## 5.30F LIABILITY FOR INJURY DUE TO MECHANICAL DEFECT OR FAILURE (Approved before 1984)

### 1. Liability of Owner in General

The law imposes upon the owner of a motor vehicle the duty of exercising reasonable care to have such vehicle in safe condition and properly equipped and maintained for use upon the highway. This duty includes the obligation of exercising reasonable care in the inspection of the vehicle for defects or other conditions which would render its use unsafe. An owner of a vehicle is chargeable with knowledge of such defects or conditions in the vehicle as a reasonable inspection would reveal. For failure to perform this duty a defendant is liable in money damages to one who suffers injury thereby.

In order for the defendant to be liable, it is necessary that you find that the defect or condition existed, that it was known to the defendant or could have been discovered by him/her in the exercise of reasonable care on his/her part, and that it was the, or a, proximate cause of the plaintiff's injury.

***NOTE TO JUDGE***

The above or the alternate form hereunder would be applicable where the use of the vehicle is by the owner or his/her agent, or, with reference to the condition of the vehicle, where the owner entrusts it to another for operation upon the highway. It is not intended to cover defects which originate after the vehicle leaves the possession of the owner or his/her agent.

*See* separate charges as to liability for breach of warranty (Model Civil Charges 4.21 and 4.22) as in *Henningson v. Bloomfield Motors, et al.*, 33 *N.J.* 358 (1960).

## ALTERNATE FORM

It is the duty of the owner of the motor vehicle to exercise reasonable care to see that it is in a reasonably safe condition for operation upon the highway, and that it is so equipped and maintained as not to become a hazard to other users thereof. The failure on the part of the owner to exercise reasonable care as to the equipment, inspection or maintenance of the vehicle constitutes negligence and renders him/her liable for damage to the person or property of another who may be harmed as a proximate result thereof. If the defect or condition which brought about the plaintiff's injury could have been discovered by the defendant, in the exercise of reasonable care on his/her part, it is no defense that he/she had no actual knowledge of the defect. However, if the defective condition in question was not known to the defendant and could not have been discovered by him in the exercise of ordinary care on his/her part, he/she was not negligent and hence would not be liable for the plaintiff's injury.

### *NOTE TO JUDGE*

The circumstances of the individual cases will dictate which of the above alternative forms should be used. It should be kept in mind that

the liability of the owner may extend to injuries sustained by the operator of the vehicle if he/she was exercising reasonable care.

Either of the above versions may be modified to cover the obligation of one other than the owner. *Albert v. Feldstein*, 21 *N.J. Super*. 503 (App. Div. 1952).

***NOTE TO JUDGE***

*See* the American Law Institute's *Restatement of Torts*, § 402A (1964 Revision).

As to obligation of one who operates a vehicle under a governmental franchise, *see Felbrant v. Able*, 80 *N.J. Super*. 537 (App. Div. 1964); *Honey v. Brown*, 22 *N.J*. 433 (1952).

As to liability of garage repairman, *see Zierer v. Daniels*, 40 *N.J. Super*. 130 (App. Div. 1956).

As to liability of owner of car when driven by repairman's employee, *see Ford v. Fox*, 8 *N.J. Super*. 80 (App. Div. 1950).

A manufacturer and a dealer are liable, regardless of privity, for injuries sustained by the wife of the buyer of a vehicle by reason of a defect therein. *Henningson v. Bloomfield Motors, et al*., 33 *N.J*. 353 (1960) (breach of warranty case); *see also*, *Pabon v. Hackensack Auto Sales, Inc*., 63 *N.J. Super*. 476 (App. Div. 1960).

<u>*RES IPSA LOQUITUR*</u>.
Where through an instrumentality under the exclusive control of the defendant there is an occurrence which in the ordinary course of things would not take place if the person in control were exercising reasonable care, the occurrence thereof in the absence of explanation has been held to be *prima facie* evidence of negligence in certain cases. *Rapp v. Butler-Newark Bus Company*, 103 *N.J.L*. 512 (1927) (rear wheel of bus came off); *Gaglio v. Yellow Cab Co*., 63 *N.J. Super*. 206 (1960) (front wheel locked). It is to be noted that the above cases involved passengers in common carrier vehicles. *See*, however, 24 *A.L.R*. 2*d*. 161 (1952).

DEFECTIVE ACCELERATOR.
*Hennig v. Booth*, 4 *N.J. Misc*. 150; 132 *A*. 294 (Sup. Ct. 1926).

DEFECTIVE STEERING MECHANISM.
*Brenson v. Scott*, 9 *N.J. Misc*. 1320; 157 *A*. 550 (Sup. Ct. 1931).

FAULTY BRAKES.
*Stiegler v. Neuweiler*, 91 *N.J.L*. 273 (E. & A. 1917); *Schriener v. Del. L. & W.R.R.*, 98 *N.J.L*. 899 (E. & A. 1923); *Feury v. Reid Ice Cream Co*., 2 *N.J. Misc*. 1008; 126 *A*. 462 (Sup. Ct. 1924); *Hinsch v. Amirkanian*, 7 *N.J. Misc*. 274; 145 *A*. 232 (Sup. Ct. 1929); *Wilkerson v. Walsh*, 115 *N.J.L*. 243 (E. & A. 1935); *Alpert v. Feldstein*, 21 *N.J. Super*. 503 (1952).

