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B The Supreme Court

The Supreme Court's emphatic refusal to abrogate the doctrine of joint and several liability can perhaps be attributed to its reaction to the approach of the court of appeal. The Supreme Court succeeds in partially providing a solution to the inequity suffered by defendants. By establishing comparative partial indemnity, the Court has modified the system so that many defendants will only be liable in proportion to fault.[105] However, this solution, without modification of joint and several liability, still requires the defendant to bear the burden of an insolvent or settling tortfeasor alone.

The Court presented three arguments in support of its refusal to abolish joint and several liability. First, the plaintiff's injury is indivisible; second, the plaintiff's conduct is not as tortious as defendant's; and third, the present law allows injured persons to receive full recovery.

1. The Indivisibility of the Injury

The first argument is that the injury by the plaintiff is indivisible, therefore, each defendant should potentially bear the burden of the entire loss: "In other words, the mere fact that it may be possible to assign some percentage figure to the relative culpability of one negligent defendant does not in anyway suggest that each defendant's negligence is not the proximate cause of the entire indivisible injury."[106]

This argument is, of course, contrary to *Li*. As Justice Clark pointed out in his dissent, "plaintiff's negligence is also the proximate cause of the entire indivisible injury,"[107] but this did not prevent the *Li* court from repudiating the all-or-nothing solution. Indeed, it is only because the injury is indivisible that liability can be apportioned between plaintiff and defendant as required in *Li*. If the injury were divisible, the only sensible way to apportion damages would be according to who caused each portion of the injury.

The better view would be that since the injury is truly indivisible, a culpable plaintiff and defendant should share the burden of plaintiff's injury. After all, the plaintiff is also the proximate cause of a single indivisible injury.

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would still be better off financially than he would have been prior to *Li*. The plaintiff will still recover something, the only variable would be the proportion of the total damages.

105. 20 Cal. 3d at 604, 578 P.2d at 915-16, 146 Cal. Rptr. at 198-99. After a lengthy analysis of the 1957 contribution statute the court determined that it was intended to lessen the harshness of the former common law no-contribution rule. Finding nothing in the legislative history of the statute indicating an attempt to foreclose future judicial development of the statute's purpose, the court held that the common law equitable indemnity doctrine should be modified to permit partial indemnity among concurrent tortfeasors on a comparative fault basis. *Id.*

106. 20 Cal. 3d at 589, 578 P.2d at 905, 146 Cal. Rptr. at 188.

107. *Id.* at 611, 578 P.2d at 920, 146 Cal. Rptr. at 203.

Although this argument is used to support the continued existence of joint and several liability, it is a better argument for modification of the doctrine. If the indivisibility of the injury allows apportionment of the loss between the culpable plaintiff and defendant, then the portion of the loss which is unsatisfied because of the settlement or insolvency of one tortfeasor should also be apportioned. The indivisibility of the injury should not be used for plaintiffs in *Li* and against defendants when it comes to the subject of modifying joint and several liability.

2. *The Culpability of Plaintiff*

As Justice Clark noted in his dissent, the second justification for joint and several liability offered by the majority is really a two-fold argument dealing with the culpability of the plaintiff.[108] The first part of this argument is that, although *Li* stated that parties should be liable in proportion to fault, not all plaintiffs are culpable. While it is undoubtedly true that not all plaintiffs will be found to be culpable, this argument serves only to justify the rule of entire liability when applied to situations involving a completely innocent plaintiff. However, since it is of course possible to have one rule for innocent plaintiff and one rule for culpable plaintiff, this argument actually favors modification of the current law which allows both culpable and innocent plaintiffs alike to use joint and several liability to the detriment of defendants.

In order to justify applying joint and several liability when the *plaintiff* is also at fault, the Supreme Court makes a second argument based on the *plaintiff*'s conduct. The Court states that the culpability of the plaintiff is not "equivalent to that of a defendant."[109] The degree of plaintiff's culpability is less because plaintiff has only violated a duty to protect himself, whereas defendant has violated a duty to prevent harm to others. The Court argues that since the degree of culpability is less, the rule of entire liability should be maintained.

There are several things wrong with this point of view. To begin quite often a plaintiff in injuring himself will have created a tremendous risk of harm to others. Moreover, the scope of plaintiff's duty is irrelevant. The Supreme Court itself in *American Motorcycle* pointed out that the guiding principle is that "a tortfeasor is liable for any injury of which his negligence is a proximate cause."[110] It makes no dif-

108. *Id.* at 611, 578 P.2d at 920-21, 146 Cal. Rptr. at 203.

109. *Id.* at 589, 578 P.2d at 906, 146 Cal. Rptr. at 189. Reduced to its simplest terms, the argument is that the conduct of the defendant is tortious, while the plaintiff's is not. *See* PROSSER, *supra* note 3, §65, at 418.

110. 20 Cal. 3d at 587, 578 P.2d at 904, 146 Cal. Rptr. at 187.

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111. *Id.* at 589-90, 578 P.2d
112. Fleming, *supra* note 94.
113. 20 Cal. 3d at 590, 578 P.2

ference if plaintiff had a duty only to himself; it is enough that the breach of the duty to himself caused this injury.

Finally, the language of the court makes it sound as if the court holds the view that tort liability is based on the moral wrongfulness of defendant's conduct. The court goes so far as to say that "the fact remains that insofar as the plaintiff's conduct creates only a risk of self-injury, such conduct, unlike that of a negligent defendant, is not tortious."[111] The only reason the conduct is not tortious is that plaintiff has not "wronged" anyone else. However, a more acceptable view of tort law is that liability exists, not because of moral wrong, but because someone's conduct is such that this person should pay for the damages the conduct causes. In *Li*, the Supreme Court held that plaintiff, in effect, did have to pay for injuries which he caused to himself. Regarding the injury which plaintiff has caused himself, the plaintiff is not culpable to a lesser degree or order, his culpability is exactly the same as defendant's.[112]

3. *Full Recovery for the Plaintiff*

The Court's final justification for joint and several liability is that "it frequently permits an injured person to obtain full recovery for his injuries even when one or more of the responsible parties do not have the financial resources to cover their liability."[113] This position is laudable; our tort system must take care of those who are injured. However, fairness will often be violated in such a system which may make a tortfeasor of relatively incidental fault pay the damages to a plaintiff who is significantly at fault. Even with the laudable motive of taking care of the injured, such a result is blatantly pro-plaintiff and only tenable because it is assumed that defendant has insurance or in some other way may be considered to have deep pockets. Does it seem proper for a private individual to bankrupt himself or herself to cover injuries for which the plaintiff was more responsible?

To some degree the court must reach this harsh result because its discussion is limited to the subject of abrogation; it does not examine the possibility of modifying the inequitable effect of joint and several liability. However, there are other ways for society to fairly shift the burden of loss. While it is true that the total abolition of joint and several liability would shift the entire burden of an insolvent defendant to the plaintiff, there are methods by which the risk can be apportioned

111. *Id.* at 589-90, 578 P.2d at 906, 146 Cal. Rptr. at 189.
112. Fleming, *supra* note 94.
113. 27 Cal. 3d at 590, 578 P.2d at 906, 146 Cal. Rptr. at 189.

between plaintiff and solvent defendant fairly.[114]

4. The Unstated Reason

Perhaps the real reason for the court's decision is unstated, for there is another justification for the court's refusal to abolish joint and several liability. This reason is succinctly stated by Professor Fleming:

> That rule is justified not by a one-sided preference for plaintiffs, but by the very principle of evenhandedness between plaintiffs and defendants enunciated in *Li*. It should therefore appeal to plaintiffs' and defendants' bar alike on the grounds of fairness: the "several" rule of the court of appeal in *American Motorcycle* is unfairly skewed against plaintiffs, whereas the supreme court's opinion carries the seeds of unfairness for defendants.[115]

The Supreme Court was confronted by a dilemma in determining the fate of joint and several liability. The real issue was who should bear the burden of the damages which are unsatisfied because one tortfeasor was insolvent or had settled for an amount less than his portion of the fault would justify his paying. If the court upheld joint and several liability, the defendant would bear the burden exclusively. If the court abrogated the doctrine, the plaintiff would bear the burden. As between plaintiff and defendant, the court chose the defendant, who at least, is always culpable to bear the burden. Therefore, joint and several liability was upheld.

The dilemma can be avoided entirely if the choice is not between the continued existence or abrogation of joint and several liability. If the issue is whether or not the doctrine should be modified so that plaintiff and defendant equally bear the burden of the unsatisfied damages, the answer is plain. The fairness principle of *Li* dictates modification.

IV. Other States

Although the Supreme Court chose not to abolish joint and several liability for the reasons stated above, the court seemed to take heart from the inability of the American Motorcycle Association to cite authority in support of abrogation of the doctrine: "AMA has not cited a single j .dicial author to support its contention that the advent of comparative negligence rationally compels the demise of the joint and several liability rule."[116] The Court also points out that the "over-

114. *See infra* note 173.

115. Fleming, *supra* note 94.

116. 20 Cal. 3d at 590, 578 P.2d at 906, 146 Cal. Rptr. at 189 (accordingly the court held that a concurrent tortfeasor remained liable for the total amount of damages diminished only proportionally to the degree of negligence attributable to the person recovering).

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119. *See supra* note 11

120. 31 N.Y.2d 25, 28 E.2d

121. 30 N.Y.2d 143, 282 N.E.2
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whelming majority of jurisdictions which have adopted comparative negligence have retained the joint and several liability doctrine"[117] and cites a number of cases which refuse to abolish joint and several liability.[118]

While the court is certainly correct in its view that the great weight of case authority is against the abrogation of the doctrine, the same cannot be said regarding the subject of modification. None of the cases cited by the Supreme Court fully deal with modification; only one mentions it. These cases, therefore, have dubious precedential value regarding modification. Moreover, a number of states have legislated either modification or abrogation.

A. The Cases Against the Abrogation of Joint and Several Liability

1. Those Cited by the Supreme Court

The Supreme Court in *American Motorcycle* cited five cases to illustrate the proposition that all courts which have considered the matter have refused to abrogate joint and several liability.[119] The court's use of these cases makes an interesting study in its own right. One of these strongly upholds the doctrine but does not discuss the subject of abrogation with anything near the thoroughness of the court in *American Motorcycle*. One of them indirectly upholds the doctrine against a challenge based upon comparative negligence. Another upholds joint and several liability but no mention is made of comparative negligence. And two of them, while upholding the doctrine of joint and several liability, actually modify it.

Kelly v. Long Island Lighting Co.[120] is the only case which lends strong support for the position of the Supreme Court in *American Motorcycle*. *Kelly* followed *Dole v. Dow Chemical Co.*, the New York case which allowed the apportionment of damages among contributing tortfeasors according to proportional fault.[121] In *Kelly*, the New York Court of Appeal stated:

> It should, of course, be understood that this refinement of the rule of contribution does not apply to or change the plaintiff's right to re-

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117. *Id.*

118. Gazaway v. Nicholson, 190 Ga. 345, 9 S.E.2d 154 (1940); Saucier v. Walker, 203 So. 2d (Miss. 1967); Kelly v. Long Island Lighting Co., 31 N.Y.2d 25, 286 N.E.2d 241, 334 N.Y.S.2d (1972); Chille v. Howell, 34 Wis. 2d 491, 149 N.W.2d 600 (1967); Walker v. Kroger Grocery & king Co., 214 Wis. 519, 252 N.W. 721 (1934).

119. *See supra* note 118.

120. 31 N.Y.2d 25, 286 N.E.2d 241, 334 N.Y.S.2d 851.

121. 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972). Damages were apportioned among the joint or concurrent tortfeasors regardless of the degree or nature of the concurring fault. The court in *Kelly* stated that "[w]e believe the new rule of apportionment to be pragmatically sound, as well as realistically fair." 31 N.Y.2d at 29, 286 N.E.2d at 243, 334 N.Y.S.2d at 854.

> cover against any joint tort-feasor in a separate or common action the total amount of his damages suffered and not compensated. We are only concerned here with the right of contribution between two or more joint or concurrent tort-feasors.[122]

This statement is all that is said in *Kelly* regarding joint liability, and even it seems to be made in passing. It is almost as if the court of appeal is not responding to arguments of counsel but rather merely clearing up a question which might occur in the minds of future readers.

Gazaway v. Nicholson, a Georgia case, also stands for the proposition that adoption of the comparative negligence doctrine does not require the abrogation of the rule which requires a joint verdict against jointly negligent tortfeasors.[123] However, in *Gazaway*, the primary concern of the court was the application of comparative negligence to multi-defendant cases.[124] As to joint and several liability, the Georgia Supreme Court added that "the mere fact that the same formula might produce results which vary to some extent as to the individual defendants [depending on whether defendants were sued jointly or separately] would not within itself authorize the conclusion that the comparative-negligence rule operated to change the common law rule as to joint verdicts."[125] This ruling upholds joint and several liability in the sense that there can be no joint and several liability unless there is a joint verdict.

While *Saucier v. Walker*[126] does stand for the principle that "there must be one verdict and that must be in one amount and against all the joint tort-feasors found liable,"[127] there is no mention of the existence of comparative negligence as the basis for a challenge to joint and several liability. It is true that comparative negligence was the law of Mississippi at the time *Saucier* was decided, and this case does include the following quotation: "It is the settled law of this state that there can be

122. 31 N.Y.2d at 30, 286 N.E.2d at 243, 334 N.Y.S.2d at 855.

123. 150 Ga. 345, 9 S.E.2d 154. An action was brought on the behalf of a seven year old boy, who was struck by an automobile after exiting a school bus, against the driver of the automobile which hit him, the driver of the school bus, and the owner of the bus. The defendants were sued as joint tortfeasors.

124. It may be true that in such case the rule as to comparative negligence cannot in every instance be applied in favor of each separate defendant to the same extent as if one party only had been sued, the argument here being that in the former case the plaintiff's negligence must be compared with the combined negligence of all the defendants considered as a unit, whereas in the latter case, only the one and sole defendant can be treated as the unit of comparison.

190 Ga. at 348, 9 S.E.2d at 156.

125. 190 Ga. at 348, 9 S.E.2d at 156.

126. 203 So. 2d 299 (Miss. 1967).

127. *Id.* at 302-03.

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134. 214 Wis. at 536, 252 N.W. at

135. 34 Wis. 2d at 500, 149 N.W.2

136. 318 So. 2d 386 (Fla. 1975).

137. 280 So. 2d 431 (Fla. 1973).

no apportionment of damages against a joint tort-feasor. . . ."[128] Yet, this quotation is merely used as grounds to construe an ambiguous jury verdict.[129]

The last two cases cited in *American Motorcycle*, *Walker v. Kroger*[130] and *Chille v. Howell*,[131] are related in that *Chille* follows *Walker*. They both stand for the proposition that the comparative negligence doctrine does not require the demise of joint and several liability.[132] However, the practical effect of the form of comparative negligence which existed in Wisconsin at that time was to modify joint and several liability. Wisconsin followed the form of comparative negligence which bars the plaintiff from recovery where his negligence was "as great as" the defendant's.[133] Therefore, if the plaintiff's negligence was greater than one tortfeasor's, then there was no recovery whatsoever from that tortfeasor: "If such contributory negligence was as great as the negligence of one of the tort-feasors against whom recovery is sought, then as to that particular tort-feasor there still is no right to recover."[134] This position, established in *Walker*, was later reaffirmed in *Chille*,[135] and it solves one of the injustices which results from joint and several liability. A defendant who is less liable than the plaintiff should not have to pay the damages caused by all the defendants.

2. *Cases Not Cited in* American Motorcycle

There are additional cases which refuse to abolish the doctrine of joint and several liability despite the existence of comparative negligence. *Lincenberg v. Issen*[136] is the Florida equivalent of *American Motorcycle*: the Florida Supreme Court had adopted comparative negligence in *Hoffman v. Jones*,[137] and *Lincenberg* was the court's first opportunity to apply the comparative approach to multiple tortfeasors.

128. *Id.* (citing Southland Broadcasting Co. v. Tracy, 210 Miss. 836, 850, 50 So. 2d 572, 577 (1951)).

129. In *Sawyer*, the jury returned a verdict which was unclear as to whether three defendants were to pay $5,000 each, for a total of $15,000, or $5,000 together. The court used the quotation above as a basis for holding that the verdict was for $5,000 against all three defendants as joint tortfeasors.

130. 214 Wis. 519, 252 N.W. 721 (1934).

131. 34 Wis. 2d 491, 149 N.W.2d 600 (1967).

132. This holding was reaffirmed in Fitzgerald v. Badger State Mutual Casualty Co., 67 Wis. 2d 321, 227 N.W.2d 444 (1975).

133. WIS. STAT. §331.045 (1931) provided in part that, in connection with contributory negligence, the negligence of the plaintiff would not bar recovery "if such negligence was not as great as the negligence of the person against whom recovery is sought" and that "any damages allowed shall be diminished by the jury in the proportion to the amount of negligence attributable to the person recovering." *Id.*

134. 214 Wis. at 536, 252 N.W. at 727-28.

135. 34 Wis. 2d at 500, 149 N.W.2d at 604.

136. 318 So. 2d 386 (Fla. 1975).

137. 280 So. 2d 431 (Fla. 1973).

The court held that it was bound by the legislature's recent adoption of the Uniform Contribution Among Joint Tortfeasors Act.[13] The court held that the will of the legislature should prevail; since the statute act expressly provided for the continued existence of joint and several liability, that this doctrine should continue to be the law of Florida. It should be noted that the court also declined to apportion contribution among tortfeasors according to fault because the statute expressly provides for pro rata contribution.[139]

In Colorado, one appellate court has held with little discussion that the Colorado rule of joint and several liability and the rule of no contribution among tortfeasors should continue to be the law. Although the court noted the existence of *American Motorcycle*, there was little discussion of it: the court simply noted that such a change "is not within the province of this court."[140] However, there is a vigorous dissent supporting both contribution based upon proportional fault[141] and the abrogation of joint and several liability.[142]

In *Arctic Structures, Inc. v. Wedmore*, the Supreme Court of Alaska refused to abandon the doctrine despite recognizing that it places the entire burden of an insolvent defendant on those defendants who can pay.[143] The court reasoned that even the Uniform Comparative Fault Act only suggested modification of the doctrine[144] and that the two

138. During the pendency of the appeal, the Florida Legislature passed FLA. STAT. §768.31 (1975), which was signed into law by the governor on June 13, 1975. The Florida statute was an adoption of the UNIF. CONTRIBUTION AMONG TORTFEASORS ACT, 12 U.L.A. 63 (1975) (1955 version).

139. 318 So. 2d at 394. "The negligence attributed to the defendants will then be apportioned on a pro rata basis without considering relative degrees of fault although the multi-party defendants will remain jointly and severally liable for the entire amount." *Id.*

140. Stefanich v. Martinez, 570 P.2d 554 (Colo. App. 1977).

141. 570 P.2d at 555.

142. *Id.* at 555-57.

143. 605 P.2d 430, 432 (Alaska 1979).

144. UNIF. COMPARATIVE FAULT ACT §2, 12 U.L.A. 33, 38 (Supp. 1982) (Commissioners' Comment: *Joint and Several Liability and Equitable Shares of the Obligation*). The common law rule of joint-and-several liability of joint tortfeasors continues to apply under this Act. This is true whether the claimant was contributorily negligent or not. The plaintiff can recover the total amount of his judgment against any defendant who is liable.

The judgment for each claimant also sets forth, however, the equitable share of the total obligation to the claimant for each party, based on his established percentage of fault. This indicates the amount that each party should eventually be responsible for as a result of the rules of contribution. Stated in the judgment itself, it makes the information available to the parties and will normally be a basis for contribution without the need for a court order arising from motion or separate action.

Reallocation. Reallocation of the equitable share of the obligation of a party takes place when his share is uncollectible.

Reallocation takes place among all parties at fault. This includes a claimant who is contributorily at fault. It avoids the unfairness both of the common law rule at joint-and-several liability, which would cast the total risk of uncollectibility upon the solvent defendants, and of a rule abolishing joint-and-several liability, which would cast the total risk of uncollectibility upon the claimant." *Id.* The suggested modification of the Act is discussed *infra* note 173 and accompanying text.

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145. 605 P.2d at 432-35.

146. 605 P.2d at 435.

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147. 20 Cal. 3d at 590, 578 P.2d at

148. *See supra* note 116 and accom

other important jurisdictions—Florida in *Lincenberg* and California in *American Motorcycle*—which had considered this issue rejected any change in the doctrine.[145] The court concludes that the doctrine should not be "modified."[146] Although the term "modified" is used and there is mention of the suggested approach of the Uniform Comparative Fault Act, the bulk of the court's discussion deals with the subject of abrogation.

Although most of the cases discussed above—both those cited in *American Motorcycle* and those which are not—have some precedential value in support of the continued existence of joint and several liability, none of them, except *Arctic Structures*, even mention modification. None of them fully discuss the possibility of modification, much less attempt to come to grips with the problem of the settling or insolvent tortfeasor. Even *Walker* and *Chille* which do in effect modify the doctrine of joint and several liability, merely state a conclusion without real discussion. Failure to abolish a law does not mean it should not be modified; indeed, when someone is arguing abolition and the courts are resisting, perhaps modification is the moderate step which should be taken.

B. States Abolishing or Modifying Joint and Several Liability

Although the thrust of this article is not to advocate the abolition of joint and several liability, it should be noted that several jurisdictions have abolished the doctrine as being incompatible with comparative negligence. The court in *American Motorcycle* implies that it knew of these cases when it stated that "the overwhelming majority of jurisdictions which have adopted comparative negligence have retained the joint and several liability doctrine."[147] However, the tone of the court is such that it seems to be saying that no rational mind which has considered this issue has ever found any contradiction between the doctrine of joint and several liability and the fairness principle which lies behind comparative negligence.[148]

Three states—Vermont, Kansas, and New Hampshire—have abolished joint and several liability using similar statutory language:

> Where recovery is allowed against more than one defendant each

145. 605 P.2d at 432-35.

146. 605 P.2d at 435.

> In light of Alaska's existing pro rata legislative scheme for apportionment or damages among joint tortfeasors and the public policies implemented by the legislation, we hold that the common law rule of joint and several liability should not be judicially modified.

Id. [footnotes omitted]; *see* State v. Guinn, 555 P.2d 530, 547 n.42 (Alaska 1976) (recognizing that judicial adoption of the doctrine of comparative negligence will require legislative amendment).

147. 20 Cal. 3d at 590, 578 P.2d at 906, 146 Cal. Rptr. at 189.

148. *See supra* note 116 and accompanying text.

> defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributable to all the defendants against whom recovery is allowed.[149]

In Kansas, this language was challenged on the grounds that, since the term "joint and several liability" was not mentioned, the statute did not really abolish the doctrine. The Supreme Court of Kansas met this challenge with the unequivocal statement that

> [U]nder the provisions of K.S.A. 60-258a the concept of joint and several liability between joint tort-feasors previously existing in this state no longer applies in comparative negligence actions. The individual liability of each defendant for payment of damages will be based on proportionate fault, and among joint judgment debtors is no longer required in such cases.[150]

Several states have modified the doctrine of joint and several liability. Texas has limited the doctrine by a statute which states that a defendant who is less liable than the plaintiff will only be liable for his proportional share.[151] This modification has been held by the courts to apply only to situations in which the defendants have all been negligent and not to situations in which one defendant was strictly liable.[152] Nevada has adopted an approach similar to that of Texas,[153] although it is interesting to note that prior to 1979 the Nevada comparative negligence statute took an even stronger position, holding that multiple defendants were severally liable.[154] Finally, Minnesota has adopted the Uniform Comparative Fault Act with its provisions for sharing the burdens of the settling or insolvent tortfeasor between culpable plaintiff and the other defendants.[155]

149. VT. STAT. ANN. tit. 12, §1036 (1973); N.H. REV. STAT. ANN. §507:7-a (1977); KAN. STAT. ANN. §60-258b (1976) (substantially identical to the quoted language).

150. Brown v. Keill, 224 Kan. 195, 204, 580 P.2d 867, 875 (1978); *accord*, Wilson v. Probst, 224 Kan. 459, 581 P.2d 380 (1978).

151. TEX. REV. CIV. STAT. ANN. art. 2212a, §2(c) (Vernon 1982-83) provides that:
> Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment which represents the percentage of the negligence attributable to him.

152. Lubbock Mfg. Co. v. Perez, 591 S.W.2d 907 (Tex. Civ. App. 1979) Pyramid Derrick and Equip. Co. v. Mason, 617 S.W.2d 727 (Tex. Civ. App. 1981).

153. NEV. REV. STAT. §41.141.

154. 1979 NEV. STAT. c. 629, § 6, at 1356-57 stated in part that:
> Where recovery is allowed against more than one defendant in such an action:
> (a) The defendants are severally liable to the plaintiff.
> (b) Each defendant's liability shall be in proportion to his negligence as determined by the jury, or judge if there is no jury. The jury or judge shall apportion the recoverable damages among the defendants in accordance with the negligence determined.

155. MINN. STAT. ANN. §604.02(a) provides in part that:
> Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fau
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V. The Methods of Modification: The Uniform Comparative Fault Act

The fairness principle requires that loss should be apportioned according to the percentage of fault.[156] Because of the changes which have been made in the law in *Li* and *American Motorcycle*, this principal is very much embodied in California tort law.[157] However, because of the existence of joint and several liability, the embodiment of this is not complete. Defendants still unfairly bear the burden of that portion of the loss attributable to settling tortfeasors beyond the amount of their settlements or to insolvent tortfeasors.

Those arguments which were used in *American Motorcycle* to justify the continued existence of the doctrine of joint and several liability do not negate the argument that the inequitable effects of the doctrine should be modified. Indeed, some of the reasons given in *American Motorcycle* against abolition actually favor modification. Moreover, as demonstrated in the previous section, a number of jurisdictions have seen fit to change the law in this area because of the fairness principle. And, in this section which deals primarily with the form that modification should take, it will be apparent that there is additional persuasive authority in support of modification.

Whatever new form the law takes, it must fairly apportion the burden of the unsatisfied portion of the loss between the defendants and the culpable plaintiff. If this is not entirely possible, the law must find other trade-offs which help to balance any inequity which remains. Fortunately, suggestions for new approaches which more fully embody the fairness principle have been made, and if the Supreme Court of California was unimpressed by the persuasive authority in favor of abolishing joint and several liability, the reverse should be true here. These suggestions have been made by the commissioners of the National Conference of Commissioners on Uniform Laws and notable

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ties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

156. *See supra* note 66 and accompanying text.

157. The current status of the law of comparative fault in California may be summarized as follows: (1) the doctrine of comparative fault will be applied to a single plaintiff-single defendant situation, including products liability cases; (2) comparative fault principles will be utilized to ascertain percentages of fault in situations involving multiple tortfeasors; (3) equitable indemnity will in fact provide proportionate contribution between or among multiple defendants; (4) named defendants may file a cross-complaint against unnamed potential defendants for partial indemnity; (5) the concept of joint and several liability has been retained; and (6) good faith settlements will be given *pro tanto* or dollar-for-dollar effect. It is unfortunate that some of these rules fail to carry out the "fairness" principle of *Li*.
Adams, *Settlements After Li: But Is It "Fair"?* 10 Pac. L.J. 729, 742-43 (1979).

scholars[158] in the form of the Uniform Comparative Fault Act[159] which proposed changes in the tort system resolving the problems of both the insolvent and the settling tortfeasors.

A. *The Problem of the Insolvent Tortfeasor*

The Uniform Comparative Fault Act corrects the problem of insolvency by having the culpable plaintiff and the solvent tortfeasors share the burden of the damages which would be apportioned to the insolvent tortfeasor. Section 2(d) of the Uniform Comparative Fault Act states as follows:

> Upon motion made not later than [one year] after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. The party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to claimant on the judgment.[160]

In practice, the statute would work something like this. Assume there is a judgment of $100,000 and the relative fault of the parties is as follows:

Plaintiff =20%
Defendant A=20%
Defendant B=[illegible]%
Defendant C=40%

If defendant A was insolvent, any of the other defendants could move for a reallocation of the judgment among the two remaining defendants *and plaintiff*. The liability of A would be apportioned according to the relative fault of the remaining parties. Plaintiff would have to absorb ¼, defendant B ¼, and defendant C ½ of the $20,000 liability of A. $5,000 will be allocated to plaintiff, $5,000 to B, and $10,000 to C. Plaintiff's total recovery will be $75,000. Each one of the defendants may be subject to pay the entire judgment under the doctrine of joint and several liability, but each may seek contribution from the other. There has been an equitable apportionment of the burden of the insolvent tortfeasor.

Since the jury will determine the proportional fault of all the parties, the motion for reallocation can be made at the time of the trial if the insolvency of a defendant is known then or when this insolvency comes

158. *See* Adams, *supra* note 157; Fleming, *supra* note 94.
159. UNIF. COMPARATIVE FAULT ACT, 12 U.L.A. 35 (Supp. 1983).
160. *Id.* §2(d), at 37 (Supp. 1982).

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The rationale for the plaintiff and defendants t an insolvent tortfeasor. I Fault Act, the Commissio cation . . . avoids the unf and-several liability, whic upon the solvent defenda liability which would cas claimant."[162]

Moreover, as pointed o *Motorcycle*, any other ap fact finding process. Ot known at the trial; this de or, because of insolvency system plaintiff will seek t to the insolvent defendant fendant will be responsib vent one. If joint and s would be true: defendant attributable to the insolver sible. Reallocation would no incentive to inflate the

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161. This concept of reallocation jurisdictions. Professor John G. Fl DISTRIBUTION IN NEGLIGENCE ACT two common law jurisdictions whic Liability Act of 1961, 1961 Acts of th Damages Act of 1956, ch. 2, § 8(ii) (*supra* note 94, at 1492.
162. UNIF. COMPARATIVE FAUL ment to section 2).
163. *American Motorcycle*, 20 C dissenting).
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to light but not later than one year after the judgment is entered.[161]

The rationale for the reallocation is simple: reallocation requires plaintiff and defendants to share the burden of the loss attributable to an insolvent tortfeasor. In the Comment to the Uniform Comparative Fault Act, the Commissioners make the following statement: "Reallocation . . . avoids the unfairness both of the common law rule at joint-and-several liability, which would cast the total risk of uncollectibility upon the solvent defendants, and a rule abolishing joint-and-several liability which would cast the total risk of uncollectibility upon the claimant."[162]

Moreover, as pointed out by Justice Clark in his dissent in *American Motorcycle*, any other approach besides reallocation will distort the fact finding process. Often the insolvency of one defendant will be known at the trial; this defendant may be absent from the suit entirely or, because of insolvency, unrepresented at trial. Under the present system plaintiff will seek to increase the portion of liability apportioned to the insolvent defendant because plaintiff knows that the solvent defendant will be responsible for the damages attributable to the insolvent one. If joint and several liability was abolished, the opposite would be true: defendant would seek to enlarge the portion of fault attributable to the insolvent defendant knowing plaintiff will be responsible. Reallocation would put an end to this process. There would be no incentive to inflate the liability of the insolvent defendant.[163]

The rule of reallocation may not appeal to members of the plaintiffs' bar because at present plaintiffs can always recover the full amount of the judgment as long as there is one solvent judgment debtor. However, this solution would provide the Supreme Court of California an opportunity to further embue the personal injury system with the fairness principle. In *American Motorcycle*, the court significantly advanced the fairness principle, however, it stopped short when further change meant shifting the entire burden of the uncollectible judgment to the plaintiff. Reallocation is a moderate solution, and it completely embodies the fairness principle.[164]

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161. This concept of reallocation is not new; indeed it has been adopted in some common law jurisdictions. Professor John G. Fleming credits Gregory in C. GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 77-79 (1936), as the originator of reallocation and cites two common law jurisdictions which use some form of reallocation. Republic of Ireland's Civil Liability Act of 1961, 1961 Acts of the Oireachtas, ch. 41 §38; *cf.* South Africa's Apportionment of Damages Act of 1956, ch. 2, § 8(ii) (redistribution between solvent joint wrongdoers). Flemming, *supra* note 94, at 1492.

162. UNIF. COMPARATIVE FAULT ACT, 12 U.L.A. 35, 40 (Supp. 1983) (commissioners' comment to section 2).

163. *American Motorcycle*, 20 Cal. 3d at 614, 578 P.2d at 923, 146 Cal. Rptr. at 206 (Clark, J., dissenting).

164. In establishing the reallocation principle of the Uniform Act it would be possible to ex-

B. The Settling Tortfeasor

At present a non-settling tortfeasor must bear the burden of that portion of loss attributable to a settling tortfeasor which exceeds the amount of the settlement. A release given in return for a settlement will bar any further recovery from the settler. Only the amount of a good faith settlement is deducted from the judgment regardless of the settler's proportional fault.[165] The doctrine of joint and several liability requires that the non-settling defendants pay the entire remainder of the judgment. A plaintiff who settles risks nothing as long as there is another solvent defendant.

The fairness principle requires that liability be apportioned according to fault. There are a number of ways the fairness principle could be applied to remove this burden from the exclusive responsibility of non-settling defendants. However, in this situation, the fairness principle must be balanced against the policy which favors settlement between the parties as the most efficient way to resolve disputes.

1. Shifting Burden to Settler

One possible way to implement the fairness principle is to shift the burden to the settling tortfeasor. The Uniform Contribution Among Tortfeasors Act of 1939[166] took this approach: a settling tortfeasor "remained liable for contribution in the amount by which his share exceeded the dollar value of the settlement."[167]

Although the 1939 Act did not contemplate a comparative fault system, its approach would work, and indeed this approach would best embody the fairness principle. For example, if the judgment was for $100,000 and defendant A, who had settled for $20,000, was 40 percent at fault, defendant B who had satisfied $80,000 of the judgment ($100,000 less the $20,000 settlement) could receive a $20,000 contribution from A. Ultimately both would be liable for the loss in proportion to their fault. If such a system were established today, there would be no injustice created by joint and several liability. A non-settling defendant who had to satisfy the entire judgment would have an action

empt from reallocation those situations in which one defendant would be vicariously liable for the damage caused by another under agency principles. The policies which make a master responsible for the conduct of the servant do not conflict with the fairness principle. The fairness principle is most applicable to situations in which defendants and plaintiffs are all the concurrent cause of plaintiff's injury.

