#53(L) 2/12/65

Memorandum No. 65-6

Subject: Study No. 53(L) - Personal Injury Damages as Separate Property

The Commission had done considerable work on this subject when we were overwhelmed by the problem of governmental liability. There has been but one change in the voting membership of the Commission since that time (Assemblyman Song has replaced Assemblyman Bradley). To refresh your recollections concerning the matter, we will review what decisions were made. At this meeting we hope to discover whether the policy decisions previously made still represent the Commission's thinking. Attached are the minutes for October, November, and December, 1961, which review in more detail the problems involved.

Civil Code Section 163.5 provides:

> All damages, special and general, awarded to a married person in a civil action for personal injuries, are the separate property of such married person.

The Commission concluded that this section, which was enacted to prevent the imputation of contributory negligence from one spouse to another, is undesirable. Because damages awarded in personal injury actions are separate property, they are not subject to division on divorce, do not descend as community property does, even when the loss suffered is clearly a loss to the community--lost earnings, medical bills, lost services. These consequences follow even though no question of contributory negligence by another spouse was involved in the case.

Under classic community property law (never followed in California), damages to community interests--such as lost earnings, services, etc.--would be community property, but damages to individual interests--pain,

suffering, etc.--would be separate property. The Commission decided that the classic scheme would introduce too much complexity into a field that is sufficiently complex already.

The Commission decided that personal injury damages should be regarded as community property. However, the community property nature of the cause of action should not be a bar to an innocent person whose spouse was contributively negligent. The Commission also concluded that to require the negligent third party to bear the full responsibility for the injury would not be fair to the third party, for in the usual case involving joint tort feasors, they will both be made parties to the action and will have a right of contribution. The negligent spouse should be required to bear his share of the liability for the damages that his negligence, in part, caused. The Commission indicated that the spouse's share of the liability might be satisfied by insurance, but in the absence of insurance, the community property damage award should be used to pay the negligent spouse's share.

Since these decisions were made, the California Supreme Court has held that there is no interspousal tort immunity in California, even for negligent torts. Self v. Self, 58 Cal.2d 683 (1962); Klein v. Klein, 58 Cal.2d 692 (1962). We have also been authorized to act in regard to the doctrine of imputed contributory negligence contained in Section 17150 of the Vehicle Code.

The questions before the Commission now are:

1. Should personal injury damages be separate or community property?

   a. Should the nature of the damages depend on whether a spouse participated in the tort?

2. Should proposals be made to require the negligent spouse to bear some measure of the responsibility for the damages that he helped to cause?

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

Recommendation. The Commission considered the substance of Memorandum No. 60(1961) containing proposed statutory changes relating to personal injury damage awards recovered by married persons. This material was drafted to effectuate the Commission's previous determination to make such awards community property, to eliminate the imputation of contributory negligence between spouses insofar as it is based upon the community property nature of the recovery, and to reduce the liability of a negligent defendant by the amount the contributorily negligent spouse would be liable to contribute if he were adjudged a joint tortfeasor with the defendant.

Following a full consideration of the several problems raised in the proposed solution, the Commission approved the proposition that a married person bringing a personal injury action should recover from a negligent defendant the entire damages suffered by him or her and that a plaintiff's contributorily negligent spouse should be liable for contribution to the defendant for an amount up to one-half the judgment. This action modifies the previous action taken by the Commission. It recognizes the fact that a negligent spouse is ordinarily insured against the consequences of his negligent acts and there is no reason to adopt a legislative scheme that would prevent a spouse from utilizing insurance to protect him from the consequences of his negligence in this situation.

The following matters are to be included in the legislation to effectuate this proposition: (1) The injured spouse is to recover all damages which arise as a result of the injury, including loss of

earnings, medical expenses, etc. Because there is some doubt as to the present law with respect to which spouse must bring the action for certain items of damage, the staff was directed to submit a report which names the items of damage included in personal injury actions and identifies the spouse who must sue to recover each. (2) The entire recovery is to be the community property of the spouses. The recovery is liable, however, for reimbursement of the property (separate and/or community) which supplied funds for the payment of expenses arising out of the injury and for payment of any judgment for contribution against a contributorily negligent spouse where funds are not otherwise available for payment of such liability. The balance of the recovery is to be under the management and control of the injured spouse. (3) The procedure for permitting a negligent defendant to recover from a contributorily negligent spouse was not specifically determined, although the Commission favored a procedure, such as a cross-complaint, which would permit joinder of the spouse in the primary action. Whether joined in the original action or sued in a separate action, the contributorily negligent spouse should not be permitted to interpose a defense based upon spousal tort immunity or the guest statute.

STUDY NO. 53(L) - PERSONAL INJURY DAMAGE AWARDS TO MARRIED PERSONS

The Commission considered Memorandum No. 55(1961) and the attachments thereto relating to problems raised and alternative solutions presented in connection with the study of personal injury damage awards to married persons. The following Commission action should be particularly noted.

The Commission approved the repeal of Section 163.5 of the Civil Code. Prior to enactment of this section, personal injury damage awards were held to be community property. The Commission agrees that this type of recovery should be community property because the community suffers loss by the personal injury of a spouse and hence Section 163.5 should be repealed.

Section 163.5 changed basic marital property rights in order to indirectly accomplish its primary purpose of preventing intraspousal imputation of contributory negligence. The Commission believes that the problem of imputing negligence between spouses should be dealt with directly without the artifice of changing property rights.

With respect to the imputation of negligence between spouses, the Commission approved the proposition that contributory negligence should not be imputed between spouses so as to defeat recovery from a negligent defendant. However, in fairness to a third-party defendant, it was agreed that he should have a right of contribution from a contributorily negligent spouse as though the spouse were not married.

