

# You Bend it – You Mend it



## ***When is a gentleman (sometimes) not a gentleman?***

***ANSWER:*** *when he races another gentleman's car on an unwritten "you bend it, you mend it" gentleman's agreement.....and then bends it.*

**By Martin Emmison**

**W**e are all aware that most arrangements are done on a handshake, when a generous owner invites another person to drive his racing car on the track. In the vast majority of cases all turns out well, the lucky driver is careful with the owner's car, and everyone lives happily ever after. However, as we all know, accidents do happen.

In the immediate aftermath of the accident, in my experience the driver will often apologise profusely and admit responsibility for repairing the owner's car. This initial reaction may be driven by his remorse of the moment, or by the peer pressure of others present at the scene. However, when faced with a large repair estimate, more often than not the erstwhile gentleman finds reasons why he is not responsible for repairing the damage. Here are a few examples:

It wasn't my fault, I had nowhere to go

I was hit from behind

It was the other driver's fault

There was oil on the circuit, I was just a passenger

The brakes/steering/suspension failed - or worse

I never agreed to be responsible, and anyway there's nothing in writing to prove it.

Nothing in writing – there is the nub of the problem. If there is nothing in writing to prove the existence and terms of the agreement between the owner and the driver, the owner effectively relies on the driver being a gentleman after as well as before the accident. Without written proof, or perhaps the independent evidence of someone who is prepared to stand up in court and swear that he witnessed the driver's verbal undertaking, the owner will be hard pressed to convince a court that there was a binding contract between them. Even if the owner can prove an intention to create legal relations by the verbal agreement, he still has to prove the precise terms of that agreement.

A case in point is the accident that Michael Steele's HWM-Jaguar suffered at Spa a few years ago when driven by

Lash McCall. They had a verbal agreement that if he bent the HWM McCall would mend it, but after the accident there was a dispute about the extent of the repairs and their cost. The case was eventually settled by the court, but Steele reckons it consumed three entire months of his life over three years, on top of which were the legal costs, which on both sides totalled more than £200,000.

Therefore, however much as owner you may trust the person who will be racing or testing your car, the sensible course is to agree who will be responsible if the worst happens, and then to record that agreement in writing. Quite apart from the written word going a long way to protecting the owner against the driver reneging on his obligation, not least because he will know that he is on a sticky wicket, the act of writing it down will very likely identify some of the points that should be addressed, such as:

- does it matter who is responsible for causing the accident, the Driver or another driver?
- will the Driver be responsible if the accident is caused by a mechanical failure of the Owner's car?
- in the case of mechanical failure, will the Owner be indemnified against any claim for personal injury to the Driver?
  - who will be responsible for the costs of a mechanical blow-up that happens when the Driver is driving?
- where the Driver is clearly responsible for an accident or a blow-up, who chooses the repairer?
- where the Driver is himself a repairer, can he insist on doing the job in his shop, as opposed to paying someone else, and if so within what timescale?
- if the Owner and Driver decide to insure the car for a race meeting, who pays the premium, and who bears the excess and any uninsured amount?

Which brings us round to the question of track insurance. Through a specialist broker you can buy insurance cover for physical loss or damage to your car that is caused by accident or fire, to cover racing, qualifying, and practice, either on a race

by race basis or for the whole season. Separate cover for test days and hillclimbs is also available. Accident impact damage to the engine and transmission is normally excluded, but can be added for an extra premium.

The premium, that's the nasty part. This is calculated based on a number of factors, such as the type of circuit, length of race, type of car, experience of the drivers, and the sum insured. You are usually responsible for the first part of the damage (the "excess"), normally at least 10% of the sum insured. You choose the sum insured, based on your assessment (guesswork) of the likely cost of repairs after an accident, and how much premium you are prepared to pay.

However, it is not every situation where the driver of someone else's car will expect to be responsible for an accident on the track. For instance, if you are a professional driver or a recognized hotshot, you may have been asked to test the car, to see how it might be improved; or your task may be to get it higher up the grid than the owner could. If the car suffers an accident while you are driving, you would not expect to be asked to contribute to the repair cost, but where to draw the line? There must be many situations where the owner thinks he is being generous in asking another man to test or race his car, while the driver fools himself that he has only been asked because he is quick! To avoid such unfortunate misunderstandings, my advice is to put it in writing.

Finally (as they say on the TV News), let us end with a tale to restore our faith in human nature. Some years ago Brian Horwood arranged to lend his Lotus 18 to Chris Smith to race in HGPCA events and at the Goodwood Revival. They agreed in writing that Chris would buy some equity in the car to give some sense of "ownership", and that he would prepare, maintain and repair the car during the time that he used it. If he bent the Lotus, he would mend it. Chris had a huge accident at Madgwick at the 2004 Revival. I remember it well, because it happened thirty yards from where I was sitting. The car was cut in two to release Chris from the wreckage. Chris had the car repaired and returned it to Brian in better condition than it was when they made their agreement. When the car was sold,



Brian returned to Chris his equity contribution and a share of the profit. Difficult to say whether it helped that they had put their agreement in writing, but it was at least a happy outcome to a very nasty accident.

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# Letters

Dear Carol,

Whilst I'm sure Marcus Pye can leap to his own defence in need, I would like to comment on the letter from Peter Wallenberg Jr. in the September 2010 issue of the magazine.

Marcus is an extremely experienced competitor and canny observer of motorsport of almost all forms and I think it is right for him to 'call it as he sees it'.

My wife and I attended the Monaco Historics this year and it was certainly noticeable that there was a disparate standard of driving ability on show. I don't know what the ACM's entry qualifications are to take part in such an event, but it did appear that certain people were there more because of connections and pocketbook rather than ability. I'm sure that all that took part are aware of the nature of the circuit and the fact that it punishes mistakes, so perhaps there should have been a more stringent vetting of the drivers' abilities in this case. I don't know, so can't comment on Mr Wallenberg's abilities and experience, but I do feel that debuting a new (to him) car on such a circuit was possibly not the best idea.

That being said, it is beholden upon all the drivers to act with due care and respect on such a circuit. Those who prefer to drive well within the limits of they and their car's abilities should be welcome to do so, paying due care and attention to the competitors around them, whilst those who prefer a more 'ten-tenths' approach should be aware and respectful of the other drivers on the circuit and remember that Historic racing is about the car and not about the drivers! After all, we are not all there to rewrite history or add to the history of the cars, merely to celebrate them...

With Best Regards

Andrew Stevens

PS - just back from the Goodwood Revival and it was interesting to see the deployment of the 'Bad Sportsmanship' flag on one occasion to good effect. Perhaps it should be more regularly aired in some events!

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