165. 20 Cal. 3d at 602-04, 578 P.2d at 914-16, 146 Cal. Rptr. at 197-99.

166. UNIF. CONTRIBUTION AMONG TORT FEASORS ACT (1939).

167. Fleming, *supra* note 94, at 1494. Three states presently follow this approach: Arkansas, Hawaii, and South Dakota. However, five other states adopted this approach at one time: Delaware, Maryland, New Mexico, Pennsylvania, and Rhode Island. Adams, *supra* note 157, at 744 n.104.

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against the settler for the amount of the settler's liability exceeding the settlement.

The problem with this approach is that it discourages settlement. Why should any defendant settle if there is nothing to prevent him from being responsible for the full amount of the judgment that he would have to pay if he did not settle?[168] It would seem that the need to encourage settlements is as great today, especially in terms of overcrowded court calendars, as it was in 1955 when the Commissioner of the Uniform Laws rejected this approach in favor of the present system which provides for complete discharge of the settling tortfeasor and reduces plaintiff's recovery against other defendants by the amount of the settlement.[169]

2. *Shifting the Burden to Plaintiff*

The approach of the Uniform Comparative Fault Act is to shift the burden of the outstanding portion of the settling tortfeasor's liability to the plaintiff. The Act uses its provisions governing release to shift the burden:

> A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. *However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of Section 2.*[170]

If a $100,000 judgment is apportioned with plaintiff 25% at fault, with defendant A, (who had settled for $5,000) 25% at fault, and with defendant B 50% at fault, plaintiff may recover only $50,000 from B. A is completely discharged, and his or her equitable share of the liability, $25,000, is subtracted from the total amount, $75,000, which plaintiff can recover.

Beyond the fact that this approach is supported by the Commissioners, the rationale for the Uniform Act is appealing even though it does not completely embody the fairness principle. Plaintiff is the master of his or her fate free to settle or not depending upon the value he or she places on the suit. Joint and several liability will still be available to

168. One small benefit might be that the settling defendant would not be jointly liable for the other defendant's share; however, this would hardly provide the encouragement that is now given defendants who know they will suffer no liability beyond the amount of the settlement.

169. UNIF. CONTRIBUTION AMONG TORT FEASORS ACT §4(b), 12 U.L.A. 63, 98 (1975). *See* CAL. CIV. CODE §877(a).

170. UNIF. CONTRIBUTION AMONG TORTFEASORS ACT §6, 12 U.L.A. 35, 44 (Supp. 1983) (emphasis added).

assist plaintiff to recover the loss, and the tortfeasor who is "entirely liable" can seek contribution on a comparative basis against anyone but the settling tortfeasor. Moreover, there is no reason for a collusive settlement. As Professor Fleming has noted, "this self-regulatory incentive is clearly more effective than the requirement of 'good faith' under the current California statute and the Uniform Contribution Act."[171]

However, this form of apportionment does not fulfill the requirements of the fairness doctrine that liability should be apportioned according to fault. Plaintiff will bear a disproportionate share of the loss, and indeed, an innocent plaintiff may have to bear a portion of the loss where now he would not bear any loss. While it is true that plaintiff "has bought his peace,"[172] this approach seems harsh, especially on the innocent plaintiff since it is the innocent plaintiff who is least able to protect against loss.

Plaintiff, knowing that he or she will have no opportunity to recover the entire amount of loss after settlement, will certainly be more reluctant to settle. However, the disincentive to settle is somewhat mitigated under the Uniform Comparative Fault Act since plaintiff will be able to keep any portion of the settlement which is above the actual liability of the settler. Yet, the possibility that plaintiff may lose a portion of damages will insure the opposition of the plaintiffs' bar to any legislated change in the law.

However, taking into account all the policies that are relevant to this subject, the approach of the Uniform Act is better than either the present system or a regression to the 1939 version of the Uniform Contribution Among Tortfeasors Act. The present system encourages settlement, but it flys in the face of the fairness principle. The position of the 1939 Act, if used in a comparative system, would completely embody the fairness principle; however, it would strongly discourage settlement. The Uniform Act balances the two positions in that it maintains the incentive for defendant to settle and it embodies the fairness principle at least to the degree that plaintiff does not have to swallow any more of his own loss than he bargained for.[173]

171. Fleming, *supra* note 94, at 1496.

172. *Id.* at 1498.

173. It is also possible to modify the present system so that it can embody the fairness principle even more than under the Uniform Comparative Fault Act yet not reduce plaintiff's incentive to settle. the approach would be very similar to that used by the Uniform Act to apportion the liability of an insolvent tortfeasor except there would be no need of the one year waiting period. Since the amount of any settlement is known at the time the judgment is pronounced, the portion of the settling defendants' liability which exceeds the settlement could be apportioned among all parties who are at fault including plaintiff.

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VI. Conclusion

After *Li* and *American Motorcycle Association*, the California tort system has embodied the principle that plaintiff's loss should be apportioned among all parties, including a culpable plaintiff. However, because of the doctrine of joint and several liability upheld in *American Motorcycle*, the fairness principle does not control situations involving settling or insolvent tortfeasors. In those situations defendants are presently required to satisfy any portion of plaintiff's loss which are outstanding because of insolvency or settlement. The present system can be easily modified so that any unsatisfied loss can be apportioned between a culpable plaintiff and defendants.

Plaintiff = 20%
Defendant A = 40%
Defendant B = 40%

If the judgment was $100,000, defendant A's proportional share would be $40,000. However, if A had settled for $25,000, there would be $15,000 which would fall upon the shoulders of one of the other parties. Because of the doctrine of joint and several liability under present California law, B could be required to pay both his $40,000 and the $15,000 which A avoided by settlement. Under the approach of the Uniform Contribution Act of 1939, B, he satisfied the entire $55,000, could seek contribution from A for $15,000. In contrast, the Uniform Comparative Fault Act would require plaintiff to bear this burden. A would be discharged from all further liability and B would be liable only for his own $40,000.

But the most equitable method of resolving this situation is for the $15,000 to be apportioned between the plaintiff and defendant B. The ratio of B's liability to plaintiff's is two to one. Therefore, defendant B would have to pay for two-thirds of A's proportional liability—$10,000. Defendant B's liability would total $50,000. Plaintiff would have to absorb $5,000 of the loss as the price of settlement. As noted above, this apportionment could be made at trial, since the amount of the settlement is known then.

Of all the methods of solving the problem of the settling tortfeasor this one best embodies the fairness principle while still encouraging settlement. Joint and several liability still exists to assist the plaintiff in recovering judgment, but the inequity created by the doctrine will be greatly lessened. All culpable parties except the settling defendant are liable in proportion to fault. It is possible to establish a system in which a settling defendant would also have to share in the division of the portion of his liability which exceeds the settlement. In the hypo discussed above defendant A would be responsible for 2/5 of the outstanding $15,000 or $6,000, defendant B would also be responsible for 2/5 or $6,000. Plaintiff's share would be 1/5 or $3,000. The disadvantage of this method is that it would discourage settlement. Defendants settle not only to avoid greater liability but also to avoid the costs of defense. If the settling defendant may still be liable for some damages, both plaintiff and the remaining defendant will attempt to increase the settler's liability, and they may be successful since the settler will not be present to defend himself. In this situation a defendant may not want to be absent from trial. The settling defendant is completely discharged only to preserve the incentive to settle.

Both plaintiffs and defendants will be encouraged to settle under this system. Although plaintiffs will not benefit as much as they do under the present system, they will know that they will not be responsible for the entire amount of damages which exceeds the amount of the settlement. Since in most cases plaintiff will be less culpable than remaining defendants, the plaintiff's share will be small. Defendants will want to settle because of the complete discharge which results. Moreover, as each defendant settles, the pressure will be on the remaining defendants to settle since they will be partially responsible for the outstanding portion of the settler's share. Also, the Supreme Court in *American Motorcycle* established that it valued the rationale of favoring the innocent plaintiff over the culpable defendant, 20 Cal. 3d at 589-90, 578 P.2d at 906, 146 Cal. Rptr. at 189, the form of apportionment suggested here embodies this rationale since the innocent plaintiff will not have to bear any portion of the loss attributable to a settling defendant.

Adopted AK 1970 (19 other states have adopted)
AS 09.16.010 – .060
AK act does vary significantly

UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

An Act Concerning Contribution Among Tortfeasors, Release of Tortfeasors, Procedure Enabling Recovery of Contribution, and Making Uniform the Law with Reference Thereto.

1955 REVISED ACT

Sec.

Be it enacted .....

§ 1. [Right to Contribution]

(a) Except as otherwise provided in this Act, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally [wilfully or wantonly] caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

Subsection (c). Intentional, wilful and wanton. The substance of this provision is found in a few of the existing statutes, usually in rather vague language. Kentucky and Virginia, for example, provide that there must be no "moral turpitude." The 1939 Act was silent on the matter. The policy here followed is that of the original rule as to contribution, that the court will not aid an intentional wrongdoer in a cause of action which is founded on his own wrong. In cases of concerted battery, for example, there appears to be little reason to shift any part of the liability to another.

Two valid reasons exist for extending the exclusion to wilful and wanton acts causing or contributing to the injury.

In the first place wilful and wanton acts seem naturally to belong in the same class with intentional wrongs and to imply moral turpitude on the part of the wrongdoer. The policy of the section as drafted adopts the law of those states which do not recognize classification of negligence into degrees. It is intended to convey the idea that there is a difference between negligence and wilful or wanton misconduct. (See Srajer v. Schwartzman, 164 Kan. 1, c. 248.)

In the second place, by excluding wilful and wanton actors from the right to contribution, we eliminate most of the arguments urged for a rule allocating the shares of liability on the basis of relative degrees of fault. (See Sec. 2.)

In many states "gross and wanton negligence" in guest statutes is construed to mean wilful and wanton conduct. This is the rule which should be applied in determining the right of contribution under this act.

Brackets have been placed around the words "wilfully or wantonly" so that they may be omitted in those states where by definition of the terms they mean something less than they imply and where by including them the bar of the remedy would be too broad.

In contribution from a joint tortfeasor guilty of intentional, wilful or wanton conduct the share of liability would be determined under Section 2 as in any other case. Any liability for the whole claim as between tortfeasors or beyond "pro rata share" would depend on the law of indemnity.

Subsection (d). This is the same as Section 2(3) of the 1939 Uniform Act. The policy of the Act is to encourage rather than discourage settlements. The tortfeasor who settles removes himself entirely from the case so far as contribution is concerned if he is able and chooses to buy his peace for less than the entire liability. If he discharges the entire obligation it is only fair to give him contribution from those whose liability he has discharged. Since the settlement must be reasonable it follows that the question of total liability to the injured party may be litigated in the contribution action.

Subsection (e). Insurers. This provision is not in the 1939 Act.

In the absence of a statute, Minnesota and Wisconsin have subrogated the insurer to the right of contribution. Underwriters at Lloyds v. Smith, 166 Minn. 388, 208 N.W. 13 (1926); Frankfort General Ins. Co. v. Milwaukee Electric Ry. & Light Co., 169 Wis. 533, 173 N.W. 307 (1919). On the other hand some of the statutes have been construed to give only the tortfeasor himself the right to contribution, and not to cover the insurer. See for example, Lumbermen's Mutual Cas. Co. v. United States Fidelity & Guaranty Co., 211 N.C. 13, 188 S.E. 634 (1936).

The argument against subrogation is that the insurer has been paid full consideration for carrying the risk of liability, and contribution is a windfall to him. This ignores the fact that the contribution experience will inevitably be reflected in the insurance rates. The best analogy appears to be that of the workmen's compensation acts, which subrogate the insurer to the claim against third parties.

Subsection (f). Indemnity. The first part of this provision is retained from Section 6 of the 1939 Act, which apparently left it uncertain whether there could be contribution in any indemnity situation. There have been reports of one or two cases in which a trial court allowed it under the Act. It seems clear that there should be no contribution. Where a master is vicariously liable for the tort of his servant, the servant has no possible claim to contribution from the master; and the master does not need contribution from the servant and will not seek it, since he is entitled to full indemnity. The master, of course, may recover contribution from any third tortfeasor against whom he has no right of indemnity.

Subsection (g). The meaning is clear. It is not intended that the act should extend to liabilities arising out of breaches of fiduciary relationships.

Action in Adopting Jurisdictions

Variations from Official Text:

Alaska. In subsec. (c), omits bracketed material.

In subsec. (g), substitutes "does not" for "shall not".

Massachusetts. Section reads:

"(a) Except as otherwise provided in this chapter, where two or more persons become jointly liable in tort for the same injury to person or property, there shall be a right of contribution among them even though judgment has not been recovered against all or any of them.

"(b) The right of contribution shall exist only in favor of a joint tortfeasor, hereinafter called tortfeasor, who has paid more than his pro rata share of the common liability, and his total recovery shall be limited to the amount paid by him in excess of his pro rata share. No tortfeasor shall be compelled to make contribution beyond his own pro rata share of the entire liability.

"(c) A tortfeasor who enters into a settlement with a claimant shall not be entitled to recover contribution from another tortfeasor in respect to any amount paid in a settlement which is in excess of what was reasonable.

"(d) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, shall be subrogated to the tortfeasor's right of contribution to the extent of the amount it

has paid in excess of the tortfeasor's pro rata share of the common liability. This provision shall not limit or impair any right of subrogation arising from any other relationship.

"(e) This chapter shall not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee shall be for indemnity and not contribution, and the indemnity obligor shall not be entitled to contribution from the obligee for any portion of his indemnity obligation."

Nevada. In subsec. (e), omits bracketed material.

North Carolina. In subsec. (e), omits bracketed material.

In subsec. (d), substitutes "has not been extinguished" for "is not extinguished by the settlement".

In subsec. (e), substitutes "succeeds to" for "is subrogated to".

Tennessee. In subsec. (a), adds "but no right of contribution shall exist where, by virtue of intrafamily immunity, immunity under the workmen's compensation laws of the state of Tennessee, or like immunity, a claimant is barred from maintaining a tort action for injury or wrongful death against the party from whom contribution is sought" at the end thereof.

In subsec. (c), omits bracketed material.

Subsec. (e) reads: "A liability insurer, who by payment has discharged in full or in part the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, may be subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation or assignment arising from any other relationship and causes of action for contribution or indemnity are fully assignable and transferable."

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Operation of the Act in New Jersey. S. P. Orlando. 22 Ins.Counsel J. 480 (Oct.1955).

§ 1 CONTRIBUTION AMONG TORTFEASORS

Note 1

Rule against contribution and its status in Nebraska. 37 Neb.L.Rev. 820 (June 1958).

Revision of the Act. S. A. Gard. 27 J.B.A. Kan. 2 (Aug.1958).

Wilful tortfeasors: Common law and the Uniform Act. 62 Dick.L.Rev. 262 (March 1958).

Library References

Contribution ⇐5 et seq.
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C.J.S. Contribution § 11 et seq.
C.J.S. Indemnity § 1 et seq.
C.J.S. Insurance § 1209 et seq.

Notes of Decisions

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1. Purpose

Purpose of this Act is to provide for proportionate allocation of burden among tort-feasors who are liable. Alder v. Garcia, C.A.N.M.1963, 324 F.2d 483.

The preliminary purpose of the Uniform Contribution Among Tortfeasors Act was to create a right of contribution among joint tort-feasors, a right which did not exist at common law, and to establish a procedure whereby that right of contribution might be made effective in practice. Albert v. Dietz, D.C.Hawaii 1968, 283 F.Supp. 854.

It was intended by the Uniform Contribution Among Tortfeasors Act that equity should prevail over the manifest injustice of the common-law rule under which there was no right of contribution among joint tort-feasors. Id.

One of primary purposes of Uniform Contribution Among Joint Tortfeasors Act was to create a right of contribution among joint tort-fensors which did not exist at common law. Rowe v. John C. Motter Printing Press Co., D.C.R.I.1967, 273 F.Supp. 303.

This Act was designed to reverse two well established rules of law, namely, that there was no contribution among joint tort feasors and that the discharge of one joint tort feasor either by satisfaction of a judgment or by its equivalent, a release, discharged all other joint tort feasors. Hackett v. Hyson, 1946, 48 A.2d 353, 72 R.I. 132, 166 A.L.R. 1096.

The primary purpose of this Act is to create a right of contribution among joint tortfeasors, which did not exist at common law, and to establish a procedure whereby that right might be made effective in practice. Baltimore Transit Co. v. State, to Use of Schriefer, 1944, 39 A.2d 858, 183 Md. 674, 156 A.L.R. 460.

Purpose of this Act is to insure that a case involving joint tort feasors may be fully heard on the merits, without regard to the position of any of the parties as original defendants or otherwise. Brotman v. McNamara, 1943, 29 A.2d 264, 181 Md. 224.

One purpose of Uniform Contribution Among Tort-feasors Act was to provide proportionate allocation of burden among tort-feasors, in abrogation of common-law rule that there can be no contribution among joint tort-feasors. Rio Grande Gas Co. v. Stahmann Farms, Inc., 1969, 457 P.2d 364, 80 N.M. 432.

Purpose of this section providing that right of tort-feaser to secure money judgment for contribution does not accrue until he has either discharged common liability of joint tort-feasors by payment or has paid more than his prorata share thereof is to prevent injured person from . . lieving one joint tort-feasor of obligation of contribution except where he has also released other tort-feasors from prorata share of common liability. Garrison v. Navajo Freight Lines, Inc., 1964, 392 P.2d 580, 74 N. M. 238.

One primary purpose of this Act is to prevent multiplicity of suits. Kapp v. Bob Sullivan Chevrolet Co., 1962, 353 S.W.2d 5, 234 Ark. 395.

The intent of this Act is to permit finders of fact to decide relative responsibility of each tort-feasor and to hold him responsible in that proportion only, and the act does not presume that full recovery can be defeated because one or more of the defendants may be execution proof. Little v. Miles, 1948, 212 S.W.2d 935, 213 Ark. 725.

2. Retroactive effect

This Act affects substantive rights and cannot be construed retroactively. Distefano v. Lamborn, Del.1951, 81 A.2d 675, 7 Terry 195, opinion adhered to on reargument 82 A.2d 300, 7 Terry 195.

The Uniform Contribution Among Tortfeasers Act and Rules of Civil Procedure governing joinder of parties and causes were inapplicable to action commenced in 1967. Robertson v. Bankers & Tel. Emp. Ins. Co., 1968, 160 S.E.2d 115, 1 N.C.App. 122.

Uniform Contribution Among Tort-Feasors Act, in changing general rule that there is no contribution among joint tort-feasors, made substantive change in the law, resulting in deprivation of valuable common-law right to those who might be affected by such sweeping change, and would not and could not constitutionally, be given retroactive application. Massey v. Sullivan County, 1971, 464 S.W.2d 548, 225 Tenn. 132.

This Act is not retroactive and is not applicable to a transaction occurring prior to its enactment. Commercial Cas. Ins. Co. v. Leonard, 1940, 196 S.W.2d 919, 210 Ark. 575.

3. Construction

In absence of some reason expressed or necessarily implied to the contrary in this Act, court would construe the legislative language so as to give it meaning. Hackett v. Hyson, 1940, 48 A.2d 353, 72 R.I. 132, 166 A.L.R. 1096.

The rule that adoption of statutes from other states carries with it construction thereof by courts of such states, unless contrary to adopting state's settled policy, applies by analogy in construction of this Act. Shultz v. Young, 1943, 169 S.W.2d 648, 205 Ark. 533.

The interpretation of this Act by Commissioners on Uniform State Laws is not binding on State Supreme Court in construing state act concerning such contribution, but should be adopted, unless court is clearly convinced that such interpretation is erroneous or contrary to state's settled policy as declared in Supreme Court's opinions. Id.

4. Prior law

Prior to effective date of this Act in New Jersey, there could be no contribution or indemnification between joint tort-feasors and a joint tort-feasor was not liable to defendant and could not be joined as a third-party defendant. Douglas v. Sheridan, 1953, 98 A.2d 632, 26 N.J.Super. 544.

Prior to enactment of this Act in Delaware, no right of contribution existed between joint tort-feasors whether negligence charged was deliberate or willful or passive. Distefano v. Lamborn, Del.1951, 81 A.2d 675, 7 Terry 195, opinion adhered to on reargument 82 A.2d 300, 7 Terry 195.

Note 5

5. Law governing

In diversity actions which were brought in federal district court in Pennsylvania and which arose out of Pennsylvania automobile accident that resulted in injuries to plaintiffs, husband and wife, who were domiciliaries of New Jersey, New Jersey had most significant interest in issue of intraspousal contribution, raised by husband's motion to be dismissed as third-party defendant, and its law must be applied, although, to extent that threat of liability deters carelessness, Pennsylvania arguably had interest in intraspousal contribution. Zurzola v. General Motors Corp., D.C.Pa.1972, 341 F.Supp. 767, affirmed 481 F.2d 1398, 1399, 1400.

Subsequent or secondary action by defendant to obtain contribution or indemnification from third party in Pennsylvania court for loss sustained by judgment depends upon law of Pennsylvania as of date of filing or commencement of the secondary or independent suit. Spry v. Eastern Gas & Fuel Associates, D.C.Pa.1964, 234 F.Supp. 580.

Where action by airlines against airplane manufacturer seeking recovery by way of indemnity of sum representing amounts paid by airlines in settlement of claims for deaths of passengers in airplane crash or for contribution of one-half the total settlement figures based right of recovery on manufacturer's alleged negligence and not upon alleged breach of warranty, and airplane crash occurred in Wisconsin, the law of Wisconsin determined existence, nature and extent of rights, if any, of airlines and corresponding liability of manufacturer, since right of indemnity or contribution is governed by law of place of the tort. Northwest Airlines, Inc. v. Glenn L. Martin Co., D.C.Md.1958, 161 F.Supp. 452.

In action brought in New York, and transferred to Pennsylvania by husband and wife, New York domiciliaries, against defendant Pennsylvania motorists and their automobile liability insurer, a company doing business in Pennsylvania, for personal injuries sustained by the plaintiff wife in collision in Pennsylvania between husband's automobile and defendants' automobile, the law of Pennsylvania would be applied under New York choice of law rules and defendants would be entitled to interplead the husband for purposes of contribution. Ryer v. Harrisburg Kohl Bros., Inc., D.C.Pa.1971, 53 F.R.D. 404.

Contribution is classified in Delaware as a matter of remedy, and hence Delaware law, which does not permit a defendant to assert a claim for contribution against spouse or parent of plaintiff, applied to claim of a Pennsylvania defendant who sought to bring in as a third-party defendant the wife of one plaintiff and the mother of the other plaintiff notwithstanding that Pennsylvania law permits a defendant to assert a claim for contribution against spouse or parent of a plaintiff. Perez v. Short Line Inc. of Pa., Del.Sup.1967, 231 A.2d 642, affirmed 238 A.2d 341.

In action for injuries sustained in an automobile collision occurring in New Jersey, New Jersey law applied and controlled all matters of substance, including the extent of liability and the right to, and measure of, contribution between the defendants. Steger v. Egyud, 1959, 149 A.2d 762, 219 Md. 331.

6. Definitions

Phrase "liable in tort" in Uniform Contribution Among Tortfeasors Act does not require present liability to whoever might be particular plaintiff. New Amsterdam Cas. Co. v. Holmes, C.A.R.I.1970, 435 F.2d 1232.

Phrase "same injury" in Uniform Contribution Among Tortfeasors Act refers to initial injury occasioned by jointly negligent parties and not to something definable in terms of who brings the suit. Id.

Term "liable in tort" as used in definition of joint tort-feasors means any person or persons who have negligently contributed to another's injury and term refers to culpability. Zarrella v. Miller, 1968, 217 A.2d 673, 100 R.I. 545.

Definition of "joint tort-feasors" embraces successive wrongdoers lia-

ble for same harm though one may be also liable for additional damages. Trieschman v. Eaton, 1960, 166 A.2d 892, 224 Md. 111.

Word "liable" in Uniform Contribution Among Tortfeasors Act means "subject to suit" or "liable in court of law or equity." Tamashiro v. De Gama, 1969, 450 P.2d 998, 51 Hawaii 74.

7. Common law

Under common law of Mississippi, there was no contribution between joint tort-feasors. Standard Oil Co. of Ky. v. Illinois Cent. R. Co., C.A. Miss.1969, 421 F.2d 201.

Under common law, where two persons, acting independently or jointly, negligently injure third person or his property and both become liable in tort for such injury, one tort-feasor, making expenditures in discharge of such liability, is not entitled to contribution from other tort-feasor. Baltimore & O. R. Co. v. Alpha Portland Cement Co., C.A.Pa.1955, 218 F. 2d 207.

Under common law, there was no right of contribution between joint tort-feasors. Cage v. New York Cent. R. Co., D.C.Pa.1967, 276 F.Supp. 778, affirmed 380 F.2d 998.

Where relationship between owner of building abutting on sidewalk, on which pedestrian was injured in fall due to accumulation of ice and snow, and borough was one of primary and secondary liability and not one of joint and several liability, this Act did not apply, and common-law principle that release of tort-feasor discharges another tort-feasor who has committed a concurrent or successive tort applied. George v. Brehm, D.C. Pa.1965, 246 F.Supp. 242.

Common law rule against contribution among tortfeasors was in part superseded by adoption of this Act, and those facets of principle established by courts and not covered by Legislature are still obligations of courts to reexamine, repeal or reaffirm. Tino v. Stout, 1967, 229 A.2d 793, 49 N.J. 289.

Where plaintiff injured by truck brought action against truck driver, truck owner, and contractor for which truck was being operated at time of accident, at common law, truck owner and contractor, who were not guilty of wilful or active negligence but liable, if at all, on doctrine of respondeat superior, were joint tort-feasors, each entitled potentially to contribution if driver was the servant of each at the time of accident. Keitz v. National Paving & Contracting Co., 1957, 130 A.2d 229, 214 Md. 479.

At common law and until adoption of this Act, no right of contribution existed among joint tort-feasors. Burmeister v. Youngstrom, 1965, 139 N.W.2d 226, 81 S.D. 578.

Rule of equal contribution between tort-feasors was not a part of common law in existence at time of American Revolution and adopted in territory of Wisconsin; and legislation was not required to alter such rule, which was adopted through judicial process in 1918. Bielski v. Schulze, 1962, 114 N.W.2d 105, 16 Wis.2d 1.

8. Generally

Under Pennsylvania law, contribution among joint tort-feasors in negligence actions is permitted. Duckworth v. Ford Motor Co., C.A.Pa. 1963, 320 F.2d 130, 97 A.L.R.2d 806.

Under Delaware law there is a right to contribution among joint tort-feasors. ICI America, Inc. v. Martin-Marietta Corp., D.C.Del.1974, 368 F.Supp. 1148.

Under Maryland law, right of contribution exists among joint tort-feasors. State of Md. for Use of Gliedman v. Capital Airlines, Inc., D.C. Md.1967, 267 F.Supp. 298.

Pennsylvania law permits contribution among joint tort-feasors. Frankel v. Bu[illegible]'s Excavating Inc., D.C. Pa.1963, 22[illegible] F.Supp. 945.

Generally, right to contribution can arise only against joint tort-feasor who is himself directly liable to the injured party. LaChance v. Service Trucking Co., D.C.Md.1963, 215 F. Supp. 162.

Note 8

Under Pennsylvania law, contribution is permitted between joint tort-feasors even when the injured party has no cause of action against one of them on the theory that as between two tort-feasors contribution is not a recovery for the tort but the enforcement of an equitable duty to share liability for the wrong done. Panichella v. Pennsylvania R. Co., D.C.Pa.1958, 167 F.Supp. 345, reversed on other grounds 268 F.2d 72, certiorari denied 80 S.Ct. 370, 361 U.S. 932, 4 L.Ed.2d 353.

The right of contribution accorded by the Pennsylvania statute to one joint tort-feasor against the other creates a cause of action of a different nature from tort action which is the subject of the original suit. Martin v. U. S., D.C.Pa.1958, 162 F. Supp. 441.

Contribution is permitted between joint tort-feasors under 12 P.S. § 2083. Keller Crescent Printing & Engraving Co. v. Rosen, D.C.Pa.1955, 135 F.Supp. 22.

Where there is no negligence, there can be no right of contribution. Standhardt v. Flintkote Co., 1973, 508 P.2d 1283, 84 N.M. 796.

9. Nature of right

Contribution does not create direct liability in tort, each toward the other, between two tort-feasors; rather it is a right based on equitable fairness and that right, to have the other tort-feasor contribute to his outlay, arises in whichever tort-feasor satisfies the loss. Newport Air Park, Inc. v. U. S., C.A.R.I.1969, 419 F.2d 342.

Under law of Arkansas, contribution is founded on principles of equity and such relief will be granted only where equities are equal. U. S. Fidelity & Guaranty Co. v. Aetna Cas. & Sur. Co., C.A.Ark.1969, 418 F. 2d 953.

"Contribution" does not arise out of contract but is an obligation imposed by law, and rests on the principle that when the parties stand in aequali jure, the law requires equality, which is equity, and that all should contribute equally to the discharge of the common liability. Thomas v. Malco Refineries, C.A.N. M.1954, 214 F.2d 884.

Uniform Contribution Among Joint Tort-feasors Act rests on equitable principles and does not contemplate the sharing of responsibility among persons not in pari delicto and presupposes that the joint tort-feasors it deals with are in aequali juri. Rhoads v. Ford Motor Co., D.C.Pa. 1974, 374 F.Supp. 1317.

The right to contribution accorded by Pennsylvania statutes to one joint tort-feasor against the other creates a cause of action of a different nature from the tort action which was the subject of the original suit or claim; the right of contribution in Pennsylvania is a dual one: a right sounding in equity and a right at law sounding in quasi contract. W. D. Rubright Co. v. International Harvester Co., D.C.Pa.1973, 358 F. Supp. 1388.

The right of contribution arises from the application of equitable rules in that where one joint tort-feasor pays more than his just share he has an equitable right to proceed against the other joint tort-feasor for contribution. Albert v. Dietz, D.C. Hawaii 1968, 283 F.Supp. 854.

While the right of contribution by joint tort-feasors does arise at time of concurring independent acts, nevertheless until one of those joint tort-feasors pays more than his proportionate share of the underlying claim, the right remains contingent and inchoate and it is not until a tort-feasor pays more than his proportionate share that the right ripens into a cause of action. Id.

Under Uniform Contribution Among Joint Tortfeasors Act, right of contribution is a derivative right and not a new cause of action. Rowe v. John C. Motter Printing Press Company, D.C.R.I.1967, 273 F. Supp. 363.

Right to contribution is statutory creation resting on principle that, when parties stand in aequali jure, the law requires all to contribute

equally to discharge of the common liability. Southern Maryland Oil Co. v. Texas Co., D.C.Md.1962, 203 F. Supp. 449.

Right of contribution is a derivative right and not a new cause of action. Cacchillo v. H. Leach Machinery Co., 1973, 305 A.2d 541, —— R.I. ——.

Joint Tortfeasor Contribution Act was intended to relieve tortfeasors of injustice as among themselves and was not designed to prevent full recovery by plaintiff or intended to deny plaintiff full and complete satisfaction; Act gives contribution rights to defendant only after he has paid more than his pro rata share and does not require plaintiff to pursue each defendant only for his pro rata share, and plaintiff may still sue either defendant separately for entire amount of claim or sue defendants jointly and levy execution of entire amount against either alone or secure fractions thereof against both. Tino v. Stout, 1967, 229 A.2d 793, 49 N.J. 289.

Application of doctrine of contribution involves procedural or remedial law. Lutz v. Boas, 1962, 176 A.2d 853, 40 Del.Ch. 130.

Right to contribution is an equitable right based on a common liability to plaintiff. Brown v. Dickey, 1959, 155 A.2d 836, 397 Pa. 454.

Right to contribution remains a separate right of person asserting it, no matter how dependent it may be on other liability. Brown v. Eakin, 1957, 137 A.2d 385, 11 Terry 574.

Doctrine of contribution is equitable doctrine, based on natural justice, and was well-recognized in suretyship and other areas of law before it was adapted to negligence. Bielski v. Schulze, 1962, 114 N.W.2d 105, 16 Wis.2d 1.

There is no right to contribution among joint tort-feasors, in absence of statute. Brown v. Murdy, 1960, 102 N.W.2d 664, 78 S.D. 367.

Right to contribution by a primary wrongdoer against a primary wrongdoer granted by Pennsylvania statute is a substantive legal right which is unaffected by purely procedural statute or rule enacted or promulgated for convenience and to avoid multiplicity of suits. Murphy v. Barron, 1965, 258 N.Y.S.2d 139, 45 Misc.2d 905.

A defendant's right pursuant to Ark.Stats., § 34–1007, to seek contribution from a joint tort-feasor by making him a party is permissive and does not exclude right to seek contribution in a separate suit. Rudolph v. Mundy, 1956, 288 S.W.2d 602, 226 Ark. 95.

10. Common liability

Under South Dakota law the right to contribution is determined by whether there is joint or several liability, rather than by the presence of joint or concurring negligence, so that there can be no right to contribution unless the injured party has a possible remedy against both tort-feasors. Highway Const. Co. v. Moses, C.A.S.D.1973, 483 F.2d 812.

Indispensible to joint tort-feasor relationship is a common liability, either joint or several, that two or more parties have to the person injured and without this dual liability no right of contribution can exist under applicable Delaware law. ICI America, Inc. v. Martin-Marietta Corp., D.C.Del.1974, 368 F.Supp. 1148.

