

1952

TORTS-STATUTES-UNSATISFIED JUDGMENT AND HIT-AND-RUN PROVISIONS AS SUPPLEMENTING FINANCIAL RESPONSIBILITY ACTS

Herbert L. Meschke
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Torts Commons](#)

Recommended Citation

Herbert L. Meschke, *TORTS-STATUTES-UNSATISFIED JUDGMENT AND HIT-AND-RUN PROVISIONS AS SUPPLEMENTING FINANCIAL RESPONSIBILITY ACTS*, 50 MICH. L. REV. 1385 (1952).

Available at: <https://repository.law.umich.edu/mlr/vol50/iss8/12>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

TORTS—STATUTES—UNSATISFIED JUDGMENT AND HIT-AND-RUN PROVISIONS AS SUPPLEMENTING FINANCIAL RESPONSIBILITY ACTS—In 1947, North Dakota enacted legislation providing that one who recovers a judgment in an action for damages for personal injuries or death resulting from the operation of a motor vehicle and who cannot execute the judgment because of the defendants' inability to pay and lack of property, may receive payment from the state unsatisfied judgment fund upon application to the court and assignment of the judgment to the state.¹ The fund was created, and is to be maintained,

¹N.D. Rev. Code (1943, 1949 Supp.) c. 39-17; as amended by N.D. Laws (1951), c. 257 and c. 259.

Since the Attorney General may appear upon any application for payment from the fund to show cause why the payment should not be made (§39-1704), what would be the result if he could show that the action might be brought against another who may be liable for the same injury, or that a judgment against a nonresident who is uncollectible within

by a special assessment on motor vehicle owners.² 1951 North Dakota legislation provides that any person who has a cause of action for personal injuries or death resulting from a motor vehicle accident may recover from the unsatisfied judgment fund in an action nominally against the state highway commissioner when the identity of the person or persons against whom the action might be brought cannot be ascertained.³ Upon payment the state is subrogated pro tanto to the rights that the person recovering has against the unascertained person. In both instances, maximum payments out of the fund are limited to \$5,000 on each judgment and to \$10,000 for each accident.

With recognition of the fact that the automobile traffic accident is a constantly recurring event which is not wholly susceptible of elimination, state legislatures for the past 25 years have struggled for a statutory solution of a major problem thereby presented—the injured party's frequent inability to collect damages because the negligent motor vehicle operator is uninsured and otherwise unable to pay damages, or because his identity is unknown.⁴ Abatement of this problem was one of the original stimuli for the so-called motor vehicle financial responsibility acts⁵ which have been adopted in variant form in nearly all the states.⁶ However, it is frequently pointed out that these acts do an incomplete job.⁷ Because of their "one-bite" aspects,⁸ they do not assure compensation to the first victim of any motorist; nor do they assure compensation

the state might be enforced in another state? Unlike similar New Brunswick and Nova Scotia provisions, cited *infra* note 9, the North Dakota act does not specifically require a showing that the action has been brought against all those possibly liable for the particular injury before the unsatisfied judgment may be paid. Neither the Canadian acts nor North Dakota's indicate a specific answer to the nonresident situation. If the answer to the latter problem is that payment may nevertheless be made, it would seem to be an unnecessary gift to all those injured by nonresident motorists.

² *Id.*, §39-1701. Canadian provisions, cited *infra* note 9, maintain the unsatisfied judgment fund by assessing the motor vehicle operators, who pay upon obtaining their drivers' licenses. Query: Which is better policy?

³ N.D. Laws (1951), c. 258.

⁴ For a recent analysis of the social problem see Grad, "Recent Developments in Automobile Accident Compensation," 50 *COL. L. REV.* 300 at 300-303 (1950).

⁵ "The basic scheme [of financial responsibility legislation] leaves all drivers free to operate their vehicles without liability insurance until they are involved in an accident in which personal injury or property damage above a certain minimum amount was inflicted. Upon the occurrence of that contingency, or upon conviction for a serious traffic violation, the owner must prove . . . that he is financially responsible to pay judgments up to a certain amount for accidents arising in the future [and, under the so-called "security responsibility" form of these acts, that he is financially responsible to pay any judgments that *might* arise from the accident that he was involved in, as well]. Such proof usually takes the form of procuring liability insurance. Failure to give such proof . . . and, in many jurisdictions, failure to pay the judgment arising out of the accident . . . leads to the revocation of his driver's license or motor vehicle registration." Grad, "Recent Developments in Automobile Accident Compensation," 50 *COL. L. REV.* 300 at 305 (1950).

