

# The Legal Liabilities Resulting from a Traffic Accident: A Comparison between Spain and Japan

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## 要 旨

今日、科学技術の発展により自動車・航空機などが一般化し、交通の利便性が格段に向上した。しかしその反面様々な場面で事故の起こる可能性が高まっている。それらの事故の中で特に自動車の交通事故から生ずる法的な責任問題を検討することが必要になっている。法的な立場からすると、交通事故が発生した場合、事故を起こした加害者は、「行政上」、「民事上」、「刑事上」の3つの責任を負うことになる。本研究は、交通事故とその3つの責任について、大陸法の法伝統に則ったスペインとその法伝統を取り入れながらも、独自の法制度を作った日本との比較を行い、両法制間の類似点と相違点を明らかにしようとするものである。

**Keywords:** Civil Liability, Criminal Liability, Administrative Liability, Spain and Japan  
Comparative Study

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## **I. Introduction**

At first sight, it could be easy to say that between Spain's and Japan's Legal Systems, there are many differences and many similarities in the legal liabilities resulting from traffic accidents. However, that simple assumption does not tell anything, unless a further detailed analysis concerning this issue is pursued. Both countries currently establish administrative, civil, and criminal liabilities, in addition with compulsory vehicle insurance laws to compensate personal and/ or material damages to an injured party. Spain on the one hand, keeps a rooted civil (continental) legal tradition (Merryman 1969); Japan on the other hand, has created a hybrid system by introducing parts of the common legal tradition to the continental legal framework. In recent decades, the enormous advances in technology have increased the possibilities of accidents in many settings including road traffic, which has made the issue of *liability* a striking, appealing one in the field of law. When someone causes a traffic accident, in which the life of a human being is brought to an end, his or her body is seriously injured, or material damages are caused, the issue of law arises. Thus, from the complex range in the negligence liability area, the road traffic sphere will be the main concern in this dissertation.

The field of traffic psychology has extensively demonstrated that most traffic accidents (80-90%) <sup>1</sup>are due to human factors rather than external circumstances (Erenius 1976). This relevant information makes important cooperation to the study of negligence, which deals with all those who unintentionally, but "carelessly", "wantonly" or "grossly" caused the death, or bodily injures of a road-user. The current study re-explores the area of negligence including the current theoretical trends existing in the continental legal tradition, in countries such as Spain, and Japan in an ample sense since it considers three types of liabilities effected by a traffic accident, administrative, civil, and criminal ones. In the continental legal tradition, the sources of law are restricted to the statutes; legal precedents are not considered as valid sources of law. In addition, the application of the statutes by way of analogy is forbidden in the interpretation of criminal law. <sup>2</sup> In these two countries, conditions of traffic accidents are registered as follows. In the year 2000, the number of victims involved

traffic accidents in Spain amounted to 155,557, among whom 5,776 resulted in death and 27,764 were seriously injured (*see table 5, in the appendix*).<sup>3</sup> In Japan, traffic accidents totalled 1,164,763 victims, among whom 9,066 resulted in death, and 80,104 were seriously injured (*see table 6 in the appendix*). Thus, as stated above, to analyze how this traffic reality is addressed from the legal perspectives and especially, in the area of liabilities resulting from traffic accident will be the main concern of this study.<sup>4</sup>

## II. Triple liability in both countries

A triple liability system (administrative, civil and criminal) permits Spain as well as Japan to have several alternatives to regulate the increasingly challenging road traffic spectrum, specifically in the part concerned with traffic accidents, and drivers' behavior.

## III. Spain

### A. Administrative Liability

The administrative regulations concerning the field of traffic initiated with the Highway Code, and Annexes in a Decree emitted in 1934. In 1989, the law about Traffic, Motor Vehicles Circulation and Traffic Security (Law 18) was enacted and published in the State Official Bulletin nº 178. Another major development occurred in 1990, the Royal Legislative Decree 339, that approved the articulated text about Traffic Law, Traffic of Engine Vehicles, and Traffic Security was published in the State Official Bulletin nº 178. Other decrees making slight modifications to the current 1992 Highway Code took place in 1992, 1994, and 1995.<sup>5</sup>

The final version of the Highway Code **provides the government with power** to make the necessary arrangements to develop it. However, the necessity to create an articulated text covering the whole traffic phenomenon creates a dilemma between the requirement to abandon the intention to create and publish only one set of laws such as the currently enforced Highway Code, and the other extreme, consisting of the disintegration of the Highway Code, in numerous Ordinances causing a needless increase of laws. The current Highway Code of Spain is formed by five titles.<sup>6</sup> Title I "rules about traffic" regulates some important matters such as drivers' general rules (ch 3), rules about alcoholic drinks and narcotics (ch 4), and psychotropic substances (ch 5). Most of these violations fall under the category of serious offenses. Title

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II "vehicles and traffic" includes issues such direction of traffic on the road (ch 1), speed (ch 2), rights of way (ch 3), overtaking (ch 7), usage of lights (ch 10), and drivers warnings (ch 11). Title III "other traffic rules" considers aspects such as seatbelts, helmets, and other security elements (ch 2) driving periods and rests (ch 3) pedestrians (ch 4) animals (5), and conduct in case of emergency (6). Title IV "about sign posting" concerns types and meanings of traffic signs and road marks (ch 5). Finally, Title V addresses the issue concerning "vehicles signs". The traffic laws have only a merely administrative effect, when the driver commits a traffic violation not penalized by the Penal Code, he or she is not arrested. The following table gives an illustration of the administrative fines based in § 65 of the Law about Traffic, Motor Vehicles Circulation and Traffic Safety.

**Table.1** Traffic Infringements after the Reforms Implemented from the Middle of January 2002

Offense Level	Administrative Pecuniary Sanction	Other Measurements
Light	Until 91 € (Euro)	None
Serious	From 92 € to 301 €	Possible suspension of the driving permit or license up to 3 months
Very Serious	From 302 € to 302 €	Suspension of the driving permit or license up to 3 months
Others*	From 94 € to 1,503 €	Suspension of the license up to one year

\* Infringements such as driving without the corresponding authorization, without matriculation, without completing the vehicle's transference for not complying with the required technical conditions of security, etc.

Source: The original is presented in Spanish in the web page <http://www.dgt.es/index.html> by the Traffic Direction of Spain's Interior Ministry.

At the end of last year (2001), Spain increased the strictness ('tough policy') of the traffic regulations with the intention to decrease the traffic accident-rate.<sup>7</sup> Some of those modifications are as follows: the Title II "Norms concerning the behavior while driving" gives special attention to the utilization of cellular phones while driving and the installation of an antiradar system is typified as a serious violation (§ 11). Drivers will be able to use only a non manual-cellular phone which is installed in the car. The § 65 of the current law refers to the following general traffic law violations:

1. The actions or omissions contrary to this law, or the application rule-manuals will have the nature of administrative infringement, unless the administrative infringement is classified as a criminal violation too. When the offender is prosecuted criminally, the administrative procedures are delayed until the criminal procedure is over.

2. The following violations are typified as very serious:

- a. negligent driving,
- b. to throw in the road or its surroundings objects that could produce fire or traffic accidents,
- c. the infringements of the speed limits,
- d. to stop and park in dangerous places interrupting the flow of traffic,
- e. to circulate without lights,

5. When the following infringements do not constitute a criminal offense, it will become a very serious traffic violation:

- a. to drive over the limit of alcohol permitted by the law or stupeficient, psychotropic or any other substance with mind-altering effects,
- b. resistance to take the drug detection test by those involved in a traffic accident,
- c. dangerous driving,
- d. the excess of the vehicle's wage in a 50%,
- e. the excess of 50% in the vehicle's speed, etc.

How a driver can lose and recover his or her driving licence (§ 67): a driver who within two years has committed three serious violations, besides the monetary sanction he or she will suffer a definite revocation of the driving license. To rate the monetary sanction the administrative authorities will take into account the seriousness, and transcendence of the act, as well as the potential danger caused. However, all those drivers whose driving license has been revoked for an indefinite period could request for the cancellation of the revocation, by taking and passing an traffic awareness course in an authorized center. This stops the effect of the indefinite revocation and changes it to a maximum of three months. If the driver breaks the license suspension period after performing that process, at first, he or she will receive a driving license suspension for one year. In case the driver repeats the offence for a second time, the driving-license will be subject to a new indefinite revocation. Besides the course of safety awareness, the law permits another way to avoid the indefinite driving-license suspension: a driver can take again the driving-license examination, although he or she cannot obtain a new driving license without passing the driving safety awareness course.

## **B. Civil Liability**

In case of personal and/ or material damages liability, Spain's legal system refers to §§ 1902,1902, 1903 and 1904 of the Civil Code (CCS), § 19 (and § 116.1 to § 122) of the Penal Code (PCS), and any other

disposition stated in the "Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law." <sup>8</sup>  
This study, takes as a base the book titled "Penal and civil liabilities resulting from a traffic accident"  
(Caballero 1998).

