mobile where the automobile was completely inoperative and was never used after acquisition of the pickup truck. The pickup truck was purchased as a means of transportation to replace the transportation provided by the automobile.

Because of our affluent and fast-paced society where almost every family owns a car, automatic insurance clauses in automobile liability policies are necessary. They are intended to meet the necessity for maintaining coverage in the situation resulting from the recognized custom among insured owners of acquiring other cars by replacement and new purchases during the life of their policies.[11] The issues resolved in the instant case[12] have yet to be litigated in the Georgia courts, but the holding is a just and fair one and is followed by most jurisdictions where this problem has arisen.

EDWIN S. VARNER, JR.

INSURANCE—RIGHT OF RECOVERY UNDER LIFE POLICY—INSURED KILLED WHILE COMMITTING A FELONY

A recent case[1] brought before the Third District Court of Appeals of Florida involved a situation of first impression in that state. The insured under a group life insurance policy which did not contain a violation of law clause was killed while in the commission of an armed robbery. The granting of a summary judgment in favor of the administratrix of the insured's estate was affirmed, the court holding that the public policy of Florida would not preclude such recovery.

While there does not seem to be a clear-cut majority rule in this country, the court in *Home State Life Ins. Co. v. Russell*[2] stated:

> In the absence of any provision in the policy excepting such a risk, the insurer is liable, though the insured was killed while committing a felony, if it does not appear that the policy was obtained in contemplation of the commission of a felony and the consequent danger.[3]

In the *Home State* case the court refused to hold that the public policy of Oklahoma precluded a beneficiary's recovery on a life insurance contract where the insured was killed in the commission of a felony, and where the contract did not exclude such cause of death. The court reasoned that it

11. Mullen v. Farm Bureau, 21 Ill. App. 2d 280, 157 N.E.2d 679 (1959).
12. Filaseta v. Pennsylvania Threashermen & Farmers' Mut. Cas. Ins. Co., 209 Pa. Super. 322, 228 A.2d 18 (1967).
1. Valley Forge Life Ins. Co. v. Lawrence, 196 So.2d 759 (Fla. 1967).
2. 175 Okla. 492, 53 P.2d 562 (1936).
3. *Id.* at 493, 53 P.2d at 563.

should not be presumed that policyholders as a class or any appreciable number of them would go out and seek death in unlawful pursuits in order to mature their policies. Another case deciding this question of public policy in favor of allowing recovery was *Domico v. Metropolitan Life Ins. Co.*[4] in which the Minnesota court reasoned that to allow recovery to an innocent third party where the insured was killed while committing a felony would be no more offensive to public policy than that state's settled policy of allowing recovery in cases where the insured died as a result of suicide, even while sane. In the case of *Zurich General Accident and Liability Ins. Co. v. Flickinger*[5] it was stated that "If insurance companies desire to avoid liability on such grounds, they should insert a clause in their policies to that effect."[6]

The possibility that the allowance of recovery would promote evil or cause any considerable number of insureds to commit depredations on the public because of the comforting reassurance that their beneficiaries could collect the insurance if they were killed in the commission of a crime was dismissed as being only remote, speculative, and theoretical in the 1959 Missouri case of *Bird v. John Hancock Mut. Life Ins. Co.*[7] The *Bird* case concerned a factual situation almost identical to the that in the principal case. In its allowance of recovery the court said:

> Whatever public detriment ensues may well be offset by the public benefit accruing in the protection of creditors, the safeguarding of commercial transactions, and the provision of dependent women and children with the material necessities of life, resulting from a rule requiring insurance companies to pay in accordance with the terms of their contracts when death occurs.[8]

However, there appears to be considerable authority to the effect that recovery under circumstances as are present in the instant case would be precluded. It has been said:

> Public policy has been held to preclude recovery on a life and accident insurance policy where the insured's injury or death was a direct result of his own criminal acts, the courts so holding reasoning that, even in the absence of a policy provision expressly excluding liability under such circumstances, to permit recovery would encourage crime by protecting the criminal from some of the consequences which society imposes.[9]

In *Mulloy v. John Hancock Mut. Life Ins. Co.*,[10] a 1951 Massachusetts

4. 191 Minn. 215, 253 N.W. 538 (1938).
5. 33 F.2d 853 (4th Cir. 1929).
6. *Id.* at 856. *See also* Sanders v. Metropolitan Life Ins. Co., 104 Utah 75, 138 P.2d 239 (1943).
7. 320 S.W.2d 955 (Mo. 1959).
8. *Id.* at 958, 959.
9. 29A AM. JUR. *Insurance* §1183 (1960).
10. 327 Mass. 181, 97 N.E.2d 422 (1951).

case with facts similar to those in the principal Florida case, the insured was killed while attempting armed robbery. In denying recovery to the decedent's estate the court held, "that public policy forbids even an innocent beneficiary of a policy of life insurance to recover on a policy where the death of the insured is the result of his own criminal conduct."[11] The 1961 Virginia case of *Smith v. Combined Ins. Co. of America*[12] denied recovery on an accidental death policy where the insured died as a result of his own criminal acts, the court saying, "[t]his is upon the principle that by his conduct the insured has voluntarily placed himself in a position where he knows or should know that he is likely to be killed or injured."[13]

The Georgia courts have not been confronted with the identical situation presented in the principal case, although there are decided cases dealing with similar facts except for the presence of violation of law clauses, and cases involving double indemnity for accidental death provisions. In *Mutual Life Ins. Co. v. Anglin*,[14] a 1942 Georgia case in which the insured was killed while engaged in an armed robbery, recovery was allowed of the basic face amount of the policy even though recovery of the increased benefits under the double indemnity provision was denied. It is the opinion of this writer that if the Georgia courts were presented with a situation similar to that in the principal Florida case they would reason as the Florida appellate court did and decide that public policy should not be invoked to justify a denial of recovery.

FRANK D. FARRAR, JR.

TORTS—ASSUMPTION OF RISK—INEXPERIENCED DRIVERS

In a case of first impression, the Court of Appeals of Maryland was called upon to decide whether a friend who accompanies a learning driver with only a learner's permit for the purpose of giving the driver instruction and help in learning to drive must be held, as a matter of law, to have assumed the risk of injury in a collision in which no other vehicle and no unexpected emergency was involved and in which the only explanation of the collision was the conduct of the driver. In a split decision, the court held that there had been no such assumption as a matter of law.[1]

The dissent in the principal case,[2] noting that all the elements prere-

11. *Id.* at 182, 97 N.E.2d at 423.
12. 202 Va. 758, 120 S.E.2d 267 (1961).
13. *Id.* at 759, 120 S.E.2d at 269.
14. 66 Ga. App. 660, 19 S.E.2d 171 (1942).
1. Chalmers v. Willis, 231 A.2d 70 (Md. Ct. App. 1967).
2. *Id.* at 75.