Accordingly, the Commission adopted the staff's suggestion in this regard, but approved making the residual recovery after contribution the community property of the spouses instead of the separate property of the injured spouse. Other possible solutions were rejected as being inconsistent with the theory of community property or as necessitating special verdicts or complicated procedure which invite appeals. The solution adopted is primarily based upon fairness to all parties involved--the injured spouse is not arbitrarily denied recovery merely because of the marital relation, the contributorily negligent spouse is liable to the same extent as though unmarried and a negligent third party defendant is given the same right of contribution as though the joint tortfeasor were unmarried. Procedural methods for accomplishing this result are to be drafted by the staff for later consideration.

It was noted that the proposed solution adopted by the Commission may be wholly defeated by the statutory provision relating to vehicle ownership registration (Veh. Code § 17150). Because of the probable adverse results by application of this section, the Commission unanimously adopted a motion by Commissioner Stanton, seconded by Commissioner Sato, that a request be made to the Legislature at the 1962 Legislative Session for permission to broaden this study to include the doctrine of imputed contributory negligence based on the spousal relation and vehicle ownership.

STUDY NO. 53(L) - PERSONAL INJURY DAMAGES

The Commission considered Memorandum No. 47(1961) relating to whether personal injury damages awarded to a married person should be separate property.

Civil Code Section 163.5 provides that "all damages, special and general, awarded to a married person in a civil action for personal injuries, are the separate property of such married person." This section was enacted in 1957. Prior to 1957 the California courts held that such damages were community property and that the negligence of the other spouse was to be imputed to the injured spouse in an action by the injured spouse against a third person for personal injuries. Section 163.5 was enacted to prevent imputation of negligence in such cases.

However, Section 163.5 is not limited to cases where negligence of one spouse might be imputed to the other; the section also applies to cases where the other spouse was not contributorily negligent or had no connection with the accident that resulted in the personal injury. The result is that personal injury damages recovered by a married person are not subject to division on divorce, are not subject to the community property rules relating to disposition by will and intestate succession, etc. These consequences seem undesirable since in many of these cases a large portion of the recovery represents future earnings which would, of course, be community property.

There are two separate, but related, questions that must be decided by the Commission:

(1) To what extent should personal injury damages be separate property or community property? Three alternatives are available: (a) all community property, (b) all separate property or (c) part separate property (such as pain, suffering and disfigurement) and part community property (such as future earnings). An incidental question is: Should the underlying cause of action--as distinguished from the judgment--be treated differently than the judgment? The consultant recommends that all damages be community property.

(2) What should be the rule on imputed negligence? The consultant recommends that negligence should not be imputed to the other spouse in any case. Moreover, he would revise Vehicle Code Section 17150 so that negligence would not be imputed between husband and wife under that section. It was noted that our authority to make this study is not broad enough to cover revision of Vehicle Code Section 17150. The consultant does not discuss the policy considerations relating to whether negligence should be imputed.

The Commission indicated that additional research material would be helpful in making the policy decisions noted above. Additional research is needed on the following matters:

(1) What is the status of interspousal tort immunity in California?

(2) What is the status of the law in other states on the imputation of negligence between spouses?

(3) To what extent is community property liable for torts of husband and wife in California?

(4) What are the policy considerations to be taken into account in determining whether negligence should be imputed between spouses?

It was tentatively agreed that personal injury damages should be community property if the other spouse is not contributorily negligent.

The difficult problem is what rule should apply in the cases where the other spouse is contributorily negligent. Several possible approaches to the solution of this problem were discussed:

(1) Not allow negligence of other spouse to be imputed but reduce the judgment using comparative negligence principles. Should recovery then be separate or community property?

(2) Not allow negligence of other spouse to be imputed but reduce the judgment using principles of contribution between joint tort-feasors. Should recovery then be separate or community property?

(3) Allow full recovery for personal aspects of the injury (pain, suffering and disfigurement, etc.) but provide that the rest of recovery (loss of earnings, etc.) is not barred by imputed negligence but subject to either comparative negligence principles or contribution between joint tort-feasors principles. Some of the problems that this alternative would create in personal injury cases were mentioned.

(4) No imputation of negligence but provide that the damages recovered are community property with no reduction in amount of recovery.

(5) San Francisco Bar proposal--amend Section 163.5 to provide for reimbursement to community of amounts paid for medical expenses out of community property but make no other change in Section 163.5.

It was suggested that the research consultant should be requested to prepare additional research material concerning the matters discussed at this meeting which are not covered in his research study.

A STUDY RELATING TO PERSONAL INJURY DAMAGE AWARDS TO MARRIED PERSONS: THE EFFECTS OF CIVIL CODE SECTION 163.5*

*This study was made for the California Law Revision Commission by Mr. George Brunn of San Francisco, a member of the California State Bar. No part of this study may be published without prior written consent of the Commission.

The Commission assumes no responsibility for any statement made in this study and no statement in this study is to be attributed to the Commission. The Commission's action will be reflected in its own recommendation which will be separate and distinct from this study. The Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature.

Copies of this study are furnished to interested persons solely for the purpose of giving the Commission the benefit of the views of such persons and the study should not be used for any other purpose at this time.

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STATEMENT OF THE PROBLEM

California law prior to 1957.