### *1. Civil Code*

In the book IV "Obligations and Contracts", "The obligations originated by culpa or negligence" (ch 2) from § 1902 to § 1904 of the (CCS) holds drivers liable for risk, personal and material damages. In this case, material or personal damages caused negligently to another road user by the driver. In § 1902, the general tort principle states: "One who by action or omission negligently causes damages to others he or she has the obligation to compensate the damage caused." § 1903 states "The obligation imposed by the previous article applies not only to the perpetrator's own acts or omissions, but also to those who should respond for it." The parents are held responsible for the damages caused by their sons and daughters under their guardianship. In addition, guardians are held liable for the damage caused by the minors or those with physically disability under their guardianship. Moreover, the owners or directors of an establishment or enterprise are held liable for the damages caused by their employees while accomplishing their tasks . . . the liability expressed in the current article shall be exempted, if the guardians show they have used all the diligence of good parents or good administrators to prevent the damage. According to § 1904, the administrators after having paid for the damages caused by those under their control, can file a compensation request for the same compensated amount.

### *2. The Penal Code*

§ 19. Minors of 18 years of age will not be criminally liable according to the PCS. He or she shall be held liable by the law establishing the penal liability for minors.

Other articles of the (PCS) referring to civil liability: **In Chapter II, "The persons civilly liable" in the following articles, the relationship between the PCS and the CCS is stated.**

§ 116 ( 1 ) A person criminally liable of a crime or fault is also civilly liable as well, if from the act, damages and detriments are caused. If there are two, more held liable for a crime, or a fault, the judges or tribunals shall establish the amount, that each of those held liable shall respond for it.

(2) Perpetrators and accomplices, each of them in its respective category, will be jointly held liable for their quota of participation, and shall respond economically for the corresponding quota of the others held liable.

The secondary liability will be made effective as follows: firstly in the property of the perpetrators, then, in the properties of the accomplices.

In either of the cases, in which the liability was determined as joint or, secondary, the one who pays for all the amounts of the others has the option to file a case against the rest held liable to recover the money he or she

has paid.

§ 117. When an act contemplated in this Code (PCS) produces an event determining the insured risk, the insurers had assumed the risk of pecuniary liability derived from the use or exploitation of any property, enterprise, industry or activity. The insurer shall be directly held civilly liable until the limit of the compensation legally established or conveniently agreed without preventing a repetition against who shall correspond.

§ 118.1 The exemption of liability declared in ( 1, 2, 3, 4, 5, 6 ) of § 20, does not exempt the civil liability that will be made effective according to the following rules:

(I) In the cases of the numerals, (1) (3) are also liable for the acts executed by those declared excepted of criminal liability: those who exercise authority or in fact legal guidance as long as there had been guilt or negligence from their part, and without affecting the direct liability that could correspond to the perpetrator. The judges or tribunals will consider in a reasonable (equitable) way to what extent each of the individuals held liable should respond with their properties.

(II) The drunk and the intoxicated in the enunciate of number (2) are equally liable

(III) In the case of numeral, (5) when damages have been caused on behalf of some persons, such persons are directly held civilly liable in proportion to the damage they have managed to prevent on their interest by the performance of an illegal act in their favor, if the damages are estimable or otherwise, the judge or tribunal establishes it according to the prudent judgment. When the amount the interested has to respond for is not equivalently assigned by the judge or tribunal, even by approximation; or when the liability is extended to the public administrations or to the majority of a population in any case, as long as the damage was caused with presence of the authority and of its people, it shall be accorded, in this case, the compensation in the form that is established by the especial laws.

(4) In the case of numeral (6), those who mainly caused dread or in any absence of them, those who executed the act will be held liable.

2. In the case of the article 14, those who perpetrated the act shall be held liable.

§ 119. In all the contents stated in the previous article, the judge or tribunal decides the absolatory sentence because he or she estimates the concurrence of any of the exempting causes expressed. In addition the judge will proceed in the determination of the civil liabilities if there has not been any reservation expressed to make the corresponding claim in the corresponding channel.

§ 120. Those also held civilly liable, in its defect, are those held criminally liable:

(1) The parents or guardians, are held civilly liable for the damages and detriment caused by the crimes or faults committed by those older than eighteen years of age that were under their authority or guardianship, and are living in their company, as long as there is guilt or negligence on their part.

(2) The natural or juridical persons heading editorials, newspapers, magazines, radio stations or television channels; using the means of the shifts, exempting the stipulation stated in the § 212 of this code are held civilly liable.

(3) The natural or juridical persons are held liable in the case of crimes or faults committed in the establishment of the shifts. When acting on the part of those directing or administering; or on the part of the clerks and employees have infringed the police regulations; or the dispositions of authority that are related to the punishable act committed in a way that, such punishable act, had not occurred without the committed infraction.

(4) The natural or juridical persons dedicated to any kind of industry or business are held liable for the crimes

or faults committed by their employees or clerks, delegates, and business agents in general, in the execution of their duties or services.

(5) **The natural or juridical titular of motor vehicles susceptible to create risk to third parties**, for crimes or faults committed while the utilization of such motor vehicles by their employees, delegates, or authorized persons.

§ 121. The state, the autonomous community, the province, the island, the municipality, and other public entities, according to the cases, respond in a subsidiary way for the damages caused by those held criminally liable of guilt, or negligence. When those held criminally liable are authority figures, agents, and those hired by the public institutions the same applies with respect civil liability. When public officers are executing their post, duties or functions causing harm. As long as harm was caused as a direct result of the functioning of the public services entrusted without detriment of patrimonial responsibility derived from the normal or abnormal functioning of such services required according to the norms of the administrative procedure, without permitting the duplicity of compensation in a case are civilly liable.

If in the penal process civil liability of the authority is demanded, agents and those hired by the public institution or public officers, the claim shall be directed simultaneously against the administration or public entity presumed to be civilly liable in secondary terms.

§ 122. The one who by lucrative title has participated to the effects of a crime or fault is obligated to pay restitution of the property (thing) or to the compensation for the damage upto the amount received from his or her participation.

### 3. *Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law*<sup>9</sup>

In the case of a traffic accident, there is a *civil liability* covered by a compulsory insurance law established by Decree 632 (1968), which became the base for this compulsory insurance law. It was approved from the reformed text of the law 122 (1962) "Use and Circulation of Motor Vehicles", the law 30, in 1995, which adopted the name "Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law" that is currently used to the present day. This law has two titles, four chapters, and annexed tables to estimate the amount of compensation the victims of a traffic accident shall receive. Title I "Civil Order", chapter 1, "General dispositions", describes the civil liability of the driver. The driver is liable for the risk, personal, and material damages caused by the control of the vehicle. In case of personal damages, the driver is exonerated of his liability when he or she demonstrates that the damages were caused only by the negligence of the victim or by a major extraneous-uncontrollable force, not pertaining with the driving activity or functioning of the vehicle. The defects of the vehicle, or any damage or mal-functioning of any part or mechanism of the vehicle are not considered as a major extraneous-uncontrollable force. In addition, this law states that the financial damages caused to the persons, including the predicted, predictable and the obvious ones originating the suffered loss, the profit non-perceived, and moral harm due to the accident will be quantified in any case, according to compensation limits established in the annexes of the current law. There are standards available to decide the amount a driver should compensate to the victims; the judge only has to fairly follow those tables. Chapter II "Duty concerning the affiliation to a compulsory insurance", all

the owners of a vehicle who have the habitual parking of a vehicle in Spain have the duty to affiliate to the compulsory insurance. The insurance companies have to send the file of the driver insured to the Treasury Department, where there is an "Insurance Compensation Consortium". In the case of an accident in which the perpetrator cannot be identified, the insurance consortium has to compensate the victims. The non-abidance of the compensation insurance contract of civil liability will incur in a fine oscillating between 100,000 pesetas to 500,000 pesetas. The governor of the locality in which the violation had occurred, will collect such fine, but the ministry of justice, and interior will hand in to the compensation insurance consortium 50% of the collected fines aiming to compensate part of the compensation-fines paid to the victims of a traffic accident when the driver was not identified. Additionally, the range of compulsory insurance will cover the personal, and material damages established in the statutes. If the resulting established amount is superior to the maximum coverage of the compulsory insurance, that maximum amount is paid leaving the rest to be covered by the voluntary insurance according to the procedures established by the law or by a supplementary civil compensation filed under § 1903 of the (CCS).

Exclusions of the compulsory insurance: the coverage of the motor vehicles' compulsory circulation insurance will not take effect when the driver of the insured car suffers personal damages. The coverage of the compulsory circulation insurance will also not cover material damages suffered by the insured vehicle, neither for anything transported on it, or the damaged property under the name of a drunk-driver. In addition, it will not enjoy coverage of the insurance user, the owner, the driver, as well as the spouse or relatives up to a third degree of consanguinity or affinity of the above mentioned. Moreover, the insuring entity could not oppose (appeal) the judgment of any exclusion, in particular, with regard to the contractual clauses excluding in the coverage the usage or conduction of the vehicle designated in the insurance certificate. For example, those not being authorized to drive a vehicle, non-abiding legal obligations of the technical nature concerning the security of the vehicle, out of the theft assumption, non-legal usage of somebody else's vehicle, or without the expressed or tactical authorization of the owner. The legal direct action to which the victim is entitled can be taken to court within a period of one year.

