

LEGISLATIVE HISTORY OF R.S. 2A:53A-1 thru 5  
(Joint Tortfeasors)

~~COPY NO. 2~~

Previous bills introduced:

PROPERTY OF  
NEW JERSEY STATE LIBRARY

1964 1 1964

1951

- A242 - Introduced January 29 by Mr. Musto.  
Died in Committee.
- S222 - Introduced March 7 by Mr. Clapp.  
Died in Committee.

185 W. State Street  
Trenton, N. J.

1952

- A212 - Introduced January 28 by Mr. Musto.  
Bill had statement. (photostat of bill w. statement enclosed)  
April 2 - 2d reading in Assembly.  
No further action.
- A634 - Introduced March 19 by Mr. Salsburg.  
Bill had statement. (photostat of bill w. statement enclosed)  
March 28 - Passed Assembly.  
April 4 - Passed Senate.  
May 27 - Vetoed by Governor. (photostat of Governor's  
Veto Message enclosed)

The bill which became law was:

- 1952, Chapter 335 - S145  
Introduced March 10, 1952 by Clapp and O'Mara.  
No statement on the bill. (photostat of original bill enclosed)  
March 28 - Passed Senate.  
April 2 - Passed Assembly.  
May 27 - Conditionally vetoed by Governor (photostat of message enclosed)  
June 9 - Passed both houses as amended by Governor.  
June 18 - Approved.

No hearings or reports were found on any of these bills.

We searched the following without success:

New Jersey Law Journal, 1951, 1952.

According to the National Conference of Commissioners of Uniform State Laws, New Jersey's law is not based on the Uniform Act.

The first Uniform Act was adopted in 1939. (See 1939 Handbook of National Conference of Commissioners of Uniform State Laws (enclosed).)

They adopted a new Uniform Act in 1955. (See 1955 Handbook of the National Conference of Commissioners of Uniform State Laws (enclosed).)

Do Not Remove From Library  
DEPOSITORY COPY

Do Not Remove From Library  
DEPOSITORY COPY

ASSEMBLY, No. 212

STATE OF NEW JERSEY

INTRODUCED JANUARY 28, 1952

By Mr. MUSTO

Referred to Committee on Revision and Amendment of Laws

AN ACT to provide for contributions from joint tort-feasors in certain cases.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. Where a money judgment has been jointly recovered against two or  
2 more defendants in an action for personal injuries, or for property dam-  
3 age, and such judgment has been paid in part, or in full, by one or more of  
4 such defendants, each defendant who has paid more than his own pro rata  
5 share shall be entitled to contributions from the other defendants with re-  
6 spect to the excess so paid over and above the pro rata share of the defend-  
7 ant or defendants making such payment; *provided*, that no defendant shall  
8 be compelled to pay to any other such defendant an amount greater than  
9 his pro rata share of the entire judgment. Such recovery may be had in a  
10 separate action; or where the parties have appeared in the original action, a  
11 judgment may be entered by one such defendant against the other upon ap-  
12 plication to the court on notice to the party from whom such recovery is  
13 sought.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to enable the joint tort-feasor who pays more than his pro rata share of a judgment to obtain a contribution from the other joint tort-feasor. Where both are at fault, there should be contribution as between the joint tort-feasors.

[OFFICIAL COPY REPRINT]

**ASSEMBLY, No. 212**

**STATE OF NEW JERSEY**

INTRODUCED JANUARY 28, 1952

By Mr. MUSTO

Referred to Committee on Revision and Amendment of Laws

AN ACT to provide for contributions from joint tort-feasors in certain cases.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. Where a money judgment has been jointly recovered against two or  
2 more defendants in an action for personal injuries, or for property dam-  
3 age, and such judgment has been paid in part, or in full, by one or more of  
4 such defendants, each defendant who has paid more than his own pro rata  
5 share shall be entitled to contributions from the other defendants with re-  
6 spect to the excess so paid over and above the pro rata share of the defend-  
7 ant or defendants making such payment; *provided*, that no defendant shall  
8 be compelled to pay to any other such defendant an amount greater than  
9 his pro rata share of the entire judgment. Such recovery may be had in a  
10 separate action; or where the parties have appeared in the original action, a  
11 judgment may be entered by one such defendant against the other upon ap-  
12 plication to the court on notice to the party from whom such recovery is  
13 sought.

1 2. This act shall take effect immediately.

**ASSEMBLY, No. 634**

**STATE OF NEW JERSEY**

INTRODUCED MARCH 19, 1952

By Mr. SALSBURG

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning joint tortfeasors.

1 **BE IT ENACTED** *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. No proof shall be made at the trial of any civil action, founded upon  
2 a tort for which two or more tortfeasors are liable, of any payment made  
3 by one or more of such tortfeasors, not parties to such action, which would  
4 otherwise be admissible in mitigation of the damages of any tortfeasors  
5 made a party thereto and any verdict for the plaintiff, in any such action,  
6 shall be rendered and entered without the deduction of any such payment,  
7 and judgment shall be entered accordingly, but it shall be the duty of the  
8 plaintiff to, and any other party to the suit may, apply to the court to  
9 credit on the judgment, the amount so paid, for the benefit of any defend-  
10 ant in said judgment who would have been entitled to credit the same in  
11 mitigation of damages except for the provisions of this act and upon suffi-  
12 cient proof of the facts, an order shall be entered satisfying the judgment  
13 as against such defendant or defendants to the extent of the amount so paid.

1 2. This act shall not preclude proof at such trial of any release, or pay-  
2 ment operating as a release, of the liability of any defendant to the plaintiff.

1 3. This act shall take effect immediately.