Under Delaware law, there can be no contribution unless there is common liability to injured person and unless injured person has possible remedy against two or more persons. Walker v. Patterson, D.C.Del.1971, 325 F.Supp. 1024.

Defendant in personal injury case could not proceed for contribution against operator of automobile in which plaintiff passenger rode at time of accident where plaintiff and third-party defendant were coemployees, inasmuch as plaintiff could not under Delaware statute bring direct negligence against coemployee, notwithstanding that plaintiff had not applied for or received workmen's compensation. Id.

Provisions of Uniform Contribution Among Joint Tortfeasors Act are

only applicable where there is a common liability to an injured person, and this common liability may be either joint or several, but there can be no contribution unless the injured person has a right of action in tort against both the parties seeking contribution and the party from whom contribution is sought. Rowe v. John C. Motter Printing Press Company D.C.R.I.1967, 273 F.Supp. 363.

In view of definition of "joint tortfeasors", before there can be any kind of contribution it must appear that at least originally the person seeking contribution and person from whom contribution is sought must have been under a common legal liability to injured party, so that there can be no contribution where injured party had no cause of action originally against party sought to be charged. Cox v. Maddux, D.C.Ark. 1960, 255 F.Supp. 517, reversed on other grounds 382 F.2d 119.

This Act is only applicable where there is a common liability to an injured person in tort, which liability may be joint or several, but there can be no contribution where injured person has no right of action against the third party defendant; the right of contribution being a derivative right and not a new cause of action. Oahu Ry. & Land Co. v. U. S., D.C. Hawaii 1947, 73 F.Supp. 707.

Under Delaware law, issue of contribution is contingent on a determination of whether defendants share a common liability to plaintiffs arising out of a single injury, and are, therefore, joint tort-feasors. Hood v. McConemy, D.C.Del.1971, 53 F.R.D. 435.

Under statute establishing right of contribution among joint tort-feasors, liability must be common to warrant contribution. Carchillo v. H. Leach Machinery Co., 1973, 305 A.2d 541, — R.I. —.

There can be no contribution unless injured party has a right of action in tort against both parties seeking contribution and party from whom contribution is sought. Id.

Action for contribution under Joint Tortfeasors Act will lie only when proposed contributor shares with defendant a common liability to plaintiff. Mumford v. Robinson, Del.1967, 231 A.2d 477.

Motorist sued by passenger in other automobile could not recover against host driver for contribution as joint tort-feasor unless host driver was liable to passenger. Id.

This Act is applicable only to a situation where there is a common liability to an injured person in tort, and there can be no contribution where the injured person has no right of action against the third-party defendant. Eanis v. Donovan, 1960, 161 A.2d 698, 222 Md. 536.

One tort-feasor may recover contribution even if, for one reason or another, plaintiff who has obtained judgment against both is precluded from enforcing liability thereunder against the other. Puller v. Puller, 1954, 110 A.2d 175, 380 Pa. 219.

This Act has no application unless there is a common liability to the injured party which liability may be joint or several and there is no right to contribution unless the injured person has a possible remedy against two or more persons. Ferguson v. Davis, 1954, 102 A.2d 707, 9 Terry 299.

Joint or several liability, rather than joint or concurring negligence determines right to contribution under this Act entitling joint tort-feasor to money judgment for contribution after he has by payment, discharged "common liability," or has paid more than his pro rata share thereof. Lutz v. Boltz, 1954, 100 A. 2d 647, 9 Terry 197.

Under this Act a joint judgment is not a necessary requisite to the right to contribution. Douglas v. Sheridan, 1953, 98 A.2d 632, 26 N.J.Super. 544.

Right to contribution under this Act depends upon existence of joint or several liability and not upon joint or concurrent negligence and there is no right to contribution unless injured party has a possible remedy against two or more persons.

Burmeister v. Youngstrom, 1965, 139 N.W.2d 226, 81 S.D. 578.

This Act is applicable only where joint tort-feasors share a common liability. Beal by Boutwright v. Southern Union Gas Co., 1956, 304 P.2d 566, 62 N.M. 38.

Tort-feasors, acting independently, are jointly liable to a plaintiff, and liable to each other in contribution, only when the independent acts of each cause or contribute to the same injury obtained by plaintiff. Applegate v. Riggall, 1958, 318 S.W.2d 596, 229 Ark. 773.

This Act contemplates right of contribution only where there is a common liability to an injured person in tort or to persons who are liable in tort for same injury to person or property. C & L Rural Elec. Coop. v. Kincaid, 1953, 256 S.W.2d 337, 221 Ark. 450.

11. Accrual of right

12 P.S. § 2082 et seq., gives substantive rights when it grants right of contribution among tortfeasors and when it makes payment of more than the pro rata share of the common liability a condition precedent to the accrual of the right to a money judgment for contribution. Smith v. Whitmore, C.A.Pa.1959, 270 F.2d 741.

While the right of contribution by joint tort-feasors does arise at time of concurring independent acts, nevertheless until one of those joint tort-feasors pays more than his proportionate share of the underlying claim, the right remains contingent and inchoate, and it is not until a tort-feasor pays more than his proportionate share that the right ripens into a cause of action. Albert v. Dietz, D.C.Hawaii 1968, 283 F.Supp. 854.

Under Maryland law, right both to indemnification and to contribution, whether based on contract or tort, accrue at time of payment, not before. Southern Maryland Oil Co. v. Texas Co., D.C.Md.1962, 203 F.Supp. 449.

Contribution claimant must show compliance with statutory requirements of Joint Tortfeasors Contribution Act. Miraglia v. Miraglia, 1969, 255 A.2d 762, 106 N.J.Super. 266.

Prerequisite to contribution is demonstration that person seeking to enforce contribution and one from whom contribution is sought are joint tort-feasors, and right of contribution accrues when injured third person has brought action and recovers judgment against one or more of joint tort-feasors and latter has paid judgment in whole or in part. Id.

Ordinarily, a right to contribution does not accrue before payment. Associated Transport v. Bonoumo, 1948, 62 A.2d 281, 191 Md. 442.

Under Pennsylvania law, substantive right to sue third-party defendant for contribution accrues when complaint in principal action is served upon defendants. Murphy v. Barron, 1965, 258 N.Y.S.2d 139, 45 Misc.2d 905.

12. Wanton or willful negligence

The equitable principle of contribution should not be used to transfer part of the obligation to pay compensation from a party that has acted quasi-intentionally so as to do a wanton and wilful act, to a party that was merely negligent. W. D. Rubright Co. v. International Harvester Co., D.C.Pa.1973, 358 F.Supp. 1388.

Under Pennsylvania law, railroad which was found guilty of wanton and willful negligence in automobile-train collision could not enforce right of contribution against administrator of driver of automobile who was found to have been contributorily negligent. Cage v. New York Cent. R. Co., D.C.Pa.1967, 276 F.Supp. 778, affirmed 386 F.2d 998.

Under Pennsylvania law, a tort-feasor found guilty of wanton and willful misconduct cannot enforce right of contribution against one specifically found not guilty of wanton and willful misconduct in same accident. Id.

Host driver's apparently mistaken and confused act of driving wrong way on one-way street during snowstorm was not gross negligence and, therefore, host driver was not liable

Note 12

to guest for injuries sustained in collision and owner and driver of truck involved in collision were not entitled to contribution from the host driver. O'Mara v. H. P. Hood & Sons, Inc., 1971, 268 N.E.2d 685, 359 Mass. 235.

Owner and driver of truck being sued for wrongful death of gratuitous guest passenger in automobile which collided with truck could not recover on third-party complaint against driver of automobile all or any part of damages awarded for wrongful death, notwithstanding this Act, in absence of either allegation or proof that automobile driver was guilty of wilful and wanton misconduct within automobile guest statute. Burmeister v. Youngstrom, 1965, 139 N.W.2d 226, 81 S.D. 578.

Primary purpose of R.L.H.1955, § 246–10 et seq., is that most culpable party should sustain that share of loss which is commensurate with his degree of fault and inequity of equal contribution among joint tort-feasors has been removed in cases where gross negligence and foolhardiness of one party has joined with act of negligence of second party to produce injuries complained of. Mitchell v. Branch, 1961, 363 P.2d 969, 45 Hawaii 128.

13. Insurers

The Uniform Contribution Among Tortfeasors Act in no way affects right of successful plaintiff to recover entire amount of verdict, interest and costs from any one of joint tortfeasors, and accordingly the liability insurer of only one of them was required to pay the compensable costs in full. Hafer v. Schauer, 1968, 239 A.2d 785, 429 Pa. 289.

Uniform Contribution Among Tort-Feasors Act applies to joint tort-feasors who are joint adventurers; accordingly appellant, as an excess liability insurer, was entitled to contribution from appellee, another excess insurer, in proportion to the relative degrees of fault of their respective insureds. U. S. Fire Ins. Co. v. State Farm Fire & Cas. Co., 1960, 441 S.W.2d 787, 246 Ark. 1269.

Prior to enactment of this Act in 1941, insurer paid judgment against insured was not entitled to contribution from joint tort-feasor against whom judgment was jointly rendered, notwithstanding that joint tort-feasor was not a purposeful tort-feasor. Commercial Cas. Ins. Co. v. Leonard, 1946, 196 S.W.2d 919, 210 Ark. 575.

14. Injured person, rights of

Under Pennsylvania law, strict products liability is assigned to the field of torts so that consideration of contributory negligence on part of injured user as a bar to recovery and his concurrent negligence as a basis of liability under Uniform Contribution Among Joint Tortfeasors Act is required. Rhoads v. Ford Motor Co., D.C.Pa.1974, 374 F.Supp. 1317.

This Act was intended to relieve tortfeasors of injustice as among themselves and was not designed to prevent full recovery by plaintiff or intended to deny plaintiff full and complete satisfaction; Act gives contribution rights to defendant only after he has paid more than his pro rata share and does not require plaintiff to pursue each defendant only for his pro rata share, and plaintiff may still sue either defendant separately for entire amount of claim or sue defendants jointly and levy execution of entire amount against either alone or secure fractions thereof against both. Tino v. Stout, 1967, 229 A.2d 793, 49 N.J.Super. 289.

Where plaintiffs, who had recovered judgment against joint defendants, gave first defendant warrant of partial satisfaction upon receipt of more than half of judgment, without full release, and gave second defendants warrant of partial satisfaction, upon partial payment of balance, which was in full satisfaction as to second defendants but which expressly operated only to reduce judgment as against first defendant, first defendant was entitled only to pro tanto rather than pro rata reduction, plaintiffs could pursue first defendant for balance, and first defendant would have contribution rights against second defendant. Id.

In action against two persons for assault, plaintiff's recovery was not limited to amount of smallest of two separate verdicts, returned by jury against each defendant, as jury had power to apportion damages between defendants. Shultz v. Young, 1943, 160 S.W.2d 648, 205 Ark. 533.

15. Co-conspirators

Under this Act, co-conspirators are liable to one another for contribution as joint tort-feasors. Webster Motor Car Co. v. Zell Motor Car Co., C.A. Md.1957, 234 F.2d 616.

16. Joint obligors

One joint obligor on note may claim contribution from another such obligor for having discharged their mutual obligation. Jackson v. Cupples, 1965, 212 A.2d 273, 239 Md. 637.

Where there are joint obligors and one of the obligors discharges debt, that obligor has right in equity to proceed against other obligors to enforce their proportionate share of contribution. Goldberg v. Altman, 1950, 154 A.2d 279, 190 Pa.Super. 495.

17. Employer and employee relationship

Where under Rhode Island Workmen's Compensation Act plaintiff as personal representative of employee had no right of action in tort for damages for death against former employer, employer was not "joint tort-feasor" within Uniform Contribution Among Joint Tort-feasors Act, and hence employer could not be liable for contribution to a third-person tort-feasor although employer's negligence may have concurred in causing the death. Rowe v. John C. Motter Printing Press Company, D.C.R.I. 1967, 273 F.Supp. 363.

If employee does not have a right of action against employer, employer is not a joint tort-feasor against whom contribution can be claimed under Contribution Among Joint Tort-Feasors Act. Cacchillo v. H. Leach Machinery Co., 1973, 305 A.2d 541, — R.I. —.

A master, who owned motor vehicle which caused injuries when negligently operated by servant, and servant were "joint tort-feasors" within this Act. Smith v. Raparot, 1967, 225 A.2d 666, 101 R.I. 565.

Generally, employer whose concurring negligence contributes to his employee's injury cannot be held liable for contribution as a joint tort-feasor, the statutory remedy being exclusive. Jack Morgan Const. Co., Inc. v. Larkan, 1973, 496 S.W.2d 431, 254 Ark. 838.

18. Marital relationship

Under Pennsylvania law, third party who is sued by one spouse for personal injuries may recover contribution or indemnity against other spouse, even though latter is immune from direct suit by plaintiff spouse. Fisher v. U. S., D.C.Pa.1969, 299 F. Supp. 1.

Intrafamily immunity doctrine would prevent husband and minor children from obtaining a judgment against wife, but she would nevertheless remain liable for contribution if she were to be found a joint tort-feasor. Restifo v. McDonald, 1967, 230 A.2d 199, 426 Pa. 5, 34 A.L.R.3d 1365.

Husband, sued by automobile owner for contribution as joint tortfeasor in action wherein wife, as passenger in husband's automobile, recovered from automobile owner for injuries sustained as result of collision, was joint tortfeasor within meaning of this Act and was liable in action for contribution although he was immune from liability to his wife in any action by her as result of automobile collision. Zarrella v. Miller, 1966, 217 A.2d 673, 100 R.I. 545.

Defendant, who had only a derivative right, if any, in actions commenced against him by husband as administrator of his wife's estate, could not maintain third-party claims against husband, who was driving automobile in which decedent was riding at time it collided with defendant's automobile, on theory that husband was or might have been liable to defendant for all or part of such claims, in view of fact that at time of alleged tortious act of husband he and decedent were married, and

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therefore decedent could not have maintained an action against her husband on account of his alleged negligent operation of his automobile. Ennis v. Donovan, 1960, 161 A.2d 698, 222 Md. 536.

Where automobile driver's wife and daughter recovered verdicts against him and railroad company as joint tort-feasors, and railroad company paid verdicts in full, it could not recover from automobile driver half amount it had paid to his wife and daughter. Puller v. Puller, 1954, 110 A.2d 175, 380 Pa. 219.

Contribution cannot be obtained from a wife's husband, as a joint tort-feasor, under 1953 Comp. § 24–11 et seq. Rodgers v. Galindo, 1960, 360 P.2d 400, 68 N.M. 215.

Defendant could not obtain contribution from plaintiff's husband, who was operating automobile in which plaintiff was riding, as a joint tort-feasor, in wife's action for injuries sustained in collision with defendant's automobile. Id.

Where wife-owner recovered for automobile damage and husband-driver recovered for personal injuries in action in which jury found husband guilty of 45 per cent of negligence and defendants' driver guilty of 55 per cent, defendants, upon discharging judgment in favor of wife-owner would be entitled to file motion for judgment for contribution from husband-motorist under Ark.Stats. § 34–1002. Wymer v. Dedman, 1961, 350 S.W.2d 160, 233 Ark. 854.

19. Motor vehicle accidents

In order for tractor-trailer owner, being sued by automobile passenger, to obtain contribution from automobile driver, it had to appear not only that tractor-trailer owner and automobile driver were concurrently negligent, but that the negligence of each was proximate cause of collision between automobile and tractor-trailer. Stanchis v. Hess Oil & Chemical Co., D.C.Pa.1967, 292 F. Supp. 22, affirmed 403 F.2d 24.

Although both driver of naval truck and preceding motorist whose automobile was struck by truck, were negligent, government would not be liable to automobile driver by way of contribution for any damages he might have to pay to injured occupant of naval truck. Maddux v. Cox, C.A.Ark.1967, 382 F.2d 119.

A manufacturer of automobile was liable for injuries to purchaser because of defective steering assembly, was not entitled to contribution from dealer for amount of judgment rendered against manufacturer on theory that jam nut which caused the defect was properly secured when automobile left manufacturer's factory, and that dealer loosened the jam nut either in course of making automobile ready for delivery to purchaser or while attempting to make adjustment during course of 1,000 mile inspection under evidence. Duckworth v. Ford Motor Co., D.C.Pa. 1962, 211 F.Supp. 888, affirmed in part, remanded, reversed in part on other grounds 320 F.2d 130, 97 A.L.R. 806.

Where automobile and tractor-trailer collided on Arkansas highway and each driver was negligent to extent of 50 per cent of total negligence, the driver of automobile and the owner of the tractor-trailer and its driver, who was acting in scope of his employment at time of collision, were jointly liable to owner of parked tractor which was struck by tractor-trailer, and were jointly liable to absent owner of automobile, and on payment by driver and owner of tractor-trailer of the entire judgment in favor of the owner of the parked tractor and owner of automobile, the driver and owner of the tractor-trailer would be entitled to contribution from driver of automobile under Ark.Stats. § 34–1007(3). Sunday v. Burk, D.C.Ark.1959, 172 F.Supp. 722.

Under 12 P.S. §§ 2082-2089, the United States was entitled to contribution from tractor-trailer driver and owners of tractor and trailer for half of amount of damages awarded plaintiffs by judgment against United States in action under Federal Tort

Claims Act, 28 U.S.C.A. § 2671 et seq., for damages to plaintiffs' personalty in leased house rammed into by tractor-trailer after colliding with post office bus and swerving from road. Russell v. U. S., D.C.Pa.1953, 113 F.Supp. 353.

Under 12 P.S. §§ 2082-2089, the United States is entitled to contribution from tractor-trailer driver and owners of tractor and trailer for half of amount of damages awarded plaintiffs in action under Federal Tort Claims Act, 28 U.S.C.A. § 2671 et seq., for damage to plaintiffs' house as result of being struck by tractor-trailer when it swerved from road after colliding with post office bus as a proximate result of such driver's negligence concurring with that of bus driver. Showers v. U. S., D.C. Pa.1953, 113 F.Supp. 350.

Jury finding that both host driver and other driver in automobile collision were negligent was binding and governed other driver's right to contribution from host driver; and thus court erred when, viewing directed verdict at close of passenger's case for host driver as relieving him of any further participation in the case or defense to claims, it denied motion of other driver for contribution. Holloway v. Wright, 1974, 320 A.2d 572, 21 Md.App. 615.

In absence of any evidence that subcontractor which contracted with bridge contractor to paint bridge did anything which contributed to collision which occurred when eastbound automobile struck westbound automobile which contractor's employees had diverted into eastbound lane without warning eastbound motorist, contractor was not entitled to contribution from subcontractor under Uniform Contribution Among Tortfeasors Act in regard to judgment rendered against contractor in favor of eastbound motorist. Gordon v. Campanella Corp., 1973, 311 A.2d 844, — R.I. —.

Defendant motorist would be entitled to contribution from father of plaintiff minor unemancipated children for injuries sustained by the children in collision between defendant motorist's automobile and father's automobile as the result of the father's alleged negligent operation of automobile. France v. A. P. A. Transport Corp., 1970, 267 A.2d 490, 56 N.J. 500.

Defendant motorist would be entitled to contribution from husband for all sums found to be due to estate of deceased wife in death and survival actions arising out of automobile accident in which wife was killed while riding as passenger in husband's automobile if husband was negligent in operation of automobile. Id.

When jury, in personal injury actions by driver of leased truck against lessor thereof and another defendant which had allegedly directed parking of vehicle into which leased truck crashed, returned verdict against both defendants, defendant truck lessor had right to seek relief under Joint Tortfeasors Contribution Law, and when trial judge subsequently granted other defendant's motion for judgment notwithstanding verdict, truck lessor became aggrieved party with right of appeal. Ettin v. Ava Truck Leasing, Inc., 1969, 251 A.2d 278, 53 N.J. 463.

Defendant motorist who collided with automobile driven by joint tortfeasor resulting in death of passenger in such automobile was not precluded from seeking contribution from joint tort-feasor on ground that defendant's evidence negatived finding that the two could have been jointly negligent, since defendant's action of swerving into left lane, even though blinded by joint tort-feasor's high beams, could be deemed negligence for failure to go into the wide right shoulder of road with which the evidence showed defendant familiar. Harger v. Caputo, 1966, 218 A.2d 108, 420 Pa. 528.

Where automobile collision is result of negligence of both plaintiff and defendant automobile drivers, defendant automobile driver had a right to seek contribution from plaintiff automobile driver as a joint tort feasor in respect to the total damage which plaintiff and her joint owner recover for the injury to their

automobile. Maloney v. Rodgers, 1957, 135 A.2d 88, 184 Pa.Super. 342.

In action for damages sustained in an automobile collision, additional defendants against whom verdict was rendered had the right to make the original defendants share their liability to the plaintiff for his damages if those defendants were in fact also guilty of negligence which helped to cause the accident. Ratcliff v. Myers, 1955, 113 A.2d 558, 382 Pa. 196.

Where guests, injured in automobile collision, and host brought action against alleged tort-feasor, alleged tort-feasor could not under 10 Del.C. § 6302, entitling joint tort-feasor to money judgment for contribution where he has by payment discharged "common liability" or has paid more than his pro rata share thereof, maintain counterclaim for contribution against host on theory that host contributed to guests' injury, in absence of allegation that host's negligent conduct was willful or wanton, in view of automobile guest statute. Lutz v. Boltz, 1954, 100 A.2d 6[illegible] Del. 197, 9 Terry 197.

In action by streetcar company against taxicab owner, as alleged joint tort-feasor, for contribution after company had paid representative and widow of deceased taxicab passenger and other passenger for death and injuries resulting when streetcar struck taxicab which had been stopped on the streetcar tracks, evidence was sufficient to establish negligence on part of owner's driver, which was sufficient to entitle company to contribution. O'Keefe v. Baltimore Transit Co., 1953, 94 A.2d 26, 201 Md. 345.

Where judgments had been obtained against trucking company for damages from accident in which tractor-trailer hit curb of grass plot in center of street, city was liable by way of contribution for half of damages paid by company, if city was guilty of any negligence directly contributing to accident. East Coast Freight Lines v. Mayor and City Council of Baltimore, 1948, 58 A.2d 290, 190 Md. 256, 2 A.L.R.2d 386.

Under statute, proof of host driver's gross negligence was necessary to entitle truck owner and truck driver against whom automobile guest brought action for injuries sustained in collision between automobile and truck to contribution. O'Mara v. H. P. Hood & Sons, Inc., 1971, 268 N.E.2d 685, 359 Mass. 235.

Under theory of left-turning motorist that other motorists were engaged in a joint racing venture, there could have been no liability running from one of the drag racing motorists to the other, and thus from one of the drag racing motorists to the left-turning motorist and drag racing motorist was entitled to directed verdict on left-turning motorist's claim for contribution in action brought by other drag racing motorist. Burrington v. Heine, 1974, 215 N.W.2d 119, — S.D. —.

Where parents sued for injuries sustained in automobile accident between parents' automobile which was driven by their minor unemancipated son and vehicle driven by defendant and defendant joined minor as third-party defendant, minor was liable in tort to his parents, was subject to contribution to his joint tort-feasor, and could be made third-party defendant for that purpose. Tamashiro v. DeGama, 1969, 450 P.2d 998, 57 Hawaii 74.

On record presented, in action for injuries sustained by passenger in following vehicle which swerved off highway to avoid colliding with preceding vehicle engaged in making U-turn, it was not error to hold that preceding motorist's acts had contributed to accident in amount of 65%, and to require contribution accordingly. Mitchell v. Branch, 1961, 363 P.2d 969, 45 Hawaii 128.

That following motorist negligently misjudged his distance when he swerved off highway in effort to avoid collision did not preclude preceding motorist's negligence, in making U-turn, from constituting proximate cause of injuries sustained by passenger in following automobile or absolve preceding motorist from liability to contribute toward satisfac-

tion of claim for injuries sustained by such p ssenger. Id.

Jury finding, in automobile accident case against plaintiff's insureds and defendant from whom insurer sought contribution for one-half of judgment satisfied by insurer, that injuries and damages did not result from any negligence of defendant precluded insurer from obtaining contribution, and jury finding in the automobile accident case on defendant's cross claim against plaintiff's insureds that defendant was guilty of contributory negligence was not tantamount to determination of joint tort liability. Iowa Nat. Mut. Ins. Co. v. Surratt, 1973, 200 S.E.2d 220, 19 N.C.App. 745.

Fact that representatives of deceased motorist and guest prevailed against truck driver and his employer in action against another motorist and truck driver and his employer did not, of itself, entitle the other motorist, who had filed cross complaint for contribution and personal injuries, to favorable verdict on cross complaint. Ellsworth Bros. Truck Lines v. Mayes, 1960, 338 S.W.2d 724, 246 Ark. 441.

Where there was sufficient evidence before jury in action by truck driver for damages of $554.93 against three motorists who forced truck into ditch, to permit jury to appraise the conduct of each motorist and to undertake, as fairly as practicable, to fix the responsibility of each motorist, jury had right to find that two motorists were liable for $200 each and one motorist for $154.93, though there was no instruction authorizing apportionment of damages, and though two of the motorists were allegedly execution proof. Little v. Miles, 1948, 212 S.W.2d 935, 213 Ark. 725.

20. Liability in general

Mississippi statute on contribution between tort-feasors first provides that each defendant is to share equally, and then specifies how to count those defendants who are to share; proviso places ceiling on liability of principal or employer so that he, or his insurer, is not exposed to risk of contributing twice, once for his agent's wrong and once for his own responsibility imposed via respondeat superior. Standard Oil Co. of Ky. v. Illinois Cent. R. Co., C.A.Miss.1970, 421 F.2d 201.

To the extent a shipowner proves that payments made in satisfaction of a maintenance and cure obligation have reduced or eliminated a concurrent claim which a seaman, but for prohibition against double recovery, could assert against another party absent a release, shipowner is entitled to reimbursement from other party in such amount as will cause the ultimate liability to be placed: (1) by means of contribution, equally upon all shipowners with coextensive maintenance and cure obligations; or (2) by means of exoneration, fully upon the party with a primary obligation in damages arising out of negligence, unseaworthiness, or other violation of duty. Gooden v. Sinclair Refining Co., C.A.Pa.1967, 378 F.2d 570.

Where defendants were sued in antitrust actions as theater operations presenting legitimate attractions and controlling legitimate theater business of city, and they were charged with preventing plaintiff's theater from presenting legitimate attractions to injury of plaintiff, and third-party complaint alleged that third-party defendants conspired to see that one of the third-party defendants obtained first-run movies and that plaintiff did not, and that, as a result, third-party defendants were liable in treble damages under 15 U.S.C.A. §§ 1, 2, defendants and third-party defendants were not joint tort-feasors, and defendants were not entitled to contribution from third-party defendants under 12 P.S. § 2082 et seq., and District Court properly granted plaintiff's motion to vacate ex parte order permitting joinder of third-party defendants and properly dismissed third-party complaint. Goldlawr, Inc. v. Shubert, C.A.Pa. 1960, 276 F.2d 614.

In action for injuries received while working on a scaffold as result of negligence of defendant in erecting

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it, where defendant moved to bring in a Rhode Island corporation as a third-party defendant for contribution on ground of negligence of the third-party defendant, refusal to permit the impleaded defendant to be held to answer a contingent claim for contribution on the ground that the third-party plaintiff had not yet discharged any common liability required by Gen.Laws 1956, § 10–6–1 et seq., as condition to claiming contribution was error, where the district court was not being asked to enter a money judgment against the impleaded defendant at that time. D'Onofrio Const. Co. v. Recon Co., C.A.R.I.1958, 255 F.2d 904.

Under allegation of third-party complaint by material supplier against contractor that contractor negligently performed its duties and such negligence was the cause of damage, if any, which building owner sustained would negate any liability on part of material supplier and destroy any basis for claim that material supplier and contractor were jointly or severally liable for the alleged injury to building owner, and on this postulate claim by material supplier for contribution from contractor would not lie under applicable Delaware law. ICI America, Inc. v. Martin-Marietta Corp., D.C.Del.1974, 368 F.Supp. 1148.

Duty which contractor owed to building owner as alleged in material supplier's third-party complaint against contractor did not defeat material supplier's right of contribution but was essential to it, and if both material supplier and contractor each breached duties owed to building owner each became liable to building owner and a right of contribution arose. Id.

Where negligence of "master" of motorboat in permitting plaintiff to ride elsewhere than in the rear seat of the boat was passive while the negligence of the operator of the boat was active, the operator was not entitled to any indemnity or contribution from "master" for jury award to passenger injured in motorboat accident on the Arkansas river. St. Hilaire Moye v. Henderson, D.C.Ark.1973, 364 F.Supp. 1280, affirmed 486 F.2d 973.

The Pennsylvania Uniform Contribution Among Joint Tortfeasors Act permits contribution between joint tort-feasors when one is responsible under strict liability rule in product defect case and the other is responsible for an act of negligence. W. D. Rubright Co. v. International Harvester Co., D.C.Pa.1973, 358 F.Supp. 1388.

There exists a right of contribution in favor of one liable to plaintiff under strict liability theory from party whose liability is based on negligence or want of due care. Walters v. Hiab Hydraulics, Inc., D.C.Pa.1973, 356 F.Supp. 1000.

Under Pennsylvania statute exempting employee from any liability for injury to fellow-employee, unless intentionally inflicted, employee is relieved from liability for contribution, even though employer, whose liability might be vicarious because of master-servant relationship, remains liable for contribution to extent of his liability under the Workmen's Compensation Act. Dodick v. Norfolk & W. Ry. Co., D.C.Pa.1971, 320 F.Supp. 1154.

Where certain riparian landowners were guilty of fault in causing oil to coat a navigable river, and a shipowner was guilty of fault under the Jones Act, 46 U.S.C.A. § 688, in placing a lighted lantern too near to the water, and such conjunction of fault caused the death of one of shipowner's seamen, and resulted in shipowner's liability under the Jones Act for the wrongful death of such seaman, and the shipowner and the landowners were in fact and in legal contemplation total strangers, under such circumstances, there was no right of contribution between the parties, and neither could an indemnitor's liability be imposed on the landowners after shipowner paid damages for the injury caused by the active and concurring wrongs of shipowner and landowners. American Dredging Co. v. Gulf Oil Corp., D.C.Pa.1959, 175 F.Supp. 882, affirmed 282 F.2d 73, certiorari denied 81 S.Ct. 460, 364 U.S. 942, 5 L.Ed.2d 373, rehearing denied 81 S.Ct. 746, 365 U.S. 838, 5 L.Ed.2d 748.

Where third-party action against city was predicated upon an act of negligence subsequent to and wholly separate and distinct from that which was the basis of the original action, in that after describing the act of city policeman, occurring in placing plaintiff in an ambulance, the third-party alleged that damages resulting to the plaintiffs were caused solely by the negligence of third-party defendant's agencies, through the improper treatment of the plaintiff, allegations were insufficient to establish a joint tort authorizing contribution. Martin v. U. S., D.C.Pa.1958, 162 F.Supp. 441.

There is no right of contribution between a party whose liability is imposed under strict liability of manufacturer or seller of product which at time of sale contains a dangerous defect and a party whose liability is based on negligence or want of due care. Fenton v. McCrory Corp., D.C. Pa.1969, 47 F.R.D. 260.

Telephone company whose employee was electrocuted while installing cable at university was not liable to university for contribution, as joint tort-feasor, for any amount recovered against university in action brought by widow of deceased employee in that, in order to enforce contribution, joint tort-feasors must be liable to same person asserting the claim. Diamond State Tel. Co. v. University of Del., Del.1970, 269 A.2d 52.

Deed provision making conveyance subject to rights of adjoining owners in party walls gave purchaser constructive, if not actual, notice of existence of wall; and vendors who had not created alleged dangerous condition or nuisance would not be liable for contribution or indemnity, even if purchaser was held liable for injuries to infant playing on or near wall when it collapsed almost four years after sale. Hut v. Antonio, N. J.Super.L.1967, 229 A.2d 823, 95 N.J. Super. 62.

Nonaffiliated director of mutual fund who was held jointly and severally liable along with broker for management fees paid by mutual fund to investment advisory company was entitled to contribution from broker, which was held solely liable to fund for brokerage profits which amounted to less than management fees, and agreement between mutual fund and broker to first apply settlement money to broker's individual liability was ineffectual. Lutz v. Boas, 1962, 176 A.2d 853, 40 Del.Ch. 130.

10 Del.C. § 6301 et seq., was applicable in determining right of mutual fund to recover brokerage fees and management fees from broker and nonaffiliated director and in determining rights of contribution between nonaffiliated director and broker. Id.

Where city acquired property by treasurer's sale for unpaid taxes and legal title was taken in name of city alone but county and school district also had tax claims against property, county and school district were liable along with the city for injuries sustained by pedestrian in a fall on sidewalk adjacent to such property for alleged negligence in maintenance of sidewalk although city acted as trustee for county and school district, and county and school district were obligated to contribute their share of judgment recovered by pedestrian in accordance with their interest in property at time of acquisition of property by city. Osborne v. City of Pittsburgh, 1960, 161 A.2d 636, 192 Pa.Super. 387.

Potential right of contribution that each joint tort-feasor has against the other constitutes him an indemnitee pro tanto and entitles him to have other joint tort-feasors, if he calls upon them to do so, to participate in defense of lawsuit by claimant or be subject to outcome of the action just as if they had participated. Keitz v. National Paving & Contracting Co., 1957, 130 A.2d 229, 214 Md. 479.

If both petroleum transportation company and bulk gasoline station operator were currently negligent in causing fire consuming adjacent owner's property, neither could recover damages from the other. Chicago, M., St. P. & P. R. Co. v. Johnston's

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Fuel Liners, Inc., N.D.1963, 122 N.W. 2d 140, appeal after remand 130 N.W. 2d 154.