With the purpose to speed up compensation in the range of material damages caused in a traffic accident, the insurance company will hand in to the insured a "*friendly declaration of the accident*", from that the driver should use it to declare the accident to the insurance company. The insurance entities after paying the compensation damages can file a compensation complaint against the driver or the owner of the vehicle that caused the accident, if the damage was caused due to intentional or negligent behavior of either the driver or

the owner. An example of this could be the driving a vehicle under the influence of alcohol or toxic drugs, amphetamines, or psychotropic substances.

The Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law was partially annulled by a Supreme Court decision in the year 2000.

Unconstitutional claims and its respective numbers: 3536/96, 47/97, 1115/1997, 2823/97, 3249/97, 3297/97, 3556/97, 3949/97, 5175/97 y 402/98 filed by the Trial Court (TC) (juzgado de instrucción), 10 from Leon, (TC) 3 from San Sebastian, Section 17th, Provisional Court of Madrid, (TC) 4(th) from Valladolid, Section 1st, Provisional Court from Castellon, Court of First Instance, and TC from Calahorra. The unconstitutional claims were filed against the *Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law dated from* (1995) adopted from the text of the decree 632/1968. Most of these unconstitutional claims state that the *Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law* in its article 1. (2) of decree 632/1968 violates § 14 of the Constitution of Spain in which the principle of equality is recognized and guaranteed. § 1 (2) establishes the criteria the judge has to follow to estimate the amount of compensation the victims of a traffic accident shall receive. The tables to estimate the compensation damages have not been extended to the same level as the civil liability principle stated in the civil code. Also, such tables mandate the amount that shall be applied to all the cases for all the personal damages without taking into account the lucrative loss such damages which have been caused to the victim (s). This law treats equally, thus avoiding individualization of damages otherwise treated differently by introducing a non-reasonable inequality in the context of the general regime practiced in the civil liability area. Other cited unconstitutionality mention § 9 (1), (3), § 117 (1), and §9. (2), § 9.3, § 15, § 24.1, and § 117 (3) of the Constitution of Spain.

### **C. Criminal Liability**

An act of negligence consists of an omission more or less voluntary, but conscientious of the diligence (Moreland 1944). It corresponds to the statutes providing for personal safety as well as material items. It is also called imprudence, which means a lack of prudence, caution and precaution. This is an expression inextricably related to criminal law, in which crimes are categorized as premeditated, and non-premeditated acts. The latter ones are executed with a "*certain degree of will*". Negligence occurs by the execution of an action or by the omission of it. The omission seems to be better suited to the acts of negligence, which is also an element of criminal liability. Thus, those "wantonly, "grossly" or "carelessly" committing a

negligent act are held criminally liable.

*The Penal Code of Spain* as well as the *Penal Code of Japan*, both do not include any definition of the term **criminal negligence**. However, this term is understood as defined linguistically, which does not differ too much from the legal terminology. Obviously, such a concept is restricted by the criteria expressed in the (PCS) or in the case of Japan, in the Constitution.

In the (PCS) of Spain, faults leading to involuntary homicide and injuries caused by **slight negligence**, cases of involuntary homicide and injuries caused by **gross negligence** involving the execution of the act with a **vehicle** or a **firearm** are stated in (§ 14 (2), § 152 (2) § 621 (4) & (5) (Arrollo 1994)). In addition, the cases involving **professional negligence** (§ 142 (3) and § 152 (3)) are taken into account to impose the following types of sanctions (of inhabilitation):

1. Deprivation of the right to drive vehicles,
2. Deprivation of the right to possess and carry firearms,
3. Special prohibition of a profession, occupation or public office.

Besides the deprivation of the previously mentioned rights, the (PCS) also includes the corresponding punishment of imprisonment.

In the Penal Code of Spain: Title I, "Penal Infringement Delimitation", chapter 1 Crimes and Faults (§ 10- § 18). § 12 "*The imprudent actions and omissions shall be punished only when **are expressly established by the law***".<sup>10</sup> According to this general principle, from all the range and kinds of negligence occurring in the daily life in the diverse sectors and spheres, the (PCS) only rank the category of crime in which the cases involve **gross negligence** (§ 142, § 146, § 152, § 159 (2), § 267, § 344, § 358, § 367) attempting against life, and physical integrity. In addition, there are cases of **slight negligence** (§ 621) dealing with material damages of the victim (Conde 1998). Criminal negligence generally deals with legal elements that are of special importance, having social transcendence (life, physical integrity, life of the fetus, human genotype, pecuniary damages of special seriousness, public health etc.) where the *principle of minimum intervention of the penal code* is applied. It is considered necessary to turn to the penal code in aiming to curb, or in any case, to prevent the harm or negligent exposure to risky situations .

In the current (PCS) in force, only certain negligent crimes are punished (*crimina culposa*) which differs from the previous (PCS), which included a generic (*crimen culpae*) considering the result, as a type of punishable negligence. According to the current regulations in the Penal Code of Spain, the punishment of the crime is regulated by the negligent act, expressly incriminated from the objective part of (unjust type of)

the crime. Therefore, the negligent crime constitutes an *incongruous postulate*, because the subjective type does not match the objective type, which goes further than merely considering what the negligent perpetrator aimed to perform. However, the imposition of the penalty depends of the seriousness of the actual negligent act more than of the **produced result**.

Generally, the (PCS) only penalizes the *serious negligence* including involuntary homicide (manslaughter), abortion, injuries to the fetus, alteration of the genotype, severe pecuniary (patrimonial) damages, the endangering of life, physical health of the workers or consumers, the creation of false documents, prevarication, etc. The (PCS) also penalizes the **slight negligence** as failures or faults to exercise great degree of care in relation to homicide, and the injuries constitutive of a crime ( § 621) and the perpetrator is prosecuted only when there is a petition from the injured party. In addition, the negligent pecuniary damages are subjected to the same process. Pecuniary damages caused by **ordinary negligence** are publicly prosecutable if they are higher than **ten million pesetas** ( § 267).

The following articles of the (PCS) have direct relationship to the criminalization of the traffic accidents or drivers behavior:

§ 142 (1) The one who by serious negligence causes the death of another, shall be punished as a defendant of negligent homicide, and with an imprisonment penalty oscilating from one to four years.

(2.) When the negligent homicide is committed with a vehicle or a firearm, a deprivation of the right to drive a vehicle, or the right to have or carry a firearm shall be applied besides the penalty established in the previous section of this article, for a period oscilating from one year to six years.

§ 152.1 Those who for serious negligence cause any of the injuries contemplated in the previous articles will be punished: (1) With penalty of arrest from seven to twenty four weekends if the injuries are included in

§ 147.1

§ 147.1. One who by any means or procedure causes to another an injury affecting his or her body integrity or phisical, and mental health will be punished as a perpetrator of the crime of inflicting injuries with a prison sentence oscilating from 6 months to three years, as long as the injury caused requires futher medical or surgical (quirurgical) treatment after the first facultative intervention. The simple vigilance or facultative follow up of the course of the injury is not considered medical treatment.

(2) With the penalty of imprisonment from one to three years if the injuries involved are included in § 149.

§ 149. One who causes to other by any means or proceeding the loss of utility of an organ or main movement, or one sense, impotency, esterility, a serious deformity, a serious somatic or psychological disease

shall be punished with an imprisonment sentence ranging from 6 to 12 years.

(3) With prison sentence from six months to two years if it has to do with the injuries stated in § 150.

§ 150 One who causes to another the loss or deformity of a non-main organ shall be punished with imprisonment oscillating from 3 to 6 years.

*(2) When the acts referred in this article have been committed with vehicle or a firearm, it shall be imposed respectively, the deprivation of the right to drive vehicle or the deprivation of the right to possess or to carry firearms for a period oscillating from one year to three years.*

(3) When the injuries are committed by professional negligence in the same way, special prohibition for the exercise of the profession, occupation, or post for a period oscillating from one year to four years shall be imposed.

§ 267. The damages caused by serious imprudence in a quantity superior to ten million pesetas, shall be punished with **a fine from three to nine months' working salary.**

The infringements referred to in this article, only shall be prosecuted by previous denunciation of the person affected or of the legal representative of the person affected. The district attorney (prosecutor) could also denunciate (press charges) when the person is a minor or an incapacitated person. In these cases, the pardon of the affected person or of the person's legal representative will extinguish the penalty or criminal action, without affecting the content established in the paragraph (4) of § 130 of this Code.

Title III. Injuries (from § 147 to § 156)

§ 147. 1. One who by any means or proceeding causes to another an injury affecting his or her body integrity or physical, and mental health shall be punished as a perpetrator of the crime for inflicting injuries with a prison sentence oscillating between 6 months to three years as long as the injury caused requires further medical or quirsurgical treatment after the first facultative intervention. The simple vigilance or facultative follow up of the course of the injury is not considered medical treatment.