In California until 1957 damages recovered for personal injuries to a husband or wife were community property.[1] Courts came to this conclusion by what seemed like simple logic. The Civil Code defines separate property as that owned before marriage or acquired afterwards by gift, bequest, devise or descent; "all other property acquired after marriage" is community property.[2] Since a damage award is not acquired by gift, bequest, devise or descent, it is community property.[3]

The characterization of such damages as community property led courts to block a spouse from recovery where the injury was caused by the negligence of a third person and the contributory negligence of the other spouse.[4] Courts reasoned that since the damages would belong to the community, the negligent spouse would--if recovery were allowed--share in the recovery and thereby profit from his own wrong; accordingly, they imputed the contributory negligence to the innocent spouse.[5] This

* This study was made at the request of the California Law Revision Commission by Mr. George Brunn of San Francisco, a member of the California State Bar. The opinions, conclusions and recommendations are entirely those of the author and do not necessarily represent or reflect the opinions, conclusions and recommendations of the Law Revision Commission.

result has been critized: it puts a spouse in a worse position than a friend or acquaintance; it prevents a fictitious "profit" by committing a real injustice--denying an innocent person recovery because of the wrong of another.[6]

Twice before 1957 action by the legislature encouraged optimists that a brighter day had come. In 1913, married women were given the right to sue for personal injuries without joining their husbands.[7] The legislature went so far as to say in C.C.P. Section 370:

> "When the action concerns her separate property, including action for injury to her person . . . she may sue alone . . ." [8]

Boalt Hall's Dean McMurray hopefully asked:

> What happens to the ancient judicial myth that the right of the wife to sue for personal injuries is community property, in view of the recent amendment allowing the wife to sue for such injuries? If she may sue alone, she certainly can control and manage this portion of the community property, notwithstanding that the husband has, in general, such management or control. [9]

But the rule remained unchanged.[10]

In 1951 the legislature again touched on the problem. It enacted Civil Code Section 171c, giving the wife "management, control and disposition" of damages for personal injuries except for medical expenses paid by the husband.[11] While this section also provided that it did not transmute damages into separate property, there was again some hope that it had sufficiently limited the possibility of the husband's "profiting" by his own negligence,[12] Most commentators, however, were pessimistic,[13] and such judicial application of the section as occurred was adverse.[14] And litigants' self-help attempts by way of agreement that the cause of action would be separate property were also unsuccessful.[15]

1957 legislation.

In the 1957 session of the legislature two bills on the subject were introduced. One would have added a Section 171d to the Civil Code as follows:

> The negligence or contributory negligence of one spouse shall not be imputed to the other spouse in any action, even though the damages that are recovered are community property.[16]

This bill was not acted on in committee and apparently was never called up for hearing by its authors.[17] The other bill became Civil Code Section 163.5.[18] It was passed in the form in which it was introduced, with the addition of a non-retroactivity provision, and states:

> All damages, special and general, awarded to a married person in a civil action for personal injuries, are the separate property of such married person.[19]

Several discussions of the new section have appeared,[20] but todate judicial application has been limited,[21] probably due to the fact that it applies only to causes of action arising after its effective date.[22]

Questions raised by the section fall into two general areas:

1. Questions arising directly from the changed property nature of damage awards. The principal questions here are:

a. Are medical expenses paid out of community funds recoverable as separate property and, if so, is the community protected?

b. Is the community unfairly deprived of awards for lost earnings?

c. What are the effects of Section 163.5 on a recovery which is followed by the death of a spouse or by divorce?

d. Are damages received by way of settlement, as distinguished from judgments, also separate property?

2. Questions concerning actions based on negligence involving a contributorily negligent spouse:

a. Does the section eliminate the problem of collateral estoppel?

b. Does the section eliminate one form of imputed negligence but open up a new form under Vehicle Code Section 17150?

c. Does the section leave unaffected the imputation of negligence in action by a parent for the wrongful death of or injuries to a child?

PROBLEMS RELATING TO THE CHANGED PROPERTY NATURE OF DAMAGE AWARDS

Medical expenses.

The new section raises two principal questions about medical expenses paid out of community funds: (1) Can they be recovered by the injured spouse as separate property? (2) If so, is the community entitled to reimbursement by the injured spouse?

The first question arises because Section 163.5 speaks of "all damages, special or general, awarded . . ." and does not purport to say what damages may be awarded. Since each spouse was allowed to recover medical expenses paid from community funds prior to the enactment of Section 163.5,[23] it is likely that this will continue to be the case.[24]

It has been suggested that permitting such recovery would effectuate the legislative intent of abolishing imputed negligence between spouses and that a contrary result would again open the way to the imputation of negligence.[25] Upon closer analysis this is questionable. Suppose that a wife is injured as the result of a third person's negligence, that her husband was contributorily negligent, and that her medical bills were paid by community funds.

In this situation if the wife is not allowed to recover the medical expenses, they will remain unreimbursed: any attempt by the husband to recover them on behalf of the community will presumably be blocked by his contributory negligence. But it should be noted that the husband's recovery would not be barred by any imputed negligence here, but by his own contributory negligence.

In the converse situation, where the husband is the injured party, no one has contested his right to recover medical expenses[26] and the question of imputed negligence would arise only if it were held--contrary to what appears to be the plain language of the statute--that his recovery of such expenses is community property.

Thus, the intent of the legislature in enacting this section does not shed conclusive light on the question.

The principal argument against permitting recovery of medical expenses by the wife seems to be that if such recovery were allowed, the husband would to that extent "forfeit" his interest in community funds.[27] Cases decided prior to 1957 should no longer control, so the argument runs, since they rested on the basis that the recovery would be community property.[28] To amplify, these cases had to meet the contention that the wife's recovery of medical bills would interfere with the husband's power of management and control of the community property.[29] As long as the recovery was community property, the funds would at least return to the community and to the husband's management, while under Section 163.5 this would no longer be the case.

This argument seems weak for a number of reasons:

1. The husband has a primary right of action for medical expenses paid for treatment of his wife's injuries.[30] Thus, he can avoid any "forfeiture" of his interest in community funds if he is concerned about the matter. The only time he cannot assert this right is when he has been contributorily negligent and in such a case he is obviously not harmed if his wife recovers the medical expenses.

2. It is doubtful logic to attempt to protect the husband's interest in community funds by an approach which would leave medical expenses

paid from community funds entirely unreimbursed in case of his contributory negligence. Such a result can only be viewed as a net loss to the family and to the community property.