Where waterproofing compound was not inherently dangerous and manufacturer of compound did not have duty to warn architect of its use, compound would have been adequate if plans and specifications originally submitted by architect had been used and architect was negligent in changing plans without consulting manufacturer, in preparing faulty plans and in failing to adequately supervise application of waterproofing compound, manufacturer was not joint tort-feasor and was not responsible for architect's negligent acts and was not required to contribute to judgment obtained against architect for damage to building caused by faulty waterproofing. Standhardt v. Flintkote Co., 1973, 508 P.2d 1283, 84 N.M. 796.

It is not true that relationship between public officials serving as commissioners in any governmental organization establishes vicarious liability for negligence or misfeasance, malfeasance or nonfeasance of other commissioners so as to support an order for contribution per se; while each commissioner might be found liable to third parties who sustain losses as result of negligent action or inaction of board of commissioners, as between commissioners themselves in suit for contribution, rules applicable to joint tort-feasors apply. Butler v. Trentham, 1970, 458 S.W.2d 13, 224 Tenn. 528.

Where there was no evidence, in negligence action against manufacturer, supplier, and owner of swinging-stage scaffold from which plaintiff's decedent fell nine stories to his death when defective eye loop end of support cable gave way, that scaffold cable was ever returned to supplier for replacement or repair work or that manufacturer had purchased its cable from manufacturer shown to have manufactured cable with defective eye loop, scaffold owner was not entitled to contribution against supplier or manufacturer. W. E. Clark & Sons, Inc. v. Elliott, 1972, 475 S.W.2d 514, 251 Ark. 853.

Jury's finding that appellant-defendant was 9% responsible for plaintiff's damages and appellee-defendant 91% responsible included appellee's liability for both breach of warranty and negligence, but appellant's liability for negligence only; thus, appellant was entitled to only 91% contribution from appellee even though jury also found that 30% of appellee's negligence was attributable to its negligence in design of equipment which caused plaintiff's injuries for which appellant could not be held liable. Burks Motors, Inc. v. International Harvester Co., 1971, 466 S.W.2d 907, 250 Ark. 29, rehearing denied 466 S.W.2d 943, 250 Ark. 641.

21. Settlement

See, also, annotations under section 4 of this Act, infra.

Where settlement occurs before injured plaintiff has proven his original case at trial, settling tort-feasor cannot enforce his right to contribution unless in a separate proceeding he proves that the settlement figure was reasonable and that the parties from whom he seeks contribution were in fact joint tort-feasors. W. D. Rubright Co. v. International Harvester Co., D.C.Pa.1973, 358 F. Supp. 1388.

After a settlement contribution should be litigated in same action. Harger v. Caputo, 1966, 218 A.2d 108, 420 Pa. 528.

One joint tortfeasor who has made settlement and secured complete release of all participants may secure contribution from others. Mong v. Hershberger, 1962, 186 A.2d 427, 200 Pa.Super. 68.

Joint tortfeasor, who obtained from injured parties instruments which released him from all liability and provided that claims against other tortfeasor were reduced to the extent of released tortfeasor's pro rata share, but who paid for those releases more than total amount of subsequent verdicts, had right of contribution of fifty per cent of verdict against non-settling joint tortfeasor who had been credited on his pro rata share of verdict for everything

settling tortfeasor had paid in excess of his share. Id.

In absence of allegation or proof that release given to owner, which had settled claim of subcontractor's employee for injuries, accomplished release of contractor or subcontractor, owner acquired no right of contribution against either. Pittsburgh Steel Co. v. Patterson-Emerson-Comstock, Inc., 1961, 171 A.2d 185, 404 Pa. 53.

Under 12 P.S. § 2082 et seq., plaintiff who had obtained release of all claims of third party against both plaintiff and defendant as alleged joint tort-feasors, could enforce contribution against defendant for proportional amount of settlement without suit or judgment having been entered by third party. Swartz v. Sunderland, 1961, 169 A.2d 289, 403 Pa. 222.

Purpose of amendment to 10 Del.C. § 6302, providing that right of contribution provided by the act shall be enforceable only with respect to judgments entered against one or more joint tortfeasors subsequent to May 27, 1949, was to fix an effective date for application of act to judgments, and did not take away right of contribution to a joint tortfeasor who discharged common liability by settlement and release. Halifax Chick Exp., Inc. v. Young, 1957, 137 A.2d 743, 50 Del. 596, 11 Terry 596.

Where one of two joint tortfeasors made payment to plaintiffs for injuries in automobile accident and took releases, which provided that damages recoverable against other tortfeasor were reduced to extent of pro rata share of tortfeasor who made payment, and plaintiffs subsequently obtained verdicts against the joint tortfeasors, plaintiffs could recover from tortfeasor who did not obtain releases only one half of the amount of the verdicts less amount that they received from other tortfeasor in consideration for their releases, as against plaintiffs' contention that they were entitled to recover one half of each of the verdicts wholly irrespective of amounts of the settlement with other tortfeasor. Daugherty v. Hershberger, 1956, 126 A.2d 730, 386 Pa. 367.

Where streetcar company had, without consent or participation of taxicab owner, who allegedly was joint tort-feasor with the company, settled, out of court and before judgment was entered, death and personal injury action pending against both company and owner and obtained releases of liability of both the company and owner, company could, while the action still remained pending, institute an independent action for contribution against the owner. O'Keefe v. Baltimore Transit Co., 1953, 94 A. 2d 26, 201 Md. 345.

Under Code Supp.1947, Art. 50, § 22, a joint tort-feasor is, in the eyes of the law, a wrongdoer whose basic obligation to make contribution springs from the tort he jointly committed, but ultimately he is called upon to contribute his share only after his joint tort-feasor has discharged the joint liability under a settlement. Hodges v. U. S. Fidelity & Guaranty Co., D.C.Mun.App.1952, 91 A.2d 473, 34 A.L.R.2d 1101.

In action under Code Supp.1947, Art. 50, § 21 et seq., joint tort-feasor who had negotiated settlement with injured persons and had obtained release discharging its fellow wrongdoer in consideration for $100 was properly allowed to show that three days thereafter he paid $2,400 to injured persons by check, the endorsement of which purported to release only the joint tort-feasor, and that the amount to which fellow wrongdoer was obligated to contribute was the total amount. Id.

In view of fact that, under Code Supp.1947, Art. 50, § 27, permitting one joint tort-feasor to file third-party complaint against another in tort action against the first is merely permissive, and contribution proceedings may be instituted after judgment in the tort action is taken, the third party practice allowed by said section, does not impliedly require that a joint tort-feasor give notice to other joint tort-feasors before negotiating settlement pursuant to such section. Id.

Note 21

Individual third-party defendants who, before commencement of trial, together with defendant and all but one of other third-party defendants paid plaintiff $118,000 in return for release which ran to all defendants, including the nonsettling third-party defendant, were not persons jointly or severally liable in tort for same injury to person or property and were thus not joint tort-feasors, within meaning of statute defining joint tort-feasors, and not entitled to recover from nonsettling third-party defendant on theory of contribution. Alamida v. Wilson, 1972, 495 P.2d 585, 53 Hawaii 308.

A party who settles prior to suit on a tort claim and is later found not negligent in an action for contribution is not a joint tort-feasor within meaning of statute defining joint tort-feasors and is therefore not entitled to contribution. Id.

22. Indemnity

"Indemnity" applies only where the one held liable is without personal fault, in contrast to the rules of "contribution," where the burden of liability is shared in proportion to the degree of fault. Highway Const. Co. v. Moses, C.A.S.D.1973, 483 F.2d 812.

Under Pennsylvania law, contribution is authorized among joint tort-feasors, but in absence of contract, right to indemnity is not recognized among them; whereas the right to indemnity is recognized as between a tort-feasor secondarily and one primarily liable, but not a right to contribution. Globe Indem. Co. v. Agway, Inc., C.A.Pa.1972, 456 F.2d 472.

Contribution and indemnity are alternative remedies and are in no sense cumulative. Id.

In the case of concurrent or joint tortfeasors having no legal relation to one another, no right of indemnity exists on behalf of either against the other. Panichella v. Pennsylvania R. Co., D.C.Pa.1957, 150 F.Supp. 79, cause remanded on other grounds 252 F.2d 452.

Remedies of contribution and indemnity are mutually exclusive. Hut v. Antonio, 1967, 229 A.2d 823, 95 N.J.Super. 62.

Where joint tort-feasors are in pari delicto, that is, where each is chargeable with active or affirmative negligence contributing to the injury, neither is entitled to indemnity from the other although contribution may be available. Degen v. Bayman, 1972, 200 N.W.2d 134, 86 S.D. 598.

Contribution is appropriate where there is common liability among the parties, whereas indemnity is proper where one party has a greater liability or duty which justly requires him to bear the whole of the burden as between the parties. Id.

Although similar in nature and having a common basis in equitable principles, contribution and indemnity differ in the kind and measure of relief provided; contribution requires the parties to share the liability or burden, whereas indemnity requires one party to reimburse the other entirely. Id.

"Indemnity" is concerned with obligation of primary tort-feasor to respond for all damages recovered against secondary tort-feasor, as compared with "contribution," which is obligation of one joint tort-feasor to contribute his share to discharge of common liability. Rio Grande Gas Co. v. Stahmann Farms, Inc., 1969, 457 P.2d 364, 80 N.M. 432.

23. Conditional judgment

Although a joint tort-feasor may not obtain a money judgment against his cotort-feasor, under 12 P.S. § 2082 et seq., until he has paid more than his prorata share of any judgment obtained by plaintiff, a conditional judgment may be entered for contribution. Falciani v. Philadelphia Transp. Co., D.C.Pa.1960, 189 F.Supp. 203.

§ 2. [Pro Rata Shares]

In determining the pro rata shares of tortfeasors in the entire liability (a) their relative degrees of fault shall not be considered; (b) if equity requires the collective liability of some as a group shall constitute a single share; and (c) principles of equity applicable to contribution generally shall apply.

Commissioners' Comment

This section in positive terms resolves several difficult questions of policy.

First, it recognizes and registers the lack of need for a comparative negligence or degree of fault rule in contribution cases. As stated in the comments on subsection 1(c) the exclusion of intentional, wilful and wanton actors from the right to contribution eliminates the better arguments for a relative degree of fault rule. Only Arkansas, Delaware, Hawaii and South Dakota apply such a rule in contribution cases.

Second, it invokes the rule of equity which requires class liability, including the common liability arising from vicarious relationships, to be treated as a single share. For instance the liability of a master and servant for the wrong of the servant should in fairness be treated as a single share. Other examples are those situations involving co-owners of property, members of an unincorporated association, those engaged in a joint enterprise and the like; where the problem is the allocation of liability between such a group on the one hand and a tortfeasor having no connection with the group. It adopts the equitable principle involved in the case of Wold v. Grozalsky, 277 N.W. 364, 14 N.E.2d 437 (1938), where the plaintiff was injured by the collapse of a party wall between two buildings. One building was owned by A, the other jointly by B and C. It was held that B and C were liable each for only one-fourth of the entire liability, rather than one-third. Another case is Walsh v. Phillips, New York Supreme Court, Niagara County, July 3, 1952, where one contributor was an unincorporated association, and its numerous members were held liable in the aggregate only for a single share.

Third, it makes it clear that except as limited by the section, principles of equity shall control. The common situation with which the courts would be concerned here is that involving insolvency of a potential contributor. Suppose that the plaintiff is injured by the negligence of A, B, and C. A pays a judgment, and C is wholly insolvent. Should A's right to contribution from B amount to one-third of the judgment, or one-half? It has been pointed out that there are difficulties of proof of insolvency, and that the situation requires at least three tortfeasors and will seldom arise. It has also been argued that it is better to let A recover only one-third from B and take his chances

on C's insolvency, rather than litigate that issue between A and B, with further suits against C to follow if he turns out later to have any money. The courts in contract contribution cases have dealt satisfactorily with such situations and it is not only difficult but unwise to try to state an express rule dealing with all the equitable situations which may arise.

Law Review Commentaries

Abrogation of common law doctrine. 43 Boston U.L.Rev. 417 (1963).

Apportionment of damages under comparative negligence. Philip W. Bouchard. 55 Mass.L.Q. 125 (1970).

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Contribution among joint tort-feasors. Edward F. Hennessey. 47 Mass.L.Q. (1962); James W. Smith. 9 Annual Survey of Mass.Law, Boston College, p. 44 (1962).

Contributions among joint tort-feasors, proposed uniform act. 31 Mass.L.Q. 34 (1946).

Contribution among tortfeasors. 1960 Wis.L.Rev. 478 (May).

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Determination of pro rata shares. 43 Boston U.L.Rev. 422 (1963).

General liability insurance. J. Albert Burgoyne and George E. Donovan. 12 Annual Survey of Mass. Law, Boston College, p. 243 (1965).

Medical malpractice. Robert J. Sherer. 10 Annual Survey of Mass. Law, Boston College, p. 42 (1963).

Procedural aspects of securing tort contribution in injured plaintiff's action. 47 Harvard L.Rev. 209 (1933).

Substantive base for impleader. 51 Mass.L.Q. 51, 56 (1966).

Library References

Contribution ⇐7. C.J.S. Contribution § 6.

§ 3. [Enforcement]

(a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right of contribution is barred unless he has either (1) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within one year after payment, or (2) agreed while action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

Commissioners' Comment

Subsection (a). Enforcement by Separate Action. This simply announces the rather obvious proposition that the remedy of contribution may always be enforced in a separate action and need not be enforced in the action establishing liability for the tort, even where the case has gone to judgment.

Subsection (b). Post-Judgment Procedure. This is based on the New York statute. It appears to have worked well and no serious objection to it has developed. It seems consistent with good practice to authorize contribution problems to be tried out, after adjudication of the plaintiff's claim, among the defendants over whom the court has acquired jurisdiction in the original action. The requirement of notice to all of the parties makes it necessary to give notice to the plaintiff as well as to joint tortfeasor defendants. This may on first impression seem unnecessary but it is done to give a plaintiff who may have been only partially paid, some protection against the exhausting of the assets to satisfy a contribution claim before the plaintiff (judgment creditor) has collected the balance on his judgment.

No provision for impleading and cross-complaints among joint tortfeasors in the original action prior to trial on plaintiff's claims are included. This is left to the established procedure in the several states.

Subsection (c). Statute of Limitations After Judgment. The statute of limitations offers one of the real difficulties in contribution, to which no entirely satisfactory solution can be found.

The 1939 Act was silent on it, apparently leaving the contribution suit to the general statute of limitations. One of the chief criticisms of the Act, which has even led to efforts to repeal it in some of the states where it has been adopted, has been that this unduly extends the liability of the second tortfeasor. Where there is a short statute of limitations, as in most malpractice cases and in some states as to all personal injuries, this extension defeats the whole purpose of the short statute, by adding the time necessary to bring the first suit to judgment, and an additional period for the contribution suit.

Unless contribution is to be limited to joint judgments, there is no way to avoid some extension of the time within which the second tortfeasor may be sued. The extension should obviously be as short as possible; particularly in view of the fact that the tortfeasor seeking contribution nearly always has had legal advice. The great difficulty arises from the fact that no cause of action for contribution exists unless the first tortfeasor has paid. If the extension is a short one, such as six months, it will restrict the right to contribution to those who can raise the money to pay off the judgment immediately.

Various suggestions have been made along the lines of a suit for a declaratory judgment or an interlocutory order determining the right to contribution, but permitting judgment for it only after the first tortfeasor has paid. Other suggestions have involved a notice of an intent to claim contribution. Such procedures are entirely unfamiliar in a good many states, and there is serious doubt whether legislatures would accept them.

Some compromise apparently must be made between a reasonable time to pay the judgment and unduly extended liability for contribution. One year seems about the right compromise.

Subsection (d). Bar of Claim by Laches. The comments on Subsection (c) are in principle applicable here. Clause (1) applies to situations where the entire liability to the injured party has been settled without action being filed. Clause (2) applies to settlements of the entire liability while action is pending and before judgment. The provision is so worded as to prevent the long delay in the assertion of a contribution claim resulting from installment payments made while the action is kept alive. Under both clauses the party seeking contribution must discharge the obligation by actual payment within the prescribed time or lose his right to contribution.

Subsection (e). Judgment Against One Tortfeasor. This was Section 3 of the 1939 Act. It simply states the well established rule that the injured party in obtaining judgment against one joint tortfeasor does not thereby discharge the others, although there may, of course, be but one satisfaction of the claim.

Subsection (f). Res Adjudicata. This seems necessary in view of the position some courts have taken that adjudication of liability to the plaintiff of several defendants is not necessarily res adjudicata of the liability for de-

termination of contribution claims. Obviously the defendants should be bound as among themselves by the adjudication of their liability to the claimant.

Action in Adopting Jurisdictions

Variations from Official Text:

Massachusetts. Omits "or wrongful death" wherever appearing.

North Carolina. In subsec. (c), substitutes "after final judgment is entered in the trial court in conformity with the decisions of the appellate court" for "after appellate review."

In subsec. (d), adds clause (3) which reads: "or (3) While action is pending against him, joined the other tort-feasors as third-party defendants for the purpose of contribution."

Subsec. (e) reads: "The recovery of judgment against one tort-feasor for the injury or wrongful death does not of itself discharge the other tort-feasors from liability to the claimant. The satisfaction of the judgment discharges the other tort-feasors from liability to the claimant for the same injury or wrongful death, but does not impair any right of contribution. Provided, however, that a consent judgment in a civil action brought on behalf of a minor, or other person under disability, for the sole purpose of obtaining court approval of a settlement between the injured minor or other person under disability and one of two or more tort-feasors, shall not be deemed to be a judgment as that term is used herein, but shall be treated as a release or covenant not to sue as those terms are used in G.S. 1B–4."

Tennessee. In subsec. (a), adds "in the circuit or chancery courts to be tried according to the forms of chancery" at end thereof.

In subsec. (b), adds "provided that any issue as to indemnity may be determined at the hearing of such motion" at end thereof.

In subsec. (c), substitutes "after satisfaction of the judgment" for "after the judgment has become final by lapse of time for appeal or after appellate review."

In subsec. (d), adds "within one (1) year of payment" at end thereof.

In subsec. (f), inserts "after trial on the merits" following "wrongful death", and adds "or indemnity, except where a claimant commenced an action for injury or wrongful death prior to the effective date of this chapter" at the end thereof.

Law Review Commentaries

Contributions in impleader. 51 Mass.L.Q. 51, 59 (1966).

Enforcement of contribution—Procedure. 43 Boston U.L.Rev. 423 (1963).

Library References

Contribution ⇐9(1) et seq.

C.J.S. Contribution § 13.

Notes of Decisions

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1. Generally

The right to contribution accorded by Pennsylvania statutes to one joint

Note 1

tort-feasor against the other creates a cause of action of a different nature from the tort action which was the subject of the original suit or claim; the right of contribution in Pennsylvania is a dual one: a right sounding in equity and a right at law sounding in quasi contract. W. D. Rubright Co. v. International Harvester Co., D.C.Pa.1973, 358 F. Supp. 1388.

Where original defendant driver of other automobile, appealed from award against him in favor of minor plaintiff expressly limiting scope of appeal to his behalf only, the liability of additional defendant, the minor's father and driver of automobile in which minor was riding, was not affected by the appeal and original defendant did not risk his right to contribution established by award of arbitrators by making his expressly-limited appeal. Romanovich v. Hilferty, 1968, 245 A.2d 701, 212 Pa.Super. 570.

Maryland Court Rule, No. 315, setting forth the procedure and remedies for enforcement of the substantive right to contribution conferred by Code 1957, art. 50, § 17, does not purport to grant substantive rights. Ennis v. Donovan, 1960, 161 A.2d 698, 222 Md. 536.

Where original defendants, in wrongful death action, impleaded additional defendants and filed against them a claim for contribution, and plaintiffs amended their declaration to join impleaded defendants as defendants, it was error to direct verdicts in favor of impleaded defendants at conclusion of plaintiffs' case and thus deprive original defendants of opportunity to present evidence against them on contribution claim. Stem v. Nello L. Teer Co., 1957, 130 A.2d 769, 213 Md. 132.

Defendant against which, along with [illegible] defendant, joint and several judgment had been entered could not be subjected to a money judgment against codefendant under any set of circumstances until defendant had either paid the judgment or discharged more than its pro rata share. Burks Motors, Inc. v. International Harvester Co., 1971, 466 S.W.2d 943, 250 Ark. 641.

2. Separate action

Rule providing that where defendant claims that person not a party is or may be liable to defendant for all or part of plaintiff's claim defendant may cause service of summons and third-party claim upon the person did not preclude company and individual from which $25,000 and costs had been recovered in automobile accident case wherein corporation had not been joined from maintaining separate action against the corporation for contribution on joint tort-feasor theory. Maloney Concrete Co. v. D. C. Transit System, Inc., 1966, 216 A. 2d 895, 241 Md. 420.

Contribution may be enforced in independent action, or joint tort-feasor who pays plaintiff's judgment may have it marked for his use so as to allow his recovery as subrogee. Puller v. Puller, 1954, 110 A.2d 175, 380 Pa. 219.

Defendants under Pennsylvania law have choice of enforcing their right to contribution by third-party action or by separate suit. Murphy v. Barron, 1965, 258 N.Y.S.2d 139, 45 Misc.2d 905.

Repossessor of automobile sued by automobile owner for conversion of property and invasion of privacy had right to sue bank which authorized repossessor to contact automobile owner to collect charges for contribution and indemnity in lieu of bringing cross-claim against bank. Sanford v. Stoll, 1974, 518 P.2d 1210, 86 N.M.App. 6.

3. Cross claims

In action by administrator for death of automobile occupant as result of collision of automobile with bus, cross claim by bus owner against automobile driver for indemnity or contribution was not premature, notwithstanding fact that under 12 P.S. § 2082 et seq., a joint tort-feasor may not obtain a money judgment against his cotort-feasor until he has paid more than his prorata share of any judgment obtained by plaintiff. Fal-

ciani v. Philadelphia Transp. Co., D.C.Pa.1960, 189 F.Supp. 203.

Rules governing cross claim against coparty and third-party practice permit determination of cross claim or third-party complaint for recovery of either indemnity or contribution, although money judgment for indemnity must be subject to cross claimant's actual loss, and money judgment for contribution would be subject to conditions of statute governing accrual of right of contribution. Board of Ed., School Dist. 16, Artesia, Eddy County v. Standhardt, 1969, 458 P.2d 795, 80 N.M. 543.

Under Ark.Stats. § 34-1007(3), a party may state as a cross claim against a coparty any claim of contribution that he may have. Northwest Motors, Inc. v. Creekmore, 1958, 318 S.W.2d 614, 229 Ark. 755.

4. Third party practice

Dismissal of defendant's motion to join driver of vehicle in which plaintiffs were passengers at time of collision with defendant's vehicle would not prevent defendant from instituting third-party complaint for contribution. Lebel v. Reagan, 1963, 192 A.2d 28, 159 Me. 300.

In automobile collision case, wherein defendant, who had been sued by passenger in his automobile, impleaded other driver as third party defendant for contribution, defendant had right to have third party defendant, who had secured from passenger a release which denied liability and provided for reduction of passenger's damages to extent paid, remain in action, since, even though defendant could not recover contribution from third party defendant, defendant's liability would be halved if he could establish that third party defendant was joint tort-feasor, and trial court's grant of summary judgment for third party defendant was error. Swigert v. Welk, 1957, 133 A.2d 428, 213 Md. 613.

Phrase "party to the action" in Superior Court Rule providing that defendant may move for leave as third-party plaintiff to serve process and complaint on person not a "party to the action" who is or may be liable to him for all or part of plaintiff's claim against him, means party to the original action only and therefore first decedent could implead, as third-party defendants, partners, who had already been impleaded as third-party defendants by second defendant. Novak v. Tigani, 1954, 110 A.2d 298, 49 Del. 106, 10 Terry 106.

Where complaint charged that defendant negligently drove her automobile into an automobile owned by plaintiff wife and operated by her husband, defendant was not entitled to file a third-party complaint against the husband seeking contribution from him as a joint tort-feasor, since to permit the third-party proceeding would be to render the husband liable indirectly upon a claim to the wife for which he could not be held liable directly. Ferguson v. Davis, 1954, 102 A.2d 707, 9 Terry 299.

Where owner and driver of first automobile executed release discharging driver of second automobile from liability arising out of collision of two automobiles, and passenger in second automobile brought action against owner and driver of first automobile to recover for injuries sustained in the collision, release was a bar to joinder by owner and driver of first automobile of driver of second automobile as an additional defendant. Killian v. Catanese, 1954, 101 A.2d 379, 375 Pa. 593.

Where employee's dependents were awarded workmen's compensation and brought an action against third party for employee's death, third party was not entitled to join employer as a party defendant, particularly where third party alleged that employer was solely responsible for employee's injury, notwithstanding the fact that the employer would be entitled to repayment of compensation award. Baltimore Transit Co. v. State, to Use of Schriefer, 1944, 39 A.2d 858, 183 Md. 674, 156 A.L.R. 460.

Where injured plaintiff has no right of action against third party, there can be no contribution entitling

defendant to join third party as defendant under Code 1951, art. 50, §§ 20-29, notwithstanding liability under said Act may be joint or several, since right of contribution is a derivative right and not a new cause of action. Id.

Payment by one defendant on judgment may be condition to judgment against other defendant on cross claim, but absence of payment is not ground for dismissal of cross claim or third-party complaint for recovery of either indemnity or contribution. Board of Ed., School Dist. 16, Artesia, Eddy County v. Standhardt, 1969, 458 P.2d 795, 80 N.M. 543.

In action against owner and driver of automobile which collided with plaintiff's automobile, contribution was not involved, and joinder of defendant driver's employer was not authorized by SDC 33.04A01 et seq. Mellchar v. Frank, 1959, 98 N.W.2d 345, 78 S.D. 58.

Where garage which installed rebuilt brake assembly in automobile was sued by motorist for property damage and injury sustained in accident when brakes failed, and garage filed third-party complaint against its supplier which filed third-party complaint for indemnity from rebuilder which filed cross action against garage, rebuilder's cross action was properly a part of the law suit, as against garage's contention that if rebuilder were held liable for indemnity to supplier, rebuilder could not be entitled to indemnity or contribution from garage. Wilson v. Rob Robinson's Auto Service, 1973, 200 S.E.2d 393, 20 N.C.App. 47.

Where owner of automobile and employee were domiciled in Sebastian county and employee went to Logan county to demonstrate a car to decedent who was killed in a collision with a truck owned by a resident of Logan county, and owner and its employee filed suits in Sebastian county against truck owner and obtained service of process and decedent's administrator brought suit in Logan county against owner of car and employee, administrator of decedent was entitled to file a third-party complaint against the car owner asking for contribution in the event that the administrator should be held liable to the truck owner on the latter's cross complaint. Northwest Motors, Inc. v. Creekmore, 1958, 318 S.W.2d 614, 229 Ark. 755.

Corporation which sold chemical dust for use of spraying rice crops from airplanes, knowing that such chemical dust was inherently dangerous to broad leaved plants, was subject to strict liability for damage to cotton crop from use of chemical dust by owner of rice crop in spraying rice crop, and was properly joined as a defendant by owner of rice crop in action against it by owner of cotton crop for damage to cotton crop. Chapman Chemical Co. v. Taylor, for Use and Benefit of Wilson, 1949, 222 S.W.2d 820, 215 Ark. 630.

In death action against contractors and independent contractor to recover for death of an implied invitee of contractors, contractors had right to make independent contractor a third party defendant even after plaintiff had dismissed as to independent contractor under a covenant not to sue. Glem v. Williams, 1949, 222 S.W.2d 800, 215 Ark. 705.

5. Counterclaims

Where guests, injured in automobile collision, and host brought action against alleged tort-feasor, alleged tort-feasor could not under 10 Del.C. §§ 6301-6308, entitling joint tort-feasor to money judgment for contribution where he has by payment discharged "common liability" or has paid more than his pro rata share thereof, maintain counterclaim for contribution against host on theory that host contributed to guests' injury, in absence of allegation that host's negligent conduct was willful or wanton, in view of 21 Del.C. § 21. Lutz v. Boltz, 1953, 100 A.2d 647, 48 Del. 197, 9 Terry 197.

Where minor child's parents joined as coplaintiffs in action by child against city and county alleging city's negligence as proximate cause of child's personal injuries, city's coun-

terclaim against parents for contribution, alleging that parents' negligence was sole or contributing cause of child's injuries, should have been allowed. Petersen v. City and County of Honolulu, 1969, 462 P.2d 1007, 51 Hawaii 484.

6. Defenses in general

Third-party defendant may avail himself of guest statutes in defending a claim for contribution. Troutman v. Modlin, C.A.Ark.1965, 353 F. 2d 382.

Where railroad employee, injured in train derailment which occurred when train was entering a private crossing of steel company, recovered for injuries from railroad in an action under Federal Employers' Liability Act, and railroad sought contribution or indemnity from steel company in third-party action on theory that steel company's negligence in maintaining crossing had caused derailment, recovery by railroad depended upon state law regarding effect of employee's contributory negligence, so that if there were no express agreement as to indemnity between railroad and steel company, and employee were found to be contributorily negligent, steel company could plead his contributory negligence as a bar to any recovery over by railroad. Kennedy v. Pennsylvania R. Co., C.A.Pa.1960, 282 F.2d 705.

Although both driver of naval truck and preceding motorist whose automobile was struck by truck, were negligent, government would not be liable to automobile driver by way of contribution for any damages he might have to pay to injured occupant of naval truck. Maddux v. Cox, C.A. Ark.1967, 382 F.2d 119.

In action under the Federal Employers' Liability Act for negligence of railroad in requiring employee to walk along a dangerous route while in a fatigued condition and after a snowstorm, where the employee was injured when he fell on the premises of a third-party defendant, employee's inability to recover from a third-party tort-feasor because of his contributory negligence would as a matter of law deny the railroad's claim against the third-party tort-feasor for contribution. Panichella v. Pennsylvania R. Co., D.C.Pa.1958, 167 F.Supp. 345, reversed on other grounds 268 F.2d 72, certiorari denied 80 S.Ct. 370, 361 U.S. 932, 4 L.Ed.2d 353.

Defendant motorist who settled actions for death resulting from collision between his automobile and automobile driven by joint tort-feasor was not precluded from maintaining action for contribution on ground that defendant was a volunteer since he had available defense of contributory negligence against decedent imputed from joint tort-feasor's alleged negligence, since this Act permits a suit over where party suing for contribution obtained a release of parties by way of settlement. Harger v. Caputo, 1966, 218 A.2d 108, 420 Pa. 528.

Unfairness or fraud may be asserted by a joint tort-feasor against whom contribution is sought by another joint tort-feasor who negotiated settlement with the injured party. Hodges v. U. S. Fidelity & Guaranty Co., D.C.Mun.App.1952, 91 A.2d 473, 34 A.L.R.2d 1101.

In action by state of Maryland for use of surviving parents of automobile driver and surviving parents of passenger and by administrator, with limited letters, of estate of automobile driver to recover damages for wrongful death of driver, as result of collision between automobile and tractor-trailer owned by defendant, defendant was not entitled to set up claim against administrator for contribution to satisfy any judgment that might be entered against defendant, since neither state of Maryland nor administrator represented deceased driver. In re State of Md. for use of D'Agostino, 1955, 139 N.Y.S.2d 746, 285 App.Div. 1078.

Litigant could not escape liability to cross complainant for contribution

on ground that litigant was not served with a summons upon the cross complaint, where litigant participated actively in trial and cross-examined cross complainant. Walton v. Tull, 1962, 356 S.W.2d 20, 234 Ark. 882, 8 A.L.R.3d 708.

7. Limitations

Date of defendant's performance of any act or failure to act was irrelevant in determining whether suit against defendant for contribution or indemnity was barred by Tennessee statute requiring a separate action to enforce contribution for injury or wrongful death to be commenced within one year after satisfaction of judgment. DeVore Brokerage Co. v. Goodyear Tire & Rubber Co., D.C. Tenn.1969, 308 F.Supp. 270.

Presentation of claim against county within six-month statutory limit from date of plaintiff's injuries was not a condition precedent to maintaining a third-party action against county for contribution under Hawaii's Uniform Contribution Among Tortfeasors Act since no right of contribution against county was enforceable until third-party plaintiff had paid more than his proportionate share of underlying claim. Albert v. Dietz, D.C.Hawaii 1958, 283 F.Supp. 854.

8. Questions for jury

This Act as enacted in Arkansas reverses common-law rule against contribution among joint tort-feasors and makes allocation of pro rata share of damages as among joint tort-feasors a jury question although all tort-feasors remain jointly and severally liable for total amount of damages in so far as injured party is concerned. Paclawski v. Bristol Laboratories, Inc., Okl.1967, 425 P.2d 452.

9. Instructions

In action against building owner for death of corporate painting contractor's employee who fell from roof, wherein owner brought in contractor as third-party defendant, charging that if jury found that contractor and its president were not negligent jury should find for the owner was error since if owner was not negligent contractor was not liable and case would then be ended, and if owner was found negligent, its recourse against contractor was by way of contribution and jury should have been instructed as to what standard of care was imposed on a landlord with respect to employee of independent contractor. Moushey v. U. S. Steel Corp., C.A.Pa.1967, 374 F. 2d 561.

10. Recovery of judgment

Under 12 P.S. § 2084, providing that the "recovery of a judgment" by the injured person against one joint tort-feasor does not discharge the other joint tort-feasor, the quoted phrase does not include the satisfaction of judgment. Hilbert v. Roth, 1959, 149 A.2d 648, 395 Pa. 270.

The words "recovery of a judgment", as used in this section, do not discharge the other joint tortfeasors, must be construed broadly to mean actual recovery of a judgment, and not merely rendition of the judgment. Hackett v. Hyson, 1946, 48 A.2d 353, 72 R.I. 132, 166 A.L.R. 1096.

11. Entry of judgment

Entry of judgment against only two or four joint obligors would not affect such joint obligors' right of contribution against others. Goldberg v. Altman, 1959, 154 A.2d 279, 190 Pa.Super. 495.