**STATEMENT**

The purpose of this bill is to prevent the confusion of the jury by evidence which does not affect the merits of the case, and which cannot assist in the determination of liability. Defendant's right to have proper credit for any payment made by others, is not affected.

[OFFICIAL COPY REPRINT]  
**ASSEMBLY, No. 634**

**STATE OF NEW JERSEY**

INTRODUCED MARCH 19, 1952

By Mr. SALSBURG

Referred to Committee on Revision and Amendment of Laws

**AN ACT concerning joint tortfeasors.**

1 **BE IT ENACTED** *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. No proof shall be made at the trial of any civil action, founded upon  
2 a tort for which two or more tortfeasors are liable, of any payment made  
3 by one or more of such tortfeasors, not parties to such action, which would  
4 otherwise be admissible in mitigation of the damages of any tortfeasors  
5 made a party thereto and any verdict for the plaintiff, in any such action,  
6 shall be rendered and entered without the deduction of any such payment,  
7 and judgment shall be entered accordingly, but it shall be the duty of the  
8 plaintiff to, and any other party to the suit may, apply to the court to  
9 credit on the judgment, the amount so paid, for the benefit of any defend-  
10 ant in said judgment who would have been entitled to credit the same in  
11 mitigation of damages except for the provisions of this act and upon suffi-  
12 cient proof of the facts, an order shall be entered satisfying the judgment  
13 as against such defendant or defendants to the extent of the amount so paid.

1 2. This act shall not preclude proof at such trial of any release, or pay-  
2 ment operating as a release, of the liability of any defendant to the plaintiff.

1 3. This act shall take effect immediately.

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
May 27, 1952. }

ASSEMBLY BILL No. 633

*To the General Assembly:*

I am returning herewith, without my approval, Assembly Bill No. 633, for the following reasons:

This bill would add a new route to the State highway system between the Newark Turnpike in the Town of Harrison and the intersection of Routes S-3 and 17 in the Township of Lyndhurst.

The alignment described in the bill is in close proximity to Route 101 as set forth in Chapter 290 of the Laws of 1951. I am advised by the State Highway Department that there would be no need of two routes in such close proximity with each other. Moreover and perhaps even more important, no provision is made in the bill requiring the proposed route to be a limited-access highway.

For these reasons, I am constrained to return the bill without my approval.

Respectfully,

ALFRED E. DRISCOLL,  
*Governor.*

[SEAL]  
Attest:

LEON S. MILMED,  
*Counsel and Acting Secretary to the Governor.*

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
May 27, 1952. }

ASSEMBLY BILL No. 634

*To the General Assembly:*

I am returning herewith, without my approval, Assembly Bill No. 634, for the following reasons:

This bill would prevent the introduction of proof at the trial of any civil action founded upon a tort of any payment made by one or more of joint tortfeasors, not parties to the action which would otherwise be admissible in mitigation of the damages of any tortfeasors made a party to the action.

Any verdict for the plaintiff would be required to be rendered without deduction of such payment. In such case, the bill would make it the plaintiff's duty, and allow any other party to the action, to apply to the court to credit on the judgment the amount so paid, for the benefit of any defendant in the judgment who would have been entitled to credit such payment in mitigation of damages except for the provisions of the bill. Upon sufficient proof of the facts, an order would be required to be entered satisfying the judgment as against such defendant to the extent of the amount so paid.

The statement appended to the bill states that its purpose "is to prevent the confusion of the jury by evidence which does not affect the merits of the case, and which cannot assist in the determination of liability."

The subject matter of this bill appears to be essentially procedural and one that should be dealt with by rule of court in accordance with the Constitution of 1947, Article VI, Section II, paragraph 3; *George Ziegler Co. vs. Norton*, 8 N. J. 374 (1952).

Accordingly, I am constrained to return Assembly Bill No. 634 without my approval.

Respectfully,

[SEAL]  
Attest:

ALFRED E. DRISCOLL,  
Governor.

LEON S. MILMED,  
Counsel and Acting Secretary to the Governor.

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
May 27, 1952. }

ASSEMBLY BILL No. 651

*To the General Assembly:*

I am returning herewith, without my approval, Assembly Bill No. 651, for the following reasons:

This was one of three bills adopted by the Legislature to amend Section 34:15-43 of the Revised Statutes. In order to avoid internal conflict among the three bills it is

necess  
them  
adopti  
messa.

By  
object  
this bi  
discr  
pared  
approp  
into t  
promis

The  
plovee  
other l  
presen  
trouble  
tween  
our co  
kind o  
natura  
cial cor  
pensat  
eration  
wages  
week.  
rate, tl  
of at le

It is  
There  
municip  
pensati  
desirab  
ipality  
in the c  
ipal off  
who are  
is \$2,34  
in our S  
officials  
Member  
time an  
eration  
of these

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1952

By Messrs. CLAPP and O'MARA

Referred to Committee on Revision and Amendment of Laws

AN ACT establishing the right of contribution among joint tortfeasors.

1 **BE IT ENACTED** by the Senate and General Assembly of the State of New  
2 Jersey:

1 1. For the purpose of this act the term "joint tortfeasors" means two  
2 or more persons jointly or severally liable in tort for the same injury to  
3 person or property, whether or not judgment has been recovered against all  
4 or some of them.

1 2. The right of contribution exists among joint tortfeasors.

1 3. Where injury or damage is suffered by any person as a result of the  
2 wrongful act, neglect or default of joint tortfeasors, and the person so suffer-  
3 ing injury or damage recovers a money judgment or judgments for such in-  
4 jury or damage against one or more of the joint tortfeasors, either in one  
5 action or in separate actions, and any one of the joint tortfeasors pays such  
6 judgment in whole or in part, he shall be entitled to recover contribution from  
7 the other joint tortfeasor or joint tortfeasors for the excess so paid over his  
8 pro rata share; but no person shall be entitled to recover contribution under  
9 this act from any person entitled to be indemnified by him in respect to the lia-  
10 bility for which the contribution is sought.

