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JOINT TORTFEASORS: LEGISLATIVE CHANGES IN THE RULES REGARDING RELEASES AND CONTRIBUTION

By JAMES F. THAXTER†

The California legislature has laid to rest two well-known common law rules regarding joint tortfeasors. Title 11 of the California Code of Civil Procedure, enacted during the 1957 session, provides generally that a right of contribution exists among unintentional joint tortfeasors against whom a joint judgment has been rendered,1 and that a release of one joint tortfeasor does not release the others.2 The common law rules will first be discussed separately, and then an attempt will be made to evaluate the new statute and foretell its effects.

The No- Contribution Rule

Contribution may be loosely defined as the sharing of a common liability, which, in the situation under consideration, is a tort liability. The rule

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1 CAL. CODE CIV. PROC. § 875:
“(a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.
“(b) Such right of contribution shall be administered in accordance with the principles of equity.
“(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.
“(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.
“(e) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution among them.
“(f) This title shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor.”

§ 876:
“(a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.
“(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them.”

§ 880:
“This title shall become effective as to causes of action accruing on or after January 1, 1958.”

2 CAL. CODE CIV. PROC. § 877:
“Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort—
“(a) It shall not discharge any other such tortfeasor from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater; . . .”

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that there is no right of contribution among joint tortfeasors dates back at least as far as 1799 and the oft-cited English case of *Merryweather v. Nixan*.\(^3\) This was a case apparently involving intentional wrongdoers. Lord Kenyon ruled that an action for contribution could not lie upon an implied *assumpsit* in such a case. He gave no reasons for this decision, but subsequent commentators have felt that the reluctance of courts to adjudicate matters between two guilty parties was the controlling consideration. There is a great deal of difference, however, between cases where the parties have joined together, in concert of action, to cause injury and cases where they have inflicted injury unintentionally, although jointly.

There appears to be no good reason why a court should not be willing to settle matters between unintentional joint tortfeasors. Unfortunately, though, the courts, at least the American courts,\(^4\) have relied on *Merryweather v. Nixan* and have applied its rule indiscriminately in cases involving joint tortfeasors. Thus, it has long been recognized in the United States that the general rule is that no right of contribution exists among tortfeasors, whether they have inflicted injury intentionally or unintentionally. Of this rule, Dean Prosser says:

"There is obvious lack of sense and justice in a rule which permits the entire burden of a loss, for which two defendants were equally, unintentionally responsible, to beshouldered onto one alone . . . \(^5\)"

The question seldom has been raised in California, but on each occasion when it has been presented the California courts have held uniformly that there is no right of contribution among tortfeasors—intentional or unintentional.\(^6\)

The "obvious lack of sense and justice" in the rule denying contribution among unintentional tortfeasors has led to a movement away from the rule, particularly in the last 25 years. Many states have statutes changing the rule, and in some jurisdictions the result has been reached by the courts, without the aid of a statute.\(^7\) California, through the adoption of the aforementioned act, has now joined this movement. By 1955 approximately half the states had allowed contribution among joint tortfeasors in some form or another.\(^8\) There was no uniformity of rules among the states allowing contribution, however, so the National Conference of Commissioners on Uni-

\(^3\) *Term Rep.* 186, 101 *Eng. Rep.* 1337 (1799).


\(^5\) *Id.* at 248.


\(^7\) *Handbook of the National Conference of Commissioners on Uniform State Laws* 216–17 (1955).

\(^8\) *Ibid.*
form State Laws promulgated a revised Uniform Contribution Among Tortfeasors Act. The first uniform act was recommended by the commissioners in 1939, but it had little effect in producing uniformity. These acts are discussed later.

The Release Rule

The rule that a release of one joint tortfeasor releases all has had a longer, and more troublesome existence than the "no-contribution" rule. Dean Wigmore once referred to the release rule as "a surviving relic of the Cokian period of metaphysics." The bases and reasons for the common law rule are somewhat cloudy, but may be stated briefly thus: where the tortious conduct of two or more persons combines to cause a single, indivisible injury to another, the injured party has only one cause of action and is entitled to only one satisfaction. Hence, a release of the cause of action against one of the tortfeasors necessarily releases the others.