12. Recitals in judgment

Under 12 P.S. § 2082 et seq., judgment should be directed to the liability of the defendant and to existence of right of contribution from third-party defendant who had not been joined by plaintiff as a party defendant and should state that judgment was entered in favor of plaintiff and against defendant and that defendant and third-party defendant were joint tortfeasors and that right of contribution existed in favor of defendant

and against third-party defendant and that defendant "may hereafter have judgment" against third-party defendant for amount which the defendant proves he has paid to plaintiff in excess of the designated amount which third-party defendant must contribute. Smith v. Whitmore, C.A.Pa.1959, 270 F.2d 741.

13. Satisfaction of judgment

An injured party is entitled to only one satisfaction for any injury. Bittner v. Little, C.A.Pa.1959, 270 F. 2d 286.

Since plaintiff motorist had already received from one of joint tort-feasors the sum of $5,000 in return for execution of a joint tort-feasors' release, defendant joint tort-feasor was entitled to have judgment marked satisfied under this Act where verdict was for only $1,650. Weinstein v. Stryker, D.C.Pa.1967, 267 F.Supp. 34.

Where automobile passenger injured in accident occurring in Pennsylvania brought action against host only in New York where she recovered judgment which was satisfied, her voluntary satisfaction of judgment barred action in United States District Court in Pennsylvania against driver of other vehicle. Raleigh v. Peterson, D.C.Pa.1959, 165 F.Supp. 47.

Satisfaction of judgment entered against one or more joint tort-feasors releases all of them. Grantham v. Board of County Com'rs for Prince George's County, 1968, 246 A.2d 548, 251 Md. 28.

Where one joint tort-feasor was released on a fully satisfied judgment, the other tort-feasor was also released and the results would have been no different had they been concurrent or plural tort-feasors. Id.

Statute providing that recovery against one joint tort-feasor does not discharge the other joint tort-feasor does not alter common-law rule that satisfaction of judgment against one tort-feasor bars further action against other tort-feasors. Id.

An unsatisfied or partially satisfied judgment against one tort-feasor will not discharge another. Id.

In action for injuries sustained in an automobile accident against two defendants where plaintiff's verdict against the first defendant resulted in judgment which was satisfied on record by that defendant, plaintiff was not entitled thereafter to proceed against the second defendant. Hilbert v. Roth, 1959, 149 A.2d 648, 395 Pa. 270.

Rule that plaintiffs are entitled to only one satisfaction for a tort, even though two or more parties might have contributed to causing their loss, is not changed by Code 1951, Art. 50, § 23, relating to contributions among joint tort-feasors. Maryland Lumber Co. v. White, 1954, 107 A.2d 73, 205 Md. 180.

Under this section, defendant was not discharged by satisfaction of plaintiffs' judgments against defendant's joint tort-feasor, but such judgments could only be applied in reduction of the amount of any judgment which might be recovered against the defendant. Hackett v. Hyson, 1946, 48 A.2d 353, 72 R.I. 132, 166 A.L.R. 1096.

Plaintiff may have but one satisfaction for his injuries from joint tort-feasors; accordingly, amount paid for covenant by one of them reduces liability of others by that amount. Whittlesea v. Farmer, 1970, 469 P.2d 57, 86 Nev. 347.

Uniform Contribution Among Tort-feasors Act was intended to reverse common-law rule that satisfaction of judgment by one joint tort-feasor discharged the other joint tort-feasors. Rio Grande Gas Co. v. Stahmann Farms, Inc., 1969, 457 P.2d 364, 80 N.M. 432.

Where judgment of $137,000 was entered against one defendant in original trial of both defendants and judgment of $150,000 was entered on retrial of second defendant, satisfaction of either judgment would entitle tort-feasor against whom it was had to contribution from the other, although it would not discharge other

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tort-feasor from liability as to plaintiff, but plaintiff's first satisfaction must be credited to any subsequent satisfaction which he sought. Woodward v. Blythe, 1971, 462 S.W.2d 205, 249 Ark. 793.

14. Interest on judgment

Joint tort-feasor was liable for contribution with regard to interest paid by other joint tort-feasor's insurer on judgment against such tort-feasor where no interest between date of payment and date of money judgment was allowed and no more than legal rate of interest was paid. International Harvester Co. v. Burks Motors, Inc., 1972, 481 S.W.2d 351, 252 Ark. 816.

15. Summary judgment

Where judgment against one tort-feasor was fully satisfied, the order granting motion of other tort-feasor for summary judgment should not have been disturbed. Grantham v. Board of County Com'rs for Prince George's County, 1968, 246 A.2d 548, 251 Md. 28.

Where plaintiff sued joint tort-feasors and obtained joint verdict against them but released one, he could not be permitted to attack the granting of summary judgment for the other on theory that there was no proof that they were joint tort-feasors. Id.

16. Res judicata

Section 1 of this Act authorizing contribution from joint tort-feasor and subsec. (f) of this section providing that judgment determining liability of several defendants to claimant shall be binding among such defendants in determining their right to contribution or indemnity, except where a claimant commenced an action for injury or wrongful death prior to the effective date of the statute, were not unrelated, and adjudication of liability in suit commenced prior to effective date of statute was not res judicata as to liability of the defendants in joint tort-feasor's suit against another joint tort-feasor for contribution. Watts v. Memphis Transit Management Co., 1971, 462 S.W.2d 495, 224 Tenn. 721.

§ 4. [Release or Covenant Not to Sue]

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and,

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Commissioners' Comment

Subsection (a). Other Tortfeasors Not Discharged. This is retained from Section 4 of the 1939 Act, which dealt only with the release. The covenant not to sue or not to levy execution has been added because it should obviously have the same effect. There

seems to have been little difficulty with the 1939 provision. It changes the technical rule as to the effect of a release in many states, but in most of them it will make no significant change in practice, since any plaintiff wishing to hold other joint tortfeasors insists on a covenant not to sue instead of a release. The advantage to both plaintiff and the settling tortfeasor of being permitted to make an independent settlement is sufficiently obvious.

Subsection (b). Effect on Contribution. The 1939 Act provided, in Section 5, that a release of any tortfeasor should not release him from liability for contribution unless it expressly provided for a reduction "to the extent of the pro rata share of the released tortfeasor" of the injured person's recoverable damages. This provision has been one of the chief causes for complaint where the Act has been adopted, and one of the main objections to its adoption.

The requirement that the release or covenant be given in good faith gives the court occasion to determine whether the transaction was collusive, and if so there is no discharge.

The idea underlying the 1939 provision was that the plaintiff should not be permitted to release one tortfeasor from his fair share of liability and mulct another instead, from motives of sympathy or spite, or because it might be easier to collect from one than from the other; and that the release from contribution affords too much opportunity for collusion between the plaintiff and the released tortfeasor against the one not released. Reports from the state where the Act is adopted appear to agree that it has accomplished nothing in preventing collusion. In most three-party cases two parties join hands against the third, and this occurs even when the case goes to trial against both defendants. "Gentlemen's agreements" are still made among lawyers, and the formal release is not at all essential to them. If the plaintiff wishes to discriminate as to the defendants, the 1939 provision does not prevent him from doing so.

The effect of Section 5 of the 1939 Act has been to discourage settlements in joint tort cases, by making it impossible for one tortfeasor alone to take a release and close the file. Plaintiff's attorneys are said to refuse to accept any release which contains the provision reducing the damages "to the extent of the pro rata share of the released tortfeasor," because they have no way of knowing what they are giving up. The "pro rata share" cannot be determined in advance of judgment against the other tortfeasors. In many cases their chief reason for settling with one rather than another is that they hope to get more from the party with whom they do not settle. A provision for reduction in a fixed amount will not protect the settling tortfeasor from contribution. No defendant wants to settle when he remains open to contribution in an uncertain amount, to be determined on the basis of a judgment against another in a suit to which he will not be a party. Some reports go so far as

to say that the 1939 Act has made independent settlements impossible. Many of the complaints come from plaintiff's attorneys, who say that they can no longer settle cases with one tortfeasor. Such reports have reached other states, and have been responsible for a considerable part of the opposition to the 1939 Act. The New York Law Revision Commission has introduced a number of bills for contribution acts, and this objection has been the chief factor in defeating them.

It seems more important not to discourage settlements than to make an attempt of doubtful effectiveness to prevent discrimination by plaintiffs, or collusion in the suit. Accordingly the subsection provides that the release in good faith discharges the tortfeasor outright from all liability for contribution. This is consistent with Section 1(d) above, which provides that the settling tortfeasor has himself no right of contribution against another unless he has assumed the full responsibility to the claimant.

Action in Adopting Jurisdictions

Variations from Official Text:

Massachusetts. Omits references to "wrongful death", wherever appearing.

Tennessee. Adds subsection as follows: "No evidence of a release or covenant not to sue received by another tort-feasor or payment therefor may be introduced by a defendant t the trial of an action by a claimant for injury or wrongful death, but may be introduced upon motion after judgment to reduce a judgment by the amount stipulated by the release or the covenant or by the amount of the consideration paid for it, whichever is greater."

Law Review Commentaries

Effect of release of claim for tort occurring in Massachusetts. Francis J. Nicholson. 15 Annual Survey of Mass.Law, Boston College, p. 126 (1968).

Effect of release or covenant not to sue. 43 Boston U.L.Rev. 426 (1963).

General release of one tortfeasor releases all under this Act. 60 Mich.L.Rev. 668 (1962).

Meaning and significance of this section. Robert H. Griffith. 31 Pa. B.A.Q. 322 (1960).

Library References

Contribution ⇐8.
Release ⇐29(2).

C.J.S. Contribution §§ 7, 12.
C.J.S. Release § 50.

Notes of Decisions

1. Purpose

The purpose of this section is to encourage settlements without prejudice to the parties. Cartmel v. Williams, 1965, 215 A.2d 282, 207 Pa.Super. 144.

2. Retroactive effect

Release, given to one of three alleged joint tort-feasors 11 months after effective date of 12 P.S. § 2082 et seq., was governed as to its effect by such Act, notwithstanding accident which gave rise to cause of action against the three took place 13 months prior to Act's effective date, and hence release to the one tort-feasor did not preclude action against the others. Smith v. Fenner, 1960, 161 A.2d 150, 399 Pa. 633.

This section of Uniform Contribution Among Tort-Feasors Act providing that when release or covenant not to sue is given in good faith to one of two or more persons liable in tort for same injury, it does not discharge any of other tort-feasors from liability for injury unless its terms so provide, but it reduces claim against others to extent of any amount stipulated by release or covenant, or in amount of consideration paid for it, whichever is greater, alters substantive rights and is not applicable retroactively. Miller v. Sohns, 1971, 464 S.W.2d 824, 225 Tenn. 158.

3. Common law

Where relationship between owner of building abutting on sidewalk, on which pedestrian was injured in fall due to accumulation of ice and snow, and borough was one of primary and secondary liability and not one of joint and several liability, this Act did not apply, and common-law principle that release of tort-feasor discharges another tort-feasor who has committed a concurrent or successive tort applied. George v. Brehm, D.C. Pa.1965, 246 F.Supp. 242.

At common law an injured party could have for same injury but one satisfaction, and receipt of such satisfaction, as consideration for a release executed by him, from a person liable for such injury, necessarily worked a release of all others liable for same injury even though it was intended, or the release expressly stipulated that the other wrongdoer should not thereby be released. Daugherty v. Hershberger, 1958, 126 A.2d 730, 386 Pa. 367.

Under common law, a release of one joint tort-feasor is a release of all. Wilbert v. Pittsburgh Consolidation Coal Co., 1956, 122 A.2d 406, 385 Pa. 149. See, also, Swigert v. Welk, 1957, 133 A.2d 428, 213 Md. 613.

An injured party may have but one satisfaction and the receipt of such satisfaction, either as payment of a judgment recovered or as consideration for a release executed by injured person, from a person liable for such injury, necessarily works a release of all others liable for the same injury and prevents further proceedings against them, regardless of whether the wrongdoers involved committed a joint tort or concurrent or successive torts. Girard Trust Corn Exchange Bank v. Reliable Motors, 1954, 106 A.2d 670, 176 Pa.Super. 300.

4. Generally

Where administrator instituted action under 28 U.S.C.A. § 1346 subd. (b), based on death resulting from gas explosion in housing project, and United States was made defendant upon administrator's successfully contending that housing authority involved was, for purposes of suit, a federal agency so that its employees were employees of the government within 28 U.S.C.A. § 1346 subd. (b), administrator could not successfully contend that a release executed by administrator to the housing authority did not inure to benefit of United States on ground that release to agent would not necessarily release principal or on ground that United States and authority were joint tort-feasors. Schetter v. U. S., D.C.Pa. 1956, 136 F.Supp. 931.

The words of a release should not be construed to extend beyond express consideration mentioned so as to make release for parties which they never intended or contemplated.

Furtek v. West Deer Tp., 1959, 156 A.2d 581, 191 Pa.Super. 405.

A person who accepts money from a person against whom he has or may have a claim has it within his power to write into release what he pleases and, in absence of accident, fraud or mistake he is bound by what he writes. Kent v. Fair, 1958, 140 A.2d 445, 392 Pa. 272.

A release in full can only be a release of what is described in text of release. Id.

Under 12 P.S. § 2086 providing that release of one joint tort-feasor does not relieve him from liability for contribution unless release provides for reduction to extent of pro rata share of released tort-feasor of injured person's damages recoverable against all other tort-feasors, tort-feasor who had given general release to lady driver who had also taken releases from her passengers had right to require her to remain in action brought by passengers against him, since, even though he could not recover contribution from her, his liabilility would be halved if he could establish that she was joint tort-feasor. Davis v. Miller, 1956, 123 A.2d 422, 385 Pa. 348.

A contract not to sue is in effect a release, and is therefore a present discharge. Caplan v. City of Pittsburgh, 1953, 100 A.2d 380, 375 Pa. 268.

Fact that brakeman who alighted from train after collision with truck and injured leg while attempting to cross ditch may have had cause of action against owner of truck, and that railroad's settlement with brakeman was purely voluntary, would not within itself justify withdrawing railroad's claim against driver of truck for amount paid brakeman on theory of contribution between joint tort-feasors. Missouri Pac. R. Co. v. Ellison, 1971, 465 S.W.2d 85, 250 Ark. 160.

5. Discharge of other tortfeasor—Generally

Where total damages in excess of two million dollars was sought from the United States for injuries sustained by children when bazooka shell exploded, negotiation of $350,000 settlement by government by way of release which failed to mention specifically the person who had removed the abandoned shell from government property did not extinguish that person's potential tort liability. United States v. Reilly, C.A.N.M.1967, 385 F.2d 225.

Under Pennsylvania law, a release of one of joint tort-feasors releases the others. Bittner v. Little, C.A.Pa. 1959, 270 F.2d 286.

If one joint tort-feasor settles a case with an injured plaintiff, and in the process extinguishes the liability of the other joint tort-feasors, the law implies a quasi contractual obligation or an equitable one on the part of those other tort-feasors to reimburse the settling tort-feasor for their pro rata shares of the settlement fee. W. D. Rubright Co. v. International Harvester Co., D.C.Pa. 1973, 358 F.Supp. 1388.

Under Delaware law, defendants who took joint tort-feasors' release forfeited their claims for contribution. Gentry v. Wilmington Trust Co., D.C.Del.1970, 321 F.Supp. 1370.

Under both Pennsylvania and West Virginia law, release which was executed by passengers in connection with settlement of claim against host driver and which released all other persons precluded action by passengers against driver of other vehicle involved in collision. Bonar v. Hopkins, D.C.Pa.1969, 311 F.Supp. 130, affirmed 423 F.2d 1361.

The giving of a covenant not to sue one joint tort-feasor does not discharge the liability of the other joint tort-feasor. Hayden v. Ford Motor Co., D.C.Mass.1967, 278 F.Supp. 267.

Under the Pennsylvania law, the unqualified release of one tort-feasor releases all others who are liable for the wrong. Solar Elec. Corp. v. General Elec. Co., D.C.Pa.1957, 156 F. Supp. 51.

In the case of independent concurring torts, the release of one wrongdoer does not release the other. Pan-

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Where plaintiff sued joint tort-feasors and obtained joint verdict against them but released one, he could not be permitted to attack the granting of summary judgment for the other on theory that there was no proof that they were joint tort-feasors. Grantham v. Board of County Com'rs for Prince George's County, 1968, 246 A.2d 548, 251 Md. 28.

Release of one who is not legally liable for injury to another does not operate to release culpable tort-feasor. Eckels v. Klieger, 1965, 210 A. 2d 899, 205 Pa.Super. 526.

Under this Act, release by injured party to one jointly liable does not release others also liable, unless release expressly so provides. Brown v. City of Pittsburgh, 1962, 186 A.2d 399, 409 Pa. 357.

Giving of release and covenant not to sue seller of allegedly defective tractor for injuries received when buyer's employee fell off did not release buyer from liability for the injuries. Levi v. Montgomery, N.D. 1963, 120 N.W.2d 383.

Where gas company settled judgment secured against it by reason of gas explosion and secured from persons injured in the explosion a release, which did not purport to release any claims against landowner on whose property pipe was located but was stated to be without prejudice to gas company's right to pursue claim for contribution, and where gas company did not give notice to landowner of its intention to settle, settlement did not operate as a discharge of landowner's liability. Rio Grande Gas Co. v. Stahmann Farms, Inc., 1969, 457 P.2d 364, 80 N.M. 432.

Release of one joint tort-feasor did not operate as release of all other joint tort-feasors where release was executed in compliance with this Act. Garrison v. Navajo Freight Lines, Inc., 1964, 392 P.2d 580, 74 N.M. 238.

6. —— Terms and scope of release or covenant

Instrument which was in form a release, although not absolute and unconditional, which was given in return for settlement of injury action brought in Rhode Island by occupants of automobile against operator of truck on theory that their injuries resulting from truck's collision with rear of automobile in Massachusetts were caused by negligence in operation of truck and against lessor of truck for negligence in leasing truck with defective braking mechanism, and which disclosed intention of releasors to preserve their rights against manufacturer of truck did not bar releasors' diversity action in Massachusetts against manufacturer for same injuries, but manufacturer would not be precluded from showing by evidence at trial that releasors accepted settlement in full compensation for injuries and that instrument was in fact a release of manufacturer. Hayden v. Ford Motor Co., D.C. Mass.1967, 278 F.Supp. 267.

Release given by automobile passenger to automobile driver releasing driver and any and all other persons of any and every claim or cause of action arising out of automobile-truck collision effectuated a release not only of automobile driver but also of truck owner. Hasselrode v. Gnagey, 1961, 172 A.2d 764, 404 Pa. 549.

Where release commenced with the words "from all, and all manner of" and then stated the date and place of the automobile accident and was followed by "and especially the liability arising out of the aforesaid accident" and no attempt was made to limit the scope of the release to the claims and demands of the original defendant, the release released the husband of plaintiff driving the automobile at the time of the accident from liability for contribution to defendant for injuries sustained by the plaintiff wife. Mayer v. Knopf, 1959, 152 A. 2d 482, 396 Pa. 312.

Under 12 P.S. § 2085, providing that a release by injured person of one joint tort-feasor does not dis-

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charge the other unless the release so provides but reduces the claim in the amount of consideration paid, a release is not a discharge of other tort-feasors unless it specifically so states. Hilbert v. Roth, 1959, 149 A. 2d 648, 395 Pa. 270.

Under Code Supp.1947, Art. 50, § 24, a release by the injured person of a joint tort-feasor who has made settlement may provide for the discharge of other tort-feasors without naming them. Hodges v. U. S. Fidelity & Guaranty Co., D.C.Mun.App. 1953, 91 A.2d 473, 34 A.L.R.2d 1101.

7. Reduction of claim against other tortfeasor

Under Pennsylvania Act, amount paid by hospital for its release from claim for death of patron who was administered wrong type of blood during operation was not deductible from verdict recovered against the surgeon in charge of operation, where hospital was not a party to action against surgeon and there was no judicial judgment of negligence against hospital. Mazer v. Lipshutz, C.A.Pa.1966, 360 F.2d 275, certiorari denied 87 S.Ct. 72, 385 U.S. 833, 17 L.Ed.2d 68.

Under Pennsylvania law, if a plaintiff settles with a person and a joint tort-feasor's release is given, that person may not be sued by any other person for contribution; however, if a second person is sued by plaintiff, the settling party may be brought on the record for purposes of having trier of fact determine whether the settler was in fact a joint tort-feasor; and unless the settler is found to be a joint tort-feasor by a competent trier of fact in a proceeding to which he is a party before the entry of a judgment against the nonsettling party, the settler is not taken to be a joint tort-feasor, and the party against whom judgment is entered has no right to have the judgment reduced as result of the release, nor can he then sue the settling party for contribution. Griffin v. U. S., D.C.Pa.1973, 353 F.Supp. 324.

Where release given by plaintiff to one of drivers involved in automobile collision provided that it operated as satisfaction of plaintiff's claim against other parties to extent of pro rata share of parties released, damages payable by driver who was not given release would be cut in half if drivers were joint tortfeasors. Harding v. Evans, D.C.Pa.1962, 207 F. Supp. 852.

Where negligence of two parties combined to injure a third party and third party settles with one of the negligent parties, under 12 P.S. § 2085, amount of verdict against the one tort-feasor is reduced by amount injured party received from other tort-feasor in settlement. Pilosky v. Dougherty, D.C.Pa.1959, 179 F.Supp. 148.

Where jury found that legal cause of accident was joint negligence of three defendants, but one of such defendants had been given release by plaintiff, which release was given before right of other defendants to secure money judgment for contribution had accrued and provided for a reduction, to extent of prorata share of released defendant, of plaintiff's damages recoverable against all other defendants, plaintiff could recover from unreleased defendants their joint prorata share of the verdict and costs, and neither of such unreleased defendants had any right of contribution against defendant whose liability had been settled by the release. Smith v. Fenner, 1960, 161 A. 2d 150, 399 Pa. 633.

Where one of two joint tortfeasors made payment to plaintiffs for injuries in automobile accident and took releases, which provided that damages recoverable against other tortfeasor were reduced to extent of pro rata share of tortfeasor who made payment, and plaintiffs subsequently obtained verdicts against the joint tortfeasors, plaintiffs could recover from tortfeasor who did not obtain releases only one half of the amount of the verdicts less amount that they received from other tortfeasor in consideration for their releases, as against plaintiffs' contention that they were entitled to recover one half of each of the verdicts wholly

irrespective of amounts of the settlement with other tortfeasor. Daugherty v. Hershberger, 1956, 126 A.2d 730, 386 Pa. 367.

In suit against lumber company for conversion of carload of lumber and plywood, in which plaintiffs joined railroad as a defendant and charged it with conversion by misdelivery, order of satisfaction in favor of the railroad operated as a release, and claim against other tort-feasor was required to be reduced by amount of consideration paid for order of satisfaction. Maryland Lumber Co. v. White, 1954, 107 A.2d 73, 205 Md. 180.

Where bus company and its driver were released from all claims and demands of passenger resulting from collision between bus and railroad locomotive, instrument did not specifically name railroad as a party released, but provided that the release should reduce to extent of pro rata share of bus company or its driver, any damages recoverable by passenger against the railroad, railroad was not released, but passenger's claim against railroad was reduced by amount paid by bus company and its driver. Raughley v. Delaware Coach Co., Del.Super.1952, 91 A.2d 245, 8 Terry 343.

Under 47 Del.Laws, c. 151, § 4, a release of one joint tortfeasor will not discharge a tortfeasor not named therein, but will reduce injured person's claim against tortfeasor not named in amount as great as consideration paid for the release, or a greater figure if release so provides. Id.

Release which recited that plaintiff reduced his claims for damage to extent of prorata share of liability of released tort-feasors for plaintiff's injuries and resulting damages recoverable against all other tort-feasors sufficiently complied with statute establishing conditions under which injured person's release relieves joint tort-feasor from liability for contribution. Garrison v. Navajo Freight Lines, Inc., 1964, 392 P.2d 580, 74 N.M. 238.

Where action against general contractors and independent contractor to recover for death of an implied invitee of general contractors was dismissed against independent contractor under a covenant not to sue, and contractors placed covenant in evidence, thereby disclosing to jury the amount which plaintiff had received from independent contractor, contractors had benefit of this section, providing that a release of one joint tort-feasor reduces claim against others in amount of consideration paid for release, and were not entitled to have the court, after verdict, make the allowance again. Glem v. Williams, 1949, 222 S.W.2d 860, 215 Ark. 705.

8. Discharge of tortfeasor given release or covenant

Where defendant in a personal injury action arising out of collision of his automobile with automobile in which plaintiffs were riding released and discharged host driver from all claims and demands arising out of the accident, such release constituted a general release and a complete bar to all claims and demands of any kind which defendant had or might in the future have had against host driver, including right of contribution from host driver. Follett v. Peterson, D.C.Pa.1959, 171 F.Supp. 631.

Where administrator of estate of deceased killed in automobile collision involving two automobiles executed to one driver a release which provided that damages recoverable against any other person should be reduced to extent of pro rata share of responsibility for such damages of party released, effect of release under 1939 Act was to extinguish any claim of administrator against released driver and to relieve released driver of obligation to make contribution to other driver or any other joint tort-feasor, and when other driver subsequently executed release to first driver, other driver had no claim for contribution. M. F. A. Mut. Ins. Co. v. Mullin, D.C.Ark.1957, 156 F.Supp. 445.

Whether a third party defendant was solely, severally, or jointly liable to railroad employee, along with railroad, employee's release of third par-

ty defendant extinguished such liability, and therefore no right existed on part of railroad to secure contribution from third party defendant since, as between railroad and third party defendant, no cause of action remained in employee except against railroad. Panichella v. Pennsylvania R. Co., D.C.Pa.1957, 150 F.Supp. 79, cause remanded on other grounds 252 F.2d 452.

Homeowners' release of independent plumbing contractor hired by remodeling contractor from liability for fire damage allegedly caused by negligence of both contractors or their employees did not deprive remodeling contractor of right of contribution from subcontractor for general contractor's liability, in absence of provision for pro rata reduction in remodeling contractor's liability. Blanchard v. Wilt, 1963, 188 A.2d 722, 410 Pa. 356.

Where first motorist and his wife in consideration of $951.10 paid by second motorist and his wife executed a release which was headed "Release in Full of All Claims" and which provided that it released second motorist from claims which were made or might be made by first motorist and his wife because of "any damage, loss or injury, which heretofore have been or which hereafter may be sustained by us in consequence" of automobile accident, release did not discharge second motorist from liability to passenger in his automobile for injuries sustained in same accident, and hence did not bar first motorist who was sued by passenger for such injuries from joining second motorist as an additional defendant in such action. Kent v. Fair, 1958, 140 A.2d 445, 392 Pa. 272.

One who executed a general release after receiving payment for his own damages is precluded from bringing third-party action for contribution under 10 Del.C. § 6301 et seq., against joint tort-feasor to whom he addressed release. Brown v. Eakin, Del.Super.1957, 137 A.2d 385, 11 Terry 574.

Release and covenant not to sue discharges defendant given the covenant from any possible liability for tort of which defendant possibly might have been guilty, and discharges him from all liability or contribution to any of the other tort-feasors. Levi v. Montgomery, N.D.1963, 120 N.W.2d 383.

9. Discontinuance of action

Where a plaintiff in action against alleged joint tort-feasors arrived at terms of settlement of action against one defendant in accordance with provisions of 12 P.S. § 2082 et seq., which declares joint tort-feasors to have right of contribution, and plaintiff included such release in record, and release complied with requirements of such sections, plaintiff was entitled, over remaining defendant's objection, to discontinue action against such defendant with prejudice and preserve only action against remaining defendant. Fleck v. Marzano, D.C.Pa.1953, 108 F.Supp. 556.

§ 5. [Uniformity of Interpretation]

This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

Library References

Contribution ⇐5. C.J.S. Contribution § 11.

§ 6. [Short Title]

This Act may be cited as the Uniform Contribution Among Tortfeasors Act.

§ 7. [Severability]

If any provision of this Act or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

Library References

Statutes ⇐64(7). C.J.S. Statutes § 112.

§ 8. [Repeal]

All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.

§ 9. [Time of Taking Effect]

This Act shall take effect _____.

UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Alaska	1970, c. 80	4-20-1970	AS 09.16.010 to 09.16.060.
Arkansas	1941, Act 315	3-26-1941 *	Ark.Stats. §§ 34-1001 to 34-1009.
Colorado	1977, c. 195	7-1-1977	C.R.S. 13-50.5-101 to 13-50.5-106.
Delaware	1949, c. 151	5-27-1949 *	10 Del.C. §§ 6301 to 6308.
Florida	1975, c. 75-38	6-12-1975	West's F.S.A. § 768.31.
Hawaii	1941, Act 24	4-14-1941 *	HRS §§ 663-11 to 663-17.
Maryland	1941, c. 344	6-1-1941	Code 1957, art. 50, §§ 16 to 24.
Massachusetts	1962, c. 730	1-1-1963	M.G.L.A. c. 231B, §§ 1 to 4.
Mississippi	1952, c. 250	4-15-1952	Code 1972, § 85-5-5.
Nevada	1973, c. 693	7-1-1973	N.R.S. 17.225 to 17.305.
New Jersey	1952, c. 335	5-22-1952	N.J.S.A. 2A:53A-1 to 2A:53A-5.
New Mexico	1947, c. 121	3-19-1947 *	NMSA 1978, §§ 41-3-1 to 41-3-8.
North Carolina	1967, c. 847	1-1-1968	G.S. §§ 1B-1 to 1B-6.
North Dakota	1957, c. 223	3-11-1957 *	NDCC 32-38-01 to 32-38-04.
Ohio	1976, H.B. 531	10-1-1976	R.C. §§ 2307.31, 2307.32.
Pennsylvania	1951, p. 1130	7-19-1951 *	42 Pa.C.S.A. §§ 8321 to 8327.
Rhode Island	1940, c. 940	7-1-1940	Gen.Laws 1956, §§ 10-6-1 to 10-6-11.
South Dakota	1945, c. 167	2-24-1945 *	SDCL 15-8-11 to 15-8-22.
Tennessee	1968, c. 575	4-3-1968	T.C.A. §§ 29-11-101 to 29-11-106.
Wyoming	1977, c. 188	1-1-1978	W.S.1977, §§ 1-1-110 to 1-1-113.

* Date of approval.

General Statutory Notes

Pennsylvania. The Pennsylvania act, formerly contained in 12 P.S. §§ 2082 to 2089, was reenacted as part of the Judicial Code (42 Pa.C.S.A. §§ 8321 to 8327) by L.1976, P.L. 586, No. 142, effective June 27, 1978.

UNIFORM CONTRIBUTIONS AMONG TORTFEASORS ACT

Law Review Commentaries

Contribution among antitrust violators. 29 Catholic U.L.Rev. 669 (1980).

§ 1. [Right to Contribution]

Action in Adopting Jurisdictions

Variations from Official Text:

Nevada. In subsec. (b), substitutes "equitable share" for "pro rata share" wherever appearing.

In subsec. (e), substitutes "equitable share" for "pro rata share".

North Carolina. Adds subsections as follows:

"(h) The provisions of this Article shall apply to tort claims against the State. However, in such cases, the same rules governing liability and the limits of liability shall apply to the State and its agencies as in cases heard before the Industrial Commission. The State's share in such cases shall not exceed the pro rata share based upon the maximum amount of liability under the Tort Claims Act.

"(i) The provisions of this Article shall apply to the injury or death of an employee of any common carrier by rail which is subject to the provisions of Chapter 2 of Title 45 of the United States Code (45 U.S.C. §§ 51, et seq.) or G.S. 62-242 where such injury or death is caused by the joint or concurring negligence of such common carrier by rail and any other person or persons. In any such instance, the following will apply:

"(1) where liability is imposed or sought to be imposed only on such common carrier by rail, the railroad is entitled to contribution from any other such person or persons;

"(2) where liability is imposed or sought to be imposed only on a person or persons other than a common carrier by rail, such other person or persons are entitled to contribution from the railroad;

"(3) where liability is imposed or sought to be imposed on both a common carrier by rail and any other person or persons, damages shall be determined as provided in Chapter 2 of Title 45 of the United States Code (45 U.S.C. §§ 51, et seq.) or G.S. 62-242 whichever controls the claim."

Ohio. Substitutes "proportionate" for "pro rata," wherever appearing.

In subsec. (c), substitutes "intentionally caused or intentionally contributed" for "[wilfully or wantonly] caused or contributed".

Wyoming. In subsec. (e), inserts "insured" preceding references to tortfeasors, wherever appearing.

Adds a subsection (h), which reads: "W.S. 1-1-110 through 1-1-113 do not affect the common law liability of the several joint tortfeasors to have judgments recovered and payment made from them individually by the injured person for the whole injury. The recovery of a judgment by the injured person against one (1) joint tortfeasor does not discharge the other joint tortfeasors, from liability to the injured party."

Law Review Commentaries

Comparative contribution. 14 John Marshall L.Rev. 173 (1980).

Complexities of Oklahoma's proportionate several liability doctrine of comparative negligence—is products liability next? William J. McNichols, 35 Okl.L. Rev. 195 (1982).

Contribution among joint tortfeasors in Oklahoma. K. David Roberts. 50 Okl.B.J. 2193 (1979).

Contribution in Missouri. 44 Mo.L. Rev. 691 (1979).

Contributions among tortfeasors: Effects of statutes of limitations and other time limitations. Peter B. Kutner, 33 Okl.L.Rev. 203 (1980).

North Dakota equity for tortfeasors. Larry Kraft. 56 N.D.L.Rev. 67 (1980).

Notes of Decisions

Supplementary Index to Notes

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1. Purpose

Judicial purpose to encourage settlements implicitly undergirded enactment of Uniform Contribution Among Tort-Feasors Act. Lahocki v. Contee Sand & Gravel Co., Inc., 1979, 398 A.2d 490, 41 Md.App. 579, reversed on other grounds 410 A.2d 1039, 286 Md. 579.