1 4. This act shall apply to all actions for contribution commenced, and  
2 to all judgments recovered, after the effective date hereof irrespective of  
3 the time of the commission of the wrongful act or acts by the joint tortfeasors.

1 5. This act shall be known and may be cited as the "Joint Tortfeasors  
2 Contribution Law."

1 6. This act shall take effect immediately.

# STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1952

By Messrs. CLAPP and O'MARA

Referred to Committee on Revision and Amendment of Laws

**AN ACT** establishing the right of contribution among joint tortfeasors.

**1** *BE IT ENACTED by the Senate and General Assembly of the State of New*  
**2 Jersey:**

**1** **1.** For the purpose of this act the term "joint tortfeasors" means two  
**2** or more persons jointly or severally liable in tort for the same injury to  
**3** person or property, whether or not judgment has been recovered against all  
**4** or some of them. A master and servant or principal and agent shall be con-  
**5** sidered a single tortfeasor.

**1** **2.** The right of contribution exists among joint tortfeasors.

**1** **3.** Where injury or damage is suffered by any person as a result of the  
**2** wrongful act, neglect or default of joint tortfeasors, and the person so suffer-  
**3** ing injury or damage recovers a money judgment or judgments for such in-  
**4** jury or damage against one or more of the joint tortfeasors, either in one  
**5** action or in separate actions, and any one of the joint tortfeasors pays such  
**6** judgment in whole or in part, he shall be entitled to recover contribution from  
**7** the other joint tortfeasor or joint tortfeasors for the excess so paid over his  
**8** pro rata share; but no person shall be entitled to recover contribution under  
**9** this act from any person entitled to be indemnified by him in respect to the lia-  
**10** bility for which the contribution is sought.

**1** **4.** This act shall apply to all actions for contribution commenced, and  
**2** to all judgments recovered, after the effective date hereof irrespective of

3 the time of the commission of the wrongful act or acts by the joint tortfeasors;  
4 *provided*, that it shall not apply with respect to payments made prior to the  
5 effective date hereof.

1 5. This act shall be known and may be cited as the "Joint Tortfeasors  
2 Contribution Law."

1 6. This act shall take effect immediately.

ST

An Act  
relating to  
the  
contribution  
of  
joint  
tortfeasors  
in  
actions  
for  
damages  
caused  
by  
the  
negligence  
of  
two  
or  
more  
persons.

1 ]

2 *Jersey*

1 1

2 dollar

3 time

4 and

5 annua

6 ipaliti

1 2.

2 read a

3 1.

4 (\$2,000

5 municip

6 both, as

SENATE BILL No. 145

*To the Senate:*

Pursuant to Article V, Section I, paragraph 14(b) of the State Constitution, I am returning herewith, for reconsideration and with my objections, Senate Bill No. 145.

This bill would change the common law rule by providing for contribution among joint tortfeasors. It speaks in the present tense: "The right of contribution exists among joint tortfeasors." It authorizes a recovery of contribution by one joint tortfeasor against another "for the excess so paid over his pro rata share."

The bill does not define the measure of a "pro rata share." The draftsmen of the "Uniform Contribution Among Tortfeasors Act" (9 Uniform Laws Annotated 156) recognized the old common law rule, in connection with contract contribution, that the number of persons commonly liable determines the "pro rata share" of each in contribution proceedings. They also pointed out the so-called "equity" rule, to the effect that the pro rata shares are determined on the basis of the number of tortfeasors commonly liable who are available (present in the jurisdiction) and solvent (financially responsible). Under our merged practice it may be anticipated that the equity rule will prevail. In either case, the law is uncertain whether a principal and agent or master and servant might each be apportioned a full share in the contribution.

Of most importance, Senate Bill No. 145 would apply to "all actions for contribution commenced" after its effective date. How far back may the tort judgment have been paid, as the basis for contribution now? What statute of limitations would apply?

It is quite plain that these important questions should not be left in doubt. I am, accordingly, returning the bill herewith for reconsideration and with the recommendation that amendments be made to the bill (Official Copy Reprint) as follows:

On page 1, section 1, line 4, after the word "then." insert a new sentence as follows: "A master and ser-

sey Turnpike Au-  
ommission, under  
r proposed Dela-  
I agree that the  
ll avoid any pos-  
a further amend-  
void any possible  
ies served by the  
Delaware River

enate Bill No. 131  
mmendation that  
Copy Reprint) as

the word "river"  
location north of  
ounty and Phila-  
of Pennsylvania  
iver to the New

the words "New

following line 226

the provisions of  
deemed or con-  
ny of the powers,  
tations or restric-  
compact or agree-  
said Article X  
ed, operated and  
pike Commission  
y, acting alone or

RISCOLL,  
Governor.

the Governor.

vant or principal and agent shall be considered a single tortfeasor."

On page 1, section 4, line 3, after the word "tortfeasors" insert the following: "; provided, that it shall not apply with respect to payments made prior to the effective date hereof".

Respectfully,

ALFRED E. DRISCOLL,  
Governor.

[SEAL]  
Attest:

LEON S. MILMED,  
Counsel and Acting Secretary to the Governor.

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
May 27, 1952.

COMMITTEE SUBSTITUTE FOR SENATE BILL No. 147

To the Senate:

Pursuant to Article V, Section I, paragraph 14(b) of the State Constitution, I am returning herewith, for reconsideration and with my objections, Committee Substitute for Senate Bill No. 147.