⁶ *Id.* at 307, footnote 24, for a recent citation of the state statutes.

⁷ Bohlinger, "Which Road for the Uninsured Motorist," 1951 *INS. L.J.* 433; Moser, "The Road for the Uninsured Motorist," 1951 *INS. L.J.* 849; Baillie, "Manitoba Road for the Uninsured Motorist," 1952 *INS. L.J.* 109; "Recent Developments in Automobile Accident Compensation," 50 *COL. L. REV.* 300 at 311 (1950).

⁸ See note 5 *supra*.

to the victim of the occasional unlicensed operator or of the hit-and-run driver. In borrowing these conjoint provisions from its Canadian neighbors,⁹ North Dakota is the first state to adopt legislation designed to complete the legislative policy begun by its financial responsibility law.¹⁰ The unsatisfied judgment and hit-and-run remedies outlined above fulfill a legislative objective of providing an equal opportunity for all injured by the negligent operation of motor vehicles to get restitution for their personal injuries.¹¹ It is true that the unsatisfied judgment assigned to the state may never be collected; the hit-and-run driver never found, or if ascertained, found to have an effective defense¹² or to be uncollectible. However, the provisions do presuppose full individual liability, in so far as possible. Moreover, in view of the fundamental purpose of compensating the victim of the motorized era, it is not to be expected that the fund should be self sustaining.¹³ Viewed as supplementary to the financial responsibility laws, the writer believes that the unsatisfied judgment and the hit-and-run provisions serve a worthwhile purpose.¹⁴ Perhaps, if the basic policy is phrased broadly, there is no reason why the coverage of both provisions should not be extended to property damage as well as physical injury.¹⁵ It is to be hoped that these provisions will be adopted in other states to supplement their financial responsibility laws.

Herbert L. Meschke

⁹ The following provinces have an unsatisfied judgment provision supplementing their financial responsibility laws: Rev. Stat. of British Columbia (1948), c. 277, §§101-117; Nova Scotia Stat. (1949), c. 37, §8; Prince Edward Island Acts (1950), c. 14, §§99-104 and §114.

The following provinces have both an unsatisfied judgment and hit-and-run provision supplementing their financial responsibility laws: Manitoba Rev. Stat. (1940), c. 93, §§119-128 as amended by Manitoba Stat. (1945), c. 23, §12, and Manitoba Stat. (1947), c. 20, §19; New Brunswick Stat. (1951), c. 22, §17; Rev. Stat. of Ontario (1950), c. 167, §§79-109.

¹⁰ N.D. Rev. Code (1943), c. 39-16.

¹¹ "Is our object to try and see that every motorist carries insurance, or is our object to see that every victim of negligent driving receives reasonable compensation?" Baillie, "The Manitoba Road for the Uninsured Motorist," 1952 *INS. L.J.* 109 at 109.

¹² In the Canadian hit-and-run provisions, *supra* note 9, this possibly appears to be avoided. They provide that the hit-and-run driver, when ascertained, is to be proceeded against by application on the original judgment against the province or nominal defendant. In Ontario and New Brunswick, the judgment is deemed to be a judgment against the hit-and-run driver; in Manitoba, it is expressly provided that he cannot defend against the judgment on the basis of lack of fault. Query: would either provision be constitutional if enacted in one of the United States?

¹³ The fund is self-sustaining in the sense that it is maintained by assessing motor vehicle owners, however. See note 2 *supra*.

¹⁴ Baillie, "The Manitoba Road for the Uninsured Motorist," 1952 *INS. L.J.* 109 at 110, indicates that during the first 5 years that the unsatisfied judgment fund was in operation in Manitoba, 21 unsatisfied judgments were paid out of it, and, during the first 4 years that the hit-and-run provision was in effect, 11 hit-and-run claims were paid out of the fund. These figures are indicative that the financial responsibility acts do not fulfill the legislative policy they began.

¹⁵ New Brunswick and Ontario provide for payment of unsatisfied judgments for property damage up to \$1,000, but have not extended this to hit-and-run claims. See *supra* note 8.