Uniform Contribution Among Tortfeasors Act making persons jointly or severally liable in tort for same injury to person or property was intended to have full breadth and was not intended to be limited by meaning given prior usage. Clark v. Brooks, Del.Super.1977, 377 A.2d 365, affirmed 391 A.2d 747.

Joint Tortfeasors Contribution Law is intended to prevent plaintiffs, by their unilateral actions, from electing where to place the burden of a common fault. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J.Super. 192.

Statute affording a right of contribution in those instances where two or more persons become jointly liable in tort for same injury to person or property remedies unfairness of allowing a disproportionate share of plaintiff's recovery to be borne by one of several joint tort-feasors and accomplishes object of achieving a more equitable distribution of burden among those liable in tort for same injury. Hayon v. Coca Cola Bottling Co. of New England, 1978, 378 N.E.2d 442, 375 Mass. 644.

Goal of Uniform Contribution Among Tortfeasor's Act is equity among tortfeasors. Bartlett v. New Mexico Welding Supply, Inc., App.1982, 646 P.2d 579, 98 N.M. 152, certiorari denied 648 P.2d 794, 98 N.M. 336.

Uniform Contribution Among Tortfeasors Act was intended to apply where two or more parties inadvertently become joint tort-feasors. City and Borough of Juneau v. Alaska Elec. Light & Power Co., Alaska 1981, 622 P.2d 954.

The principles of equity which apply through the Uniform Contribution Among Tortfeasors Act were intended to govern contribution when one defendant is found to be insolvent, and were not intended to affect requirement that relative degrees of fault are not to be considered as factor in apportionment. Arctic Structures, Inc. v. Wedmore, Alaska 1979, 605 P.2d 426.

2. Retroactive effect

Inasmuch as cause of action for contribution arose in favor of insurer on January 20, 1979, when insurer paid judgment entered against its insured, one of joint tort-feasors, application of statute specifically enacted to compel contribution between joint tort-feasors, which became law on October 1, 1976, did not violate section of Ohio Constitution prohibiting passage of retroactive laws, notwithstanding fact that mishap occurred prior to effective date of contribution statute. Nationwide Mut. Ins. Co. v. Marcinko, 1980, 436 N.E.2d 551, — Ohio Com.Pl. —.

The Contribution Among Tort-Feasors Act has been amended as a result of the enactment of the comparative negligence act; the effective date of the comparative negligence act, July 1, 1973, was the date upon which the amendments became effective, and such amendments applied to litigants in action which was based upon facts which took place subsequent to July 1, 1973. Bartels v. City of Williston, N.D.1979, 276 N.W.2d 113.

Uniform Contribution Among Tort feasors Act did not apply to a case in which final judgment was entered prior to July 1, 1977. Hillman v. Bray Lines, Inc., 1978, 591 P.2d 1332, 41 Colo.App. 493.

Defendant driver, who settled with plaintiff in wrongful death action aris-

ing out of automobile collision, could not prevail against third-party defendant, Department of Highways, under a theory of contribution, where settlement took place before July 1, 1977, effective date of Uniform Contribution Among Joint Tortfeasors Act, and hence case was governed by common law of Colorado under which contribution between joint tortfeasors was not permitted. Hillenson v. Department of Highways, 1978, 590 P.2d 979, 41 Colo.App. 460.

Uniform Contribution Among Tortfeasors Act applied to August 1977 settlement of tort action even though alleged tortious conduct occurred before July 1, 1977, the effective date of Act. Summey v. Lacy, 1978, 588 P.2d 892, 42 Colo.App. 1.

Gondola operator which entered into settlement after effective date of Uniform Contribution Among Tortfeasors Act with parties injured as result of gondola crash occurring prior to effective date of Act could seek contribution from parties charged as joint tort-feasors. Coniaris v. Vail Associates, Inc., 1978, 586 P.2d 224, 196 Colo. 392.

Uniform Contribution Among Tortfeasors Act does not affect any vested rights of tort-feasors or create any new obligations in respect to their tort liability and thus can constitutionally be applied to pending cases even though actions giving rise to tort liability predate passage of Act. Village of El Portal v. City of Miami Shores, Fla.1978, 362 So.2d 275.

3a. Construction with other laws

Pennsylvania's comparative negligence statute was not applicable in measuring contribution among joint tort-feasors, though settlement with plaintiff and execution of general release occurred after the statute was in effect, where the underlying tort occurred before the statute's effective date. Slaughter v. Pennsylvania X-Ray Corp., C.A.Pa.1981, 638 F.2d 639.

New Jersey Joint Tortfeasors Contribution Law allowing contribution in regard to a "wrongful act" does not bar an action for contribution based on a liability arising without fault under statute making a bank which pays an instrument on a forged endorsement absolutely liable for conversion. Tormo v. Yormark, D.C.N.J.1975, 398 F.Supp. 1159.

The Tort Claims Act is not incompatible with and, hence, should be read together with the Joint Tortfeasors Contribution Law. Ezzi v. DeLaurentis, 1980, 412 A.2d 1342, 172 N.J.Super. 592.

Tort Claims Act must be read in pari materia with Joint Tortfeasors Contribution Law to the extent not inconsistent. Polyard v. Terry, 1977, 372 A.2d 378, 148 N.J.Super. 202, reversed on other grounds 390 A.2d 653, 160 N.J.Super. 497, affirmed 401 A.2d 532, 79 N.J. 547.

Workmen's Compensation Act and Joint Tortfeasors Contribution Act must be read in pari materia. Schweizer v. Elox Division of Colt Industries, 1975, 336 A.2d 73, 133 N.J.Super. 297, affirmed 359 A.2d 857, 70 N.J. 280.

Nothing in either the text, history or policy of the New Jersey Tort Claims Act mandates the abrogation or limitation of the right of contribution as legislatively established and judicially construed. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J.Super. 192.

In reconciling provisions of Contribution Among Tort-Feasors Act and the comparative negligence act, Supreme Court would avoid a construction which would permit imposition of greater liability on nonreleased tort-feasor with a right of contribution in multiple-party tort-feasor situation; such construction would not be in accordance with basic concepts of justice. Bartels v. City of Williston, 1979, 276 N.W.2d 113.

In action for negligence arising under comparative negligence act, when determining right of tort-feasor to contribution, the prorata shares of common liability are to be determined in proportion to the percentage of negligence attributable to each tort-feasor under the comparative negligence act. Id.

Electric utility employing lineman injured in fall from pole was immune, under Workers' Compensation Act, from claim for indemnity made by lineman's belt manufacturer found to have been negligent in causing lineman's fall. W. M. Bashlin Co. v. Smith, 1982, 643 S.W. 2d 526, 277 Ark. 406.

Alleged negligent premises owner's claim for contribution against hospital whose alleged negligence aggravated injuries which occurred on the premises was a medical malpractice claim that could not be raised in personal injury action without being first presented to medical liability mediation panel in accordance with statute providing that person or representative claiming damages by reason of injury, death or monetary loss on account of alleged malpractice by health maintenance organization shall submit claim to appropriate medical liability mediation panel before claim may be filed in state court. Walt Disney World Co. v. Memorial Hospital, Fla.App.1978, 363 So.2d 598.

5. Law governing

Though the time when entitlement to contribution comes into being is when the common liability of the tort-feasors to the claimant is extinguished, it is the law in effect at the moment of the injury that determines the responsibilities of the tort-feasors among themselves. Slaughter v. Pennsylvania X-Ray Corp., C.A.Pa.1981, 638 F.2d 639.

Governmental interest of Pennsylvania in demanding accountability of its corporations was paramount to interest of New Jersey in granting charitable immunity to defendant university in respect to claim that injuries sustained by plaintiff while participating in cooperative education program were caused by negligence of university in failing to adequately inspect and supervise area where plaintiff was required to work inasmuch as defendant was incorporated in Pennsylvania and it was inappropriate under circumstances for New Jersey as situs of injury to deny right given claimants under Pennsylvania Law to sue nonprofit corporations. Wuerffel v. Westinghouse Corp., 1977, 372 A.2d 659, 148 N.J.Super. 327.

6. Definitions

For purposes of Uniform Contribution Among Tortfeasors Act, plaintiff's suit for breach of implied warranty brought against supermarket arising from injury to plaintiff's tooth allegedly caused by substance in a meat product sold by supermarket could be a "claim in tort" which would allow plaintiff to claim the role of an injured person under Act. Loh v. Safeway Stores, Inc., 1980, 422 A.2d 16, 47 Md.App. 110.

Under the Joint Tortfeasor's Contribution Act, a defendant whose responsibility arises out of strict liability and

another defendant whose responsibility is due to negligence may be joint tortfeasors. Cartel Capital Corp. v. Fireco of New Jersey, 1980, 410 A.2d 674, 81 N. J. 548, 19 A.L.R.4th 310.

County, whose negligence was less than plaintiff's negligence and less than that of gas company whose negligence exceeded plaintiff's negligence, was not a "joint tortfeasor" for purposes of Joint Tortfeasors Contribution Law; thus, gas company was not entitled to contribution from county but was required to pay entire judgment minus deduction for plaintiff's contributory negligence. Nora v. Livingston Tp., 1980, 410 A.2d 278, 171 N.J.Super. 579.

Trial court could properly determine that where defendant was directly liable to injured plaintiff it was a joint tortfeasor and could be ordered to pay contribution to one codefendant as well as to indemnify another codefendant. Jennett v. Colorado Fuel & Iron Corp., 1980, 398 N.E.2d 755, 9 Mass.App. 823.

Term "liable in tort," as used in statute affording a right to contribution in those instances where two or more persons become jointly liable in tort for same injury to person or property, is broad in scope and not suitable language for implying a narrow or restricted range of application within framework of potential tort defendants. Hayon v. Coca Cola Bottling Co. of New England, 1978, 378 N.E.2d 442, 375 Mass. 644.

7. Common law

Absent any contractual right, business would have no right of contribution or indemnification against independent contractor as joint tort-feasor under Mississippi law: if both actually contributed to accident, neither has common-law right of contribution against the other. Ramsey v. Georgia-Pacific Corp., C.A.Miss.1979, 597 F.2d 890, on remand 518 F.Supp. 393.

Third-party defendant, an engineering firm, in complaint seeking contribution on theory that firm negligently supervised, tested, inspected and examined construction work performed by contractor, which was defendant in suit for damages for injuries arising from gas explosion, was protected at common law without agreement if its liability were purely vicarious. Shea v. Bay State Gas Co., 1981, 418 N.E.2d 597, 383 Mass. 218.

8. Generally

Under Pennsylvania law, right to contribution in tort action arises only among joint tort-feasors. Tesch v. U. S., D.C.Pa.1982, 546 F.Supp. 526.

Mississippi joint tort-feasor contributions statute provides for contribution only among judgment debtors. Ramsey v. Georgia-Pacific Corp., C.A.Miss.1979, 597 F.2d 890, on remand 518 F.Supp. 393.

Contribution will not arise from distinct causes of action, regardless of how similar the events may have been or how close in time they may have occurred. Klotz v. Superior Elec. Products Corp., D.C.Pa.1980, 498 F.Supp. 1099.

Except as provided by statute, there is no right of contribution in Mississippi where the parties are joint tort-feasors. Hartford Acc. & Indem. Co. v. Mitchell Buick-Pontiac and Equipment Co., D. C.Miss.1979, 479 F.Supp. 345.

Under law of Mississippi, there is no apportionment or contribution between one or more or all of parties guilty of tortious conduct. Hood v. Dealers Transport Co., D.C.Miss.1979, 472 F. Supp. 250.

In Rhode Island, contribution is generally available between joint tortfeasors for negligent acts that are the concurring causes of plaintiff's injury. Testa v. Winquist, D.C.R.I.1978, 451 F. Supp. 388.

Tennessee's adoption of Uniform Contribution Among Tort-Feasors Act is interpreted as having changed substantive law of contribution of Tennessee. Pinzer v. Wood, D.C.Tenn.1979, 82 F.R. D. 607.

One who is statutorily liable may nonetheless recover contribution from another tort-feasor pursuant to Joint Tortfeasors Contribution Act. Petersen v. Tolstow, 1982, 445 A.2d 84, 184 N.J. Super. 84.

There are two prerequisites to right of contribution among negligent parties: common liability because of such negligence and party claiming contribution paid more than its share of common liability. Nora v. Livingston Tp., 1980, 410 A.2d 278, 171 N.J.Super. 579.

Only requirement for eligibility under Uniform Contribution Among Tortfeasors Act is that persons jointly or severally be liable in tort for same injury to person or property. Clark v. Brooks, Del.Super.1977, 377 A.2d 365, affirmed 391 A.2d 747.

Relationship among themselves of those liable to injured party or a common basis of liability is not a factor in determining eligibility under Uniform Contribution Among Tortfeasors Act. Id.

In the absence of a clear legislative mandate to the contrary, the interest of the State both in obtaining repose and in having a timely opportunity for the investigation of claims against it must yield to the overriding equities which underpin the contribution laws. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J. Super. 192.

Essential elements for contribution in tort action are common liability of joint tort-feasors to an injured party and payment by one of tort-feasors of more than his share of that liability. Nationwide Mut. Ins. Co. v. Marcinko, 1980, 436 N.E.2d 551, — Ohio Com.Pl. —.

Basis for contribution lies in the relationship between tort-feasors themselves, not on their common liability to the injured party. Id.

Joint tort-feasor, who pays more than his proportionate share of common liability after effective date of Contribution Among Joint Tortfeasors Act as result of injury which was suffered prior to effective date of Act, may assert claim to recover amount which he paid in excess of his proportionate share of common liability. National Mut. Ins. Co. v. Whitmer, 1982, 435 N.E.2d 1121, 70 Ohio St.2d 149, 24 O.O.3d 248.

Language of statute providing that when two or more persons become jointly liable in tort for same injury to person or property, there shall be right of contribution among them requires that potential contributor be directly liable to plaintiff. Liberty Mut. Ins. Co. v. Westerlind, 1978, 373 N.E.2d 987, 374 Mass. 524.

Right of contribution is of statutory origin in South Dakota. Dehn v. Prouty, S.D.1982, 321 N.W.2d 534.

Each joint tort-feasor is responsible for wrong and they may be sued jointly or severally, subject however, to right of contribution among them, which right may be exercised by defending

party in principal action. Whiting v. Hoffine, 1980, 294 N.W.2d 921, — S.D. —.

Comparative negligence statute does not affect action for contribution between two joint tort-feasors under Uniform Contribution Among Joint Tortfeasors Act. Liberty Mut. Ins. Co. v. General Motors Corp., 1982, 653 P.2d 96, — Hawaii —.

Where both negligence and strict products liability sounded in tort, question of contribution between defendant tort-feasors was properly decided under the Uniform Contribution Among Tortfeasors Act as adopted in New Mexico. Sanchez v. City of Espanola, App.1980, 615 P.2d 993, 94 N.M. 993.

In case which involves injury that is not divisible, apportionment cannot rationally be applied. Chrysler Corp. v. Todorovich, Wyo.1978, 580 P.2d 1123.

Jurisdiction in matters concerning contribution is concurrently in courts of law and courts of equity. Celotex Corp. v. Campbell Roofing and Metal Works, Inc., Miss.1977, 352 So.2d 1316.

9. Nature of right

Recovery under the Pennsylvania Uniform Contribution Among Tortfeasors Act is a recovery in assumpsit or contract rather than in tort. Matter of Reading Co., D.C.Pa.1975, 404 F.Supp. 1249.

Contribution, indemnity and apportionment are each procedures to approximate an equitable division of responsibility between defendants who are jointly liable to plaintiff and, as such, equitable principles are applied. Embroy v. Borough of West Mifflin, 1978, 390 A.2d 765, 257 Pa.Super. 168.

Claim for contribution is action separate and distinct from underlying tort; rights and obligations of tort-feasors flow, not from tort, but from judgment or settlement itself. Coniaris v. Vail Associates, Inc., 1978, 586 P.2d 224, 196 Colo. 392.

Suit for contribution is, whether in equity or at law, not ex delicto in nature. Security Fire Protection Co., Inc. v. City of Ripley, Tenn.App.1980, 608 S.W.2d 874.

10. Common liability

Right of contribution must arise from the duty each of the wrongdoers owes to the injured party and not from any obligations of the wrongdoers among themselves. Fischbach & Moore Intern. Corp. v. Crane Barg R-14, C.A.Md.1980, 632 F.2d 1123.

Where outcome of claim of defendant United States against third-party defendant was not derivative of or determined by outcome of plaintiff's claim against United States, there was allegation of separate and not joint torts, and, under Pennsylvania law, contribution was not appropriate. Tesch v. U. S., D.C.Pa.1982, 546 F.Supp. 526.

Under Pennsylvania law, two persons are not acting jointly for purposes of committing joint tort if acts of original wrongdoer and joint tort-feasor are severable as to time, neither having opportunity to guard against other's acts and each breaching different duty owed to plaintiff. Id.

In principle, right of contribution rests upon common liability of wrongdoers for loss notwithstanding fact that liability of each wrongdoer may rest on different ground; however, any entitlement to contribution which a concurrent wrongdoer may have from another culpable party arises from duty each of wrongdoers owes to injured party, as opposed to obligation running among themselves. Fischbach & Moore Intern. Corp. v. Crane Barge R 14, D.C.Md.1979, 476 F.Supp. 282, affirmed 632 F.2d 1123.

Mississippi statute governing apportionment or contribution is applicable only in an action for damages where judgment is rendered against two or more defendants jointly and severally as joint tort-feasors and is inapplicable in situation where defendant is sued alone as a tort-feasor. Hood v. Dealers Transport Co., D.C.Miss.1979, 472 F. Supp. 250.

Under South Dakota law, contribution is device through which portion of liability can be shifted, but party is entitled to contribution only when there is joint or several liability, and the mere fact of concurrent negligence or fault does not give rise to right of contribution. Parker v. Stetson-Ross Mach. Co., Inc., D.C.S.D.1977, 427 F.Supp. 249.

Retailer was entitled to contribution under Joint Tortfeasor's Contribution Act, where it had negligently serviced fire-extinguishing system and had sold defective system manufactured by defendant, since damages resulted from wrongful act, neglect or default of both retailer and manufacturer. Cartel Capital Corp. v. Fireco of New Jersey, 1980, 410 A.2d 674, 81 N.J. 548, 19 A.L.R.4th 310.

Tort-feasor originally causing injury and physician who subsequently aggravates or causes new injury are not joint tort-feasors. Lasprogata v. Qualls, 1979, 397 A.2d 803, — Pa.Super. —.

In order to recover on claim for contribution it is necessary to establish that defendant was jointly or severally liable in tort. Stone & Webster Engineering Corp. v. Heyl & Patterson, Inc., 1978, 395 A.2d 1359, — Pa.Super. —.

In order for tort-feasor to be entitled to contribution from another tort-feasor whose negligence has concurred in producing injury to third person, such third person must have an enforceable cause of action not only against tort-feasor seeking contribution but also against one from whom contribution is sought. Rigsby v. Tyre, Del.Super.1977, 380 A.2d 1371.

Where house vendors and real estate brokers were joint tort-feasors with exterminator in causing the same injury or damage to house purchasers, although liability of exterminator arose by virtue of statute and liability of the vendors and brokers arose out of common-law principles, all parties were within purview of Joint Tortfeasors Contribution Law. Neveroski v. Blair, 1976, 358 A.2d 473, 141 N.J.Super. 365.

True test for contribution is joint liability, not joint, common or concurrent wrongs. Id.

It is common liability at the time of the accrual of plaintiff's cause of action which is the sine qua non of defendant's contribution right; if there is common liability to plaintiff at that time, that is, common liability as a matter of fact even though then unadjudicated, defendant cannot be deprived of his inchoate right by reason of plaintiff's loss thereafter of his own right of direct action against the joint tortfeasor. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J. Super. 192.

Contribution is appropriate between persons who are liable jointly in tort for the same injuries, even if they are lia-

ble on different theories of tort liability; thus, a negligent defendant may obtain contribution from a person who was jointly liable on theory of strict liability, and the converse is also true. Wolfe v. Ford Motor Co., 1982, 434 N.E.2d 1008, 386 Mass. 95.

Contribution requires the parties to share the liability or burden and is appropriate where there is a common liability among the parties. Dehn v. Prouty, S.D.1982, 321 N.W.2d 534.

The obligation of the Uniform Contribution Among Tortfeasors Act to contribute toward a payment of a judgment is predicated on joint or several liability. Sanchez v. City of Espanola, App. 1980, 615 P.2d 993, 94 N.M. 993.

When multiple parties are responsible for the same injury, and all are found liable, each and every one of them is a joint tort-feasor and is required by the Uniform Contribution Among Tortfeasors Act to contribute his pro rata share of judgment against them all. Id.

Common liability for contributi n purposes is determinable as of the date of accrual of plaintiff's claim. Id.

Evidence sustained finding that none of the defendants acted as agents in connection with purchase of land and that none of plaintiffs were joint tortfeasors with any of the defendants with respect to the transaction, so that plaintiffs were not entitled to indemnity or contribution from defendants. Shahan v. Stryker, 1976, 560 P.2d 540, 90 N.M. 119.

Supplier of fertilizer spreader was not entitled to contribution from manufacturers where those parties were not joint tort-feasors and did not share common liability. Larson Mach., Inc. v. Wallace, 1980, 600 S.W.2d 1, — Ark. —.

11. Accrual of right

Orders severing for trial asbestos-related personal injury claims against those defendant manufacturers who had not filed for bankruptcy were not final for purpose of appeal notwithstanding contention that severance would preclude nonbankrupt defendants from recovering contribution from the bankrupt defendants or maintaining action for contribution and apportioned damages or would preclude claims that those defendants who filed bankruptcy were wholly or partially responsible for the injuries and notwithstanding prospect of bankruptcy court orders of discharge. Matthews v. Johns-Manville Corp., 1982, 453 A.2d 362, — Pa.Super. —.

Right to contribution or indemnity does not accrue until after judgment is entered against a defendant. Cola v. Packer, 1978, 383 A.2d 460, 156 N.J.Super. 77.

A defendant's right to contribution from a joint tort-feasor is an inchoate right which does not ripen into a cause of action until he has paid more than his pro rata portion of the judgment obtained against him by plaintiff; it is at that point that his cause of action for contribution accrues. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J.Super. 192.

Even though equity for contribution arises at time of creation of relationship between parties, right to sue therefore accrues when party has paid more than his share of joint obligation. National Mut. Ins. Co. v. Whitmer, 1982, 435 N.E.2d 1121, 70 Ohio St.2d 149, 24 O.O.3d 248.

No cause of action for contribution accrues to joint tort-feasor until there has been judgment against him or settlement of claim. Coniaris v. Vail Associates, Inc., 1978, 586 P.2d 224, 196 Colo. 392.

12. Wanton or willful negligence

An active tort-feasor does not have a right to indemnification for lawful damages he has paid to an injured third party from a joint tort-feasor guilty of wanton or willful misconduct which contributed to the injuries where the third-party tort-feasor was an "employer" under the Workmen's Compensation Act. Seaboard Coast Line R. Co. v. Smith, Fla.1978, 359 So.2d 427.

13. Insurers

Under Maryland law, where one party was entitled to indemnity from another, the right to indemnity was not defeated by the fact that the loss to be indemnified for was actually paid by an insurance company. Tillman v. Wheaton-Haven Recreation Ass'n, Inc., C.A.Md. 1978, 580 F.2d 1222.

Owners of adjoining property and contractor, against whom the claims of owners of building for damage resulting from fire spreading from the adjoining property to building and resulting from contractor's demolition of the adjoining property were released after the claims were settled, were not "joint tort-feasors" with insurance agent against whom property owners sought to recover for a breach of promise to secure fire insurance. Huff v. Harbaugh, 1981, 435 A.2d 108, 49 Md.App. 661.

Absent statutory prohibition, provisions of automobile liability policy excluding from coverage members of insured's family or household are valid and relieve insurer from payment of judgment against its insured recovered by way of contribution by a joint tort feasor when that judgment is based on injury to insured's spouse; Uniform Contribution Among Joint Tortfeasors Act does not prohibit family exclusion clauses in such situation. Florida Farm Bureau Ins. Co. v. Government Emp. Ins. Co., Fla.1980, 387 So.2d 932.

Policy exclusion for resident family members in automobile liability policy is not applicable in contribution cases. Jones v. Barwick, Fla.App.1980, 386 So. 2d 7.

17. Employer and employee relationship

Uniform Contribution Among Tortfeasors Act was applicable to situation where both employer hospital and physician employee were severally liable for same injury to patient. Blackshear v. Clark, Del.1978, 391 A.2d 747.

Where sole basis of liability of an employer is negligence of employee, if employer is required to compensate injured person, employer can ordinarily require employee to reimburse employer for amount paid to injured person, but employer cannot be held liable unless employee is shown to be held liable; hence, if absence of culpability on part of employee to injured person has been established by litigation, employer cannot be held liable to injured person. Clark v. Brooks, Del.Super.1977, 377 A. 2d 365, affirmed 391 A.2d 747.

Employee's liability for his own negligence is not dependent on negligence of employer nor is employee entitled to reimbursement by employer. Id.

Employee and employer are both liable in tort under Uniform Contribution Among Tortfeasors Act for same injury to person or property. Id.

Under Uniform Contribution Among Tortfeasors Act, it is not sine qua non that suit be brought against either or

party in principal action. Whiting v. Hoffine, 1980, 294 N.W.2d 921, — S.D. —.

Comparative negligence statute does not affect action for contribution between two joint tort-feasors under Uniform Contribution Among Joint Tortfeasors Act. Liberty Mut. Ins. Co. v. General Motors Corp., 1982, 652 P.2d 96, — Hawaii —.

Where both negligence and strict products liability sounded in tort, question of contribution between defendant tort-feasors was properly decided under the Uniform Contribution Among Tortfeasors Act as adopted in New Mexico. Sanchez v. City of Espanola, App.1980, 615 P.2d 993, 94 N.M. 993.

In case which involves injury that is not divisible, apportionment cannot rationally be applied. Chrysler Corp. v. Todorovich, Wyo.1978, 580 P.2d 1123.

Jurisdiction in matters concerning contribution is concurrently in courts of law and courts of equity. Celotex Corp. v. Campbell Roofing and Metal Works, Inc., Miss.1977, 352 So.2d 1316.

9. Nature of right

Recovery under the Pennsylvania Uniform Contribution Among Tortfeasors Act is a recovery in assumpsit or contract rather than in tort. Matter of Reading Co., D.C.Pa.1975, 404 F.Supp. 1249.

Contribution, indemnity and apportionment are each procedures to approximate an equitable division of responsibility between defendants who are jointly liable to plaintiff and, as such, equitable principles are applied. Embrey v. Borough of West Mifflin, 1978, 390 A.2d 765, 257 Pa.Super. 168.

Claim for contribution is action separate and distinct from underlying tort; rights and obligations of tort-feasors flow, not from tort, but from judgment or settlement itself. Coniaris v. Vail Associates, Inc., 1978, 586 P.2d 224, 196 Colo. 392.

Suit for contribution is, whether in equity or at law, not ex delicto in nature. Security Fire Protection Co., Inc. v. City of Ripley, Tenn.App.1980, 608 S.W.2d 874.

10. Common liability

Right of contribution must arise from the duty each of the wrongdoers owes to the injured party and not from any obligations of the wrongdoers among themselves. Fischbach & Moore Intern. Corp. v. Crane Barg R-14, C.A.Md.1980, 632 F.2d 1123.

Where outcome of claim of defendant United States against third-party defendant was not derivative of or determined by outcome of plaintiff's claim against United States, there was allegation of separate and not joint torts, and, under Pennsylvania law, contribution was not appropriate. Tesch v. U. S., D.C.Pa.1982, 546 F.Supp. 526.

Under Pennsylvania law, two persons are not acting jointly for purposes of committing joint tort if acts of original wrongdoer and joint tort-feasor are severable as to time, neither having opportunity to guard against other's acts and each breaching different duty owed to plaintiff. Id.

In principle, right of contribution rests upon common liability of wrongdoers for loss notwithstanding fact that liability of each wrongdoer may rest on different ground; however, any entitlement to contribution which a concurrent wrongdoer may have from another culpable party arises from duty each of wrongdoers owes to injured party, as opposed to obligation running among themselves. Fischbach & Moore Intern. Corp. v. Crane Barge R 14, D.C.Md.1979, 476 F.Supp. 282, affirmed 632 F.2d 1123.

Mississippi statute governing apportionment or contribution is applicable only in an action for damages where judgment is rendered against two or more defendants jointly and severally as joint tort-feasors and is inapplicable in situation where defendant is sued alone as a tort-feasor. Hood v. Dealers Transport Co., D.C.Miss.1979, 472 F. Supp. 250.

Under South Dakota law, contribution is device through which portion of liability can be shifted, but party is entitled to contribution only when there is joint or several liability, and the mere fact of concurrent negligence or fault does not give rise to right of contribution. Parker v. Stetson-Ross Mach. Co., Inc., D.C.S.D.1977, 427 F.Supp. 249.

Retailer was entitled to contribution under Joint Tortfeasor's Contribution Act, where it had negligently serviced fire-extinguishing system and had sold defective system manufactured by defendant, since damages resulted from wrongful act, neglect or default of both retailer and manufacturer. Cartel Capital Corp. v. Fireco of New Jersey, 1980, 410 A.2d 674, 81 N.J. 548, 19 A.L.R.4th 310.

Tort-feasor originally causing injury and physician who subsequently aggravates or causes new injury are not joint tort-feasors. Lasprogata v. Qualls, 1979, 397 A.2d 803, — Pa.Super. —.

In order to recover on claim for contribution it is necessary to establish that defendant was jointly or severally liable in tort. Stone & Webster Engineering Corp. v. Heyl & Patterson, Inc., 1978, 395 A.2d 1359, — Pa.Super. —.

In order for tort-feasor to be entitled to contribution from another tort-feasor whose negligence has concurred in producing injury to third person, such third person must have an enforceable cause of action not only against tort-feasor seeking contribution but also against one from whom contribution is sought. Rigsby v. Tyre, Del.Super.1977, 380 A.2d 1371.

Where house vendors and real estate brokers were joint tort-feasors with exterminator in causing the same injury or damage to house purchasers, although liability of exterminator arose by virtue of statute and liability of the vendors and brokers arose out of common-law principles, all parties were within purview of Joint Tortfeasors Contribution Law. Neveroski v. Blair, 1976, 358 A.2d 473, 141 N.J.Super. 365.

True test for contribution is joint liability, not joint, common or concurrent wrongs. Id.

It is common liability at the time of the accrual of plaintiff's cause of action which is the sine qua non of defendant's contribution right; if there is common liability to plaintiff at that time, that is, common liability as a matter of fact even though then unadjudicated, defendant cannot be deprived of his inchoate right by reason of plaintiff's loss thereafter of his own right of direct action against the joint tortfeasor. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J. Super. 192.

Contribution is appropriate between persons who are liable jointly in tort for the same injuries, even if they are lia-

both employer and employee in order for suit to be brought against one of them. Id.

After trial court imputed default judgment from defendant employee to codefendant employer, it should have allowed the employer the right to litigate its claims for contribution against the other alleged joint tort-feasors; the default judgment imputation of negligence did not prevent the employer from proving that other parties stood in pari delicto. Dehn v. Prouty, S.D.1982, 321 N.W.2d 634.

Where respondeat superior form of vicarious liability was imposed upon one party through legal fiction, parties were not joint tortfeasors; therefore, Uniform Contribution Among Joint Tortfeasors Act did not apply. Kinetics, Inc. v. El Paso Products Co., App.1982, 563 P.2d 522, 99 N.M. 22.

Defendant, against whom recovery was sought for injuries allegedly sustained by plaintiff in automobile accident, could not recover contribution from plaintiff's employer and coemployee on theory that their negligence contributed to plaintiff's injuries and that it would be unjust for defendant to bear full responsibility to plaintiff. Kellen v. Second Judicial Dist. Court, In and For Washoe County, Dept. No. 1, 1982, 642 P.2d 600, — Nev. —.

Nurse, as the primary wrongdoer, had no claim for contribution from supervising doctor on the basis of respondeat superior. Dessauer v. Memorial General Hospital, 1981, 628 P.2d 337, 96 N.M.App. 93.

In view of commitment to allow contribution as matter of policy under common law, and fact that motor carrier's negligence, concerning injury to third person when its truck, operated by mechanic employed by defendant truck stop operator, struck injured third person, was based on a rebuttable presumption and could not compare in any degree with negligence of truck stop operator, motor carrier which had settled case against it by injured third person was entitled to recover from truck stop operator on a theory of contribution, notwithstanding assertion that liability of both motor carrier and truck stop operator was based upon respondeat superior so that their negligence was equal. Terminal Transport Co., Inc. v. Cliffside Leasing Corp., Tenn.1979, 577 S.W.2d 455.

Under rule concerning contribution which allows consideration of quality of negligence of parties, in vicarious negligence cases the quality of negligence depends upon who is the real master of the servant. Id.

Workmen's compensation statute, providing that liability of employer shall be exclusive and in place of all other liability to any third-party tort-feasor and to employee is constitutional. Seaboard Coast Line R. Co. v. Smith, Fla. 1978, 359 So.2d 427.

17a. Borrowed servant

Question of how loss caused by borrowed servant should be distributed as between lending and borrowing masters should be determined in accordance with principles of contribution and indemnity; abandoning Reader v. Ghemm Co., 490 P.2d 1200. Kastner v. Toombs, Alaska 1980, 611 P.2d 62.

18. Marital relationship

Under Maryland law, no contribution could be had from husband, as third-party defendant, for injuries which wife, as passenger, sustained in collision between automobile operated by husband and defendants' vehicle. Krick v. Carter, D.C.Pa.1979, 477 F.Supp. 152.