The purpose of this bill is to provide for the regulation of the practice of ophthalmic dispensing. It is designed to protect the public health, welfare and safety by providing for the regulation of the sale, dispensing and supplying of all ophthalmic appliances, eyeglasses, or ophthalmic lenses to the ultimate wearer or consumer in this State.

I approve the objective of the bill. It would appear that professional regulation in this field would benefit the consuming public.

In one respect the bill appears to go beyond the reasonable necessity of regulation. It would completely bar the sale of ready-made glasses, with simple magnification only, when sold as merchandise at established places of business. I am advised by the Executive Secretary of the Committee on Legislation of the Medical Society of New Jersey that the Society has no objection to the continued sale of such

ready-made  
the opera  
accomplish

Accord  
returning  
No. 147  
that ame  
print) as

Or  
nary  
read  
catio  
place

[SEAL]  
Attest:  
LEON

To the Se

Pursua  
State Co  
sideration

This bi  
toward th  
Brigantin  
paid by t  
began an  
funds the

The bill  
Departme  
County.

National Conference Uniform State  
Laws 1939

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.

*Be it enacted, etc. (Use the proper enacting clause for the state.)*

1 SECTION 1. [*Joint Tortfeasors Defined.*]

2 For the purposes of this Act the term "joint tortfeasors"  
3 means two or more persons jointly or severally liable in tort  
4 for the same injury to person or property, whether or not  
5 judgment has been recovered against all or some of them.

*Comment:* The phrase "whether or not judgment has been recovered," etc., is included to indicate that joint and several judgment liability is not a necessary prerequisite to the recovery of contribution among tortfeasors. Thus if the injured person, P, is hurt by the concurrent negligence of A and B and recovers judgment in a suit only against A, contribution may be recovered by A against B in a separate action. This is in accordance with the practice in Wisconsin. The common obligation contemplated by this Act is the common liability of the tortfeasors to suffer adverse judgment at the instance of the injured person, whether or not the injured person elects to impose it.

This Section does not include a definition of "pro rata share," although that phrase appears several times in the Act. Although it might be helpful to define this phrase, the draftsmen of the Act feel that in view of the difficulty in stating a concise definition and because of its well-established meaning in various contexts, the attempt of statutory definition would prove to be more harmful than otherwise.

1 SECTION 2. [*Right of Contribution; Accrual; Pro Rata*  
2 *Share.*]

3 (1) The right of contribution exists among joint tort-  
4 feasers.

5 (2) A joint tortfeasor is not entitled to a money judgment  
6 for contribution until he has by payment discharged the com-  
7 mon liability or has paid more than his pro rata share thereof.

iminal Law Acts  
of the Act was  
e Institute at its  
raft of the Act,  
ubmitted to and  
eeting in Wash-  
ference and was  
d in 1938. As a  
ganized and the  
nstitute in Feb-  
5. Subsequently,  
to the Institute  
e given the In-  
e Institute, the  
Commissioners  
an Francisco in  
il of the Act at

tribution among  
349; Legislation,  
demnity between  
on Among Tort-  
eommendations  
demnity Between  
n Between Tort-  
v. 546; Gregory,  
) ; Gregory, Pro-  
njured Plaintiff's  
tribution Practice  
tribution Among

8 (3) A joint tortfeasor who enters into a settlement with  
9 the injured person is not entitled to recover contribution from  
10 another joint tortfeasor whose liability to the injured person  
11 is not extinguished by the settlement.

12 [(4) When there is such a disproportion of fault among  
13 joint tortfeasors as to render inequitable an equal distribution  
14 among them of the common liability by contribution, the rela-  
15 tive degrees of fault of the joint tortfeasors shall be con-  
16 sidered in determining their pro rata shares.]

*Comment on Subsection (1):* This Subsection creates the right of contribution among joint tortfeasors. It does not, in any way, qualify the creation of this right by confining it to joint tortfeasors in any narrower sense than that indicated in Section 1. Nor does it confine contribution to merely negligent tortfeasors or to those in any other way inadvertently harming others. It permits contribution among *all* tortfeasors whom the injured person could hold liable jointly and severally for the same damage or injury to his person or property.

Although the draftsmen of the Act feel confident that the so-called "equity rule" should prevail in determining the pro rata shares amongst the tortfeasors in contribution proceedings, they have not stated this in the Act nor have they attempted to define "pro rata shares" in light of this conviction or in terms of the "equity rule." This rule is to the effect that the pro rata shares are determined on the basis of the number of tortfeasors commonly liable who are available (present in the jurisdiction) and solvent (financially responsible). This is in contrast to the old common-law rule that the number of persons commonly liable automatically determined the pro rata share of each in contribution proceedings. These two rules grew up in connection with contract contribution. The so-called "equity rule" now prevails in most jurisdictions, whether or not the issue arises in law or equity actions.

To illustrate the equity rule, suppose A, B and C by their concurrent negligence injure P and suppose P recovers in discharge of his claim \$6000 from A. Normally, A may have recourse against B and C for \$2000 each as contribution. But if C is out of the jurisdiction or is financially irresponsible, A may secure \$3000 from B and then A and B each may secure \$1000 from C, when, as and if they can get it.

*Comment on Subsection (2):* This Subsection merely states the universally recognized condition required for obtaining a money judgment for contribution. The Act in no way changes this requirement for stating a "cause of action" for contribution; and the subsequent Sections permitting cross-litigation in the injured person's action, before these conditions exist, of some of the issues involved in securing contribution are in no way in conflict with the provisions of this Subsection.