3. As previously noted, there is no question that where the husband is the injured party, he can recover medical expenses and his recovery would quite clearly be his separate property.[31] In that event the wife might be deprived to that extent of her vested interest in the community property. Why should the result be different where the injured party is the wife? Such a difference would not appear to be a reasonable departure from the long development toward equalizing the wife's position in terms of her right to sue and her interest in the community property.

4. The family could probably avoid the impact of any rule denying the wife to recover medical expenses paid by the community by a gift from the husband to the wife of sufficient funds to pay doctors' bills. Her use of this newly-acquired separate property[32] would presumably eliminate any restriction on her recovery.[33] In any situation where the husband might have been contributorily negligent, there would be a premium on such strategy. Rules which encourage such subterfuges seem of doubtful wisdom.

A second argument against recovery of medical expenses by the wife where the husband paid the bills might be that she herself did not sustain any damage.[34] This might be true in the situation where the husband paid the expenses from his separate property. But in the more usual situation, where community funds are utilized, the wife would seem to have been damaged in view of her equal, vested interest in community property.[35] In light of previous decisions permitting such recovery by her,[36] this question would no longer seem to be open.

On balance it seems likely that each spouse will be continued to be allowed to recover medical expenses. Since such recovery will not be separate property this may result in a loss to the community. In many cases this may make little or no practical difference where families do not differentiate between separate and community property. By comingling or by agreement between the spouses the recovery can, in whole or in part, become community property.[37] Also, as noted previously, the husband can join in the action and has the primary right to recover the expenses himself,[38] as long as he has not been contributorily negligent.

Beyond these factors the question remains whether one spouse could sue the other to obtain reimbursement for the community property. Such an action would confront a court with a number of problems.

1. The legal basis for allowing the action. Presumably the action would be based on a restitution theory: its object would be to prevent the unjust enrichment of one spouse at the expense of the community.[39] The retention by one spouse, as separate property, of compensation for moneys paid by the community, might be unjust, but it remains to be seen whether courts could fit this situation into established quasi-contract norms.[40] Furthermore, they may feel that to permit such an action would undermine Section 163.5 by turning into community property funds which the section declares to be separate property.

2. Inter-spouse suits. This is not a serious problem since the bar against inter-spouse suits does not apply to actions concerning their property rights.[41] The bar no longer applies even to tort actions dealing with injury to a property interest as distinguished from injury to the person.[42]

3. Contributory negligence in the underlying accident. Where the

husband, who seeks to recover the expenses on behalf of the community, was contributorily negligent in the accident that gave rise to the original action, it is more difficult to make out a case of unjust enrichment. The community could not have recovered for such a loss prior to the enactment of Section 163.5 and hence it would be less plausible to argue that it has been unjustly deprived of anything. In fact, litigation under these circumstances may revive the you-shall-not-profit-from-your-own-wrong argument from which imputed negligence sprang.

Thus, the community's right to reimbursement for medical expenses is speculative.[43] In some cases, especially in cases of divorce or death, this could lead to unfair results. In the bulk of the cases the question of reimbursement may never become important.

Impairment of earning capacity.

Commentators agree that damages for lost earnings and impairment of earning capacity will be separate property under Section 163.5.[44] They express concern over the fact that the other spouse--usually the wife--will have no interest in the award, even though earnings often make up a major share of the community property. For example, Witkin says:

> The husband's earnings are community property and the chief source of family support, but the statutory substitute for them--a lump sum damage award--is now his separate property and subject to his unlimited right of disposition.[45]

Would an action between the spouses lie to recover this portion of the damage award on behalf of the community property? This seems more doubtful here than in the case of medical expenses. Unjust enrichment would be more difficult to spell out since the spouse here is recovering for his own injury and not for expenses paid from community assets. Furthermore, the determination of the portion of the award which constitutes

damages for impairment of future earning capacity would face obvious practical obstacles.

The parties can mitigate the effects of Section 163.5 in two ways. They can change separate property into community property by agreement.[46] Such an agreement may be oral as long as it is "executed" and California courts have been liberal in finding execution.[47] The agreement might not even need to be express.[48] Judicial readiness in finding that an agreement has been made and executed may well avoid injustice in some cases.

The parties may also comingle the proceeds of the damage award with their community property. Where the proceeds become so mingled that they cannot be traced they will be treated as community property.[49] Even where comingling does not reach the point of making tracing impossible, deposit of the proceeds in the family bank account and their use for the support of the family, may itself be evidence of an agreement to transmute the award into separate property.[50]

Effect in the event of death or divorce.

The change of personal injury damage awards into separate property may have consequences not expected by the parties where the spouse obtaining the award dies or seeks a divorce.

In the event of intestacy, all of the community property goes to the surviving spouse,[51] but as little as one third of the separate property may go to her.[52] By will one spouse may deprive the other of all of the decedent's separate property, but only of half of the community property.[53]

Inheritance tax consequences will also be different and less favorable to the family. In general, all of the community property going to the surviving spouse is free of tax.[54] This favorable tax treatment

will be lost unless the spouses have changed the proceeds into community property. However, an inter-spouse transfer from separate into community property may itself give rise to gift tax liability.[55]

Turning to divorce, the principal difference will result from the courts' general lack of authority to award the separate property of one spouse to the other.[56] This may not work a hardship to the extent that it is possible to effectively protect the wife's right to support by an award of alimony.[57]

Nature of damages received by way of settlement.

Section 163.5 is framed in terms of damages which are "awarded" to a spouse. This wording leaves some doubt whether the proceeds of a settlement of a personal injury action--as distinguished from the proceeds of a judgment--are also separate property or whether they retain the community property character they would have had prior to the enactment of the section. Upon the answer may hinge significant consequences in relation to the various problems discussed above.