All authorities agree that the injured party is entitled to but one satisfaction; however, the "one cause of action" idea seems to be without support among modern authorities. It is undisputed that tort liability is joint and several, and, as a result, the injured party may bring separate actions and recover judgment against each tortfeasor for the entire injury. But such injured party is limited to one satisfaction.

"Nothing but false logic," says Wigmore, "prevents a complete repudiation" of the principle "... that mere words of release to A must inexorably signify also a release to B and C ... ."

The "complete repudiation" which Wigmore urged, however, has been long in coming in California. The rule has been a dangerous trap for unwary litigants and attorneys, and while the long-term trend of the California courts has been to avoid the rule, in many cases they have applied it with oftentimes harsh and, perhaps, unjust results.

California's leading case on the point is Chetwood v. California National Bank. In that case three directors of the bank were found to have been negligent in their failure to exercise control over the operations of the bank. The court appointed a referee to determine the sum due to the bank from certain debtors, for whose debts the directors were to be held responsible. The referee found the sum due to be over $196,000. Before formal judgment was entered the plaintiff settled with two of the defendants for the sum of $27,500 and dismissed the action as to them. The court held that this released all defendants from further liability, saying:

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9 Id. at 218.
11 17 Ill. L. Rev. 563 (1923).
12 McKenna v. Austin, 134 F.2d 659, 662–63 (D.C. Cir. 1943).
14 Supra note 11 at 564.
15 113 Cal. 414, 45 Pac. 704 (1896).
"... Where several joint tort feasors have been sued in a single action, a retraxit\(^\text{10}\) of the cause of action in favor of one of them operates to release them all. The reason is quite obvious. By his withdrawal plaintiff announces that he has received satisfaction for the injury complained of, and it would be unjust that he should be allowed double payment for the single wrong. It matters not, either, whether the payment made was in a large or in a small amount. . . ."\(^\text{17}\)

It appears that the court in the Chetwood case indulged in a bit of question-begging. By stating that the plaintiff announced that he had received satisfaction the court assumed the answer to the question which should have been controlling; that is, whether or not the plaintiff accepted the $27,500 \textit{with the intention that it should be full satisfaction} for the injury. Instead of looking for manifestations of the plaintiff's intent the court apparently raised a conclusive presumption that any amount paid for a release is full satisfaction of the claim.

Dean Prosser suggests that much of the difficulty with the release rule is caused by the courts' confusing the terms "satisfaction" and "release." He defines satisfaction as "an acceptance of full compensation for the injury."\(^\text{18}\) On the other hand, he says "... a release is a surrender of the cause of action, which may be gratuitous or given for inadequate consideration. . . ."\(^\text{19}\)

Of course, if the plaintiff had accepted the consideration for the release as "full compensation for the injury" the other tortfeasors should have been released. As noted, however, this should have been decided in the light of the plaintiff's manifestations of intent, and not on the basis of any presumptions.

In Flynn v. Manson,\(^\text{20}\) another California case, the court held that a clause in a release which expressly reserved rights against the other tortfeasors was "void as being repugnant to the legal effect and operation of the release itself," and consequently held that the other tortfeasors were released.

The common law courts developed an important exception to the release rule, in the covenant not to sue. This differs in form from an outright release in that the covenantor uses words of promise, agreeing not to prosecute a suit, and to hold the covenantee harmless from any liability, claims or demands arising from the tort. Words of release are not used. Courts have held that covenants not to sue do not release the other tortfeasors,\(^\text{21}\) and this became the principal mode used to circumvent the release rule.

\(^{12}\) "A \textit{retraxit} (he hath withdrawn) differs from a non-suit, in that one is negative and the other positive; the non-suit is a default and neglect of the plaintiff, and therefore he is allowed to begin his suit again, upon payment of costs; but a \textit{retraxit} is an open and voluntary renunciation of his suit, in court, and by this he forever loses his action." \textit{Jones, Blackstone} § 374, p. 1885 (1916).

\(^{17}\) 113 Cal. 414, 426, 45 Pac. 704, 707.


\(^{19}\) Ibid.