*Comment on Subsection (3):* This Subsection is included to avoid what might easily prove to be an embarrassment if it were not covered. Nobody would deny that payment of an injured person's claim by one of the tortfeasors, pursuant to a settlement instead of after judgment in a lawsuit, should entitle the paying tortfeasor to recover contribution to his payment from other joint tortfeasors. The courts are generally agreed upon this in those states permitting recovery of contribution among tortfeasors without the requirement of joint and several judgment liability. But suppose the settling tortfeasor has purchased only his own immunity from suit, taking a covenant not to sue from the injured person, so that the other tortfeasors are still liable to the injured person. In such a case there is no reason to permit contribution since the settling tortfeasor has removed no burden common to all or more than one of the tortfeasors. Presumably, under this Section, if a tortfeasor, by a settlement, secures the release of one of several tortfeasors other than himself, he may at least request contribution from that tortfeasor.

*Comment on Subsection (4):* This Subsection, it will be observed, is bracketed to indicate that its adoption is optional. If adopted, it would permit apportionment of pro rata shares of liability of the joint tortfeasors *as among themselves*. It would not affect their joint and several liability toward the injured person. Without this Subsection, the ordinary rule of apportionment of the common liability among the tortfeasors in accordance with the number of them commonly liable obtains. Thus, if P is hurt by A, B and C, who were concurrently negligent, and he recovers his damages from A alone, A may shift one-third of the burden to B and one-third to C. Ordinarily no inquiry is made into the respective degrees of fault of the tortfeasors as amongst themselves.

The draftsmen of the Act feel that there is a very strong case to be made for apportioning the common liability as among the tortfeasors when the evidence clearly indicates that one or more of the tortfeasors was much more at fault than one or more of the others. At the same time they wish to point out that each tortfeasor is still completely and fully liable toward the injured person. Granted, however, that a contribution statute does effect some measure of justice in distributing the common burden of liability *equally* among the tortfeasors, it is apparent that some measure of injustice is done when a tortfeasor whose fault was patently greater than another's can nevertheless shift to such other half of the burden imposed on him by the injured person.

The apportionment device is intended to work as follows: If the evidence indicates that there is a disproportion of fault as among the tortfeasors, the court shall instruct the jury that if it finds the tortfeasors to have been negligent, they shall also fix their relative degrees of fault. Thus, if the court believes that an apportionment of fault is inappropriate in a particular case, none will be made. Naturally, a court trying a case without a jury will itself make the apportionment of fault when appropriate.

Under the English tort contribution act the court always makes the apportionment; but the draftsmen feel that in the United States this had best be left to a jury within the ordinary power of a court to keep the issue of negligence from a jury when the evidence indicates that submission thereto would not be warranted.

1 SECTION 3. [*Judgment Against One Tortfeasor.*]

2 The recovery of a judgment by the injured person against  
3 one joint tortfeasor does not discharge the other joint tort-  
4 feasers.

*Comment:* This Section was included to make universal the common-law view prevailing in some jurisdictions to the effect that recovery by the injured person of a judgment against one of two or more joint tortfeasors does not automatically discharge the others. Although an automatic discharge would not necessarily affect the sued tortfeasor's claim for contribution against the discharged tortfeasors, this Section was thought to be necessary out of considerations of consistency, in view of the changes made in connection with releases in the following Section.

1 SECTION 4. [*Release: Effect on Injured Person's Claim.*]

2 A release by the injured person of one joint tortfeasor,  
3 whether before or after judgment, does not discharge the other  
4 tortfeasors unless the release so provides; but reduces the claim  
5 against the other tortfeasors in the amount of the consideration  
6 paid for the release, or in any amount or proportion by which  
7 the release provides that the total claim shall be reduced, if  
8 greater than the consideration paid.

*Comment:* This Section is intended to change the common-law view under which a release given by an injured person to one of two or more tortfeasors automatically releases the others. Since this result may be avoided anyhow by giving a covenant not to sue instead of a release, it was thought wise to obviate what must frequently be considered a technical pitfall by an injured person who releases one of two or more joint tortfeasors for a certain sum, presumably approximately the released person's share of the damage, intending to pursue his claim against the others. The direct bearing which this change has on contribution among tortfeasors, in view of such releases and partial settlements, is apparent.

The second clause of this Section is included simply to emphasize the fact that a release of one tortfeasor will benefit the others by reducing the claim against them in the amount of the consideration paid therefor, or in the amount or proportion by which the release provides that the total claim shall be reduced, whichever is larger.

Suppose P is hurt, apparently by the concurrent negligence of A and B. He wishes to pursue his remedy against B but wants to let A off lightly. For \$100 paid he releases A and then sues B. The jury might fix P's damages and the court might then deduct \$100 from the amount of the verdict before entering judgment. Thus, on a verdict for P against B of \$2000, the court would enter judgment for \$1900. Although this could be handled by introducing evidence before the jury of a payment of \$100 and by letting the jury take that into account in fixing P's damages, this method would be less satisfactory than the solution suggested in the previous sentence.

Under each alternative of the second clause of this Section, A, the tortfeasor to whom a release is given, should be credited in any contribution proceedings against him, with the amount by which the injured person's, P's, claim is reduced in accordance with the Section. Thus, if the release mentions no amount or proportion by which P's claim against B is reduced, but A paid P \$100 for his release, then if the jury awards P \$2000 damages against B, P should get judgment for only \$1900. Then in B's action against A for contribution, if A does not dispute the amount of P's recovery against B, or, if he disputes it, is unsuccessful in getting that amount lowered as the basis of the claim for contribution, B should be allowed to recover \$900 from A as contribution. The explanation is that the "common liability" is for \$2000, of which A has already paid \$100. In contribution proceedings between two tortfeasors where no apportionment of fault takes place and where the damages of the injured person are \$2000, the paying tortfeasor should be able to shift one-half of the burden, or \$1000, to the non-paying tortfeasor. But if the non-paying tortfeasor had already paid \$100 to the injured person, thereby lowering the other tortfeasor's liability by that amount, he should have credit for the payment in contribution proceedings.