Commentators disagree about the effect of the section on settlements. One article takes the language of the section at face value and concludes that "it seems quite likely that the property nature of any settlement is not affected."[58] Another concludes that a settlement should be separate property for the following reason: Since recovery by way of judgment is separate property, the cause of action should also be separate property in order not to split the property characterization of the cause of action and the recovery; hence, settlement proceeds should in turn be separate property.[59]

Witkin says:

> If the cause of action is still community property, as held by a long line of prior decisions, money paid by

> way of compromise and satisfaction thereof may likewise be regarded as community property, . . . [60]

From a practical standpoint there would seem to be no justification for treating settlements differently from judgments.

PROBLEMS RELATING TO COLLATERAL ESTOPPEL AND IMPUTED NEGLIGENCE

Collateral estoppel.

Prior to the enactment of Section 163.5, a spouse could not maintain a personal injury action against a third party where the other spouse, in a prior suit involving the same accident, had been found contributorily negligent.[61] Because of the community property nature of the potential recovery it was held that the spouses were in "privity" and that, therefore, the prior judgment was res judicata in the later action.[62]

It seems to be clear that Section 163.5 leaves no room for such an application of collateral estoppel.[63]

Imputation of negligence under Vehicle Code Section 17150.

Vehicle Code Section 17150 (formerly Section 402(a)) provides:

> Every owner of a motor vehicle is liable and responsible for the death of or injury to person or property resulting from the negligence in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner, and the negligence of such person shall be imputed to the owner for all purposes of civil damages. (Emphasis supplied.)

This section has been applied to impose liability on one spouse for the negligent driving of the other.[64] Also, it applies to block an owner from recovery where the person who drove with the owner's consent was guilty of contributory negligence.[65]

In the past there has been little occasion for such a defensive use of Section 17150 to bar the recovery of one spouse because of the contributory negligence of the other: the rule which Civil Code Section 163.5 changed already produced this result. But it seems clear that Section 17150 has such a defensive application in appropriate situations involving

spouses.[66] Thus, in one recent case, where the family automobile was owned jointly by husband and wife, the court said:

> Moreover, in the case at bar the automobile operated by Mr. Moren was owned jointly by him and his wife. . . . These circumstances would foreclose recovery by the wife in the event her husband was contributively negligent independent of their husband and wife relationship. Under Section 17150 of the Vehicle Code, formerly Section 402, the negligence of the operator of an automobile is imputed to the owner thereof for all purposes of civil damages.[67]

In the case just referred to, the accident occurred prior to the effective date of Section 163.5. But the court made it clear that regardless of the status of the rule as to imputation of negligence between spouses, Vehicle Code Section 17150 prevents recovery where the spouses are co-owners of the car.[68]

Thus, while the drafters of Section 163.5 may well have hoped that it would put an end to all imputation of the contributory negligence of one spouse to the other,[69] some imputation will continue under Section 17150. In general, the contributory negligence of the spouse who was driving will be imputed to the other spouse if the latter was the owner of the car and gave the other permission to drive it within the meaning of the Vehicle Code section. Factors such as who the registered owner is, whether the car is community, separate or joint property, and which spouse drove will be determinative. The table below considers various combinations of these factors and indicates the likely results. In a number of instances the result is uncertain.

TABLE I

Abbreviations: H - husband; W - wife; C.P. - community property; S.P. - separate property

	Registered owner	Nature of ownership	Driver	Injured spouse	Can the injured spouse recover where the other spouse was contributively negligent?
1.	Both	C.P.	H	W	Yes. Since H has exclusive management of the C.P., W has no consent to give. Hence, H is not a permissive user of the car. [70]
2.	Both	C.P.	W	H	Probably not. [71]
3.	H	C.P.	H	W	Yes, like case 1. [72]
4.	H	C.P.	W	H	Probably not: similar to case 2, with possibly a slightly stronger case that H consented.
5.	W	C.P.	H	W	Probably; [73] similar to case 1.
6.	W	C.P.	W	H	Probably not; similar to case 2. [74]
7.	Both	Joint	H	W	Probably not: driving with consent of co-owner. [75]
8.	Both	Joint	W	H	Probably not, like case 7.
9.	H	S.P.	H	W	Yes, here H is driving his own car.
10.	H	S.P.	W	H	Probably not: W would normally be driving with H's consent. [76]
11.	W	S.P.	H	W	Generally not, similar to case 10:H would normally be driving with W's consent. [77]
12.	W	S.P.	W	H	Yes, here W is driving her own car.

Parents' recovery for death or injury of children.

Recovery for the wrongful death of a spouse or parent is not community property in California.[78] But parents' recovery for the wrongful death of a child is community property; one parent's contributory negligence is therefore imputed to the other with the effect of preventing recovery, and it has recently been held that Section 163.5 does not change this result because its scope is limited to actions for personal injuries and does not extend to wrongful death actions.[79]

Recovery by parents for injuries to their children has also been treated as community property, with the usual consequences as to imputation of one parent's contributory negligence to the other.[80] Whether Section 163.5 affects this situation remains to be seen. It could be interpreted to apply to this kind of action since, literally, a suit by a parent for injuries to his child could result in "damages . . . awarded a married person in a civil action for personal injuries." It has been argued, however, that the section be construed to apply only to injuries sustained by a spouse.[81]

CONCLUSIONS AND RECOMMENDATIONS

Section 163.5 was designed to abolish a rule deemed unjust -- the imputation of negligence between spouses. An assessment of this statute raises two basic questions: (1) Does it achieve its aim? (2) Does it entail other, undesirable consequences?

The answer to the first question points to only partial success. In some situations contributory negligence will, in all likelihood, continue to be imputed to a spouse under Vehicle Code Section 17150. True, the imputation will no longer be based on the nature of the recovery but on the ownership of the car and on an issue of consensual driving. It could be said that under Section 17150 spouses are legally in no worse position than anyone else--that the section applies to them "independent of their husband and wife relationship" [82] -- and that Section 163.5 removed a special imputation rule which was applicable only to husbands and wives.

