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# Masthead

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# WESTERN RESERVE LAW REVIEW

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## NOTES

### *Liability of the Unconscious Driver*

Today, liability of the insane driver for tortious conduct is no longer an open question. In recent years, the great majority of courts have imposed liability upon the insane individual despite lack of moral blame.<sup>1</sup> Certainly one would not deny that here we are imposing a form of strict liability.<sup>2</sup> In contrast to this responsibility, the courts, almost as one voice, have held that the unconscious driver is to be excused for his injury to the completely innocent plaintiff because it was "utterly without his fault."<sup>3</sup> This contrast rings a dissonant bell. Legal reasoning which

<sup>1</sup> Williams v. Hays, 143 N.Y. 442, 38 N.E. 449 (1894) (ship captain); Sforza v. Green Bus Lines, 150 Misc. 180, 268 N.Y.S. 446 (1934); Leary v. Oates, 84 S.W.2d 486 (Tex. Civ. App. 1935); RESTATEMENT, TORTS § 283 (1948 Supp.); see Ellis v. Fixico, 174 Okla. 116, 50 P.2d 162 (1935); Parke v. Dennard, 218 Ala. 209, 118 So. 396 (1928) (dictum); cf. White v. White, 2 All E.R. 339 (1949) (dissenting opinion).

<sup>2</sup> "No statement has been found in any recent case decided on common law principles which even suggests that an insane person should not be liable for harm unintentionally inflicted by conduct which would be negligent in a normal adult. . . ." RESTATEMENT, TORTS § 283 (1948 Supp.).

<sup>3</sup> Cohen v. Petty, 65 F.2d 820 (D.C.Cir. 1933); Waters v. Pacific Coast Dairy, 55 Cal. App. 2d 789, 131 P.2d 588 (1942); Soule v. Grimshaw, 266 Mich. 117, 253 N.W. 237 (1934); Lagasse v. LaPorte, 95 N.H. 92, 58 A.2d 312 (1948); Harrington v. H. D. Lee Mercantile Co., 97 Mont. 40, 33 P.2d 553 (1934); Lehman v. Hayman, 164 Ohio St. 595, 133 N.E.2d 97 (1956); Weldon Tool Co. v. Kelley, 81 Ohio App. 427, 76 N.E.2d 629 (1947); La Vigne v. La Vigne, 176 Ore. 634,