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# Civil Practice Update

## *All the Law That's Fit to Print*

by Michael J. Epstein

Vol. X, No. 1  
February 2012

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**Tenth Anniversary!** It is hard to believe, but we are embarking on our tenth year of the Civil Practice Update. Any gifts should be tin, but please don't throw them at us because you don't like the humor or commentary from past updates! An outstanding question over the past ten years is why does this guy refer to himself as we instead of I? Well, the answer is that when we started we hoped to write new material and edit submissions from those of you in the legal community. As luck would have it, we have had requests to write on certain topics, maybe one or two actual submissions, and a bunch of "what were you thinking" sprinkled in with hey I really enjoyed that. "I" still like "we" for journalistic integrity – a romantic journalist at heart. All kidding aside, I want to thank all of you who have taken the time to email, write, call, and tell me that you read and enjoy this publication.

**QUIZ.** Enough with the sappy stuff, and let's do a QUIZ as it has been a while. Today's quiz is on the LOL and motor vehicle accidents. No, not laugh out loud and texting – the limitation on lawsuit, formerly known as the verbal threshold. Let's test our knowledge,

and no peaking at the end where the answers are!

**QUESTION 1.** Does a pedestrian hit in a crosswalk by a car get the LOL if she does not own a car, but lives with her parents who own a private passenger car where the LOL was elected: (A) yes, (B) no, (C) need more information, (D) none of the above.

**QUESTION 2.** Does that same pedestrian get the LOL if she is struck by a commercial truck. (A) yes, (B) no, (C) need more information, (D) none of the above.

**QUESTION 3.** Does an uninsured driver of his own car get the LOL if he is rear-ended by an insured car. (A) yes, (B) no, (C) need more information, (D) cannot sue for pain and suffering.

**QUESTION 4.** A person owns a car, but is uninsured. She gets drunk, is a passenger in her own uninsured car, and does not tell the driver that the car is uninsured. Does she get the LOL if she is injured in a car accident? (A) yes, (B) no, (C) need more information, (D) cannot sue for pain and suffering.

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**QUESTION 5.** A person gets drunk, gets in her car, and gets into an intersection collision with another car. Does the drunk driver get the LOL. (A) yes, (B) no, (C) need more information, (D) cannot sue for pain and suffering.

**QUESTION 6.** Can the drunk driver sue the bar that served him until he was visibly intoxicated? (A) yes, (B) no, (C) need more information, (D) none of the above.

**ANSWERS: (1) - A, (2) - B, (3) - D, (4) - D, (5) - D, (6) - A.** If you got 6 right, you are an all-star. If you got 5 right, you are a major leaguer. If you got 4 right, you are triple A, and need to brush up. If you got 3 or under correct, you might want to take a class on new cases and/or read Gerry Baker's latest and greatest supplement that was in a recent Law Journal.

**Supreme Court Civil Practice Committee.** It is that time again. The Committee is seeking comments to the proposed amendments to the Rules of Court. Any and all comments must be in by April 2, 2012. We address a few of the proposals here:

**4:5-3.** A proposed amendment would require doctors in a malpractice case to list their specialties in the answer. This proposal makes great sense as it would eliminate many problems that occur with affidavits of merit.

**4:17:4(f).** The proposed amendment will require plaintiffs claiming personal injuries to provide HIPPA's for all doctors listed in their answers to interrogatories. This rule will streamline the discovery process, but the form HIPPA that is proposed for the Appendix is a must or there will be motion practice on the form of the HIPPA provided by plaintiffs.

**Form Roggs – treatises.** Proposed amendment makes it clear that a party need not disclose learned treatises that will be used for impeachment purposes.

**Contributions.** If you have an interesting case, rule interpretation, ethics issue, or civil-related story, please contact me at (201) 845-5962, (f) (201) 845-5973, or e-mail [mjepstein@theepsteinlawfirm.com](mailto:mjepstein@theepsteinlawfirm.com).

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