(2) Notwithstanding the stated above, when the injury is of less seriousness, depending on the means employed and the effects produced the defendant shall be punished with detention for 7 to 24 weekends, or a fine oscillating from **3 to 12 months of working salary.**

§ 148. The injuries considered in section 1 of the previous article shall be punished with an imprisonment sentence from 2 to 5 years according to the caused result or produced risk;

(1) If in the aggression there was usage of weapons, instruments, objects, means, methods of concrete forms

endangering life or physical or mental health of the injured.

(2) If there is a mediation of cruelty

(3) If the victim is under 12 years old he or she is considered non capable.

§ 149. One who causes to other by any means or proceeding the loss or utility of an organ or main movement, or one sense, impotency, esterility, a serious deformity, a serious somatic or psychical disease shall be punished with an imprisonment sencece ranging from 6 to 12 years.

§ 150 One who causes to other the loss or deformity of a non-main organ will be punished with imprisonment oscilating from 3 to 6 years.

§ 151 The provocation, conspiracy, or proposition to commit the crimes stated in the articles of this title shall be punished with an inferior punishment in one or two degrees less than the corresponding sentence of the crime.

Article 152.1. Those who for serious negligence cause any of the injuries contemplated in the previous articles shall be punished:

(1) With penalty of detention for seven to twenty four weekends if there are injuries included in article 147.1

(2) With the penalty of imprisonment from one to three years if there are injures included in article 149. (3) And the imprisonment ranging from 6 months to 2 years if there are injuries stated in article 150.

2. **When the acts referred to in this article have been committed with a motor vehicle** or a firearm it shall be respectively imposed to the perpetrator the penalty of the deprivation of the right to drive a motor vehicle or of the right to possess or to carry firearms for a period ranging from one to three years.

3. When the injuries are committed by professional negligence in the same way it will be imposed a penalty of especial prohibition for the exercise of the profession, occupation, or post for a period ranging from one year to four years.

#### **IV. Japan**

One of the foci in the crime problem through out post-war Japan has been "traffic crime". Usually, the Japanese people do not worry about whether they are victimized by street crimes. However, they do fear traffic accidents. Quantitatively speaking, traffic crime has been the biggest problem (Koyama 1990). In both crimes against the Criminal Code ("criminal code crime") and "all criminal cases" (= criminal code crimes + crimes against laws other than the CC), traffic crimes have been the overwhelming majority. Almost in all special laws (laws other than the CC) traffic crimes are crimes against the Road Traffic Law (RTL). Crime against RTL had its peak in 1965 (4.5 million a year), and made the court system nearly

bankrupt. The number of ex-criminals with a criminal record has risen up by 4.5 million every year. Moreover, traffic law violators, who have not been officially treated as such, have amounted to 14 million a year. Taking seriously such situations, the government had amended the RTL in 1968 for adults (offenders being 20 years old and above at the time of committing the offense) and for juveniles (offender being under 20 years old at the time of committing the offense). According to the amended RTL, non-serious offenses against RTL can be administratively processed by the police as non-crimes. These dispositions by the police are called "triviality dispositions" (bisai-syobun). Almost all non-serious offences against RTL are processed through this special administrative bypass procedure called "the traffic offences notification system" (kotsu-hansoku-tsukoku-seido) with a pre-standardized fine as an administrative penalty (hansoku-kin: close to what is known as traffic ticket fee in many western countries). Thus, the number of cases processed amounts to more than 10 million per year. As a result of this amendment and actual administration of RTL, crimes against RTL had fluctuated above 2 million for 10 years since 1970.

### **A. Administrative Liability**

(1) The traffic offences notification system (TONS): this system has made a marked paradigm shift towards decriminalization of traffic offenders. Before 1968, all violators against RTL had been treated as criminals. After 1968, serious offences against RTL, e.g., driving while intoxicated or drunk, driving without a license and severe speed violation are currently processed as crimes. This means that behind the administrative system of treating traffic violators lays a powerful horrifying shadow of the criminal law.

Now under TONS, if a driver pays a fine (pecuniary sanction) within 10 office-working days<sup>11</sup> at the post office, he or she must not be criminally prosecuted (§ 128 (2) of RTL). In addition, by being treated as such, a violation will not be registered in a driver's criminal record. Thus, a driver can get a chance to keep clean his or her record. Moreover, the police can get the necessary fines faster without time-consuming court procedure. The sum total amount of fines is 90 billion yen per year! This money will be spent on improvement of traffic conditions.

The problem breaks out when a driver does not pay the fine within 10 days. The police have to pass the case as criminal to the prosecutor's office or send it as a delinquent case to the family court. At that time, a violator's liability starts to change from administrative to criminal. After the change, the driver may be treated as a criminal and processed through the criminal procedure. Most Japanese drivers prefer to pay the fine to avoid wasting time and to engage in criminal procedure. It is possible to say that the criminal

shadow underlying beneath the administrative processing system motivates the drivers to pay promptly, to keep their records clean.

(2) The point system: The point system was adopted for the first time, by the state of Connecticut, USA, in 1947, after that, the point system extended throughout the United States, then, the point system was also introduced and implemented in West Germany, where it became popular until now.

This system was introduced in Japan by the Government Ordinance 298 in 1968 with TONS and applied one year later in 1969. Before that time, there was an old system of license suspension and revocation, but this system was situated in "wide open, but no business". After introducing TONS, license suspension and revocation are strictly enforced with a computerized system nationwide. Now, almost all drivers without license are the persons whose license has been revoked. This system has been partially modified to adjust the system to the changes in traffic. This study will take as a base the point system modified in 1997. The RTL prescribes driving license procedure, license suspension and revocation in §§ 90, 103 and 107, which are specially regulated in the RTL, Enforcement Ordinance in §§ 33, 38 and 40 which establish specific steps for the application of license suspension and revocation. The point system, depending on the total points accumulated, manages the application of license suspension and revocation. If a person commits a traffic offence while driving a motor vehicle, the Public Safety Commission, according to the Ordinance 298, orders and performs license suspension or license revocation for a fixed period of time.

Point Calculation: there are points applied to traffic violations (basic points), points applied to specific accidents (traffic accident points) and points applied to hit-and-run- cases. The basic points are mainly applied with the pecuniary sanction imposed to the traffic violator. For example, to drive while drunken or intoxicated is considered as dangerous driving behaviour. There is an assumption that drunken or intoxicated behaviour is highly correlated with accidents. A driver who gets 15 points on his or her driving license must be subject to revocation. This means that if he or she commits only one such violation, his or her driving license must be suspended. According to §117 of the RTL, a drunk driver shall be penalized with a maximum of two years under imprisonment with forced labor or a fine under 150,000 yen.

When driving over 30 kph a general road, and over 40 kph in a highway (RTL § 75 Enforcement Ordinance, § 27, National Highway Law § 6) a driver will receive over 6 points on his or her licence. This means that the driving license is suspended after only one time of commission of the violation. Besides that, if a driver already had *two* traffic violations in his or her records, there is a high possibility he or she shall receive a high amount of points. In addition, a driver shall get a maximum of 6 months imprisonment with

forced labor or a maximum fine of 100,000 yen (RTL § 118). In Japan, the very serious violations are elevated to the degree of crime, and penalized with imprisonment with compulsory labor or a fine oscillating from 50,000 to 500,000 yen.

When a driver causes a traffic accident, he or she will get points from 2 to 13 estimated according to the degree of negligence of the driver and the severity of the accident. When a person caused an accident and did not provide appropriate aid to the injured victim, such as hit-and-run accidents causing personal damages he or she receives 10 points and a hit-and-run accident causing material damages receives 5 points.

