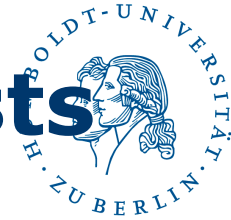


The Future of Automobile Liability and Insurance

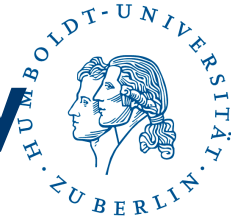
Berlin, 19 January 2017

The Present: Focus on Motorists



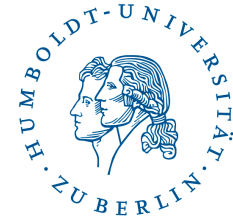
- Liability of drivers and keepers of automobiles
 - Strict liability of keepers.
 - Negligence liability of drivers.
 - In cases of accidents between motorists, apportionment of liability as to the relative degree of fault.
- Insurance coverage
 - Third party rather than first party insurance.
 - Mandatory third party insurance, with relatively high minimum coverage of around EUR 7.5 million for personal injury and death and around EUR 1 million for property damage (per accident).
 - Direct claim of accident victims against motor insurers.
 - Motor insurers allocate the costs of accidents between them on the basis of collective settlement agreements – knock for knock.
 - Same with claw-back claims of public health insurance carriers for the costs of treatment of accident victims. – Lump sum settlements.

The Present: Products Liability



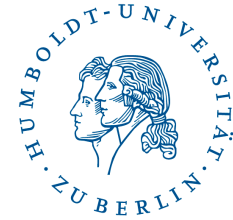
- Products liability of car manufacturers
 - Hybrid of fault-based and strict liability under European Directive 85/374/EC.
 - Manufacturer is liable for harm caused by defects in construction, production and instruction.
 - Cases involving traffic accidents are extremely rare. Exception: BGH VI ZR 107/09 – Airbags.
 - Less than 1 percent of the costs of traffic accidents are shifted to carmakers; 99 percent remain with the keeper/driver.
- Products liability insurance
 - Provided by the insurance industry and contracted for on a voluntary basis. No duty to insure.
 - No direct claim of victims against insurers.

The Present: Evaluation



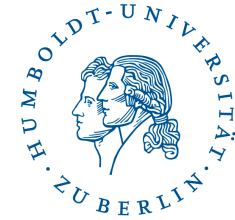
- Current regime with its focus on keepers/drivers seems reasonable.
 - Cars conform to a high level of safety; defects are exceedingly rare; reputational concerns of manufacturers weigh in heavily, particularly because traffic accidents threaten the property and bodily integrity of the keeper/driver as well.
 - Most traffic accidents are caused through the fault of (one of) the drivers involved: recklessness, negligence, inadvertence.
 - Allocation of accident costs to keepers/drivers and their insurers generate incentives to take care and to choose the efficient activity so that utility exceeds total costs.
- Liability of manufacturers for defects is indispensable for their incentives to take care, to internalize risk caused by their products and to price them adequately.

The Present: Evaluation



- Familiar critique of the system: High administrative costs.
- However, in its current form, traffic accident liability and insurance presents a well-oiled system of loss-shifting.
 - Motor insurers dominate as repeat players
 - Specialized plaintiff's bar
 - Many cases settled without court intervention
 - Collective settlement agreements between insurers and public insurance carriers

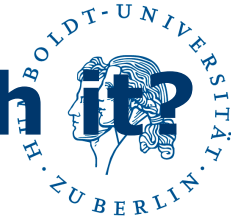
The Future: What will change



- To the extent that cars do the driving, the responsibility of the keeper/driver tandem diminishes.
 - Automated functions cannot be influenced by the driver.
 - Incentives to take care need not be gauged towards driver.
- Vice versa, importance of products liability and insurance of car manufacturers increases.
 - Manufacturers must be held responsible for defective automated cars in order to generate incentives to take care.
 - Concept of “product defect” needs to be broken down by the courts, with the help of standard setters, and with a view to automated functions in cars:

“How safe does an automated car need to be?”

The Future: What's wrong with it?