DEFECTIVE ROAD LIGHTING EQUIPMENT.
(*See N.J.S.A*. 39:3-53 *et sec*.); *Maini v. Hassler*, 38 *N.J. Super*. 81 (App. Div. 1955); *Zauber v. VanWagoner*, 12 *N.J. Misc*. 473; 172 *A*. 730 (Sup. Ct. 1934); *Hamilton v. Althouse*, 115 *N.J.L*. 248 (E. & A. 1935); *Gunnion v. Fern*, 6 *N.J. Misc*. 26; 139 *A*. 893 (Sup. Ct. 1928); *Halrin v. Tillon*, 2 *N.J. Misc*. 1100; 126 *A*. 665 (Sup. Ct. 1924); *Trefty v. Kirby*, 7 *N.J. Misc*. 555; 126 *A*. 665 (Sup. Ct. 1929); *Jacobus v. McEwan*, 2 *N.J. Misc*. 196 (Sup. Ct. 1924); *Julich v. T.A. Gillespie Co*., 7 *N.J. Misc*. 630; 146 *A*. 785 (Sup. Ct. 1929); *Osbun v. DeYound*, 99 *N.J.L*. 284 (E. & A. 1923); *Steber v. Malanka*, 14 *N.J. Misc*. 141; 182 *A*. 890 (Sup. Ct. 1936), *aff'd*, 117 *N.J.L*. 443 (E. & A. 1937); *Honey v. Brown*, 22 *N.J*. 443 (1956); *Mattero v. Silverman*, 79 *N.J. Super*. 449 (App. Div. 1963); *Nicolosi v. Knight*, 135 *N.J.L*. 515 (E. & A. 1947).

LIABILITY UNDER I.C.C. USAGE.
Where independent contractor who used truck of one having an interstate commerce license, was negligent in parking the truck on shoulder of highway without rear lights of truck being lighted and automobile ran into truck, the one who had the Interstate Commerce Commission license was liable for injuries sustained by the driver and occupants of automobile. *Honey v. Brown*, 22 *N.J*. 433 (1956).

***ADDITIONAL NOTES AS TO DEFECTS IN GENERAL***

Lights, driving without, or with improper. 21 *A.L.R.* 2d 7 (1952); 21 *A.L.R.* 2*d* 209 (1952); 67 *A.L.R.* 2*d* 118 (1959).

Tires, blowout or other failure of. 24 *A.L.R.* 2*d* 16 (1952).

Wheel, detached, *res ipsa loquitur*, 46 *A.L.R.* 2*d* 110 (1956).

Steering mechanism, break of, or defect in. 23 *A.L.R.* 2*d* 539 (1952).

Rear view mirror, lack or inadequacy of. 27 *A.L.R.* 2*d* 1040 (1953).

Inhalation of gases or fumes from motor vehicle exhaust, owner's or operator's liability for passenger's injury or death. 56 *A.L.R.* 2*d* 1099 (1957).

**2. Liability of Bailor for Consideration**

The bailor of a motor vehicle for the mutual benefit of the parties is under a duty to use reasonable care and diligence to furnish a vehicle which is reasonably fit for the purpose for which it is to be used. This duty includes the obligation of making a reasonable inspection of the vehicle for defects or conditions liable to constitute a source of danger, and to correct such defect or give warning to the prospective user of such defects or conditions of which the bailor has knowledge.

**Cases:**

*Restatement, Torts,* § 392; *Nelson v. Frehauf Trailer Co.*, 20 *N.J. Super*. 198 (1952) *aff'd* 11 *N.J*. 413 (1953); *Mason v. Niewinski*, 66 *N.J. Super*. 358 (App. Div. 1961); *Union County U-Drive It v. Blomely*, 48 *N.J. Super*. 252 (App. Div. 1958); *M. Dietz & Sons, Inc. v. Miller*, 43 *N.J. Super.* 334, (App. Div. 1957); *Schimek v. Gibb*

*Truck Rental Agency*, 69 *N.J. Super*. 590 (App. Div. 1961); *Bratka v. Castle's Ice Cream Co*., 40 *N.J. Super*. 576 (App. Div. 1956); also, 46 *A.L.R.* 2*d* 404 (1956) 60 *A.L.R.* 2*d* 350 (1958).

### 3. Manufacturer's Liability

The manufacturer of an article, such as an automobile, which while not inherently dangerous, may become so when put to the use for which it is intended, owes to the public the duty of employing reasonable care, skill and diligence in its manufacture, assembly and inspection, and of exercising reasonable diligence to see that it is reasonably fit for the purpose for which it is intended. This duty of reasonable care extends not only to the purchaser of the vehicle but to all persons who may reasonably be expected to use the vehicle or be in the vicinity of its use.

**Cases:**

*Heckel v. Ford Motor Co*., 101 *N.J.L*. 385, 387 (1925); *Henningson v. Bloomfield Motors, et al*., 33 *N.J*. 358 (1960); *Pabon v. Hackensack Auto Sales, Inc*., 63 *N.J. Super*. 476 (App. Div. 1960). See also, *O'Donnell v. Asplundh*, 13 *N.J*. 319 (1953); *Clark v. Standard*, 8 *N.J. Misc*. 284 (1930); *Sinatra v. National X-ray*, 26 *N.J*. 546 (1958).

The duty of inspection for the purpose of locating latent as well as patent defects which could be ascertained by the exercise of reasonable care on its part. *Sinatra v. National X-ray, supra*.

It is not enough that the defendant shows that it required reasonable tests of its equipment but it must appear that these tests were actually applied in a reasonably careful manner. *O'Donnell v. Asplundh Tree Expert, supra*.