Example: driving while intoxicated, paired with negligence and serious accident with damages will result in application of 6 points for driving while intoxicated, and 9 points for the serious accident. The total sum is 15 points, which is the limit to revoke a driving license.<sup>12</sup>

## **B. Civil Liability**

In Japan, the principle of tort (unlawful but as it is not a criminal act it is processed through civil procedures) is expressed in § 709 of the Civil Code (CCJ), "A person [driver] who violates intentionally or negligently the right of another is bound to make compensation for damages arising thereby". Although in legal terms intention and negligence have a different meaning in civil (private) law, when it comes to the court there is no qualitative difference (Suzuki 1998). In the case of a traffic accident, a special Law Law on Compensation for Damages Caused by Cars, plays an important role in terms of protection of the victims. This Special Law takes priority over General Law. This law, enacted in 1995, provides an exception to the rules of the civil code (§ 709) concerning the burden of proof, in order to make effective compensation for the sake of the victims, special features appear in § 3 of this law consisting of the following<sup>14</sup>:

1. A person (usually driver) who puts a car in circulation for his own sake (so-called *a provider of a vehicle for circulation*) is liable for the damages resulting from the accident.
2. Damages cover only another person's life or body. Other kind of damages, for example material ones, the general tort principle (§ 709) applies.
3. The compulsory car insurance compensation law modifies the necessary conditions required to establish the tort liability (CCJ § 709). If the *provider of vehicle for circulation* cannot prove the following three reasons, he or she shall not be exempted from compensation liability:

That one self or the driver did not neglect his or her attention, That there was intention or negligence on the part of the victim or other third party, That there was some defect or any functional

failure in the structure of the vehicle. The structure of § 3 of the Compensation for Damages Caused by Cars also applies similarly to § 715 of the CCJ by converting the burden of proof to the employer, in this case, to the *provider of vehicle for circulation* side (Uchida 1997). In the law of torts (§ 709), the burden of proof lays on the victim's side. § 715 states the following: One who employs another to carry out an undertaking is liable to make compensation for damages caused by the employee to a third person in the course of an execution of the undertaking. However, this shall not apply, if the employer has exercised due care on the appointment of the employee, and in the supervision of the undertaking or if the damage would have occurred even if due care had been exercised. One who supervises the undertaking in place of the employer shall also assume the liability mentioned in the preceding paragraph. The provisions of the proceedings stated in the previous two paragraphs shall not prevent the employer or the supervisor from demanding re-imburement from the employee. § 3 of the law Compensation for Damages Caused by Cars changes to a nearly strict liability-principle or "liability established for results." *Providers of vehicle for circulation or the driver* are subject to risk liability" because although *the provider of vehicle for circulation or the driver* did not perform a negligent act, they are seldom exempted from liability since it is only one of the 3 reasons that this law requires them satisfy in order to be excepted from compensation liability. Actually, the liability imposed on the *provider of vehicle for circulation or the driver* is monetarily covered by the compulsory insurance. This § 3 of the law Compensation for Damages Caused by Cars does not provide a clear definition of the term "*provider of vehicle for circulation*". As a result, at this particular point, the Japanese law requires a revision of the legal precedents concerning this issue to grasp the possible meanings of this term, instead of making an amendment or revision to the law.

## **C. Criminal Liability**

### **(1) The processing of criminal cases**

If a possible 'criminal' case occurred and the police did not know about it, it is not officially dealt as criminal. However, as far as the traffic crimes are concerned, it is certain that most of the cases are reported to the police. This is because mandatory and voluntary automobile insurance money usually will not be paid without the official police report of the accident, and the amount of the damages to be paid will be so much higher for the usual offenders without insurance money. If a case was known by the police, under certain circumstances, the police would not begin to investigate. Except rare cases, the police do not treat traffic accidents involving no death and/or injury as criminal ones. These cases are treated and settled as civil ones.

However, as far as traffic accidents involving death and / or injury are concerned, discretionary judgment of the police is not relevant for two reasons. Firstly, the police cannot exercise their discretionary power, because most of the cases are made known to and registered by the police at the initiative of the offender (if not, then, at the initiative of the victims). Secondly, the police do not want to exercise their power, because the police publicly and officially employ the 'tough policy'.

The procedure after the identification of the cases makes the distinction between adult cases and juvenile cases.

Adult Cases:

The police have to send the identified cases to the prosecutor's office as a rule. But, in trivial cases, according to the administrative rule (Criminal Investigation Rule, CIR) the police have the power not to send cases and to close the processing ('triviality dispositions'). This position is the final stage of the procedure by the police. However, in traffic-crime cases, at least presently, CIR does not permit this measure to the police. This reflects 'tough policy' measures used by the Japanese legal system.

Juvenile Cases:

The police have to send all identified cases to family court (Juvenile Law, JL). The police have no power to dispose of the cases by themselves. Family court has to send only the cases 'suitable for criminal dispositions, (that is, to be punished by CC), to the prosecution's office. Family court can dispose the other cases in the forms of no opening of procedure, 'non-disposition', 'protective disposition and informal disposition.

Receiving the cases, the prosecutor has to examine each case and, if necessary, investigate supplementarily. In this examination, two viewpoints are crucial. First, whether the case legally, especially in consideration of the judicial decisions of the court, constitutes certain crime(s). Second, whether the case can endure the trial in consideration of the evidence.

When one or both of these viewpoints are negatively judged, the prosecutor has to decide not to prosecute the case. If these two viewpoints are positively judged, nevertheless, the prosecutor takes substantive conditions and situations of the case into consideration and can decide not to prosecute the case (waiver of prosecution, Kiso-yuyo). The latter forms an overwhelming majority of the cases where it was decided not to bring prosecution. The rate of non-prosecution is on average at the 50% mark. Concerning traffic offence cases, it is a little less than 50%. Here again the Japanese legal system reflects once more, the usage of 'tough policy', in this case, by prosecutor's office. The prosecutor has the power to

select between two ways of prosecution. One is the summary prosecution (ryaku-shiki-kiso), which has several requisites. Among the requisites, the limit of the possible sentences (fine of 500,000 yen and under) and the consent of the defendant are important. The other is indictment, which is supposed to be the usual way of prosecution in serious cases, but in the practice of prosecution, the latter forms only a quarter (80,000-90,000 cases a year). The former forms three quarters. It is important to note that this practice is maintained notwithstanding non-selectivity of fine in major crimes. In § 211, both ways can be selected.

The summary court, receiving the summary prosecution, has to hold a court hearing and sentence for the defendant. In criminal court, the most important problem is whether the defendant is guilty or not. Criminal Procedure Code (CPC) prescribes the principles of 'direct examination' and 'oral testimony'. However, in summary trials, these principles are nearly ignored. The defendants give their consents to these proceedings. This is the Japanese style of plea-bargaining. There is no sentence of acquittal. Summary trials are not 'the' trials in the conventional understood sense, but mass processing of defendants. In this sense, the problem in point is not a speedy trial, but 'too' speedy trial. In traffic crime, most of the cases are processed through summary trials (95%).

District Court and Summary Court, receiving indictment, hold a court hearing, decide whether guilty or not, if guilty, sentence the defendant, or if not guilty, acquit the defendant. It must be noted that also in this form of trial, there are only a small number of acquittals. It follows from what was mentioned above that in Japan, who in fact decides whether the defendant is guilty or not, is not the court, but the police and the prosecutor's office.

## **(2) The treatment of traffic accidents**

As described in (1), in processing traffic accidents the police and the prosecutor's office employed 'tough policy'. In addition, in the court, 'tough policy' is employed and has its expression in the 'criminalization of traffic accidents, § 211 had been applied in cases of driving a car as a job (for example, taxi-driver) in the 1940's and 1950's. Later the concept of 'driving a car as a job' has been widely interpreted and included such cases in which a doctor drove his car when he went to the patient or when a butcher drove his truck to the market. Finally, the Supreme Court decided in 1956 that § 211 was applied to all cases of 'driving a car' without being asked whether it was as a job or not. As a result of this decision, the main obstacle to the application of § 211 was removed. Then, almost all traffic accidents involving death/ or injury are treated as a crime against § 211. The number of convictions sharply increased until 1970. Since 1971, the number turned to decrease and in the period of 1973-1975, it fell below half the level of that in 1970. This trend of

decrease continued for 10 years, but during recent years, the number of cases tended to increase again.

The increase and decrease of the convictions roughly correspond to the increase and decrease of the accidents. 'Tough policy' in the court did not decrease the accidents, but, rather conversely, the increase and decrease of the accidents, especially the number of deaths and injuries through the discretionary judgement of the police and the prosecutor's office, had decisive influence on the result of the trials (Koyama 1990).

### **(3) Stricter punishment**

'Tough policy' of the court reflects 'tough policy' of the prosecutor's office, and has its expression in the practice of sentencing. From the figures of sentence of imprisonment and figures of actual prison sentence among them, this is explicit. In 1968, CC was amended, so that imprisonment with forced labor was added to imprisonment without forced labor and the upper limit of imprisonment raised from 3 years to 5 years. Bad elements of the accidents, especially, without license, drunken and high speed driving (called as 'worst three in traffic offences'), if doubled, raised the possibility of actual prison sentence. In addition, the seriousness of the damages, *contributory negligence of the victims* and / or the third person and situations of negotiation about compensation are important. According to the decrease of the accidents and the number of deaths and injuries, sentences of imprisonment and actual prison sentence have decreased. Moreover, in sentencing it is possible to visualize, that the increase and decrease of accidents, especially the number of deaths and / or injuries through discretion of the prosecutor's office, had remarkable influence in the trials.

**(4) Marked Decrease of convictions and milder punishment until now:** Since 1941 the Supreme Court of Japan, has adopted "*the rule of trust*" in criminal cases in order to mitigate driver's liability. When a driver drove his or her car strictly obeying traffic rules, if another driver, bicycle-rider, or pedestrian did behave in an unbelievable and unexpected manner ("No-man might behave in such a manner under the circumstances"), and the driver could not avoid the accident, the driver may be exempted from his or her liability. In accidents "car vs. car" (driving evil weapon type), if the driver went straight in the priority road or was already turning to the right or left or moving backwards, when the driver could not anticipate and avoid the accidents, the driver might be excepted from his or her liability.