\(^{20}\) 19 Cal. App. 400, 126 Pac. 181 (1912).

\(^{21}\) Kincheloe v. Retail Credit Co., 4 Cal. 2d 21, 46 P.2d 971 (1935).
Whether a particular instrument should be construed to be a release or a covenant not to sue, however, was held to be determined by manifestations of the intention of the parties, and not by the form of the instrument. Thus, the California courts placed themselves in a paradoxical position. On one hand they searched thoroughly for an intention to execute a release or a covenant not to sue. On the other hand they ignored and gave no effect to the obvious, and sometimes expressed, intention not to discharge the other tortfeasors from liability.

In Pellett v. Sonotone Corp., the California Supreme Court frankly recognized that

"... the distinction between a release and a covenant not to sue is entirely artificial. As between the parties to the agreement, the final result is the same in both cases, namely, that there is no further recovery from the defendant who makes the settlement, and the difference in the effect as to third parties is based mainly, if not entirely, on the fact that in one case, there is an immediate release, whereas in the other there is an agreement not to prosecute a suit. ..." 

Fortunately, the California courts have recognized that the release rule should not apply in cases where the tortfeasors are independent and successive, rather than joint, even though one of them may be liable for the entire injury. In Ash v. Mortensen the plaintiff was injured in an accident caused by the negligence of one Wubben. His injuries were aggravated by the negligence of the defendants, physicians to whom the plaintiff had gone for treatment. Under the law both Wubben and the doctors would be liable for the damages resulting from the injury caused by the doctors. Plaintiff first sued Wubben and recovered a judgment for $15,000. The aggravation of his injuries by the doctors was not an element of the damages awarded. Wubben paid the plaintiff $5,753.22 on the judgment, and the plaintiff had the judgment satisfied of record and signed a document releasing Wubben from further liability. Plaintiff then sued the doctors for the damages caused by their negligence. The court noted that the release rule had been applied in similar cases in a number of other jurisdictions, but criticised the reasoning behind such application. The court refused to extend the release rule to such cases on the grounds that the plaintiff had separate causes of action, and, hence, the "unity of a cause of action" argument was not valid. This decision marks an important step in the previously mentioned long-term trend in California to restrict the release rule.

The latest judicial step in this direction was made by the California Supreme Court in the recent case of Lamoreux v. San Diego & Arizona

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24 Id. at 711, 160 P.2d at 786.
26 Dewhurst v. Leopold, 194 Cal. 424, 435, 229 Pac. 30, 33 (1924).
In that case the plaintiff’s husband was killed in an accident at a grade crossing. Plaintiff first sued both the railroad and her husband’s employer, alleging that they were jointly engaged in raising the grade at the crossing and that their joint negligence caused her husband’s death. Plaintiff then settled with the employer for $3,500, a sum lesser than the amount the Industrial Accident Commission could award under the workmen’s compensation provisions of the Labor Code. As part of the settlement plaintiff declared that she was satisfied that the evidence would not support her allegation of negligence by the employer. The commission approved the settlement, and the plaintiff then filed a direction for dismissal with prejudice of the action against the employer.

The court held that the dismissal with prejudice did not operate as a release of the railroad, even though there have been several California decisions holding that such a dismissal does constitute a release. These cases were distinguished on the ground that in the Lamoreux case the employer’s liability, if any, was a special liability imposed under the workmen’s compensation statutes, for which he was subject to proceedings before the Industrial Accident Commission but not to suit in court for the injury. Thus, the compromise was not an acceptance of full compensation for injuries arising from the employer’s negligence.

The trend of the California courts in avoiding the release rule wherever possible would probably have led eventually to a repudiation of the rule, but the legislature has now made that step unnecessary.

Effect of the New Rules

Coming now to the statutes passed by the California legislature, an attempt will be made to evaluate the new rules and to foretell the effects they will have.

Acts of this type apparently have two general objectives: 1) the control of the distribution of loss by law, rather than by the plaintiff; and, 2) the encouraging of out-of-court settlements. The rule allowing contribution is aimed at accomplishing the first objective, and the release rule is aimed at accomplishing the second.

