Pedestrian-Motor Vehicle Accidents:
Tort & Accident Benefits Law to Know

Presented by:

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Introduction

- Statistics on pedestrian MVAs
- Advice to clients
  - Tort
  - Accident Benefits
Tort Law
Overview & Relationship to Other Judicial Systems

- 1 MVA can = tort, CC charge & HTA charge
- Different burdens of proof
- Onus (generally)
- Impact of charges/convictions in tort
Reverse Onus

- “Pedestrian” under *HTA*
- s. 193 of *HTA*
- Applicable to MVAs on “highway”
- Evidentiary implications:
  - Trial
  - Expert reports
Contributory Negligence
Contributory Negligence: The Concept

- Liability is not binary
- Reduces damages
- 3 ways to be contributorily negligent:
  1. Caused the accident
  2. Put himself/herself into foreseeable harm
  3. Caused severity of the injury
Contributory Negligence: Accident/Foreseeable Harm

- Obligations & expectations of motorists
  - Reverse-onus discharged by showing *no* negligence
  - Higher duty at street crossings, but sharp look-out otherwise
  - Assume pedestrians will behave rationally
  - Near school/playground, drive slowly & lookout for kids
Contributory Negligence: Accident/Foreseeable Harm Cont.

- Duties to kids:
  - Reduce speed
  - Keep proper lookout
- Kids are unpredictable so take precautions
Contributory Negligence: Accident/Foreseeable Harm Cont.

- Obligations & expectations of pedestrians
  - No *absolute* right to cross
  - Duty to exercise due care
Contributory Negligence: Accident/Foreseeable Harm Cont.

- E.g. Circumstances of Contributory Negligence
  - Dart-out
  - Crossing not at intersection
  - Crossing at night in dark clothes
  - Stumbling onto highway
  - Not keeping proper lookout

- No default % → Fact based
Contributory Negligence: Severity of Injury

- Cyclists → helmets
- Proximate cause of injury
- Expert evidence adduced by defence
Tender Years Doctrine

- Concept
- Ages 13+
Negligent Supervision

- Concept & allegations
- Ways responsible adult is sued
Hit and Runs
Hit and Runs: Where Plaintiff Insured

- s. 265(1)(a) requirement for UID coverage
- Sue own insurer: 2 levels
- O.A.P. 1
  - “Insured persons”
  - If “hit by” a UID
  - $200K limits
Hit and Runs: Where Plaintiff Insured

- OPCF-44R
  - “Insured person”
  - If “struck by” a UID
  - Policy limits

- Broad definition → “Walked into”
Hit and Runs: Where Plaintiff Insured  Cont’d

- OPCF-44R: Corroborated by “other material evidence”
  - Independent witness evidence
  - Physical evidence indicating involvement of UID
- “Independent” = Extrinsic, not neutral
- Indicating = Sign of
  - Engineering evidence
  - Injuries
Hit and Runs: Where Plaintiff Not Insured

- The Fund
- UID Coverage
- Reasonable efforts to identify
- $200K limit
Accident Benefits
Overview

- No-fault
- Main categories of benefits
- Insurer to whom apply
Pedestrian “Accidents”

- s.3(1) SABS: Use or operation of automobile directly causes
- 2 part test
  - Purpose test
  - Causation test
- Pedestrian struck by vehicle
- Pedestrian who fell by vehicle?
Conclusion

- Nuances

- Importance of investigation
  - Obtaining the complete, unredacted police file;
  - Speaking directly with witnesses;
  - Going to the scene;
  - Taking photographs of the scene;
  - Reviewing Google Earth;
Conclusion Cont’d

- Reviewing online news articles and videos;
- Obtaining 911 calls;
- Seeing whether any private retail stores or homes in the area had surveillance that may have captured the area of the accident;
- Obtaining the Defendant’s dash cam video;
- Obtaining the defendant’s automobile property; damage file;
Conclusion Cont’d

- Downloading the data from the Defendant’s event data recorder (AKA the vehicle’s “black box”); and,
- Retaining an engineer.
Thank You

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Also, thanks to my summer student, Allahnah, for creating this power point!