Maryland's prohibition against the right of contribution against a spouse by an original defendant is founded on fundamentally different policy considerations than preserving domestic tranquility. Id.

Under Pennsylvania law, husband, as driver, would not be immune from liability for contribution to defendants for any judgment recovered against them by wife passenger for injuries sustained in automobile collision. Id.

While some matters or proceedings between husband and wife within privacy of bedroom may remain within protection of interspousal immunity, where husband and wife lifted veil of secrecy and placed squarely in issue all facts surrounding their use or misuse of alleged defective contraceptive device which caused impregnation and resultant damages, husband's actions were not cloaked with interspousal immunity and could be basis for claim for contribution based upon his alleged negligence. J. P. M. v. Schmid Laboratories, Inc., 1981, 428 A.2d 515, 178 N.J.Super. 122.

Doctrine of interspousal immunity barred third party claim for indemnification and/or contribution against third-party defendant where third-party defendant was spouse of plaintiff. Moler v. Quality Chevrolet, Inc., 1981, 440 N.E.2d 127, 2 Ohio App.3d 120, 2 O.B.R. 134.

Common-law doctrine of interspousal immunity did not protect husband as host driver from liability to his wife as passenger for injuries sustained in collision and, hence, did not preclude owner and operator of other vehicle, named as defendants in main action by wife, from seeking to recover in third-party action against husband for contribution as a joint tort-feasor. Hayon v. Coca Cola Bottling Co. of New England, 1978, 378 N.E.2d 442, 375 Mass. 644.

Statute affording a right of contribution in those instances when two or more persons become jointly liable in tort for same injury to person or property applied to third-party action wherein owner and operator of vehicle, named as defendants in main action by wife, sought to recover against husband as host driver of wife's vehicle for contribution as a joint tort-feasor. Id.

Common-law doctrine of interspousal immunity does not control over Uniform Contribution Among Tortfeasors Act to prevent one tort-feasor from seeking contribution from another tort-feasor when other tort-feasor is spouse of injured person who received damages from first tort-feasor. Florida Farm Bureau Ins. Co. v. Government Emp. Ins. Co., Fla.App.1979, 371 So.2d 166, quashed in part 387 So.2d 932.

18a. Parent-child

If father, who was standing with infant child at curb of street, released child's hand after observing traffic in the roadway and told child to cross the street where she was struck by vehicle, parent-child immunity doctrine would not bar vehicle driver, who was sued for child's injuries, from seeking contribution and/or indemnification from father, but recovery could not be based on theory of negligent supervision. Carey v. Davison, 1981, 437 A.2d 338, 181 N.J.Super. 283.

Note 19

19. Motor vehicle accidents

Finding, in third-party action against estate for contribution arising out of head-on collision of automobiles, that decedent was guilty of negligence contributing to accident, was binding on estate in its claim against third-party plaintiff for wrongful death, since parties were identical. Gerrard v. Larsen, C.A.N.D.1975, 517 F.2d 1127.

Under Mississippi law, where alleged design defect in automobile did not cause or contribute to collision which occurred when the automobile was rear-ended while waiting to make a left turn, tort-feasor's insurer which paid substantial judgment to survivors of victim who was burned to death in the automobile was barred by the second accident doctrine from recovering contribution from manufacturer and seller of the automobile. Hartford Acc. & Indem. Co. v. Mitchell Buick-Pontiac and Equipment Co., D.C.Miss.1979, 479 F. Supp. 345.

Under Mississippi law, where neither manufacturer nor seller of allegedly defective automobile was a party to suit which arose out of rear-end collision at intersection, tort-feasor's insurer could not recover contribution from the manufacturer or seller for amount which insurer paid to survivors of victim who was burned to death when the allegedly defective automobile exploded. Id.

Defendant driver of vehicle which struck vehicle in which plaintiff's decedent was riding was not entitled to obtain contribution from plaintiff under law of Mississippi on theory that negligence on part of plaintiff's driver contributed to collision where defendant was sued alone as a tort-feasor and, hence, judgment would not be rendered against two or more defendants jointly and severally as joint tort-feasors and, in any event, decedent could not, under Mississippi law, have sued plaintiff, his father, for damages on account of his injuries had death not ensued. Hood v. Dealers Transport Co., D.C.Miss.1979, 472 F.Supp. 250.

Since host driver was not liable to her guest passengers for injuries arising out of accident in absence of allegation and proof of intentional and wanton conduct on her part, host driver could not be held liable for contribution on counterclaim of defendant driver of other vehicle alleging that negligence on the part of host driver was a cause of injuries. Rigsby v. Tyre, Del.Super.1977, 380 A.2d 1371.

Defendant, found liable for injuries sustained when police cruiser in which plaintiff was a passenger collided with a motor vehicle operated by defendant, could derivatively enforce liability to plaintiff of driver of police cruiser by alleging in third-party claim for contribution that plaintiff's injuries were caused by driver's negligence. Foley v. Kilbrick, 1981, 425 N.E.2d 376, 12 Mass. App. 382.

If recovery is denied because of guest statute, operator cannot be "liable in tort" for injury to guest and defendants cannot receive contribution from such operator; if, however, occupant is found to be a passenger rather than a guest, a breach of the same duty of ordinary care can make operator "liable in tort" and allow contribution to defendants. Olesen v. Snyder, 1976, 249 N.W.2d 266, 90 S.D. 107.

Defendant, in personal injury action arising from automobile accident was not entitled to contribution or reduction in his liability to plaintiff passenger on basis of contention that driver of vehicle in which plaintiff was riding was jointly negligent since, through operation of South Dakota guest statute, such driver was not liable for plaintiff's injuries; right to contribution is determined by whether there is joint or several liability rather than presence of joint or concurring negligence. Beck v. Wessel, 1976, 237 N.W.2d 905, — S.D. —.

Automobile manufacturer and driver of second automobile which collided with plaintiff's automobile were "joint tortfeasors" within meaning of statute under which relative degrees of fault of joint tort-feasors may bear upon rights of contribution, since evidence disclosed negligent conduct on part of each defendant constituting legal cause of harm to plaintiff because it was substantial factor in bringing about harm; thus, instruction permitting jury to find manufacturer liable if they found that alleged manufacture defect was one of the causes of plaintiff's injury, even though they might also believe that negligence of second automobile driver was contributing factor in causing accident, was correct. Chrysler Corp. v. Todorovich, Wyo.1978, 580 P.2d 1123.

Where injuries sustained in rear-end collision by automobile driver, who brought personal injury action against automobile manufacturer and driver of second automobile which struck plaintiff's automobile, were incapable of any logical, reasonable, or practical division, and defendants, since respective conduct of each constituted legal cause of plaintiff's injuries, stood jointly and severally liable for full extent of injuries, right of automobile manufacturer to claim against driver of second automobile was to be resolved under contribution statutes rather than doctrine of apportionment, and thus dismissal of manufacturer's cross claim against second driver was harmless error, since manufacturer could still pursue any right to contribution from second driver by independent action. Id.

Under guest statute, automobile passenger had no claim for damages against driver of car in which he was riding and therefore Joint Tortfeasors Act protected driver from third-party complaint for contribution. Baldonado v. Navajo Freight Lines, Inc., 1977, 562 P.2d 1138, 90 N.M.App. 284.

Where injury to occupant of automobile was caused by negligence of truck driver who at that time was under joint supervision of service station and truck owner, the two supervisors should equally share the loss and truck owner which settled with occupant was entitled to only 50% contribution from station. Terminal Transport Co., Inc. v. Cliffside Co., Inc., Tenn.App.1980, 608 S.W.2d 860.

In action arising out of accident in which truck driven by truck driver collided with rear of parked automobile occupied by family, brought against truck driver's certifying physician by truck driver's employer for physician's alleged negligent failure to discern truck driver's physical disabilities, if actual determination of jury was that truck driver's physical disabilities were proximate cause of accident, that truck driver's employer was guilty of negligence in failing to discover truck driver's physical disabilities, and that physician was also guilty of negligence, then truck driver's employer would be entitled to

contribution from physician under Uniform Contribution Among Tort Feasors Act. Wharton Transport Corp. v. Bridges, Tenn.1980, 606 S.W.2d 521.

In action in which injured minor pedestrian obtained judgment against motorist and in which it was in effect determined that minor's mother's negligent supervision of minor contributed to his injury, contribution was available against mother, but only to extent of existing liability insurance coverage for her tort against minor. Joseph v. Quest, Fla.1982, 414 So.2d 1063.

There is no right of contribution against a joint tort-feasor who is parent of injured minor if parent is without liability insurance or if policy contains an exclusion clause for household or family members. Woods v. Withrow, Fla.1982, 413 So.2d 1179.

In action brought by passenger and driver of automobile involved in accident against contractor, which filed third-party claim against subcontractor, subcontractor's claim against driver for contribution would be allowed so that in the event that driver and passenger were not found to be joint venturers at time of accident and if jury found that driver was partially at fault as a joint tort-feasor, proper distribution of liability with respect to passenger would be insured. Florida Rock & Sand Co. v. Cox, Fla.App.1977, 344 So.2d 1296.

19a. Banking transactions

Under New Jersey law, attorney's alleged liability to clients for failing properly to supervise out-of-state attorney to whom he transferred clients' personal injury case, and who subsequently embezzled clients' funds, was not of sort which would entitle attorney to indemnity from bank, which was guilty of negligence in handling of attorney's deposit, if referring attorney were held liable for clients' loss; and thus bank was not barred from seeking contribution. Tormo v. Yormark, D.C.N.J.1975, 398 F.Supp. 1159.

19b. Fiduciary relationships

Tennessee Uniform Contribution Among Tort-feasors Act did not apply to suit seeking recovery from accounting firm which allegedly aided and abetted executor in actions which breached fiduciary relationship and suit could not be maintained against accounting firm by beneficiary who had settled with executor. Buchbinder v. Register, C.A. Tenn.1980, 634 F.2d 327.

Uniform Contribution Among Joint Tortfeasors Act does not apply to breaches of trust or other fiduciary obligations. Eason v. Lau, Fla.App.1978, 369 So.2d 600, certiorari denied 368 So.2d 1365.

20. Liability in general

Third parties seeking contribution for damages arising from incident in which transformers were damaged while being loaded on vessel did not establish that transformer manufacturer failed to exercise reasonable care, where evidence indicated that manufacturer upon being notified that stencilled weights of the transformers were erroneous, rechecked the accuracy of the stencilled figures and notified buyer of discrepancies. Fischbach & Moore Intern. Corp. v. Crane Barge R-14, C.A.Md.1980, 632 F.2d 1123.

Testimony that, even though building remained under building owner's control, contractor had ultimate responsibility for barricading elevators and having elevators shut down when barricades were not in place and evidence that subcontractor's employee was injured when he fell into open elevator shaft sustained finding that both the building owner and the contractor were negligent so that building owner was entitled to contribution from contractor, for certain amounts recovered from building owner by injured sub-subcontractor's employee and his wife. Hattersley v. Bolit, C.A.Pa.1975, 512 F.2d 209.

Under South Dakota law, where jury specifically found that particular defendant was not negligent in any manner and was not liable for injuries to plaintiff, no right of contribution existed against such defendant. Bartak v. Bell-Gallyardt & Wells, Inc., D.C.S.D. 1979, 473 F.Supp. 737, reversed on other grounds 629 F.2d 523.

In New Jersey indemnity will be allowed to a joint tort-feasor only if his liability is merely "constructive" or "vicarious," that is, liability which is imputed by law without regard to actual fault. Tormo v. Yormark, D.C.N.J.1975, 398 F.Supp. 1159.

Television set manufacturer, sued by tenant for wrongful death under Pennsylvania law because of fire caused by allegedly defective set had no cause of action for contribution or indemnity arising out of alleged third-party defendant landlord's negligence, where there was no question of primary or secondary liability and no question of vicarious liability since liability, if any, of landlord for contribution must arise out of tort law governing liability of landlord to tenant because of negligence and there had to be proof of some direct omission by landlord of performance of a duty he owed to tenant. Groover v. Magnavox Co., D.C.Pa.1976, 71 F.R.D. 638.

In regard to incident in which injuries were allegedly sustained when explosion and flash fire occurred in telephone utility's manhole, utility was not precluded from relying upon distinction between "active" and "passive" negligence with respect to original defendant's claim for contribution, and such concepts were relevant and there were sufficient facts to support submission of the issue to trier of fact. Chesapeake Utilities Corp. v. Chesapeake and Potomac Tel. Co. of Maryland, Del.Super. 1980, 415 A.2d 486.

Inasmuch as surety on performance bond issued in connection with approval of subdivision development map was not alleged to be one of the tort-feasors and was not a party to negligence action by grantors of easement for storm sewer required in connection with the development, township which had paid entire judgment obtained by grantors against township and developer did not have right to contribution from surety. Wyckoff Tp. v. Sarna, 1975, 347 A.2d 16, 136 N.J.Super. 512.

Hold harmless clause in franchise agreement between city and power company governed apportionment of liability between city and power company in negligence action rather than the Uniform Contribution Among Tortfeasors Act, in that parties, apparently at arm's length, agreed on the standard for measuring liability, provision was not unconscionable, and agreement was not at odds with the remedial purposes of the statute. City and Borough of Juneau v. Alaska Elec. Light & Power Co., Alaska 1981, 622 P.2d 954.

Note 20

Right to contribution exists among joint tort-feasors under the Uniform Contribution Among Tortfeasors Act regardless of the fact that they have been found liable under different theories, such as negligence and strict products liability. Sanchez v. City of Espanola, App.1980, 615 P.2d 993, 94 N.M. 993.

Where liability of defendant city for injuries sustained by minor plaintiff when a volleyball standard fell and severely injured her foot was predicated on negligence in that standard was being used in a recreation center under supervision of city when accident occurred, and liability of defendant manufacturer was predicated on a theory of strict products liability under section 402A of the Restatement (Second) of Torts, as was the liability of the defendant sporting goods store for having sold a defective product which eventually injured a user of the product, there were three tort-feasors which were each directly liable to the plaintiff for her injuries, and each tort-feasor had a right to contribution when it had paid more than its pro rata share of the judgment, or one-third. Id.

In a case for contribution, the real inquiry is which of the two parties is primarily responsible for the injuries. Terminal Transport Co., Inc. v. Cliffside Leasing Corp., Tenn.1979, 577 S.W.2d 455.

Uniform Contribution Among Tortfeasors Act creates a substantive right to contribution from a codefendant whose negligence contributes to plaintiff's injury. Carey v. Jones, Tenn.App. 1976, 546 S.W.2d 814.

20a. Strict liability

Liability for contribution and indemnity under the principle of strict liability as codified by section 402A of the Restatement (Second) of Torts depends, not on the means of marketing, but on the fact of marketing, whether by sale, lease or bailment, for use and consumption by the public. Hoffman v. Loos & Dilworth, Inc., 1982, 452 A.2d 1349, — Pa.Super. —.

Role of the defendant as a sales agent for the manufacturer of the boiled linseed oil which caused the fire giving rise to the wrongful death and survival claims in the trespass action provided a predicate upon which the defendant could be held liable for contribution and indemnity under the principle of strict liability as codified by section 402A of the Restatement (Second) of Torts in that the defendant intended that the product reach the market and was directly involved in supplying the chattel, not merely offering the use of money. Id.

21. Settlement

Under Pennsylvania law, settlement of claim with one tort-feasor bars subsequent suit against another joint tort-feasor only where prior proceedings can reasonably be construed to have resulted in full satisfaction of plaintiff's claim. Frank v. Volkswagenwerk, A.G. of West Germany, C.A.Pa.1975, 522 F.2d 321.

Under Pennsylvania law, where minor settled claim arising out of automobile accident because her parents and attorney concluded that the most they could recover from driver of automobile was maximum coverage under his insurance policy and not because amount of settlement fully satisfied claim, settlement did not bar action against another alleged joint tort-feasor. Id.

Defendants in death action were prevented from initiating action for contribution against other defendant after entering into settlement in death action where all parties were parties to death action. Stone & Webster Engineering Corp. v. Heyl & Patterson, Inc., 1978, 395 A.2d 1359, 261 Pa.Super. 150.

Under Tort Claims Act, plaintiffs could recover full amount of jury verdict from state to extent that Act allowed, less pro tanto reductions for two settlements from joint tort-feasors. Polyard v. Terry, 1977, 372 A.2d 378, 148 N.J.Super. 202, reversed on other grounds 390 A.2d 653, 160 N.J.Super. 497, affirmed 401 A.2d 532, 79 N.J. 547.

Tort-feasor, having agreed to entry of judgment pursuant to stipulation for dismissal, had no substantive right thereafter to require other tort-feasor to make contribution especially where other tort-feasor denied liability and did not otherwise agree to any contribution. Grace v. Buckley, 1982, 435 N.E.2d 655, 13 Mass.App. 1081.

To recover contribution, plaintiffs were required to show that they were legally liable as joint tort-feasors and that defendants were jointly liable, and plaintiffs could recover only to extent that settlement was reasonable. Robertson v. McCarte, 1982, 433 N.E.2d 1262, 13 Mass.App. 441.

Under Uniform Contribution Among Joint Tortfeasors Act, where, among multiple tort-feasors, one has settled in good faith and another has not settled, the claim against the latter is reduced by the settlement, the former being protected against further liability. Boston Edison Co. v. Tritsch, 1976, 346 N.E.2d 901, 370 Mass. 260.

Where plaintiff had settled with joint tort-feasor before judgment, settlement payment received from joint tort-feasor in April, 1974, should have been applied to reduce balance outstanding on judgment against second defendant on that date, and thus it was improper to treat settlement payment as if it had been received at time of the writ and second defendant was not thereby unfairly burdened, with respect to resultant interest calculations, on theory that it was to be credited with the settlement payment as if it had made the payment itself. Id.

Where defendants who settled their liability in iron worker's action for personal injuries sustained in fall at construction site for $130,000 were later found to be 92% liable, another defendant, who settled for $20,000, was found not to be liable, and settlement agreement with the defendant found not to be liable provided that any damages recovered against any other parties shall be reduced in the sum of twenty thousand dollars or in such sum as shall be the extent of the pro rata share of settling defendants' liability whichever sum shall be the larger, liability of architects, who did not settle, had to be reduced by $20,000 even though total verdict was $215,000, and even though such reduction of the award against the architects, who were found to be liable for 7.5% of the $215,000, eliminated their monetary liability. Duncan v. Pennington County Housing Authority, 1979, 283 N.W.2d 546, — S.D. —.

Where defendant entered into settlement agreement with plaintiff in which defendant agreed to pay plaintiff $45,000 but such defendant did not pay what would have been necessary to obtain extinguishment of other defendant's liability, defendant which had settled could

not bring claim for contribution against defendant which had not settled under Uniform Contribution Among Tortfeasors Act, even though judgment was entered in favor of plaintiff and against both defendants for $45,000, so that party which had settled and which had absolutely limited its liability to $45,000 ended up paying disproportionate share of judgment. Best Sanitary Dis. Co. v. Little Food Town, Inc., Fla.1976, 339 So.2d 222.

22. Indemnity

Under Arkansas law, right of indemnity may arise from express contract of indemnity or from special relationship between third party and employer which would give rise to the right; however, in absence of contract for indemnity running in favor of third party, negligent third-party tort-feasor is not entitled to either indemnity or contribution from a negligent employer where their concurrent negligence has produced injury or death of employee. Dulin v. Circle F Industries, Inc., C.A.Ark.1977, 558 F.2d 456.

Even assuming that painter's employer was guilty of causal negligence in connection with painter's accidental death by electrocution, employer and female conductor manufacturer, which had been found by jury to be negligent, were simply joint tort-feasors and thus manufacturer was not entitled to indemnity from employer under Arkansas law. Id.

Contribution and indemnity are mutually exclusive remedies; contribution contributes the loss among tort-feasors by requiring each to pay his proportionate share, while indemnity shifts entire loss from one tort-feasor who has been compelled to pay it to the shoulders of another who should bear it instead. Missouri Pac. R. Co. v. Star City Gravel Co., Inc., D.C.Ark.1978, 452 F.Supp. 480, affirmed 592 F.2d 455.

There is important distinction between contribution, which distributes the loss among the tort-feasors by requiring each to pay his proportionate share, and indemnity, which shifts entire loss from one tort-feasor who has been compelled to pay it to another who should bear it instead; the simplest basis for indemnity is a contract which provides for it; however, right to indemnity may arise without agreement and by operation of law to prevent a result which is regarded as unjust or unsatisfactory. Aetna Cas. and Sur. Co. v. L. K. Comstock & Co., Inc., D.C.Nev.1980, 488 F.Supp. 732.

When indemnitor expressly agreed to indemnify indemnitee except in certain specified instances in which accident was proximately caused by intervening negligence of indemnitee or third persons and it was determined that exceptions did not pertain, indemnitor was obligated to indemnify. Allen v. Standard Oil Co., 1982, 443 N.E.2d 497, 2 Ohio St.3d 122, 2 O.B.R. 671.

Indemnification between tortfeasors is allowed only when there is a preexisting legal relationship between them or a duty imposed by law upon one of the tort-feasors to hold the other harmless for the injuries. Public Service Co. of Colorado v. District Court In and For City and County of Denver, 1981, 638 P.2d 772. — Colo. —.

Issue of indemnity is not concerned with tort-feasor's liability to plaintiff; it is remedy solely concerned with equities existing among tort-feasors. Stock v. ADCO General Corp., 1981, 632 P.2d 1182, 96 N.M.App. 944.

County was not required, under indemnity provisions of contract between county and Department of Transportation for resurfacing and shoulder repairs on portion of rural road, to defend and indemnify employee of state Department of Transportation, with respect to lawsuit filed by motorist who was severely injured when his vehicle left roadway after striking an unmarked dip therein caused by county construction work, for state employee's alleged negligence in ordering and allowing county to do roadwork under his supervision that it was ill-equipped and incapable of properly performing, because there was no intent, express or implied, in indemnity provisions to indemnify state or its employees against their acts of negligence. Wajtasiak v. Morgan County, Tenn.App.1982, 633 S.W.2d 488.

In the case of joint tort-feasors, one is not entitled to indemnification; the remedy in cases involving joint tort-feasors is restitution by way of contribution. Terminal Transport Co., Inc. v. Cliffside Leasing Corp., Tenn.1979, 577 S.W.2d 455.

Where right of full indemnity exists between persons liable in tort, no right of contribution exists. Craven v. Lawson, Tenn.1976, 534 S.W.2d 653.

Defendant in action involving controversy over rights to condominium parking space was not entitled to attorney fees from vendor of parking space under claim for indemnity where defendant was not liable to plaintiffs, in that vendor's alleged obligation to indemnify never arose and defendant did not establish an independent basis for indemnification. Mauss v. Christensen, Fla.App.4 Dist.1982, 414 So.2d 255.

Purported indemnitor was not bound as a matter of law by insured's judgment against purported indemnitee since indemnitor had not been given timely notice or opportunity to appear and defend the action. Hull & Co., Inc. v. McGetrick, Fla.App. 3 Dist.1982, 414 So.2d 243.

A judgment rendered against an indemnitee is conclusive for res judicata or estoppel by judgment purposes against a purported indemnitor, but only upon condition that indemnitor has been given timely notice and an opportunity to appear and defend the action. Id.

When there is no notice to a purported indemnitor of action against purported indemnitee who subsequently seeks indemnity from indemnitor, indemnitee must, ab initio and irrespective of the prior action, establish facts which support right to indemnification, and indemnitor is free to contest those facts. Id.

Indemnitors were properly held liable on their indemnification agreement, which provided that they would indemnify indemnitee against any and all manner of claims, whether matured or unmatured, in connection with indemnitee's business dealings with indemnitors. Viyella v. Pina, Fla.App. 3 Dist. 1982, 414 So.2d 5.

Enforcement of agreement to indemnify parties against their own wrongful acts will be denied in absence of clear

and unequivocal contractual expression of such an intent; without such an expression, a contractual indemnitor's obligation is negated by any fault of indemnitee which was legal cause of its own loss. Jones v. Holiday Ins., Inc., Fla.App.1981, 407 So.2d 1032, review denied 417 So.2d 329.

Where indemnity clause of license agreement between hotel owner and operators did not clearly and unequivocally call for owner's indemnification for judgments based upon its own negligence, where it was unclear whether general verdict against owner in suit by hotel employee was based upon owner's affirmative negligence or upon owner's vicarious liability for operators' conduct, and where punitive damage award demonstrated that jury found that owner was at least partially at fault for employee's injury, owner was not entitled to contractual indemnification based on license agreement. Id.

Obligation to indemnify arises from express or implied contractual relationship between tort-feasors. First Church of Christ Scientist v. City of St. Petersburg, Fla.App.1977, 344 So.2d 1302.

22a. Pleadings

Where there has been no other clear determination as to whether two parties are joint tort-feasors, plaintiff's pleadings should control. Degen v. Bayman, 1976, 241 N.W.2d 703, 90 S.D. 400.

Third-party complaint which alleged that city had contracted with church to provide bus and operator to transport persons to church, that injuries of passenger sustained when she was struck by automobile after she exited bus were directly and proximately caused by city's failure to perform its contractual duty and which alleged that city's negligence was active or primary and that negligence, if any, of church was passive or secondary, stated cause of action for indemnity against city and also stated cause of action under Uniform Contribution Among Tortfeasors Act should trier of fact find church and city be joint tort-feasors. First Church of Christ Scientist v. City of St. Petersburg, Fla.App.1977, 344 So.2d 1302.

22b. Warranty of merchantability

Statute granting right of contribution among joint tort-feasors should be read to include tort-like liability for breach of implied warranty of merchantability. Wolfe v. Ford Motor Co., 1982, 434 N.E. 2d 1008, 386 Mass. 95.

Assembler of truck camper who was liable for breach of implied warranty of merchantability and required to pay judgment for injuries sustained in accident involving the vehicle was "jointly liable in tort" with manufacturer of truck used in construction of the vehicle within meaning of statute granting right of contribution among joint tort-feasors. Id.

If party breaching implied warranty of merchantability could not demonstrate that he was only liable vicariously for motor vehicle accident, he would not be entitled to use indemnity as a bar to contribution by codefendant. Id.

24. Compensatory damages

Compensatory damages may not be apportioned among joint tort-feasors. Cheek v. J. B. G. Properties, Inc., 1975, 344 A.2d 180, 28 Md.App. 29.

Where all three defendants were liable for same injury but insofar as defendant exterminator was concerned the judgment against it consisted of $5,000 for compensatory damages and $10,000 for penalty provided by Consumer Fraud Act, liability of the other two parties, the broker and house vendors was limited to compensatory damages for their common-law wrong, and only the compensatory portion of the exterminator judgments should be considered in computation of contribution rights among tort-feasors. Neveroski v. Blair, 1976, 358 A.2d 473, 141 N.J.Super. 365.

25. Punitive damages

Punitive damages may be apportioned among joint tort-feasors. Cheek v. J. B. G. Properties, Inc., 1975, 344 A.2d 180, 28 Md.App. 29.

Rule that where consideration paid by one joint tort-feasor for release represents full compensation for the injury the other tort-feasor is discharged does not apply to an award of punitive damages since theory behind punitive damages would best be served by adoption of rule that allows apportionment of such damages among several wrongdoers according to degree of culpability or according to existence or nonexistence of requisite state of mind for such damages in defendants. Id.

26. Review, right to appeal

Since one defendant has a right of contribution if codefendant is also found liable, judgment defendant is entitled to appeal decision dismissing the codefendant. Carey v. Jones, Tenn.App. 1976, 546 S.W.2d 814.

Prior decisions holding that one defendant may not appeal from grant of directed verdict in favor of a codefendant are no longer controlling since the enactment of the Uniform Contribution Among Tortfeasors Act. Id.

Uniform Contribution Among Tortfeasors Act changed substantive law, giving defendant the right to contribution from codefendant whose negligence contributed to plaintiff's injuries; having the right to contribution from codefendant who is joint tort-feasor, defendant's liability would be affected by dismissal of charges against his codefendant, and defendant therefore qualifies as an aggrieved party having the right to appeal dismissal of charges against codefendant. Cole v. Arnold, Tenn.1977, 545 S.W.2d 95.

Defendant was aggrieved party and had right to appeal from decision exonerating codefendant from liability in negligence action, in view of fact that defendant would have right of contribution from codefendant if codefendant were found to be a joint tort-feasor, and defendant was therefore affected by dismissal of charges against codefendant. Id.

27. Questions of fact

Issue of proximately causative negligence for purposes of determining whether general contractor was entitled to contribution from subcontractor was question for jury in action for injuries sustained by two workmen in fall of concrete floor planks where general contractor had assumed some obligation to inspect jobsite for safety violations, employed safety consultant, and had full-time employee on jobsite, notwithstanding that subcontractor was erecting beams and laying planks involved in accident. Sweetman v. Strescon Industries, Inc., Del.Super.1978, 389 A.2d 1319.

§ 2. [Pro Rata Shares]

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Section reads: "When there is a disproportion of fault among joint tortfeasors, the relative degrees of fault of the joint tortfeasors shall be used in determining their pro rata shares solely for the purpose of determining their rights of contribution among themselves, each remaining severally liable to the injured person for the whole injury as at common law."

Florida. In clause (a), substitutes "be the basis for allocation of liability" for "not be considered".

Nevada. Section reads:

"In determining the equitable shares of tortfeasors in the entire liability:

"1. If equity requires, the collective liability of some as a group constitutes a single share; and

"2. Principles of equity applicable to contribution generally apply."

Ohio. Section reads: "In determining the proportionate shares of tortfeasors in the entire liability their relative degrees of fault shall be considered. If equity requires the collective liability of some as a group, the group shall constitute a single share, and principles of equity applicable to contribution generally shall apply."

Wyoming. Section reads:

"(a) In determining the pro rata shares of tortfeasors in the entire liability:

"(i) The relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares solely for the purpose of determining their rights of contribution among themselves, each remaining severally liable to the injured person for the whole injury as at common law;

"(ii) If equity requires, the collective liability of some as a group shall constitute a single share;

"(iii) A final verdict in favor of an alleged joint tortfeasor as against the injured party shall be a conclusive determination that such successful party is not liable to make any contribution to any other tortfeasor."

Law Review Commentaries

Complexities of Oklahoma's proportionate several liability doctrine of comparative negligence—is products liability next? William J. McNichols. 35 Okl. L.Rev. 195 (1982).

Notes of Decisions

1. Generally

Railroad, which had paid settlement to injured employee, was entitled to contribution from truck driver and truck owner in the amount of five percent of settlement figure, the amount which jury found defendants' negligence in parking truck on railroad tracks to have proximately contributed to injuries. Missouri Pac. R. Co. v. Star City Gravel Co., Inc., D.C.Ark.1978, 452 F. Supp. 480, affirmed 592 F.2d 455.

Where dog-bitten child's grandparents, whose liability to child was predicated upon common-law negligence, and dog owners, whose liability was predicated upon "Dog Bite Statute," were found to be proximate and concurrent causes of child's injuries, under Joint Tortfeasors Contribution Act owners were responsible only for their pro rata share of damages recovered, amounting to 50% of total judgment, apportioned one half of such 50% to each as co-owners of dog; in addition, under Comparative Negligence Act, and because grandparents were each found 50% negligent, they were responsible for one half of remaining half of child's damages. Petersen v. Tolstow, 1982, 445 A.2d 84, 184 N.J.Super. 84.

Term "pro rata share" as used in Uniform Contribution Among Tort-Feasors Act section providing for reduction, to extent of "pro rata share" of released tort-feasor, of injured person's damages recoverable against all other tort-feasors does, and will continue to, mean that which judicial decision exemplified it to be, i. e., in numerical shares or proportions based on number of tort-feasors. Lahocki v. Contee Sand & Gravel Co., Inc., 1979, 398 A.2d 490, 41 Md.App. 579, reversed on other grounds 410 A.2d 1039, 286 Md. 679.

Whenever two actions are brought for separately identifiable acts of negligence on the part of original wrongdoer and treating physician, apportionment of damages between the two causes should take place. Lasprogata v. Qualls, 1979, 397 A.2d 803, — Pa.Super. —.

In language of 1969 comparative negligence statute providing that contributory negligence does not bar recovery in a negligence action "if such negligence was not as great as the negligence of the person against whom recovery is sought . . . ", term "person" is construed to mean "persons" so as to allow all plaintiffs in actions arising from and after effective date of 1969 statute to be treated more nearly equally and to make it unnecessary for courts to deal with separate procedures under 1969 statute and 1973 statute; negligence of plaintiff is to be compared with total negligence of all defendants, all of whom are liable to plaintiff, with contribution among joint tort-feasors on pro rata basis. Grace v. Damon, 1978, 374 N.E.2d 311, 6 Mass.App. 160.

Neither fact that legislature had not enacted a bill adopting doctrine of comparative negligence after having considered such issue several times nor fact that legislature had enacted statutes designed to make the judge-made rule of contributory negligence work or to ameliorate its harshness barred judiciary from reconsidering whether such rule should be replaced by doctrine of comparative negligence. Scott v. Rizzo, 1981, 634 P.2d 1234, 96 N.M. 682.

Alaska

The principles of equity which apply through the Uniform Contribution Among Tortfeasors Act were intended to govern contribution when one defendant is found to be insolvent, and

were not intended to affect requirement that relative degrees of fault are not to be considered as factor in apportionment. Arctic Structures, Inc. v. Wedmore, Alaska 1979, 605 P.2d 426.

Under section of Uniform Contribution Among Tortfeasors Act, a "pro rata share" means "equal shares" when applied to right of contribution between tenants in common. Commercial Union Assur. Companies v. Western Farm Bureau Ins. Companies, 1979, 601 P.2d 1203, 93 N.M. 507.