There seem to be two main ideas behind the first objective. First, an innate sense of fairness and equity dictates that where there are two or more joint tortfeasors, each of whom has contributed to the injury, they should share equally in discharging the common liability. One or more should not be allowed to escape without having paid his fair share. Secondly, for reasons of public policy it does not appear desirable to allow the

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plaintiff to control the distribution of loss by whim, spite, or collusion with the tortfeasors he fails to sue or levy execution against.29

The reason for the second objective, the encouraging of out-of-court settlements, is to save the time, effort, and expense involved in litigation, both for the parties and the community.

It was apparently with these objectives in mind that the Commissioners on Uniform State Laws adopted its first Uniform Contribution Among Tortfeasors Act in 1939.30 This act was adopted in eight jurisdictions,31 but was extensively modified in most cases, so that there was no semblance of uniformity among states allowing contribution. The act was revised in 1955, under the chairmanship of Dean Prosser. To date the revised act has been adopted only in North Dakota.

The 1939 uniform act differed in at least four important areas from the act passed by the 1957 California legislature. These differences are: (1) The 1939 uniform act recognized a right of contribution before judgment,33 while the right will not arise in California until a joint judgment has been rendered.33 (2) The 1939 uniform act applied to all joint tortfeasors,34 while the California act allows contribution only among unintentional wrongdoers.35 (3) Under the 1939 uniform act a release of one joint tortfeasor did not release him from liability to his co-tortfeasors for contribution,36 but in California a released tortfeasor will not be liable for contribution.37 (4) The 1939 uniform act contained provisions for third-party practice so that the questions of contribution could be heard in the main tort action,38 but no such provisions were included in the California act.

The first difference is the most significant one, and the one which will probably have the most force in limiting the effect of the California act. Keeping in mind that the objective of a rule allowing contribution is to control the distribution of loss by law, rather than leave such control with the plaintiff, it appears that the California act falls short of the mark. Under it a right of contribution will arise only after the plaintiff has sued two or more joint tortfeasors and has recovered a joint judgment against them. The plaintiff is still completely free to place the entire loss on fewer than all of the tortfeasors, by simply failing to sue them all, either from whim,

29 For a defense of what are called the plaintiff’s “tactical advantages,” see James, Contribution Among Joint Tortfeasors: A Pragmatic Criticism, 54 Harv. L. Rev. 1156, 1160-65 (1941). And, on the general subject of contribution among tortfeasors, see the ensuing debate with Professor Gregory; Gregory, Contribution Among Joint Tortfeasors: A Defense; James, Replication; and Gregory, Rejoinder, 54 Harv. L. Rev. 1156-89 (1941).

30 Supra note 10.


32 UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 1 (1939).

33 CAL. CODE CIV. PROC. § 875(a).

34 UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 2(1) (1939).

35 CAL. CODE CIV. PROC. § 875(d).

36 UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 5 (1939).

37 CAL. CODE CIV. PROC. § 877(b).

38 UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT § 7 (1939).
spite, or collusion. Clearly this defect goes to the very heart of the purpose of a contribution statute, and will probably negate most of the expected beneficial results. Professor Gregory, who had much to do with the drafting of the 1939 uniform act, asserts that the feature of restricting the right of contribution to parties to a joint judgment "was responsible for the complete failure" of a similar New York statute.\textsuperscript{39}

The other three differences between the 1939 uniform act and the California statute were eliminated by revisions of the uniform act in 1955,\textsuperscript{40} but in only one case can the California position be really justified. This is the rule limiting the right of contribution to unintentional tortfeasors. Nearly all commentators have been in favor of this limitation because the reason behind the decision in \textit{Merryweather v. Nixan}, i.e., courts should not adjudicate matters between two intentional wrongdoers still applies. In the 1955 revised act the Commissioners on Uniform State Laws changed their position so as to conform to this view,\textsuperscript{41} which was also followed by the California legislature.