1 SECTION 5. [*Release: Effect on Right of Contribution.*]

2 A release by the injured person of one joint tortfeasor does  
3 not relieve him from liability to make contribution to another  
4 joint tortfeasor unless the release is given before the right of  
5 the other tortfeasor to secure a money judgment for contribu-  
6 tion has accrued, and provides for a reduction, to the extent of  
7 the pro rata share of the released tortfeasor, of the injured  
8 person's damages recoverable against all the other tortfeasors.

*Comment:* Although the substance of this Section would probably be recognized anyway by courts allowing contribution among tortfeasors under the previous sections of this Act, it seems advisable nevertheless to include it. Under it, an injured person, acting in collusion with or out of sympathy for one of the tortfeasors, cannot relieve him from the obligation to contribute to the other tortfeasors by releasing him. The only way in which such a release can free the released tortfeasor from his duty to contribute

is to include a provision to the effect that the other tortfeasors shall be released from the injured person's pro rata share of the common liability.

1 SECTION 6. [*Indemnity.*]

2 This Act does not impair any right of indemnity under exist-  
3 ing law.

*Comment:* This Section simply makes clear that the Act is not intended to affect any right of indemnity under existing law.

1 [SECTION 7. [*Third Party Practice, Amended Complaints,*  
2 *Counterclaims and Cross-Complaints, and Motion Practice.*]

3 (1) Before answering, a defendant seeking contribution in  
4 a tort action may move ex parte or, after answering, on notice  
5 to the plaintiff, for leave as a third-party plaintiff to serve a  
6 summons and complaint upon a person not a party to the ac-  
7 tion who is or may be liable as a joint tortfeasor to him or to  
8 the plaintiff for all or part of the plaintiff's claim against him.  
9 If the motion is granted and the summons and complaint are  
10 served, the person so served, hereinafter called the third-party  
11 defendant, shall make his defense to the complaint of the plain-  
12 tiff and to the third-party complaint in the same manner as  
13 defenses are made by an original defendant to an original  
14 complaint. The third-party defendant may assert any defenses  
15 which the third-party plaintiff has to the plaintiff's claim. The  
16 plaintiff shall amend his pleadings to assert against the third-  
17 party defendant any claim which the plaintiff might have as-  
18 serted against the third-party defendant had he been joined  
19 originally as a defendant. The third-party defendant is bound  
20 by the adjudication of the third-party plaintiff's liability to  
21 the plaintiff as well as of his own liability to the plaintiff and  
22 to the third-party plaintiff. A third-party defendant may  
23 proceed under this Section against any person not a party to  
24 the action who is or may be liable as a joint tortfeasor to him  
25 or to the third-party plaintiff for all or part of the claim made  
26 in the action against the third-party defendant.

27 (2) When a counterclaim is asserted against a plaintiff he  
28 may cause a third party to be brought in under circumstances  
29 which under this Section would entitle a defendant to do so.

30 (3) A pleader may either (a) state as a cross-claim against  
31 a co-party any claim that the co-party is or may be liable to the  
32 cross-claimant for all or part of a claim asserted in the action  
33 against the cross-claimant; or (b) move for judgment for  
34 contribution against any other joint judgment debtor, where  
35 in a single action a judgment has been entered against joint  
36 tortfeasors one of whom has discharged the judgment by pay-  
37 ment or has paid more than his pro rata share thereof. If re-  
38 lief can be obtained as provided in this Subsection no inde-  
39 pendent action shall be maintained to enforce the claim for  
40 contribution.

41 (4) The court may render such judgments, one or more in  
42 number, as may be suitable under the provisions of this Act.

43 (5) As among joint tortfeasors against whom a judgment  
44 has been entered in a single action, the provisions of Section 2,  
45 Subsection (4) of this Act apply only if the issue of propor-  
46 tionate fault is litigated between them by cross-complaint in  
47 that action.]

*Note:* This Section is bracketed to denote that its adoption with the preceding Sections is optional. It was the consensus that the various states in which legislatures were considering the enactment of the substantive provisions of this Act, might already have available statutes or rules of procedure under which might be effected an adequate contribution practice within the injured person's action for damages. For instance, the procedural provisions in Wisconsin and Pennsylvania are fully adequate to effect such a practice. The procedural provisions are included for the benefit of such jurisdictions wanting procedural facilities. These provisions are modeled as closely as possible after rules 14 and 13 (g) of the new Federal Rules of Civil Procedure, with adaptations to the substantive provisions of the Act, and are suitable for adoption as rules of court or enactment as legislation. This section contains some provisions completely absent from the federal rules; but such provisions were thought to be essential to a desirable contribution practice under this Act.

*Comment on Subsection (1):* This Subsection enables one or more of several joint tortfeasors sued by the injured person to add as third-party defendants any fellow joint tortfeasors whom they believe to have been also responsible for the tort complained of and to litigate against them in the injured person's action any claims for contribution. In this way, the interests of justice may be promoted by obviating the necessity of a separate action for contribution. It should be noted that this Section does not affect in any way the substantive law of contribution concerning the accrual

of a cause of action for contribution as set forth in Section 2, Subsection (2), above. It merely provides for a litigation, in advance, of those issues upon which the claim for a money judgment for contribution will ultimately depend. A cross-claimant (third-party plaintiff) who is successful on his cross-claim for contribution cannot procure a money judgment for contribution unless he has paid more than his pro rata share of any judgment liability he may have sustained to the injured person, in accordance with the provisions of Section 2, Subsection (2) of this Act.