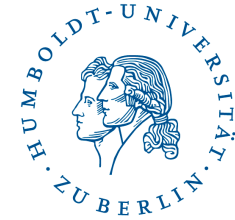
- From a social welfare perspective, the shift from a liability and insurance system centered around drivers and one focused on car manufacturers is neutral.
- Whether the overall costs of traffic accidents go up or down or remain constant is a matter of speculation. However, if the promises of automated driving hold, they will diminish.
- Whether the costs of accidents are allocated to drivers or to manufacturers, they eventually will be borne by keepers/drivers. They will have to pay for the costs of motor accidents:
 - Either “directly”, through premiums paid on their liability insurance.
 - Or “indirectly”, through a higher price charged for the car, a price that reflects the premiums the manufacturer pays to his products liability insurance carrier.
 - For the consumer or other car user it seems to be a wash.

The Future: Concerns and caveats

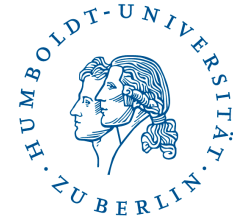


- Problem 1: Victims may lose their one-stop shop for obtaining prompt compensation
 - Combination of strict liability of keeper, mandatory liability insurance with high ceilings and *action directe* against insurance carriers provides adequate compensation within a reasonable time and at relatively low administrative cost.
 - Shift towards products liability and insurance should not disturb this one-stop shop mechanism.
 - Scope of strict motor liability (and insurance) extends to harm caused by failure of automated functions. German lawmakers even intend to abolish caps on strict liability in order to channel all liability towards the keeper and his insurer. – Reasonable.
 - Second step must be shift from motor insurer to products liability insurer in cases where accident was caused by defect of automated car. – Settlement between insurers ensures low administrative cost.

The Future: Concerns and caveats



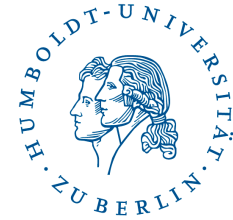
- Problem 2: Activity levels
 - Currently, keepers/drivers bear the costs of traffic accidents, internalize social costs, adjust activity levels. Drivers who use their cars a lot, cause more accidents, pay higher insurance premiums.
 - If substantial part of the costs of accidents are allocated to manufacturers who in turn add a premium to the prices charged for automobiles, car owners pay for the expected costs of accidents in the form of a higher purchase price.
 - Motor insurers set premiums with a view to the amount of miles driven per year (amongst other factors); difficult to see how manufacturers could do the same.
 - As long as manufacturers have to pay for harm caused by defective cars, there is no cross-subsidization between drivers as costs of residual harm (together with costs of negligent driving) remain with the driver.



The Far Future: Products liability will take over

- The driver drops out of the accident theatre: The more automated functions cars feature, the less important the driver becomes.
- Products liability will gradually take over motor liability.
- Two-step system will become inefficient:
 - First: Channeling of the costs of accidents towards the driver.
 - Second: Shifting costs from drivers and their insurers to manufacturers and their insurers.
- Replacement of the given one-stop shop system by another one-stop shop system.

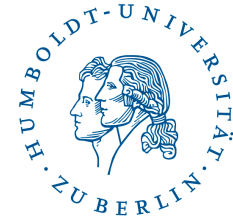
The Far Future: First Party Insurance



Assumptions

- In a world of fully automated cars, the manufacturers will bear the entire cost of accidents.
- Fully automated cars will operate within an integrated ecosystem consisting of all the other cars in a given area, roadside infrastructure, GPS systems and central systems administration.
- Traffic victim will have to “sue a network”.
- Disentanglement of “individual” causation, identification of “product defect”, allocation of responsibility to discrete actors will become difficult and costly.

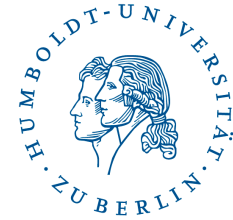
The Far Future: First Party Insurance



Consequences

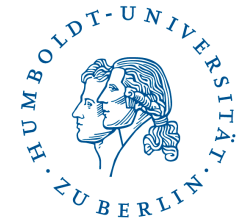
- Car manufacturers will transform themselves from independent competitors to participants in the joint network of road-based land transport.
- As the network must assume responsibility for any defect within its scope, the network will internalize the full costs of accidents anyway.
- The difference between first-party and third-party insurance collapses.
- Cars will be “sold” together with an insurance package, guaranteeing benefits to the driver in cases of injury.

The Far Future: First Party Insurance



Consequences

- Price charged for car will be contingent on the intensity of its use: The more you drive, the more you have to pay.
- No-fault plans will finally take over.



**Thank You for Your
Attention!**