The area of difference as discussed in point (3) above presents a knot-tier problem. Having the contribution and release rules in their bare form, it would appear desirable to provide that a release of one tortfeasor should not release him from his liability for contribution unless the release is for an amount equal to the tortfeasor's pro rata share of the joint liability, or unless the consideration paid for the release is, in fact, equal to or in excess of such pro rata share. This would tend to accomplish the first objective, in that it would prevent a plaintiff from releasing one tortfeasor for a small amount and then suing the others, who would not be able to extract contribution from the released tortfeasor if the pro rata shares exceeded the amount the released tortfeasor paid. A provision to this effect was included in the 1939 act,\textsuperscript{42} but experience under the act showed that this provision had the effect of stifling out-of-court settlements.\textsuperscript{43} Plaintiffs were unwilling to release a tortfeasor for an amount equal to his pro rata share of the joint liability, for the reason that they did not know what they were giving up. The pro rata shares cannot be determined until a judgment is rendered. If a plaintiff accepts $500 from one tortfeasor and releases him from all liability to an amount equal to his pro rata share of the total liability, and such pro rata share is later determined to be $5,000 the plaintiff has lost $4,500, for any judgment he may recover will be reduced by an amount equal to the released tortfeasor's pro rata share.\textsuperscript{44} Tortfeasors were unwill-

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\textsuperscript{40} \textit{Handbook of the National Conference of Commissioners on Uniform State Laws} 218 (1955).  
\textsuperscript{41} \textit{Uniform Contribution Among Tortfeasors Act} § 1(c) (1955).  
\textsuperscript{42} \textit{Supra} note 36.  
\textsuperscript{43} See discussion of this effect in \textit{Handbook of the National Conference of Commissioners on Uniform State Laws} 224 (1955).  
\textsuperscript{44} \textit{Uniform Contribution Among Tortfeasors Act} § 5 (1939).  
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As long as a tortfeasor was going to be held liable for his full pro rata share he might as well defend the action. The incentive for out-of-court settlements was impaired, if not destroyed. Thus, a provision which was inserted for the purpose of accomplishing the first objective had the actual effect of defeating the second objective. Obviously, a balance had to be struck. A sacrifice had to be made. The commissioners decided that the encouragement of out-of-court settlements was more important than the prevention of discrimination by plaintiffs, and they revised the act accordingly.

It is submitted that the reasons for this revision in the uniform act are not valid in California under the section limiting contribution to parties to a joint judgment. It is clear that any subsection to the general rule recognizing the right of contribution has no effect unless a joint money judgment has been rendered. Thus, the rule of the 1939 uniform act that a release does not also release the tortfeasor from liability for contribution, would have no application in California until a joint judgment is rendered. As shown, the criticism of this rule is that it stifles out-of-court settlements, but would this criticism be valid in California? The only out-of-court settlements the rule could stifle are those entered into after judgment, when the damage, as far as the time, effort, and expense of litigation is concerned, has been done. Also, the new release rule does not extend to settlements made after verdict or judgment, so it cannot be said that the legislature is interested in encouraging such settlements. Thus, the rule that a release of one tortfeasor also releases him from liability for contribution can serve no useful purpose in California, and will only detract from the contribution act as a whole. Of course, if the act were amended so as to provide for a right of contribution before judgment then the section that has been discussed should be retained.

Where a right of contribution exists it seems desirable that third-party practice should be allowed so that all issues could be heard in one trial. This is particularly true where the right of contribution exists before judgment. For example, suppose that A and B, through their joint negligence, injure C. For some reason or another, C sues only A, but does not release B. If a judgment is rendered against A and A satisfies it, he is entitled to contribution from B under a statute such as the uniform act. But if B denies he was negligent another trial must be held to determine B’s liability. This is wasteful of time, effort, and expense and is the reason behind the third-party practice provisions of the 1939 uniform act. The commissioners omitted these provisions in the 1955 revised act, apparently not because they were unsound, but because they were so complex that they tended to confuse the parties, attorneys, and courts. The third-party practice was

45 Uniform Contribution Among Tortfeasors Act § 4(b) (1955).
46 Supra note 38.
47 See Dean Prosser’s report in the Handbook of the National Conference of Commissioners on Uniform State Laws 150 (1952).
left to the established procedure in the several states, with the hope, no doubt, that the states had satisfactory procedural rules in this respect.