Suppose P is hurt by the concurrent negligence of A and B, and sues A for damages. Without this Subsection, P's action against A would proceed to judgment which A would pay. Then A would bring a separate action against B for contribution, in which the issues litigated would be substantially identical with those raised in P's action against A as far as evidence is concerned. Under this Subsection, A could make B a third-party defendant and proceed to prove that if he, A, is liable to P, B is also. The upshot would be that if he were successful in his claim against B, which would be litigated at the same time as P's against A, then A, on payment of P's judgment, could move in the same action for contribution against B, all of the germane issues having been settled in P's action. This practice is already well-established in Wisconsin and in several British jurisdictions.

This Subsection also provides for P's amendment of his pleadings to include the third-party as a codefendant, as if the latter had been originally sued with A. And the final sentence of the Subsection permits any person added as a third party, in turn to invoke the provisions of the Subsection in adding any other alleged joint tortfeasor not already present in the action.

*Comment on Subsection (2):* This Subsection merely makes the provisions of Subsection (1) available to a plaintiff in his capacity as "defendant" on a counterclaim.

*Comment on Subsection (3):* Part (a) of this Subsection is an adaptation of Rule 13 (g) of the federal rules, dealing with cross-complaints between co-parties. It is included to permit cross-litigation where the injured person has himself sued the joint tortfeasors as co-defendants, so that the provisions of Subsection (1) are not appropriate. The same procedural convenience and interests of justice are served by this Subsection as are by Subsection (1), that is, the litigation in the injured person's action of those issues germane to the ultimate claim for contribution in order to obviate the necessity of a subsequent separate action for contribution.

Part (b) of this Subsection is included to afford contribution on motion among parties subject to joint judgment liability to the injured person, where they had neglected to file cross-claims against each other for contribution pursuant to the provisions of part (a) of this Subsection. This is in accordance with established practice in several jurisdictions.

The final sentence of this Subsection is included to compel recourse to the injured person's action as a means of securing contribution, in order

to obviate as much subsequent separate litigation as possible. Application of this sanction is made contingent to allow for situations where relief pursuant to its terms is held to be impossible because, for instance, of the failure of a co-party to appear in the action although served by the injured person, or any other reason.

This whole Subsection is, of course, applicable to situations where a sued defendant (the cross-claimant) adds a third-party defendant under Subsection (1), against whom the plaintiff (the injured person) amends his complaint. Such added third party would under such circumstances become a codefendant and would be entitled to the benefits of this Subsection, and all of the defendants would become subject to the contingent sanctions of this Subsection.

*Comment on Subsection (4):* This Subsection is included to insure to courts the power to dispose of cross-litigation between defendants in which those factors are determined on which the subsequent final judgment for contribution will be entered. It also permits the court to enter a final judgment for contribution after a claimant, in whose favor the determinations of factors ultimately leading to contribution were made, has shown that he has paid to the plaintiff in discharge of the common liability more than his pro rata share.

*Comment on Subsection (5):* This Subsection should be adopted only if subsection (4) of Section 2 is adopted. The object of the provision is to compel litigation of the issue of apportionment during the trial of the other issues concerning contribution, if at all. Thus, if a joint judgment is finally entered in P's favor against A and B, which A pays, on his motion against B for contribution, under Subsection (3) of this Section, he cannot for the first time raise the issue of apportionment of fault as between himself and B, after the trial has been concluded, but must abide by the contributive ratio of equal pro rata shares.

1 SECTION 8. [*Constitutionality.*] If any provision of this  
2 Act or the application thereof to any person or circumstances  
3 is held invalid, such invalidity shall not affect other provisions  
4 or applications of the Act which can be given effect without  
5 the invalid provision or application, and to this end the pro-  
6 visions of this Act are declared to be severable.

1 SECTION 9. [*Uniformity of Interpretation.*] This Act shall  
2 be so interpreted and construed as to effectuate its general  
3 purpose to make uniform the law of those states that enact it.

1 SECTION 10. [*Short Title.*] This Act may be cited as the  
2 Uniform Contribution Among Tortfeasors Act.

1 SECTION 11. [*Repeal.*] All acts or parts of acts which are  
2 inconsistent with the provisions of this Act are hereby repealed.

1 SECTION 12. [*Time of Taking Effect.*] This Act shall take  
2 effect .....

*Note:* In those states which have adopted the Uniform Joint  
Obligations Act, it is recommended that Section One of that Act  
be amended to read as follows:

1 "SECTION 1. In this Act, unless otherwise expressly stated,  
2 obligation does not include a liability in tort; obligor does not  
3 include a person liable for a tort; obligee does not include a  
4 person having a right based on a tort. Several obligors means  
5 obligors severally bound for the same performance."

RI  
  
T  
  
w  
tw  
in  
O  
pl  
th  
ce  
B  
T  
th  
T  
ti  
h  
a  
  
je  
th  
fe  
le  
T  
h  
  
a  
n  
I  
N  
o  
P  
h  
c

National Conference Uniform State  
Laws 1955

UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

PREFATORY NOTE

This uniform act establishes the right of a person liable for damages for an unintentional wrong to compel others, who are liable with him for the same damages, to share in discharging the common liability.

Under the existing law an injured person may select whom he wishes to sue from among those jointly liable to him for an injury. He need not sue all. He may settle out of court or he may sue all and collect the full amount of the judgment from one. Under the prevailing law rule there is no recourse by one who voluntarily pays or who is forced to pay the common liability, against the others who are equally liable to the injured party but who have escaped payment.

This act would distribute the burden of responsibility equitably among those who are jointly liable and thus avoid the injustice often resulting under the common law.

