. *Butcher* received wide publicity in the popular press and so *may* have persuaded some of the "don't knows" to use their seat belts. However, the major part of the task of educating the motoring public as to the risks is still to be done: the next step is likely to be legislative compulsion.

KEVIN WILLIAMS*

---

[7] A view earlier characterised by Shaw J. in *Challoner* v. *Williams*, [1974] R.T.R. 221 as having "a morbid tinge . . . and altogether too lugubrious a doctrine".

[8] *Cf. Gagnon* v. *Industries Brochu Ltée*, [1974] C.S. 28, thirty-five per cent reduction against unbelted sea plane passenger. A decision kindly brought to my attention by Messrs Savoie, Smith, Léger et Lussier, Montréal.

* Kevin Williams, Lanchester Polytechnic, Coventry.