During the recent 15 years, the number of decided criminal cases has been decreased markedly from 2.5 million to 1 million. This sharp decrease had occurred as the basis of discussion for ten years in the Traffic Law Association. These phenomena were the result of intentional endeavours of the police and the prosecutor's office. At first, the police had decreased the number of the traffic offences in 1 million marks, or non-direct relationship with the accidents. Secondly, the prosecutor's office adopts the basic policy not to

prosecute non-serious injuries under two weeks as a rule. Thus, the rate of considering prosecution for crimes against the § 211 of the CC is on average 22%. In 1973, the number of the cases decided against the § 211 was 460,000, an unbelievable sharp decrease!

**(5) Structure of the Special Prison for Traffic Convictions**

In Japan, there is a specific prison for those convicted of a traffic offence. From the 1950's to the 1970's those imprisoned for causing a serious traffic-accident totalled about 3000 persons per year. Nowadays, the number of persons imprisoned for causing a traffic accident has decreased to 1,000 per year. However, the number incarcerated for repeating a traffic offence has increased to 2,000 persons. The person who repeats traffic offences has gained the recognition of having antisocial behaviour.

**Table 2.** Administrative punishment based in the points standard

Number of driving license suspension (within 3 years)	Driving license suspension	Driving license cancellation lack of driving qualification 1 - 3 years	Lack of driving qualification 2- 5 years	Lack of driving qualification 3 - 5 years
Number of times				
0	6 - 14 points	15 - 24 points	25 - 34points	Over 35 points
1	4 - 9 points	10 - 19 points	20 - 29 points	Over 30 points
2	2 - 4 points	5 - 14 points	15 - 24 points	Over 25 points
Over 3 years	2 or 3 points	4 - 9 points	10 - 19 points	Over 20 points

**Source:** Taken from the book written in Japanese language titled "The Point System and its Practical Application", Driver's License Association, (1998).

**Table 3.** License refusal or confiscation government ordinance (§ 38.2, § 38) and driving prohibition criterion (§ 40)

First Column	Second Column	Third Column	Fourth Column	Fifth Column
Driver without precedent	Over 35 points	From 25 - 34 points	From 15 - 24 points	From 6 - 14 points
1 Violation registered	Over 30 points	From 20- 29 points	From 10 - 19 points	From 4 - 9 points
2 violations registered	Over 25 points	From 15 - 24 points	From 5 - 14 points	From 2 - 4 points

**Source:** Taken from the book written in Japanese language titled "The Points System and its Practical Application"1997.

**(6) Amendment of the Criminal Code**

**The penalization of the negligent crimes in the CC of Japan until December 2001 was as follows:**

Chapter XXVIII Crimes of Inflicting Injury by Negligence

(Bodily injury caused by negligence) (13)

§ 209. A person who inflicts an injury upon another by negligence shall be punished with a fine of not more than three hundred thousand yen or a minor fine.

2. The crime mentioned in the preceding paragraph shall not be prosecuted without the filing of a complaint.

(Manslaughter caused by negligence) (13)

§ 210. A person who causes the death of another by negligence shall be punished with a fine of not more than five hundred thousand yen.

(Death or bodily injury, etc. caused by negligence in conduct of business) (13)

§ 211. A person who fails to take necessary precautions in the conduct of business and thereby causing death or injury to another shall be punished with imprisonment with or without forced labor of not more than five years or a fine of not more than five hundred thousand yen. The same shall apply to a person who, by gross negligence causes death or injury to another.

The Japanese CC has been reformed in the year 2001 and such reform started its effect on December 20, of the same year.

**The reformation of the Penal Code of Japan (Dangerous driving: causing death and injuries)**

Before	After
<p>§ 208 ( 2 ) 1. ( Unlawful meeting and assembly with dangerous weapons ) . When two or more persons intentionally join to cause injury to another person's life, body or property. Those who gather to prepare dangerous weapons or have the knowledge that dangerous weapons are being prepared shall be punished with imprisonment with or without forced labor for not more than two years or a fine of not more than 300,000 yen. (Heisei year 3, Law 32). 2. In relation to the preceding paragraph, one who causes other persons to assemble by preparing dangerous weapons or knowing dangerous weapons have been prepared shall be punished with imprisonment without compulsory labor for not more than 3 years. (Showa 33 law 107).</p>	<p>§ 208 ( 2 ) Involuntary Manslaughter resulting from Dangerous Driving ( newly established ) 1. To drive under the influence of alcohol or narcotics or resembling to have difficulties to drive normally a 4 wheeled (and over) vehicle causing injuries shall be punished with less than 10 years of imprisonment with forced labor, when the driver causes death he or she shall receive a punishment over 1 year of imprisonment with compulsory labor. In addition, when the driver has difficulties to control high speed while running a car, does not have enough ability to control a 4-wheeled vehicle, and causes death or bodily injuries he or she shall receive the same punishment stated in the previous paragraph.</p>
<p>§ 208 ( 2 ) 2 ( Newly introduced, it did not exist in the previous criminal code )</p>	<p>§ 208 ( 2 ) 2 The penalties imposed in the preceding paragraph will apply when a motorist driving a 4-wheeled-vehicle (or over) causes</p>

<p>§ 208 ( 2 ) 2 ( Newly introduced, it did not exist in the previous CC )</p>	<p>death or bodily injuries while aiming to disturb the advance of people or other vehicles suddenly invades a vehicle's frontal-space while it is in plain progress. In addition, the same shall apply, when the driver remarkably invades the approaching transit of other vehicles, and people causing serious traffic-speed danger resulting on death or bodily injuries.</p>
	<p>§ 208 ( 3 ) This is the previous § 208 ( 2 ) 1 stated in this table</p>
<p><i>Chapter 218 Crimes of inflicting injury by negligence</i>                  § 209 (Bodily injury caused by negligence) 1. A person who inflicts an injury upon another by negligence shall be punished with a fine of not more than 300,000 yen or a minor fine.                  2. The crime stated in the preceding paragraph shall not be prosecuted without the filing of a complaint.</p>	<p><i>Chapter 218 Crimes of inflicting injury by negligence</i>                  § 209 It is still the same there is no change</p>
<p>§ 210 One who causes death of another by negligence shall be punished with a fine of not more than 500,000 yen.</p>	<p>§ 210 No changes</p>
<p>§ 211-1. One who fails to take the necessary precautions in the conduction of business and thereby causing death or injury of another shall be punished with imprisonment with forced labor or imprisonment for more than 5 years or a fine not more than 500,000 yen.                  § 211-1b. The same shall apply to one who, by gross negligence causes death or injury to another.  <b>It did not exist before</b></p>	<p>211-1. One who fails to take the necessary precautions in the conduction of business and thereby causing death or injury of another shall be punished with imprisonment with forced labor or imprisonment for more than 5 years or a fine not more than 500,000 yen. § 211-1b. The same shall apply to one who, by gross negligence causes death or injury to another.                  § 211- 2. One who by driving a car causes the crime mentioned in the second part of the preceding clause could be exempted from the criminal punishment if the injuries caused were light injuries depending on the circumstances in which the accident occurred.</p>

Sources : 1. Translation from the original Roppo (2000 and 2001) written in Japanese

2. English Translated version of the Roppou of Japan. (1998).

2. *The penalization of drivers in the Japanese legal system:* In Japan, the traffic law has three main applications:

- the administrative part describing the point system ;
- the pecuniary sanctions charged when a driver commits a traffic violation (non-serious offense) ;
- when the driver causes a serious traffic violation the term of imprisonment with or without forced labor, and the amount of fine is prescribed.

Nakane, F. (1998), EHS Law Bulletin Series, Japan

### **Last reforms of the traffic law of Japan (2001)**

**Previously:** Hit-and-Run Under 3 years of imprisonment with forced labor or a fine under 200,000 yen.

**After:** Under 5 years of imprisonment with forced labor or fine under 200,000 to 500,000 yen.

**Previously:** Driving while intoxicated: Under 2 years of imprisonment with forced labor or a fine of 100,000 yen.

**After:** Driving while intoxicated: under 2 years of imprisonment with forced labor or a fine of 100,000 yen.

**Before:** Drunk driving: under 3 months of imprisonment with forced labor or a fine under 50,000 yen

**After:** Drunk driving: under 1 year of imprisonment with forced labor or a fine under 300,000 yen

**Before:** Driving without license: under 6 months of imprisonment with forced labor or a fine under 100,000 yen

**After:** Driving without license: under 1 year of imprisonment with forced labor or a fine under 300,000 yen.

**Table 4.** Comparison of the traditional crimes after the reforms of the Criminal Code of Japan

	Resulting in death	Resulting in injuries
Manslaughter	Death penalty, imprisonment for an indefinite period, or over 3 years of imprisonment with forced labor ( § 199 )	-----
Injuries (Death or bodily injury)	Over two years of terminal imprisonment with forced labor ( § 205 )	Under 10 years of imprisonment forced labor, under 300,000 yen fine ( § 204 )
Dangerous driving resulting in death or bodily injury	Over 1 year of terminal imprisonment with hard labor ( § 208.2 )	Less than 10 years of imprisonment with forced labor.
Death or bodily injury, etc. caused by negligence in conduction of business	Under 5 years of imprisonment with hard labor or imprisonment, under 500,000 yen fine ( § 211 )	Under 5 years of imprisonment with hard labor or imprisonment, under 500,000 yen fine ( § 211 )
Involuntary manslaughter	Under 500,000 yen fine ( § 210 )	Under 300,000 yen fine, penalty ( § 209 )