The Uniform Contribution Among Tortfeasors Act of 1939 has been adopted in the eight jurisdictions of Arkansas (1941), Delaware (1949), Hawaii (1941), Maryland (1941), New Mexico (1947), Pennsylvania (1951), Rhode Island (1940), and South Dakota (1945). Most of these states have made important changes in the Act which have defeated the whole idea of uniformity; and in anything like its original form it is now in effect only in Arkansas, Hawaii, and South Dakota. For this reason, and because of unfavorable reports as to the progress and operation of the Act, the Commissioners withdrew it for further study and revision.

There are a number of contribution statutes in existence apart from the old Uniform Act. Eight states, Michigan, Mississippi, Missouri, New York, North Carolina, Texas, and West Virginia have statutes which are limited in their effect to contribution between joint judgment defendants. To this list should now be added Delaware, which has amended the 1939 Act to limit it in this manner.

Six states have broad contribution statutes of a rather simple kind, which declare the right to contribution and leave most questions to the courts. They are Georgia, Kentucky, Louisiana (by construction), New Jersey, Virginia, Wisconsin.

Six jurisdictions have recognized the right of contribution among joint tortfeasors without a statute. They are District of Columbia, Minnesota, Pennsylvania (before the statute), Tennessee, Wisconsin

(before the statute). To this list should probably be added Maine, which has recognized the right to contribution of one vicariously liable but not personally at fault, with language which may indicate recognition of a general right to contribution.

In other words, contribution among joint tortfeasors is now in effect, in one form or another, in about half of the states; but there is no uniformity. The proposed Act here submitted would supersede the 1939 Uniform Act, would reconcile the serious variations which exist and, if generally adopted would eliminate the presently existing confusion.

## UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

### SECTION 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.

(e) 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, is 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 does not limit or impair any right of subrogation arising from any other relationship.

(f) This Act does not impair any right or indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(g) This Act shall not apply to breaches of trust or of other fiduciary obligation.

### COMMENT

*Subsection (a). Right of Contribution.* This combines the provisions of Sections 1 and 2 of the 1939 Act. The definition of "joint tortfeasors" and the term itself have been eliminated. There are still a few jurisdictions in which those who act

independently and not in concert, as for example two colliding automobile drivers, cannot always be joined as defendants in the same action. In these jurisdictions the tendency is to use "joint tortfeasors" to refer only to those who can be joined. The term is not indispensable to the Act, and the change in meaning might perhaps be confusing in those states.

The language used has been adequate to exclude cases where the person from whom contribution is sought was not liable to the injured person. Thus where the potential contributor is the spouse of the injured person. *Baltimore Transit Co. v. State to Use of Schriefer*, 183 Md. 674, 39 A. 2d 674 (1944). Or the parent of the injured person. *Zutter v. O'Connell*, 200 Wis. 601, 229 N.W. 74 (1930); *Norfolk Southern R. Co. v. Gretakis*, 162 Va. 597, 174 S.E. 841 (1934). Or where the injured person assumed the risk of the potential contributor's negligence. *Kauth v. Landsverk*, 224 Wis. 554, 271 N.W. 841 (1937); *Schrofe v. Rural Mutual Cas. Ins. Co.*, 258 Wis. 128, 45 N.W. 2d 76 (1950).

"Wrongful death" was added by the New York Law Revision Commission in its proposed statute, and apparently is considered necessary, as in the Federal Employers' Liability Act, where "injury to person" might perhaps not be construed to cover it.

*Subsection (b). Payment and share.* This provision is supported by several dozen decisions dealing with contribution in surety and other contract cases, and a court would almost certainly reach the result without the provision. It appears desirable to spell it out.

*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.

1 SECTION 2. [*Pro Rata Shares.*] In determining the pro rata shares  
2 of tortfeasors in the entire liability (a) their relative degrees of  
3 fault shall not be considered; (b) if equity requires the collective  
4 liability of some as a group shall constitute a single share; and (c)  
5 principles of equity applicable to contribution generally shall apply.

#### 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 associa-

tion, 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.

#### 1 SECTION 3. [*Enforcement.*]

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

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

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

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

24 (e) The recovery of a judgment for an injury or wrongful death

25 against one tortfeasor does not of itself discharge the other tort-  
26 feasers from liability for the injury or wrongful death unless the  
27 judgment is satisfied. The satisfaction of the judgment does not  
28 impair any right of contribution.

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

#### 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). Statutes 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 determination of contribution claims. Obviously the defendants should be bound as among themselves by the adjudication of their liability to the claimant.

1 SECTION 4. [Release or Covenant Not to Sue.] When a release  
2 or a covenant not to sue or not to enforce judgment is given in good  
3 faith to one of two or more persons liable in tort for the same injury  
4 or the same wrongful death:

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

10 (b) It discharges the tortfeasor to whom it is given from all lia-  
11 bility for contribution to any other tortfeasor.

#### 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 states 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.

1 SECTION 5. [*Uniformity of Interpretation.*] This Act shall be so  
2 interpreted and construed as to effectuate its general purpose to  
3 make uniform the law of those states that enact it.

1 SECTION 6. [*Short Title.*] This Act may be cited as the Uniform  
2 Contribution Among Tortfeasors Act.

1 SECTION 7. [*Severability.*] If any provision of this Act or the  
2 application thereof to any person is held invalid, the invalidity shall  
3 not affect other provisions or applications of the Act which can be  
4 given effect without the invalid provision or application and to this  
5 end the provisions of this Act are severable.

1 SECTION 8. [*Repeal.*] All acts or parts of acts which are incon-  
2 sistent with the provisions of this Act are hereby repealed.

1 SECTION 9. [*Time of Taking Effect.*] This Act shall take effect  
2 .....