Yet it is difficult to look at the chart which outlines the probable operation of Section 17150 without being appalled at the complexity, the uncertainty and the unfairness of its operation. One wonders why the rights of an innocent spouse to recover for injuries should hinge on accidentals of ownership, registration and who was driving the car. One wonders, for example, how much sense it makes to say that a wife who brought a car to the marriage cannot recover if the husband was driving and contributorily negligent, [83] while she could recover if the car had been bought after the marriage from community funds.[84] Such distinctions have little if anything to justify them and are hardly of the kind which engender public respect for law. Why should not spouses

out for a drive be treated alike as far as imputation of negligence is concerned, independently of who drives and the form of ownership and registration?

In addition to imputation under Vehicle Code Section 17150, imputation of contributory negligence between spouses will continue in actions by parents for the wrongful death of children and, possibly, for injuries to children. Such imputation appears to have as little rational justification as the imputation abolished by Section 163.5.

Turning to other effects of the section, there are some uncertainties and some unexpected consequences. The property status of settlements, as distinguished from judgments, is uncertain. The extent to which the community property can be protected with respect to community funds expended for medical costs is also uncertain. Unanticipated results of the section include the deprivation of the community of recovery for past and future lost earnings and changes in the treatment of recoveries in the event of divorce or death.

However, hardship is likely to be minimized in many cases where the parties, either deliberately or out of ignorance, transforms the proceeds of the recovery into community property.

Changes in the present law appear desirable to accomplish a dual objective: completely eliminating the imputation of negligence between spouses and doing away with the hazards brought about by the conversion of personal injury awards into separate property.

In determining what changes should be recommended, it is worth recalling that the problem of imputing negligence between spouses arose because of the mechanical application of community property concepts to negligence cases. Section 163.5 represents an attempt at a mechanical

solution: it pins a different label on the recovery. Such a formalistic approach seems neither desirable nor necessary; as has been seen above it creates more problems than it solves. It seems far more desirable to abolish imputation directly without changing the property nature of the recovery.

Accordingly, it is respectfully suggested that the Commission make the following recommendations to the legislature:

First, that Civil Code Section 163.5 be repealed and that Section 171c of the Civil Code be amended to its pre-1957 wording.

Second, that Section 163.5 be replaced with a provision, either in the Civil Code or in the Vehicle Code, that states directly that the negligence of one spouse shall not be imputed to the other.

Such a provision might read as follows:

> The negligence of one spouse shall not be imputed to the other spouse as owner of a motor vehicle under Vehicle Code Section 17150 or for any other reason.

Legislation along this line would accomplish the two objectives set forth above: it would entirely eliminate imputed negligence between spouses and it would return to the traditional treatment of a personal injury cause of action as community property and thus obviate the concerns aroused by Section 163.5.

Such a change would not diminish an owner's financial responsibility to third parties under Section 17150 et seq. of the Vehicle Code. A spouse who owns a car would continue to be liable for the negligence of the other spouse within the limits of the financial responsibility law. This is because an owner's liability to third parties is established directly by the statute and does not depend on imputed negligence.[85]

However, should there by any question in this respect, it can be resolved by the addition of an appropriate sentence to the draft statute.

In the event the Commission feels that changes affecting Vehicle Code Section 17150 are beyond the scope of authorization for this study, the Commission may want to seek such authorization and defer final recommendations. As an alternative, it may want to recommend replacement of Section 163.5 with a provision to the effect that the negligence of one spouse shall not be imputed to the other, but without reference to the Vehicle Code.[86]

Before closing a comment is necessary on the possibility of amending Section 163.5 to provide that some portions of the recovery be separate property and others community property. For example, a resolution approved in principle by the 1959 Conference of State Bar Delegates would amend the section "to provide that special damages recovered as reimbursement for expenditures made out of community funds are community property but that there shall be no imputation of negligence between husband and wife due to the community nature of such damages."[87]

Such an approach seems of doubtful desirability. Aside from the fact that it would not do away with all imputation, it is a piecemeal effort to deal with the problem. For instance, the resolution just referred to was designed to deal with the problem of medical expenses.[88]

Furthermore, splitting the recovery into part community and part separate property would introduce an additional element of complexity and an added source of disputes into an area which is already abundantly difficult. There is a genuine need for simplification here and law revision can meet this need. For these reasons amendment of Section

163.5 is not recommended.

Instead the legislature should be afforded the opportunity to remove the imputation problem from the formalistic application of property concepts. Adoption of a straight forward provision abolishing imputation--whether or not the provision extends to imputation under Vehicle Code Section 17150--would be law revision in the best sense of the term.

FOOTNOTES

1. Zaragosa v. Craven, 33 C.2d 315, 321, 202 P.2d 73 (1949); Lamb v. Harbaugh, 105 Cal. 680, 39 Pac. 56 (1895); McFadden v. Santa Ana etc. Ry. Co., 87 Cal. 464, 25 Pac. 681 (1891).

2. Civ. Code §§ 162-164.

3. E.g. Lamb v. Harbaugh, note 1 supra. Most community property states follow this view. Annot. 35 A.L.R.2d 1199 (1954). Nevada and New Mexico hold that the definition of community property as "all other property acquired after marriage" refers to acquisitions by the labor or productive facilities of the spouses; accordingly, in these states personal injury damages are separate property. Frederickson & Watson Const. Co. v. Boyd, 60 Nev. 117, 102 P.2d 627 (1940); Soto v. Vandeventer, 56 N.M. 483, 245 P.2d 826. This seems to accord with the original Spanish conception of community property. 1 De Funiak, Principles of Community Property 225-226. Louisiana by statute treats personal injury damages of the wife as her separate property. See note 24, infra.