## V. Discussion

Administrative Liability: both countries implement an administrative liability system, but have remarkable differences. For example, in Japan there is a very sophisticated point system adding points to

the drivers' license holder increasing the possibility of a license short-term suspension, mid-term suspension or long-term suspension, cancellation and revocation. In (the year) 2001, in Spain, the assembly discussed the motion concerning the introduction of the point system, but it was not approved. Instead, it was decided that drivers should lose their driving permit/license if they accumulate three serious traffic violations within 2 years. In addition, if the driver commits 15 minor violations in a period of 2 years, he or she loses the driving license, again. In Japan, traffic violations are kept in the records for 3 years, and there is a high possibility that only one serious traffic-violation (speeding over 30 kilometers, driving under the influence of alcohol) could lead to a driving license suspension. Japan, also applies points when a person causes a traffic accident. It can be seen that the Japanese administrative liability system imposes more hardship on the driver. The Japanese accumulative point system seems to be a great alternative to increase administrative liability in Spain and other countries practicing the continental law tradition. The traffic law of Spain is merely administrative; it does not mix criminal punishments in the same law. If it did, it might rise a feeling that drivers are held criminally liable without appropriate criminal procedure, and without giving the driver the right to be heard and defeated in court. In the worst case, it could elicit questions about unconstitutionality. In Japan, there has been a strong resistance to change the (1907) CC; instead, the criminalization has been shifted to a certain degree to the application of the traffic law. Another interesting issue is that in Japan after 10 office-working days the simple administrative treatment of a pecuniary sanction (traffic ticket fee) can become a criminal case if the person neglected to pay on time the pecuniary sanction. That kind of criminal law shadow underlying underneath of the pecuniary sanctions does not exist in the administrative law system of Spain. In Spain, if one refuses to pay the pecuniary sanctions there is a possibility that a certain percentage of interest shall be added to the pecuniary sanction and in the worst case the driver has to pay the pecuniary sanction when he or she wants to sell the car, renew the car's plates or the driving license permit.

**Civil Liability:** Spain and Japan have the same general tort principle establishing civil liability in general, for any personal or material damage one person inflicts to others. The Civil Codes of both countries also establish liability for the owners or directors of an institution for the damage caused by the employees or subalterns. The parents are held liable for the damages caused by their children in both countries' Civil Codes. In Japan, the Traffic Accident Special Law "Compensation for Damages Caused by Cars" and in Spain the "*Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law*" are used to establish

liability in each country in case of a traffic accident. In Japan, the law Compensation for Damages Caused by Cars takes an even more strict approach than the Civil Code by requesting the perpetrator of the traffic accident to accept the burden of proof. In Spain on the other hand, the "*Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law*" was partially annulled because it violated the right of equality granted in §14 of the Constitution of Spain. Such law also decreased the general tort principle established in the Civil Code of Spain.

**The Criminal Liability:** although the Japanese CC does not include a general principle like the one expressed in the PCS, it is possible to find a basic principle established by the *Constitution of Japan* §31 "No person shall be deprived of life or liberty, not shall be any other penalty, except according by the procedure established by the law" (Conde 1998). This article expressed in the Constitution of Japan (1946) could be used to as similar to § 5, **there is no penalty without criminal intent or negligence** and § 12 of the PCS: the negligent actions, and omissions are punished when the law explicitly penalizes them.

Criminal Negligence Established by Result: an Old Fashioned Type, (De la Torre 1996).

(1) The responsibility for the result: unintentional or unpremeditated -A result crime, which exceeds the intention of the perpetrator-

In principle, the only forms of imputation existing in the PCS are the criminal intent (*dolo*), and the criminal negligence (*imprudencia*). All forms of crime that cannot be attributable to the criminal intent and criminal negligence shall be excluded from the sphere of action of the PCS, and of the typical relevant sphere as well ( § 5 of the PCS). All result of actions not caused by criminal intent or criminal negligence shall be considered a **fortuitous and exclusive event** of natural or human origin that could not have been reasonably foreseen or expected, and is out of the control of the persons concerned.

According to the *theory of appropriate causality*, resulting fortuitous events that are objectively unforeseeable or that are produced because of actions executed with **proper diligence** are not imputable. The *objective foreseeability* and the *lesion of the proper diligence's* elements as well as the criteria for the *increment of risk*, the *execution of the risk*, and the *norm protection aim* are also elements of the unjust (unfair) type of negligence. Thus, if such elements and criteria are not satisfied in a particular situation, it is not possible to assume them as components of criminal negligence. The exclusion of *result liability* or objective liability in the criminal law-sphere is a consequence of the motivating function of the penal norms that can only motivate the citizens to avoid executing actions that could produce avoidable, and foreseeable results. It lacks the intention to punish the processes that are due merely to the results, (Ibáñez 1995).

Avoiding the negligent acts that are due merely to results seems reasonable, but although it is a relatively recent conquest of the **modern criminal law**, it is not always respected. Even in the 20th century, the criminal law field has recognized a third form of imputation different from the *criminal intent (dolo) and the criminal negligence, and imputation by mere result*. The immediate origin for this practice is found in the principle *versari in re illicita* that originates from the **medieval canonic law**. According to this principle, it is enough with the initiation of the illegal act to impute the perpetrator of the produced result, although the result was fortuitous, very distant to the purpose and foreseeability of the individual.

Thus, liability by result is linked to the initial illegal act, generally to the *criminally intended (doloso)* one, although it could be also negligent. For instance, once initiated the basic illegal act, the perpetrator shall hold the consequences of such an act. Although it was a fortuitous one, e.g. it was understood that the thief should respond for the death of the pedestrian that was hit by a tile of the roof, that was dropped by the thief. A consequence of this objective conception of the criminal liability were the *crimes qualified by the result*, in which it was enough that the qualification was produced as a consequence of the initial intended crime. For example: in the previous PCS, ( § 411, last paragraph: abortion resulting in the death of the pregnant woman; § 488, last paragraph: abandonment of the minor resulting in his death; § 348, crime against the public health resulting in death), although after the reform of 1983, the qualification was only imputed. Consequently, it could be that the most severe penalty established is imposed for these assumptions if it was caused at least by imprudence.

The 1995 PCS suppressed the crimes punishing the result to give a way to a new sphere: when it precedes the general rules of examination between the initial illegality (e.g. abandonment of a minor) and the generally negligent result produced (e.g. death of the minor). However, in the current PCS, there are some isolated precepts that include qualifications of the result. For example, crimes caused by terrorist acts, in which the penalty of twenty years imprisonment is imposed if the death of a person was caused ( § 571.1 (1). The abuse of privileged information by a functionary or authority in the result is considered as aggravating if it results in serious damages to the public-cause or to a third party ( § 442). In any event, all these qualifications of the crime are imputable if the acts are at least are produced by negligence.

## (2) *The fortuitous cases of permissible risk*

In the PCS, it prescribes that all forms of crime not attributable to criminal intent, and criminal negligence, shall be excluded from the sphere of action of the PCS and of the typical relevant sphere as well ( § 5 PCS). Traditionally, it was understood that a declaration of this type could be understood only as a

cause of exclusion of liability, since the absence of the *criminal intent (dolo) and the criminal negligence (imprudence)* would be interpreted as the non-imposition of penalties that were considered forms of liability for a wide sector in the criminal law community. That tendency has led to the traditional nomination in § 5 of the PCS as a liability principle. However, if the admitted *criminal intent (dolo), and the criminal negligence, (imprudence)* are the only two kinds of imputation of a crime it has to be considered that the absence of the two elements as *a cause of crime* shall exclude the punishment of the damage- (evil)-caused by a fortuitous act. This is typically considered the relevant issue in the criminal act.

