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Torts - Uniform Contribution Among Tortfeasors Act - Effect of Release on Injured Person's Claim

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TORTS—UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT—EFFECT OF RELEASE ON INJURED PERSON'S CLAIM—Plaintiffs were injured in a collision involving vehicles driven by the individual defendants Hershberger and Mong. Mong settled with each of the seven plaintiffs for varying amounts, receiving from them releases which not only discharged him from all liability but also reduced the damages recoverable against Hershberger by fifty percent. Plaintiffs then sued Hershberger, who joined Mong as an additional defendant. After verdicts were rendered against both defendants, the trial court denied Hershberger's motion to compel reduction of the verdicts so that in each of the seven instances his liability would be the lesser of (a) fifty percent of the verdict and (b) the deficiency between the verdict and the amount paid to the particular plaintiff by Mong. On appeal, *held,* reversed. Under section 4[1] of the Uniform Contribution

[1] Pa. Stat. Ann. (Purdon, 1945; Supp. 1956) tit. 12, §2085. Also: Ark. Stat. (1947) §34-1004; Del. Code Ann. (1953) tit. 10, §6304(a); Hawaii Rev. Laws (1945) §10490; Md. Code Ann. (Flack, 1951) art. 50, §23; N.M. Stat. Ann. (1953) §24-1-14; R.I. Acts & Resolves (1940) c. 940, §4; S.D. Code (1939; Supp. 1952) §33.04A05. Similar provisions: La. Civ. Code (Dart, 1945) §2100; Mich. Comp. Laws (1948) §691.562; Miss. Code Ann. (1942) §334; Mo. Rev. Stat. (Vernon, 1949) §537.060; Nev. Rev. Stat. (1957) §§101.040 to 101.060; 12 N.Y. Consol. Laws (McKinney, 1945) §§233 to 235; Utah Code Ann. (1953) §§15-4-3 to 15-4-5; W.Va. Code Ann. (1955) §5481; Wis. Stat. (1955) §§113.03 to 113.05.

Among Tortfeasors Act,[2] a release of one joint tortfeasor reduces the claim against the others by the greater of (a) the consideration paid for the release and (b) the amount which the release specifies. *Daugherty v. Hershberger*, 386 Pa. 367, 126 A. (2d) 730 (1956).

At English common law, a release to one of several tortfeasors who had acted in concert necessarily released the others, since a plaintiff had had but one cause of action, and it had been surrendered by the release.[3] Most American courts early extended this doctrine to all cases of concurrent tortfeasors, whether they had acted independently or in concert.[4] Thus, an injured party was forced to make the difficult choice between foregoing the opportunity of settling with one tortfeasor without suit or giving up his entire claim against the others. This undesirable situation led to a retreat from the rule in various ways.[5] Today it is possible in almost every state to settle in some manner with one tortfeasor without discharging the others.[6] In many states this retreat has been accomplished by statute, in eight instances by adoption of section 4 of the Uniform Contribution Among Tortfeasors Act.[7] In addition to providing that a release of one tortfeasor does not discharge the others, section 4 provides for a reduction in the claim against those not released "in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim be reduced, if greater than the consideration paid."[8] It was under the quoted clause that the appeal in the principal case was taken. The principal case, a case of first impression generally, involved all three variations which might arise under section 4 when the release given contains an express provision that the claim against other tortfeasors is to be reduced by a specified portion (here, one-half), viz., (a) when the amount received by the injured party under the release is greater than the actual damages as determined by the jury; (b) when the amount so received is less than actual damages but greater than one-half those damages; and (c) when the amount so received is less than one-half the damages. Reading section 4 literally, the majority found that

2 Adopted in seven states and Hawaii. 9 U.L.A. 69 (1951; Supp. 1956). See generally 34 A.L.R. (2d) 1107 (1954). Criticism of the act led to a revised version, approved by the commissioners in 1955, which has not yet been adopted anywhere. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 216 (1955), cited infra as HANDBOOK.

3 Cocke v. Jenner, Hob. 66, 80 Eng. Rep. 214 (1614).

4 24 So. CAL. L. REV. 466 (1951). See generally 148 A.L.R. 1270 (1944). See also 134 A.L.R. 1225 (1941); 85 A.L.R 1164 (1933). Cf. 40 A.L.R. (2d) 1075 (1955); 35 A.L.R. (2d) 1122 (1954); 20 A.L.R. (2d) 1044 (1951); 166 A.L.R. 1099 (1947); 160 A.L.R. 870 (1946); 126 A.L.R. 1199 (1940); 112 A.L.R. 78 (1938).

5 E.g., by recognition of the covenant not to sue. See 4 TORTS RESTATEMENT §885 (2) (1939).

6 PROSSER, TORTS, 2d ed., 244 (1955). See generally 68 HARV. L. REV. 697 (1955).

7 Arkansas, Delaware, Hawaii, Maryland, Pennsylvania, New Mexico, Rhode Island, and South Dakota.

8 The wording of the analogous provision, §4 (a), of the revised act is different, but the effect is intended to be the same. HANDBOOK 223 (1955).

the defendant owed nothing in situation (a),[9] the difference between the verdict amount and the release consideration in situation (b),[10] and one-half the verdict amount in situation (c). The dissenting justice felt that the defendant should pay one-half the verdict amount in all three situations. This point of view is without merit. The basic principle of tort damage theory is to compensate the plaintiff for actual injury suffered.[11] It is of no concern to the plaintiffs in the principal case that as between the two defendants, Hershberger received a windfall.[12] The plaintiffs in categories (a) and (b) obtained cash and judgments totaling at least as much as the amount in which the jury found they were injured, and no reason appears for giving them more. The plaintiff in category (c) obtained less than his damages as found by the jury, but the result is still proper since it embodies exactly what he agreed to in his release.[13] The results reached are desirable,[14] and, under the statute, the majority's conclusion is mandatory.[15]

It is true, as the dissenting justice suggests, that the majority result will tend to discourage settlements. In view of this decision, the injured party will not want to agree to a pro rata reduction of the other tortfeasors' liability. On the other hand, the settling tortfeasor can hardly agree to a settlement without such a reduction, in view of section 5 of the uniform act which requires it in order to excuse him from contribution.[16] Indeed, a major motivation for the revision of the uniform act was the fact that this form of the act discouraged settlements.[17]

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9 See Raughley v. Delaware Coach Co., 47 Del. 343, 91 A. (2d) 245 (1952).

10 See Ginoza v. Takai Elec. Co., 40 Hawaii 691 (1955).

11 2 HARPER AND JAMES, TORTS 1299 (1956).

12 Hershberger's liability totaled $1839.36; Mong's settlements totaled $13,500. Sec. 2 (3) of the act denies Mong a right of contribution against Hershberger.

13 It has even been held that a full release to one tortfeasor before the injured party learned of the existence of other tortfeasors bars action against the latter. Greenhalch v. Shell Oil Co., (10th Cir. 1935) 78 F. (2d) 942.

14 4 TORTS RESTATEMENT §885 (3) (1939). Cf. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 at 92, 110 A. (2d) 24 (1954).

15 That the majority view embodies the statutory intent is shown by the commissioners' note appended to §4. 9 U.L.A. 162 (1951).

16 The revised version eliminates, inter alia, the old §5. See HANDBOOK 223 (1955).

17 HANDBOOK 224 (1955). The revised act is itself criticized in 35 N.C. L. REV. 141 at 149 (1956). See also HANDBOOK 150 (1952), and cf. James, "Contribution Among Joint Tortfeasors: A Pragmatic Criticism," 54 HARV. L. REV. 1156 (1941).