4. Zaragosa v. Craven, note 1, supra; McFadden v. Santa Ana etc. Ry. Co., note 1, supra.

5. E.g. Kesler v. Pabst, 43 C.2d 254, 273 P.2d 257 (1954); Basler v. Sacramento Gas Elec. Co., 158 Cal. 514, 111 Pac. 530 (1910).

6. See, for example, Comment, 42 Cal. Law Rev. 486 (1954); Note 24 Cal. Law Rev. 739 (1936); 1 De Funiak, Principles of Community Property 222 et seq.

7. C.C.P. § 370.

8. The section was amended in 1921 to remove the reference to separate

property. See discussion in Zaragosa v. Craven, note 1, supra.

9. Comment, 2 Cal. Law Rev. 161, 162 (1914).

10. Dunbar v. San Francisco etc. Rys., 54 Cal. App. 15, 201 Pac. 230 (1921); Giorgetti v. Wollaston, 83 Cal. App. 358, 257 Pac. 109 (1927).

11. Stats. 1951, ch. 1102.

12. Carter, Recent Trends in Court Decisions in California, 5 Hast. L.J. 133, 140 (1954); cf. 4 Witkin, Summary of California Law (7th ed.) 2711.

13. 2 Armstrong, California Family Law 1512; Comment, 42 Cal. Law Rev. 838, 848 (1954); Comment, 6 Hast. L. J. 88, 92 (1954).

14. The principal case is Nemeth v. Hair, 146 Cal. App.2d 405, 304, P.2d 139 (1956). It did not deal directly with the question of imputed negligence, but with another consequence of the damages-as-community-property-rule, namely that the wife is in privity with her husband and that any judgment against him in the prior action is res judicata against her on the issue of his contributory negligence. Zaragosa v. Craven, note 1, supra; Comment, 1 Stan. Law Rev. 765, and see text at notes 61 and 62, infra. In Nemeth v. Hair the court held that Civ. Code § 171c did not change this rule of collateral estoppel. This was tantamount to adhering to imputed negligence for the question of res judicata attains legal significance only if the husband's negligence is imputable to the wife.

Ferguson v. Rogers, 168 Cal. App.2d 486, 336 P.2d 234 (1959), involving an accident that occurred in 1956, applied the imputed negligence concept to bar a wife from recovery. The court merely noted that Section 171c did not change the community property nature of the damages.

15. Kesler v. Pabst, 43 Cal.2d 254, 273 P.2d 257 (1954); Mooren v. King, 182 C.A.2d 546, 6 Cal. Rptr. 362 (1960). However, courts created exceptions to the imputation of negligence in a few circumstances where the negligent spouse could not share in the recovery: (a) where the contributively negligent husband had died (Flores v. Brown, 39 C.2d 622, 248 P.2d 922 (1952)); (b) where the parties were divorced after the accident or the marriage annulled (Washington v. Washington, 47 C.2d 249, 302 P.2d 569 (1956); Caldwell v. Odisio, 142 C.A.2d 732, 299 P.2d 14 (1956)); and (c) where the parties lived in a non-community property state (Bruton v. Villoria, 138 C.A.2d 642, 292 P.2d 638 (1956) (conflict of laws rule)).

16. A.B. 3286.

17. 1957 Assembly Final History 1097; Assembly Journal (June 12, 1957) 6989-6991.

18. S.B. 1826.

19. Stats. 1957, ch. 2334, Civ. Code § 171c was amended concurrently to eliminate all references to personal injury damages.

Witkin also speaks of a "State Bar statute" (4 Witkin, Summary of California Law (7th ed.) 2713), but the State Bar has not sponsored any legislation on this subject and the matter was not on the State Bar's 1957 legislative program. 32 S.B.J. 14 et seq. (1957). Witkin's reference may be to a resolution adopted in 1955 by the Conference of State Bar Delegates in favor of legislation which would make a cause of action "for recovery of compensatory damages for pain, suffering, disfigurement and temporary and future disability suffered by a married person" the separate property of the injured spouse. 30 S.B.J. 499 (1955). Apparently no bill

to effectuate this more limited change was introduced.

20. Selected 1957 Code Legislation, 32 S.B.J. 507 (1957); note, 45 Cal. Law Rev. 779 (1957); Comment, 9 Hast. L.J. 291 (1958); 4 Witkin, Summary of California Law (7th ed.) 2712 (hereafter referred to as Witkin).

21. In Ferguson v. Rogers, 168 Cal. App.2d 486, 336 P.2d 334 (1959), the court said that the section has no retroactive application. In Cervantes v. Maco Gas Co., 177 Cal. App.2d 246, 250, 2 Cal. Rptr. 75 (1960), the court held that the section did not apply to an action by parents for the wrongful death of a child. See text at note 79 ff., infra. In Mooren v. King, 182 Cal. App.2d 546, 6 Cal. Rptr. 362 (1960), the court indicated that Section 163.5 would not prevent imputation of negligence in appropriate cases under Vehicle Code § 17150. See text at note 64 ff., infra.

22. Stats. 1957, ch. 2334, § 3; see Ferguson v. Rogers, note 21, supra. The effective date was September 11, 1957. See 32 S.B.J. 509 (1957).

23. C.C.P. § 370; Louie v. Hagstrom's Food Stores, 81 Cal. App.2d 601, 612-615, 184 P.2d 708 (1947); Hyman v. Market Street Ry. Co., 41 Cal. App.2d 647, 107 P.2d 485 (1940); Purcell v. Goldberg, 34 Cal. App.2d 344, 93 P.2d 578 (1939); but cf. Sanderson v. Nieman, 17 Cal.2d 563, 110 P.2d 1025 (1941).