Apportionment of liability effected by contribution is on the basis that equality is equity, which means that each tort-feasor is required ultimately to pay his pro rata share, arrived at by dividing the damages by the number of tort-feasors; tort-feasors stand in the same relationship to one another and are all equally liable for breach of their duty. Id.

Under contribution statutes, trial court, before submitting to jury question of joint tort-feasors' pro rata shares of liability, must make determination as a matter of law that there was such a disproportion of fault between joint tort-feasors as to render inequitable an equal distribution among them of their common liability by contribution; if trial court should conclude as a matter of law that there were requisite disproportion of fault, relative degree of fault of each joint tort-feasor should be considered by jury. Chrysler Corp. v. Todorovich, Wyo.1978, 580 P.2d 1123.

Unless inequitable, pro rata share of each jointly and severally liable defendant is determined by dividing amount of judgment by number of persons against whom it has been obtained. Great West Cas. Co. v. Fletcher, 1982, 287 S.E.2d 429, 56 N.C.App. 247.

Contribution between joint and several judgment debtors would be pro rata based upon number of defendants rather than based upon percentage of liability attributable to seriousness of conduct of each of them. Celotex Corp. v. Campbell Roofing and Metal Works, Inc. Miss.1977, 352 So.2d 1316.

§ 3. [Enforcement]

Action in Adopting Jurisdictions

Variations from Official Text:

Ohio. In subsec. (b), substitutes "judgment debtors" for "judgment defendants".

Subsec. (f) reads: "Valid answers to interrogatories by a jury or findings by a court sitting without a jury in determining the liability of the several defendants for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution."

Wyoming. In subsec. (c), substitutes "or the decision on appeal has become final" for "or after appellate review".

Notes of Decisions

Supplementary Index to Notes

½. Construction with other laws

Statute authorizing action for contribution could not be read in isolation but was to be read in context with other sections of chapter and considered in connection with cause of enactment, mischief to be remedied and main object to be accomplished, to end that purpose might be effectuated. Robertson v. McCarte, 1982, 433 N.E.2d 1262, 13 Mass.App. 441.

1. Generally

A right to contribution may be enforced either at law or in equity. Michigan Millers Mut. Ins. Co. v. U.S. Fidelity and Guar. Corp., 1982, 452 A.2d 16, — Pa.Super. —.

1a. Parties in general

In regard to accident in which sand truck driver was killed when truck crashed through a house as it was being moved across bridge, even if it would have been permissible to reduce house movers' liability by driver's employer's proportional share of total fault up to the amount of workers' compensation benefits paid, it would not have been feasible to do so where employer was not a party, no effort was made to join employer as a party and there was no basis for a finding as to employer's proportionate share of the total fault. Blocker v. Wynn, Fla.App. 1 Dist.1983, 425 So.2d 166.

2. Separate action

Insurer of a tort-feasor found liable in a prior action may not recover contribution from a nonparty to the prior action. National Farmers Union Property and Cas. Co. v. Frackelton, 1981, 650 P.2d 571, — Colo.App. —.

Tort-feasor found liable in a prior action may not recover contribution in a separate action from a nonparty to the prior action. National Farmers Union Property and Cas Co. v. Frackelton, 1981, 645 P.2d 1321, — Colo.App. —.

2a. Complaint

Where pleadings show separate torts, as properly defined, rather than joint tort, dismissal of third-party action for contribution is appropriate. Tesch v. U. S., D.C.Pa.1982, 546 F.Supp. 526.

Insured's complaint requesting that "all sums that may be adjudged" or entire burden of liability it may have to insurer be assessed against insurance agent failed to state cause of action for contribution or indemnification. American Ins. Co. v. Material Transit, Inc., Del.Super.1982, 446 A.2d 1101.

Pleading rule did not relieve indemnitor of duty to indemnify where parties predicated release from duty to indemnify not on whether complaint alleged negligence but on whether indemnitee or third persons were in fact negligent and inasmuch as neither indemnitee nor third persons were negligent, indemnitee was entitled to be indemnified. Allen v. Standard Oil Co., 1982, 443 N.E.2d 497, 2 Ohio St.3d 122, 2 O.B.R. 671.

Complaint sounding in negligence requires allegations of duty, breach and proximate cause, while a complaint for contribution requires allegations of payment and payment in excess of one's

share, and thus claim for contribution is distinguishable from liability tort case and is not compulsory counterclaim. Harvey v. Huddle, Fla.App. 4 Dist.1982, 416 So.2d 1248.

4. Third party practice

Federal immunity, which barred plaintiff mail carrier from pursuing a tort action against United States Post Office Department, also barred a third-party action against the Department for contribution in action for alleged injuries sustained by carrier on property under defendant's general supervision. Wilson v. Knoxville Community Development Corp., D.C.Tenn.1978, 451 F. Supp. 1168.

Defendant county park commission had right to implead and seek contribution from borough under joint tortfeasor contribution law. Dambro v. Union County Park Commission, 1974, 327 A.2d 466, 130 N.J.Super. 450.

A[illegible]rtion by codefendants in a negli[illegible]ger[illegible] action of a right of contribution inter sese and the right of a defendant to implead a joint tort-feasor by a third-party complaint before plaintiff's cause of action has been reduced to a judgment are merely devices of procedural convenience afforded by the rules of practice. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J.Super. 192.

Although a defendant is not necessarily bound to proceed against joint tort-feasors in the same action in which plaintiff seeks to establish his liability, he will, nevertheless, ordinarily do so since a single action is the most orderly and logical manner in which proof of common liability can be established, and it is, as a course, common liability which is the substantive basis of a right of contribution. Id.

Where third-party defendant in negligence action arising out of automobile accident stood in loco parentis to plaintiff in action, trial court's ruling that third-party complaint did not state cause of action for contributions from third-party defendant for injuries sustained by plaintiff was not erroneous on grounds that there was no legal obligation on behalf of third-party defendant toward plaintiff and, therefore, third-party defendant should not enjoy benefit of parental immunity. Barry v. Schorling, 1982, 440 N.E.2d 1216, 2 Ohio App.3d 110, 2 O.B.R. 123

Trial court properly entered judgments in third-party actions ordering contribution in the absence of a motion and a hearing. Jennett v. Colorado Fuel & Iron Corp., 1980, 398 N.E.2d 755, 9 Mass.App. 823.

In action for damages sustained when plaintiffs were thrown from lifting beam because of a failure in one of the upper legs of a steel cable sling included in a stop log structure which was being constructed, it was properly within trial court's discretion to allow third-party motion by supplier of stop log structure to implead manufacturer of steel cable sling. Id.

An original defendant may bring in a third-party defendant for contribution to the original defendant for a part of his liability to the plaintiff and, if the original defendant is not liable to the original plaintiff, the third-party defendant may not be held liable to the original defendant. Jones v. Collins, 1982, 294 S.E.2d 384, 58 N.C.App. 753.

Where plaintiff amended complaint to include defendant and defendant filed third-party complaint seeking indemnity and contribution under Uniform Contribution Among Joint Tortfeasors Act and third-party defendant filed answer all within three years of alleged date of injury, three-year statute of limitation ceased to run at least as early as third-party defendant's answer and plaintiff's cause of action against third-party defendant was not barred even though plaintiff's complaint against third-party defendant was not filed until more than four years and four months after alleged date of injury. Larson Mach., Inc. v. Wallace, 1980, 600 S.W.2d 1, — Ark. —.

When third-party complaint alleges direct liability of third-party defendant to plaintiff on claim set out in plaintiff's complaint, third party shall make his defenses to complaint and no amendment to complaint is necessary or required, and parties are at issue as to their rights respecting claim without amendment of complaint by plaintiff. Id.

Fact that contribution may not actually be obtained until original defendant has been cast in judgment and has paid does not prevent impleader, but impleader judgment may be so fashioned as to protect rights of other tort-feasors, so that defendant's judgment against them may not be enforced until defendant has paid plaintiff's judgment, or more than his proportionate share whatever law may require. Velsicol Chemical Corp. v. Rowe, Tenn.1976, 543 S.W.2d 337.

Rules of Civil Procedure authorized third-party complaint based upon claim of one tort-feasor for indemnity or contribution from other alleged joint tort-feasors. Id.

Where, in medical malpractice action, defendant physician's third-party complaint seeking indemnification stated cause of action for contribution, third-party complaint should have been allowed to stand and trier of fact allowed to determine extent of liability, if any, as between two doctors. Lindsey v. Austin, Fla.App.1976, 336 So.2d 486.

4a. Motion for contribution

Trial court, in making order providing for entry of judgment, did not have power to assert parties' rights to contribution when there had been no motion filed or claim made by any party to effectuate such right. Kaiser v. 191 Presidential Corp., 1982, 454 A.2d 141, — Pa.Super. —.

Where no objections, reservations or claims are filed to assert right of contribution, it is not for trial court to take upon itself task of rearranging plaintiff's recovery to conform to what eventual recovery will be if all rights are, in fact, exercised; it is responsibility of parties in case to exercise such rights. Id.

Under Uniform Contribution Among Tortfeasors Act, defendant could properly assert its claim for contribution against other defendant by way of motion despite fact that it had voluntarily dismissed its claim against that defendant during trial. Best Sanitary Dis. Co. v. Little Food Town, Inc., Fla.1976, 339 So.2d 222.

7. Limitations

If liability insurer for distributor of swather had right to contribution from distributors of replacement drive chain subsequently installed on swather by its owner, with respect to amount paid by

it in settlement of claim against its insured for injuries sustained by swather owner when replacement chain broke and struck and shattered his eyeglasses, claim was barred by one-year statute of limitations, since more than one year had elapsed since time of payment. Hartford Acc. & Indem. Co. v. R. Herschel Mfg. Co., D.C.N.D.1978, 453 F. Supp. 1375.

If plaintiff is barred from pursuing his cause of action against one of two joint tort-feasors because the statute of limitations has run in respect to his own claim, the inchoate contribution right of the tort-feasor who has been sued prior to the running of the statute nevertheless remains viable and does not accrue until he has paid more than his pro rata share of the judgment; hence, the defendant has the right to implead the unjoined tort-feasor in plaintiff's action for the purpose of proving their common liability even after the statute of limitations on plaintiff's claim has run. Markey v. Skog, 1974, 322 A.2d 513, 129 N.J. Super. 192.

Action for contribution against alleged joint tort-feasor was time barred. Aetna Cas. & Sur. Co. v. Volkswagen of America, Inc., Fla.App. 3 Dist.1982, 419 So.2d 418.

Alleged tort-feasor may not seek contribution from estate of joint tort-feasor without complying with requirement of nonclaim statute that claim be filed in estate within three months from first publication to creditors. Koschmeder v. Griffin, Fla.App.1980, 386 So.2d 625.

8. Questions for jury

In action for contribution against a joint tort-feasor, evidence on issue presented by defendant third-party plaintiff's case against third-party defendant was sufficient for jury. Lotspeich Co. v. Neogard Corp., Fla.App. 3 Dist.1982, 416 So.2d 1163.

9. Instructions

In regard to accident in which sand truck driver was killed when, while employed by an employer immune from tort liability due to workers' compensation coverage, the truck crashed through a house as it was being moved across bridge, refusal to instruct that jury could apportion negligence of nonparty employer, and, thus, reduce defendant house movers' liability by proportionate amount of fault attributable to employer was proper. Hlocker v. Wynn, Fla.App. 1 Dist.1983, 425 So.2d 166.

10. Recovery of judgment

Under Pennsylvania law, plaintiff may recover as many judgments against as many tort-feasors as he wishes, but upon satisfaction of one judgment, he may not sue or execute against another joint tort-feasor. Frank v. Volkswagenwerk, A. G. of West Germany, C.A. Pa.1975, 522 F.2d 321.

13. Satisfaction of judgment

Satisfaction of judgment against one alleged joint tort-feasor terminates claimant's cause of action against another joint tort-feasor. Christiani v. Popovich, Fla.App.1978, 363 So.2d 2, certiorari denied 389 So.2d 1179.

§ 4. [Release or Covenant Not to Sue]

Law Review Commentaries

Complexities of Oklahoma's proportionate several liability doctrine of comparative negligence—is products liability next? William J. McNichols. 35 Okl.L.Rev. 135 (1982).

Contribution among tort-feasors in Washington: 1981 Tort Reform Act. 57 Wn. L.R. 479.

Meaning and significance of this section. Robert H. Griffith. (1960) 31 Pa. B.A.Q. 322.

Notes of Decisions

Supplementary Index to Notes

1. Purpose

Purpose of statute finding that a release discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor is to avoid having one of two or more joint tort-feasors bear a disproportionate share of plaintiff's recovery and it does no violence to that objective to allow tort-feasors, among themselves, to release one of their number. Sword & Shield Restaurant, Inc. v. Amoco Oil Co., 1981, 420 N.E.2d 32, 380 Mass.App. 285.

Statute providing that when release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury, it shall discharge tort-feasor to whom it is given from all liability for contribution to any other tort-feasor was drafted to encourage settlements in multiparty tort actions by clearly delineating effect settlement would have on collateral rights and liabilities in future litigation. Bishop v. Klein, 1980, 402 N.E.2d 1365, — Mass. —.

3a. Construction

Phrase "unless its terms otherwise provide" as used in statute governing scope of a release should be narrowly construed to require a degree of specificity, and allowing a discharge based on general language which does not name or identify a tort-feasor perpetuates the common-law rule, which was changed by statute, and is contrary to the statute. Beck v. Cianchetti, 1982, 439 N.E.2d 417, 1 Ohio St.3d 231, 1 O.B.R. 253.

Phrase "unless its terms otherwise provide" as used in statute governing scope of a release requires a release to expressly designate by name or to otherwise specifically describe or identify any tort-feasor to be discharged. Id.

4. Generally

Uniform Contribution Among Tort-feasors Act abrogated common-law rule that a release of one joint tort-feasor released all. Loh v. Safeway Stores, Inc., 1980, 422 A.2d 16, 47 Md. 110.

Statute, which abrogates common-law rule that release of joint tort-feasor dis-

charges all tort-feasors liable for same tort, was not repealed by Uniform Contribution Among Joint Tortfeasors Act. Eason v. Lau, Fla.App.1978, 369 So.2d 600, certiorari denied 368 So.2d 1365.

5. Discharge of other tortfeasor—Generally

Although, under Pennsylvania Uniform Contribution Among Tortfeasors Act, release in favor of one joint tortfeasor does not discharge another tortfeasor unless release so provides, plaintiff must establish that nonreleased party is joint tort-feasor in order to recover remaining portion of claim from any other party. Sochanski v. Sears, Roebuck and Co., C.A.Pa.1982, 689 F.2d 45.

Outside purview of Uniform Contribution Among Tort-Feasors Act, where it can be established that there is more than one wrong at issue, involving independent parties, the release of one wrongful party would not serve to release any other. Huff v. Harbaugh, 1981, 435 A.2d 108, 19 Md.App. 661.

By virtue of statute, release or covenant not to sue, given in good faith to one of number of joint tort-feasors, does not release those not named in release or covenant, though under common law release to only one tort-feasor would discharge all other tort-feasors from liability. Robertson v. McCarte, 1982, 433 N.E.2d 1262, 13 Mass.App. 441.

Phrase "one of two or more persons liable in tort for the same injury," within statute providing that a release or covenant not to sue or not to enforce judgment, if given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death, does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide, includes a party who is vicariously liable. Alaska Airlines, Inc. v. Sweat, Alaska 1977, 568 P.2d 916.

Defendant air carrier was "one of two or more persons liable in tort for the same injury" and, hence, was liable in tort, despite release of air taxi service with which it had contracted, for injuries sustained by plaintiff passenger due to negligence in operation of scheduled route even though defendant was not technically a tort-feasor. Id.

Plaintiffs' release of defendant driver did not operate to release defendant owner passenger for negligent entrustment of automobile by owner passenger to an incompetent driver. Mathis v. Stacy, Tenn.App.1980, 606 S.W.2d 290.

Under Uniform Contributions Among Tort Feasors Act, provision that covenant not to sue discharges covenantee from contribution and does not discharge any other tort-feasor had no application to master-servant, principal-agent relationship where liability was solely derivative. Craven v. Lawson, Tenn.1976, 534 S.W.2d 653.

Release given one joint tort-feasor, stating that it releases all firms, corporations and individuals, does release all joint tort-feasors, despite the Uniform Contribution Among Joint Tortfeasors Act since wording of Act excludes releases which so state. Newsome v. Finch, Fla.App.1979, 375 So.2d 1144.

6. —— Terms and scope of release or covenant

A general release discharging "all other persons" was sufficient under the Arkansas Uniform Contribution Among Tortfeasors Act to release joint tortfeasors who were not parties to release. Douglas v. U. S. Tobacco Co., C.A.Ark. 1982, 670 F.2d 791.

Language of release discharging "all other persons, firms, corporations" satisfied language of the Uniform Contribution Among Tortfeasors Act. Id.

Under Pennsylvania law in settling claim against one joint tort-feasor, plaintiff's failure to sign release specifically reserving her right to proceed against other joint tort-feasors did not bar her from maintaining action against other joint tort-feasors. Frank v. Volkswagenwerk, A. G. of West Germany, C.A.Pa.1975, 522 F.2d 321.

That release signed by plaintiff in connection with settlement of his personal injury claim with employer hospital was in full settlement and satisfaction of damages attributable to employer hospital was not such as to require same result as to employee doctor where employer hospital was only "releasee" named in release and, hence, employer doctor was not included in release. Clark v. Brooks, Del.Super.1977, 377 A.2d 365, affirmed 391 A.2d 747.

Language which was contained in release which was assigned in connection with settlement of his personal injury claim with employer hospital and which provided "any other such persons" would be released "from all claims which the releasors might otherwise have based upon or arising from the pro rata share of the damages or injuries of the releases caused by or attributable to the releasee" did not operate to release employee doctor so as to preclude plaintiff from seeking recovery from employee doctor for additional damages which plaintiff may have suffered in excess of amount received in settlement with employer hospital. Id.

Where alleged fact of wrongdoing was that of doctor employee, viewed from standpoint of relative liability of employer hospital and doctor employee, there was no injury which was "caused by or attributable to" employer and, hence, there was no basis under release with employer hospital to bar plaintiff from seeking recovery from employee doctor for additional damages which plaintiff may have suffered in excess of amount received in settlement with employer hospital. Id.

Release, which provided in effect that insurer of joint owners of car would pay policy limits of $15,000 to motorcycle passenger and which stated that passenger acknowledged full settlement and satisfaction of all claims of whatever kind or character arising out of collision between motorcycle and car, released all tort-feasors from claims resulting from the collision, including motorcyclist and his insurer, though release was not entered into until after default was entered against motorcyclist. Battle v. Clanton, 1975, 220 S.E.2d 97, 27 N.C.App. 616.

6a. —— Employer-employee relationship

Amendatory provision of Uniform Contribution Among Tortfeasors Act prohibiting discharge of a tort-feasor when a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for same injury or same wrongful death is inapplicable to an employer-employee relationship. Clark v. Brooks, Del.Super.1977, 377 A.2d 365, affirmed 391 A.2d 747.

There is no principle of unity of employer and employee which extends to

employee release by an employer u[illegible] employed by release.

7. Reduction against other tortfeasor

Where contract for release of one tort-feasor agreed to reduction of subsequent judgment to extent of "statutory" prorata share, question for decision was not legislative intent in using "pro rata share" phrase but rather what was understanding of the parties, and though their intent was to comply with statutory requirements, their understanding was that cost of settlement would be what judicial decision indicated, i. e., reduction of subsequent judgment proportioned among tort-feasors according to their number. Lahocki v. Contee Sand & Gravel Co., Inc., 1979, 398 A.2d 490, 41 Md.App. 579, reversed on other grounds 410 A.2d 1039, 286 Md. 579.

While release signed by plaintiff in connection with settlement of his personal injury claim against employer hospital failed to contain beneficial language found in Uniform Contribution Among Tortfeasors Act, under accepted principles that proscribed unjust enrichment, employee doctor was entitled to benefit of amount received by plaintiff as consideration for release. Clark v. Brooks, Del.Super.1977, 377 A.2d 365, affirmed 391 A.2d 747.

Under Tort Claims Act, plaintiffs could recover full amount of jury verdict from state to extent that Act allowed, less pro tanto reductions for two settlements from joint tort-feasors. Polvard v. Terry, 1977, 372 A.2d 378, 148 N.J.Super. 202, reversed on other grounds 390 A.2d 653, 160 N.J.Super. 497, affirmed 401 A.2d 532, 79 N.J. 547.

In action to recover for injuries sustained when boat manufactured by defendant backed over plaintiff and struck his legs with its propeller, trial court did not err in deducting from jury verdict amount of settlement plaintiff received from previous codefendant operator of boat, in view of fact that plaintiff's pleadings alleged that operator of boat and defendant manufacturer were joint tort-feasors, and in view of fact that Supreme Court, on review of evidence in first trial brought against operator and manufacturer, stated that operator's negligence was more than passive or vicarious. Degen v. Bayman, 1976, 241 N.W.2d 703, 90 S.D. 409.

In action to recover for injuries sustained when boat manufactured by defendant backed over plaintiff son and struck his legs with its propeller in which plaintiff father also sought recovery for medical expenses incurred before son reached age of majority, trial court did not err in deducting from jury verdict in favor of father amount of settlement received from previous codefendant operator of boat, rather than deducting pro rata credit of one-half jury verdict, in view of fact that there was never a jury determination as to proportionate liability of operator of boat and defendant manufacturer, and thus defendant manufacturer could not assert that each tort-feasor was 50% responsible for son's injury. Id.

Under statute providing that a release or covenant not to sue given to one of two or more persons liable in tort for the same injury reduces the claim by the stipulated amount there is no requirement that there be an activating relationship in tort between those liable, such as a joint tort-feasorship. Yett v. Smoky Mountain Aviation, Inc., Tenn. App.1977, 555 S.W.2d 867.

Where codefendant and plaintiff entered into limitation-of-liability agreement after jury retired, defendants were entitled to have amount of verdict rendered against them reduced by amount codefendant paid plaintiff pursuant to agreement. Atlantic Ambulance & Convalescent Service, Inc. v. Asbury, Fla. App.1976, 330 So.2d 477.

7a. Settlement agreements

Settlement agreement entered into by railroad and decedent's widow, which required widow to surrender a great measure of control over settlement negotiations with other defendants, which prohibited widow from settling with any single defendant for less than specified amount without railroad's approval and which prohibited widow from settling for more than such amount unless settling defendant was willing to assume one half of responsibility of guaranteed provision under which widow was entitled to recover a total sum of $100,000 if she pursued to final judgment her claims against railroad and one or more of the defendants, did not satisfy good-faith requirement of Uniform Contribution Among Tort-Feasors Act; thus, settlement agreement did not discharge railroad from its obligation of contribution under Tennessee law to other defendants in action commenced by widow, whose husband was killed when tank car containing liquid petroleum gas ruptured following a derailment within city limits. In re Waverly Acc. of Feb. 22-24, 1978, D.C.Tenn.1979, 502 F.Supp. 1.

Settlement between injured minor passenger of mother's automobile, and the defendants, the driver, owner and insurer of second automobile, did not release the mother, as joint tort feasor, from contributory negligence liability for daughter's injuries under defendants' counterclaim, and therefore, under statute governing right to contribution among joint tort feasors, defendants were not entitled to contribution from mother. Woods v. Withrow, Fla.1982, 413 So.2d 1179.

8. Discharge of tortfeasor given release or covenant

A tort claimant has it within his power to give a release from liability to one of several joint tort-feasors, and such a release, if given in good faith and before judgment, will preclude a claim for contribution against the released tort-feasor; the right of a joint tort-feasor not so released is merely to have the value of any consideration given for such a release subtracted from the total of the damages found to have been suffered by the victim. Grace v. Buckley, 1982, 435 N.E.2d 655, 13 Mass.App. 1081.

Statute providing that release discharges those joint tort-feasors to whom it is given from liability for contribution to those not covered under it does not apply to situation where both parties are named in same release. Robertson v. McCarte, 1982, 433 N.E.2d 1262, 13 Mass.App. 441.

Statute providing that when release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury, it shall discharge tort-feasor to whom it is given from all liability for contribution to any other tort-feasor did not extinguish right of defendant to recover contribution from

third-party defendant where judgment establishing joint and several liability had already been entered against them. Bishop v. Klein, 1980, 402 N.E.2d 1365, 380 Mass. 285.

Joint tort-feasor retains his right of contribution, regardless of success or failure of a subsequent levy of execution; thus finding that one joint tort-feasor possessed no assets beyond insurance policy was irrelevant to application of statute providing that, when release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury, it shall discharge tort-feasor to whom it is given from all liability for contribution to any other tort-feasor. Id.

General release given to motorist constituted a general release for all of his liabilities present and future, including contributions either specifically or by construction, and as a settling tort-feasor, motorist was excluded as a party from any future actions against any of the remaining nonsettling tort-feasors; plaintiff's recovery from nonsettling tort-feasors was limited to percentage of negligence attributable to the remaining nonsettling tort-feasors as determined by the court or jury. Bartels v. City of Williston, N.D.1979, 276 N.W. 2d 113.

In action for negligence arising under comparative negligence act, a release given in good faith to one of two or more persons liable in tort for same injury discharges tort-feasor to whom it is given from all liability for contribution to any other tort-feasor. Id.

Since host driver and his insurer tendered their policy limits to injured passenger and obtained a release therefor, contribution claim of owner of other vehicle and his insurer was barred. Schreier v. Parker, Fla.App. 3 Dist.1982, 415 So.2d 794.

10. Limitation of liability agreement

"Limitation-of-liability agreement," strictly speaking, is not a release or covenant not to sue, but it does have all aspects of a covenant not to enforce judgment. Atlantic Ambulance & Convalescent Service, Inc. v. Asbury, Fla. App.1976, 330 So.2d 477.

"Limitation-of-liability agreement" entered into by codefendant and plaintiff after retirement of jury, although not "Mary Carter" agreement, was nevertheless some form of "arrangement" resulting in payment of an amount received by party as compensation for his injuries subject to setoff. Id.

11. Prejudgment order of satisfaction

Order of satifaction prior to judgment is equivalent of a "release" under Uniform Contribution Among Tortfeasors Act. Loh v. Safeway Stores, Inc., 1980, 422 A.2d 16, — Md.App. —.

TORT LOSS ALLOCATION AMONG JOINT TORTFEASORS IN ALASKA: A CALL FOR COMPARATIVE CONTRIBUTION

I. INTRODUCTION

Legal doctrines providing for the allocation of tort loss among tortfeasors have been slow to develop in Alaska. The first major development occurred in 1970 when the legislature enacted the Alaska Uniform Contribution Among Tortfeasors Act (Contribution Act),[1] which reversed the common law rule that barred courts from enforcing contribution, or loss sharing, among joint tortfeasors.[2] In 1975, the Alaska Supreme Court adopted comparative negligence,[3] allowing tort victims who were themselves negligent to recover damages from concurrently negligent tortfeasors.[4] Comparative negligence requires the apportionment of fault between plaintiffs and defendants and holds the defendants as a group liable for the percentage of the damage for which they are responsible.[5] The enactment of the Contribution Act and the adoption of comparative negligence were intended to provide a system that attempts to match each tortfeasor's liability with his relative degree of fault.

Nonetheless, there is a fundamental inconsistency in the Alaska system. In adopting the Contribution Act, Alaska's legislature

1. ALASKA STAT. §§ 09.16.010-.060 (1983).
2. *See infra* notes 32-39 and accompanying text.
3. Kaatz v. State, 540 P.2d 1037, 1049 (Alaska 1975).
4. The old contributory negligence rule prohibited negligent plaintiffs from recovering from negligent defendants. *See id.* at 1047; RESTATEMENT (SECOND) OF TORTS §§ 463, 467 (1965); *see, e.g.*, Bertram v. Harris, 423 P.2d 909, 914 & n.9 (Alaska 1967) (using the definition of contributory negligence found in RESTATEMENT (SECOND) OF TORTS § 463 (1965)); Odgen v. State, 395 P.2d 371, 372 (Alaska 1964) (contributory negligence barred recovery by negligent plaintiff).

The origin of contributory negligence is generally attributed to the case of Butterfield v. Forrester, 103 Eng. Rep. 926 (K.B. 1809). *See Kaatz*, 540 P.2d at 1047. For a good discussion of the common law development of contributory negligence in Alaska, see Note, *Comparative Negligence: A Time for Change in Alaska*, 3 UCLA-ALASKA L. REV. 103, 105-09 (1973). The author discusses the inequities inherent in the contributory negligence rule and the judicial exceptions created to ease its harsh application. *Id.* at 108-09; *see also* RESTATEMENT (SECOND) OF TORTS § 886A comment a (1979).

5. Under "pure" comparative negligence, as adopted in Alaska, a negligent plaintiff may collect damages reduced in proportion to his fault regardless of his relative degree of fault. *Kaatz*, 540 P.2d at 1047.

followed many other states by requiring contribution on a pro rata basis.[6] Each tortfeasor is required to pay an equal share of the damages, regardless of his degree of fault. The share is determined by dividing the amount of damages by the number of tortfeasors.[7] The pro rata method was adopted partly because courts and juries were believed to be unwilling or incompetent to apportion fault among wrongdoers.[8] The Alaska Supreme Court rejected this rationale, however, when it adopted comparative negligence in 1975. The court found that the state courts were capable of apportioning fault among wrongdoers.[9] Since that time, the court has repeatedly noted the need for the legislature to amend the Contribution Act to permit the courts to apportion damages among tortfeasors according to their relative fault, as they do between negligent plaintiffs and defendants under comparative negligence.[10]

While urging legislative action on this issue, the court declined two opportunities to circumvent the pro rata apportionment mechanism established by the Contribution Act. In each case, the court was asked to expand the doctrine of implied indemnity — a remedy that allows one party to shift an entire damage award to another — to permit negligent tortfeasors to use the doctrine. In *Arctic Structures, Inc. v. Wedmore*,[11] decided in 1979, the court refused to adopt implied *partial* indemnity which allows courts to grant indemnity on a proportionate fault basis.[12] The court did not discuss the doctrine in its opinion, but noted that in order to bring the contribution system in line with comparative negligence, the legislature, not the court, must replace the pro rata contribution system with a comparative contribution system.[13] In 1983, the court in *Vertecs Corp. v. Reichhold Chemicals, Inc.*[14] considered, but ultimately rejected, the argument that the doctrine of implied indemnity should apply in cases of concurrent negligence.

This note focuses on these recent decisions which demonstrate the Alaska Supreme Court's hostility toward further judicial modification

6. ALASKA STAT. §§ 09.16.010-.060 (1983); *see* Note, *Adjusting Losses Among Joint Tortfeasors in Vehicular Collision Cases*, 68 YALE L.J. 964 (1959).
7. *See* ALASKA STAT. § 09.16.020 (1983).
8. *See Kaatz*, 540 P.2d at 1048.
9. *See id.*
10. *See, e.g.*, [illegible]terion Ins. Co. v. Laitala, 658 P.2d 112, 118 n.11 (Alaska 1983); State Mechanical [illegible]c. v. Liquid Air, Inc., 665 P.2d 15, 17 n.2 (Alaska 1983) (noting that judicial expans[illegible]n of the indemnity doctrine would abrogate existing contribution statute); Arctic Structures, Inc. v. Wedmore, 605 P.2d 426, 435 n.29 (Alaska 1979); State v. Guinn, 555 P.2d 530, 547 n.42 (Alaska 1976).
11. 605 P.2d 426 (Alaska 1979).
12. *Id.* at 435 n.27.
13. *Id.* at 435 n.29.
14. 661 P.2d 619 (Alaska 1983).

of the tort loss allocation system. First, the note traces the historical development of the loss allocation system and summarizes the current st[illegible] the law. Second, the note identifies some of the current issues [illegible]solved problems in the field. Third, it analyzes alternative approaches to resolving the problems in light of the current law, and offers a proposal for legislative reform by amendment of the Contribution Act. The proposed legislative amendment is modeled after the 1983 Uniform Comparative Fault Act, which is designed for jurisdictions that have adopted comparative negligence.[15] The amendment would replace the current pro rata contribution system with a system that allocates contribution among joint tortfeasors on the basis of relative fault. Full indemnity would be reserved for cases of vicarious liability or prior contract.

II. HISTORICAL DEVELOPMENT OF LOSS ALLOCATION LAW

A. Early Development of Joint and Several Liability in England and the United States

Historically, a great deal of confusion surrounded the development of rules governing loss allocation among multiple tortfeasors.[16] The confusion was largely attributable to the failure of both courts and legislatures to define terms and doctrines carefully and to their failure to respond promptly and consistently to changes in the law.[17] For example, the meaning of the basic term "joint tortfeasors" has been uncertain and inconsistent over the years.[18] Joint tortfeasors under the early common law were parties who acted intentionally or in concert, with a common purpose to carry out a joint enterprise.[19] The plaintiff was permitted to sue any or all of the joint tortfeasors, who could then be held jointly and severally liable for the entire loss.[20] Under the strict joinder rules, the plaintiff could join only those defendants who had acted in concert.[21] Where defendants acted independently, even though their acts combined to cause a single injury to the plaintiff, the plaintiff was required to maintain a separate suit against each defendant.[22] As a result, separate trials produced verdicts against each defendant for an amount presumably corresponding

15. *See infra* note 178 and accompanying text.
16. *See generally* W. PROSSER & W. KEETON, THE LAW OF TORTS §§ 46-51 (W. Keeton ed. 5th ed. 1984) [hereinafter referred to as PROSSER].
17. *See id.*
18. *Id.* § 46, at 322.
19. *Id.*; *see* Sir John Heydon's Case, 11 Co. Rep. 5a, 77 Eng. Rep. 1150 (1613).
20. RESTATEMENT (SECOND) OF TORTS § 875 (1979); PROSSER, *supra* note 16, § 46, at 322-23.
21. PROSSER, *supra* note 16, § 47, at 325.
22. *Id.* at 324-25.