At this point in time, the PCS penalizes only the drunk driver by clearly stating the period of driving license suspension term, the amount of months of working salary as a fine, and the respective term of imprisonment. The Japanese CC introduced only the word "driver" until the recent reforms enacted in 2001. Before that, the criminal punishments for drivers were based only on the Japanese RTL. Now, in both laws, the CC as well as in the RTL, drivers can be punished criminally. In the Road Traffic Law of Spain, if a driver commits three infringements typified as very serious during the last two years, he or she loses their driving license. Among the very serious offenses, it is possible to mention the following: to drive under the effect alcohol, intoxication or under the effects of other drugs; the reduction of more than the 50% of resting time established for professional drivers; reckless driving on public roads; to drive 50% over the speed limit (at least 30 kph over); to drive in the opposite lane; to resist the alcohol and stimulants test; to surpass the load capacity of the vehicle; unauthorized car races or car competitions amongst others. Most of these driving violations could result in imprisonment with forced labor or in a serious fine in Japan. In the CC of Japan there is no clear definition of the term "**negligence in conduction of business**", as a result, the Japanese legal scholars have made a paradigm shift in the traditional continental Law tradition by allowing the Japanese courts to create a legal precedent defining what **negligence in conduction of business** means. The Japanese courts have established that driving a car means to engage on dangerous behavior requiring extreme duty and care as in the conduction of business. As a result, in the Japanese courts it does not matter if one is driving a car with recreational purposes. The court will judge it as **negligence in conduction of business** when an accident happens. Even if the person involved in an accident just received their driving license and is driving his or her car for the first time, the case will be handled as **negligence in conduction of business**. This is quite a peculiar Japanese view, which probably was introduced from the German legal system. However, in Germany, the crime: "**negligence in conduction of business**" was abolished during the 1940s.<sup>15</sup> Finally, it is also important to notice that in Japan the civil procedures and the criminal

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procedures are in theory two separate processes when it comes to the establishment of civil or criminal liabilities. In many countries practicing the continental legal tradition, there is a possibility to treat the case at once or to treat it independently as is done in Japan. In Japan, it possible to find some relationship between these two processes. When a driver already has made a compensation settlement, the possibility to receive a punishment different from imprisonment with hard labor is quite high (See tables 7 and 8).

## VI. Annexes

**Table 5.** Victims of traffic accidents in Spain

Victims of Traffic Accidents					
Year	Fatal & Injuring Accidents	Total Victims	Persons Killed	Serious Injured	Slightly Injured
1991	98,128	155,247	6,797	50,978	97,472
1992	87,293	135,963	6,014	42,185	87,764
1993	79,925	123,571	6,378	36,828	80,365
1994	78,474	119,331	5,615	33,991	79,725
1995	83,586	127,183	5,751	35,599	85,883
1996	85,588	129,640	5,483	33,899	90,258
1997	86,067	130,851	5,604	33,915	91,332
1998	97,570	147,334	5,957	34,664	106,713
1999	97,811	148,632	5,738	31,883	111,011
2000	101,729	155,557	5,776	27,764	122,017

Source: obtained from following page <http://www.dgt.es/index> of the Traffic Section of Spain's Ministry Interior

**Table 6.** Victims of Traffic Accidents in Japan

Types Year	Fatal Accidents	Total Cases		Persons Killed		Persons Injured		Persons Seriously Injured		Death Rate		Serious Injury	
			Index		Index		Index		Index		Index	Rate	Index
1991	10,547	662,388	100	11,105	100	810,245	100	77,977	100	1.35	100	9.62	100
1992	10,891	695,345	105	11,451	103	844,003	104	79,535	102	1.34	99	9.42	98
1993	10,395	724,675	109	10,942	99	878,633	108	80,109	103	1.23	91	9.12	95
1994	10,154	729,457	110	10,649	96	881,723	109	77,674	100	1.19	88	8.81	92
1995	10,227	761,789	115	10,679	96	922,677	114	78,952	101	1.14	85	8.56	89
1996	9,517	771,084	116	9,942	90	942,203	116	77,053	99	1.04	77	8.18	85
1997	9,220	780,399	118	9,640	87	958,925	118	76,281	98	1	74	7.95	83
1998	8,797	803,878	121	9,211	83	990,675	122	74,247	95	0.92	68	7.49	78
1999	8,681	850,363	128	9,006	81	1,050,397	130	75,894	97	0.85	63	7.23	75
2000	8,710	931,934	141	9,066	82	1,155,697	143	80,104	103	0.78	58	6.93	72

- Note: 1. The number of fatal accidents is part of the “total cases”. Please avoid counting it twice
2. The number of serious injured is also part of the column “injured all cases”. Please avoid counting it twice.
3. The death rate is estimated from the number of (deaths ÷ number of deaths + the number of injured) × 100 (%).
4. The serious injury rate was estimated from the number of serious injured ÷ Total injured × 100 (%).

Sources: Traffic Boueau, National Police Agency, Road Traffic Accidents of Japan (1997), Institute of Traffic Accidents Research, Traffic Accidents Statistics, (1999), (2000).

**Table 7.** Crimes of Attempt Against Life and Body, Negligent Crimes and Other Crimes Particular Punishment Details and the Circumstances of Civil Liability's Settlements

Content of the Punishment	Crimes Attempting against Life and Body		Negligent Crimes		Other Crimes	
	Settlement*	Non-settlement*	Settlement	Non-settlement	Settlement	Non-settlement
Total Number	215 (24.4%)	667 (75.6%)	65 (24.5%)	200 (75.5%)	10 (13.3%)	65 (86.7)
Imprisonment	27 (20.0%)	108 (80%)	2 (16.7%)	10 (83.3%)	1 (5.6%)	17 (94.4%)
Probation	52 (38.2%)	84 (61.8%)	42 (42.9%)	56 (57.1%)	3 (37.5%)	5 (62.5%)
Summary Order	54 (14.0%)	333 (86.0%)	7 (13.5%)	56 (57.1%)	4 (37.5%)	35 (89.7%)
Indictment Postponement	82 (38.1%)	133 (61.9%)	14 (13.5%)		2 (20.0%)	8 (80.0%)
Non Compos Mentis	—	8 (100%)	—	—	—	—
Cancellation of the Accusation	—	1 (100%)	—	—	—	—

Source: information based in data provided by the ministry of Justice. Table published in the Hansai Hakushou, 1999. (2001) It shows the percentage equivalent to the kind of punishment

**Table 8.** Relation between Civil Liability Settlements (Contracts for Damages Liabilities) and Criminal Liability

Content of the Punishment	2 Under two weeks		Under One Month		Under 3 Months		Over 3 Months		Deaths	
	Settlement	Non Settlement	Settlement	Non Settlement	Settlement	Non Settlement	Settlement	Non Settlement	Settlement	Non Settlement
Imprisonment	1 (5.6)	—	—	1 (1.9)	—	1 (5.6)	—	1 (2.6)	1 (3.3)	7 (22.6)
Probation	8 (44.4)	7 (12.3)	4 (36.4)	7 (13.0)	1 (50.0)	12 (66.7)	4 (100)	12 (30.8)	25 (83.3)	18 (58.1)
Summary Order	4 (22.2)	12 (21.1)	1 (9.1)	10 (18.5)	1 (50.0)	4 (22.2)	—	13 (33.3)	1 (3.3)	4 (12.9)
Indictment Postponement	5 (27.8)	38 (66.7)	6 (54.5)	36 (66.7)	—	1 (5.6)	—	13	3 (10.0)	2 (6.5)
Total	18 (100)	57 (100)	11 (100)	54 (100)	2 (100)	18 (100)	4 (100)	39 (100)	30 (100)	31 (100)
	24.0		16.9		9.3		10.0		49.2	

Source: information based in data provided by the ministry of Justice. Table published in the Hansai Hakushou, 1999. (2001) It shows the percentage equivalent to the kind of punishment

## VII. Endnotes

- 1 Gilis Erenius, (1976), Criminal Negligence And Individuality, 19.
- 2 John Henry Merryman "The Civil Law Tradition, (1969) State Positivism, 20.
- 3 Although one might argue that the population of both countries are different, the information presented here only aims to provide general information about the victims of traffic accidents of each country. The rate is proportional to the almost 50 million inhabitants of Spain and to the almost 126 millions of inhabitants of Japan.
- 4 There are three types of liabilities (administrative, civil and criminal) running into effect as soon as a traffic accident has occurred.
- 5 The Traffic Section of Spain's Ministry Interior in the following page <http://www.dgt.es/index.html> offers this information. A copy of this paper will be sent to this office.
- 6 The original version of this law can be found at the following page <http://www.dgt.es/index> of the Traffic Section of Spain's Ministry Interior.
- 7 Presented in the Magazine "TRAFICO" (Traffic) Spain, November-December 2001.
- 8 This statement appears in the introductory paragraph of the "Civil Liability and Motor Vehicle's Compulsory Circulation Insurance Law.
- 9 This law can be obtained from following page <http://www.dgt.es/index> of the Traffic Section of Spain's Ministry Interior.
- 10 Spanish version of General theories in Criminal Law, Barcelona, Spain, 1996.
- 11 The Nishi-Keisatsu-Syou traffic department's officer manifested that after those 10 days the driver usually gets two extra weeks. If after those two extra weeks a traffic offender does not pay the ticket fee, sometimes it takes months, and even a year before the police really pass the case to the prosecutor's office to apply a formal trial, not a brief trial hearing.
- 12 What has been written in this paper was taken from the original Japanese writing presented in the book titled "The Points System and its Practical Application"1991.
- 13 Taken from the English translation of the Civil Code of Japan, Law Bulletin Series, (1998).
- 14 This part of the text is a translated summary of the original Japanese Language version presented in the book titled "Minpou II" Civil Law II, Special Provisions of Obligations, University of Tokyo Press, (1997).
- 15 Criminal Law Cases & Material: General Part, Printed in Japan, 1995.

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