Unfortunately, California does not have third-party practice rules for cases involving joint tortfeasors, and no such provisions are included in the statutes being discussed. At first glance, it might appear that effective third-party procedure rules might cure the defect imposed by the rule limiting the right of contribution to joint tort judgment debtors. This is true where the plaintiff is willing to amend his complaint. If C sued only A, A impleaded B, and C amended his complaint to name B as a joint defendant, all issues could be determined at one trial, and A would be entitled to contribution if he paid more than his pro rata share of the judgment liability. However, this still leaves control in the hands of the plaintiff, and if he refuses to amend his complaint A's right to contribution never arises. Thus, third-party procedure would only partially cure the defect in the California act, for there is no way to force a plaintiff to amend his complaint so as to name a third-party who is impleaded by the defendant. The California Law Revision Commission recommended adoption of a third-party procedure along the lines of Rule 14 of the Federal Rules of Civil Procedure, but the legislature failed to act on this recommendation.

There is one other peculiar feature of the California act which must be noted. This involves the right of a liability insurance carrier to subrogate itself to the rights of contribution of its insureds. If A's liability insurance carrier pays more than A's pro rata share of the common liability in discharge of its obligation to A it seems only logical that the insurance company should be subrogated to A's right to contribution from B. The 1955 uniform act so provides. In California the matter is handled in Code of Civil Procedure, section 875(e):”

“A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.”

(Emphasis added.)

A strict reading of this section indicates that the insurer cannot subrogate itself to its insured's right to contribution until it has discharged the entire liability of its insured, even though the insured's right to contribution arises when more than his pro rata share is paid. For example, assume that C obtains a joint and several judgment for $6,000, against A and B. A has a $5,000 liability insurance policy and the carrier pays the face amount in satisfaction of its obligation to A. Under the section quoted it appears that

48 Commissioners' Comment, Handbook of the National Conference of Commissioners on Uniform State Laws 222 (1955).
51 Uniform Contribution Among Tortfeasors Act § 1(e) (1955).
the insurance carrier could not enforce A's right to contribution against B because A's liability has not been fully discharged.

The courts may remedy this defect by giving section 875(e) a liberal construction, on the grounds that by the words "the liability of a tortfeasor judgment debtor" the legislature really meant "his pro rata share thereof."

**Conclusion**

There is certainly a need for change in the common law rules denying contribution among tortfeasors and providing that a release of one joint tortfeasor also releases the others. Cases show that these rules have resulted in much confusion and injustice, and for this reason Title 11 of the California Code of Civil Procedure is certainly a step in the right direction. Whether or not it will settle all the difficulties caused by the old rules and produce the desired results, of course, cannot be foretold with complete accuracy. It is submitted, however, that there are at least four defects in the present act which will detract from its total effect when viewed in the light of the act's objectives.

The first, and most important defect, is the limitation of the rights of contribution to tortfeasors against whom a joint judgment is rendered. Until this defect is cured the chances appear slim that the act will accomplish its first objective; i.e., the control of the distribution of loss by law rather than by the plaintiff. The second defect, the rule that a release also releases the tortfeasor from liability for contribution, is a defect only if the act remains in its present form. If the act is amended so that a right of contribution exists before judgment then this rule should be retained in order to encourage out-of-court settlements. The third defect, the absence of an effective third-party practice procedure, is also of great importance and must be remedied soon if the act is to prove practicable. It must be noted, however, that the curing of this defect will not completely remedy the first defect. The final drawback is the apparent limiting of an insurer's right to subrogate itself to its insured's right to contribution to cases where the insurer has discharged the entire liability of the insured, rather than allowing such subrogation where the insurer has paid more than the insured's pro rata share of the total liability.

The second objective, i.e., the encouragement of out-of-court settlements, will probably be accomplished to some extent. However, this objective was not as pressing as the first since the results were obtainable before by the use of the covenant not to sue. The statute changing the common law release rule merely clears the air and removes the technical trap which had plagued parties before.

Because of the defects pointed out, however, it is felt that the legislation as a whole lacks the teeth necessary to do the job required. An adoption of the 1955 revised uniform act would have made much more progress toward solution of the problems presented by the common law rules.