

# CTP AND THE COMMON LAW

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# The Reasonable driver

Is ‘...a driver of skill, experience and care, who is sound in mind and limb, who makes no errors of judgment, has good eyesight and hearing, and is free from any infirmity’.

*Nettleship v Weston* [1971] 2 QB 691, 699 (Lord Denning).

... without the availability of reasonably affordable insurance, the application of the principles of the common law of negligence to the risks involved in driving a motor vehicle would mean that few people would drive. The common law makes a defendant liable for all the harm of which his or her negligence is a cause, however slight the moral culpability involved in the negligence, and however extensive the harm. Momentary inattention can be a cause of harm for which few motorists could afford to pay compensation.

*Imbree v McNeilly* [2008] HCA 40, [22] (Gleeson CJ)

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“If such compulsory insurance were *not* part of the legal background ... and if ... the driver (or the owner) of the vehicle would, or might, be personally liable ... it is extremely unlikely, in my view, that the courts would impose on them liability ... sounding in millions of dollars. Such a course would be unrealistic and futile...”

*Imbree v McNeilly* [2008] HCA 40, [111] (Kirby J)

# Common law damages

- Aim to put the injured person in the same position that they would have been if the accident had not happened.
- Are paid in a single lump sum and it's then up to the injured person to manage the money. They may get too much or not enough and they may spend it wisely on the things it was given for, or not.