24. Louisiana has reached the opposite result under statutes which provide that "actions for damages" are the wife's separate property and that "damages resulting from personal injuries to the wife . . . shall always be and remain the separate property of the wife and recoverable by her alone." La. Civ. Code Ann. arts. 2334, 2402. Under

these sections it has been held that the wife may recover neither medical expenses nor lost earnings; such items of damage are recoverable only by the husband on behalf of the community. Keintz v. Charles Dennery, Inc., 17 So.2d 506, 511 (La. App. 1944); Simon v. Harrison, 200 So. 476, 480 (La. App. 1941); Hollinquest v. Kansas City Southern Ry. Co., 88 F.Supp. 905 (W.D. La. 1950). The Louisiana view seems to derive from the fact that prior to the enactment of the statutes making personal injury damages of the wife her separate property, only the husband, as head of the community, could recover such damages. See Annot. 35 A.L.R.2d 1199, 1223 et seq. (1954). In California a different situation prevails in light of C.C.P. § 370.

A Texas statute, similar to the Louisiana provisions, was invalidated as conflicting with a section of the Texas constitution defining the wife's separate property. North Texas Traction Co. v. Hill, 297 S.W. 778 (Tex. Civ. App. 1928).

In New Mexico the court has reached the same conclusion as Louisiana without a specific statute pertaining to the nature of personal injury damages. The court considered itself free to define damages for pain and suffering as separate property and to recognize at the same time a "cause of action for damages to the community for medical expenses, loss of services to the community, as well as loss of earnings, if any, of the wife"; this cause of action "still belongs to the community, and the husband as its head is the proper party to bring such an action against one who wrongfully injures the wife." Soto v. Vandeventer, 56 N.M. 483, 245 P.2d 826

(1952).

In Nevada, the question has apparently not been resolved, but the discussion in the leading case indicates the same view as held by New Mexico. Frederickson & Watson Const. Co. v. Boyd, 60 Nev. 117, 102 P.2d 627, 629 (1940).

25. Note, 45 Cal. Law Rev. 779, 781 (1957). Witkin states flatly that medical expenses are recoverable. Witkin at 2712. The California Law Review note favors the same result. Comment, 9 Hast. L.J. 291, 299-301 (1958) takes the opposite view for reasons that will be discussed below.

26. See Comment, 9 Hast. L.J. 291, 303 (1958).

27. Id. at 299-301.

28. Id. at 300.

29. Louie v. Hagstrom's Food Stores, 81 Cal. App.2d 601, 612, 184 P.2d 708, 714 (1947).

30. Ibid. Sanderson v. Nieman, 17 Cal.2d 563, 110 P.2d 1025 (1941).

31. See text at note 26, supra.

32. Civ. Code § 162.

33. But cf. Kesler v. Pabst, 43 Cal.2d 254, 273 P.2d 257 (1954).

34. Note, 45 Cal. Law Rev. 779, 781 note 12 (1957). Compare C.C.P. § 427 which speaks of "consequential damages suffered or sustained by the husband alone, including loss of the services of his said wife, moneys expended and indebtedness incurred by reason of such injury to his said wife . . ."

35. Civ. Code § 161a; Witkin at 2741.

36. Cases cited in note 23, supra.

37. See pages _____, infra.

38. Text at note 30, supra; C.C.P. § 427.

39. Restatement of Restitution Sec. 1; Witkin at 19 et seq.

40. See, e.g. Restatement of Restitution Sec. 112.

41. Peters v. Peters, 152 Cal. 32, 103 Pac. 219 (1909).

42. Langley v. Schumacker, 46 Cal.2d 601, 297 P.2d 977 (1956).

43. See pages , infra.

44. Note 16, supra.

45. Witkin at 2713. For possible consequences in case of death or divorce see page , infra.

46. Civ. Code §§ 158-161.

47. Woods v. Security-First Nat. Bank, 46 Cal.2d 697, 299 P.2d 657 (1956); Witkin at 2752.

48. Pruyn v. Waterman, 172 Cal. App.2d 133, 139, 342 P.2d 87 (1959); Lawatch v. Lawatch, 161 Cal. App.2d 780, 789, 327 P.2d 603 (1958); Title Ins. etc. Co. v. Ingersoll, 153 Cal. 1, 94 Pac. 94 (1908).

49. Witkin at 2728.

50. Lawatch v. Lawatch, note 48, supra.

51. Prob. Code § 201.

52. Prob. Code §§ 221-224. It should be borne in mind, however, that if there are surviving children, all of the separate property goes to the surviving spouse and children: in case of one child, half to the spouse and half to the child; in case of more than one child, one-third to the spouse and the balance to the children in equal shares. Prob. Code § 221. If there are no surviving children, the surviving spouse gets at least half of the separate property.

53. Prob. Code §§ 20, 21, 201.

54. Rev. & Tax. Code § 13551; Barnett, California Inheritance and Gift Taxes, 43 Cal. Law Rev. 49, 51, 52 (1955).

55. Rev. & Tax. Code § 15303; cf. Rice, California Tax Planning, 134-136.

56. 1 Armstrong, California Family Law, 359-360, 847-848.

57. See Washington v. Washington, 47 Cal.2d 249, 253-254, 302 P.2d 569, 571 (1956).

58. Note, 45 Cal. Law Rev. 779, 780 note 2 (1957). See also Selected 1957 Code Legislation, 32 S.B.J. at 508 (1957).

59. Comment, 9 Hast. L.J. 291, 304 (1958).

60. Witkin at 2713.

61. Zaragosa v. Craven, 33 Cal.2d 315, 202 P.2d 73 (1949).

62. Ibid.

63. Comment, 9 Hast. L.J. 291, 298-299 (1958).

64. Dorsey v. Barba, 38 Cal.2d 350, 240 P.2d 604 (1952); Wilcox v. Berry, 32 Cal.2d 189, 195 P.2d 414 (1948); Rody v. Winn, 162 Cal. App.2d 35, 327 P.2d 579 (1958); Caccamo v. Swanston, 94 Cal. App.2d 957, 212 P.2d 246 (1949); O'Neill v. Williams, 127 Cal. App. 385, 15 P.2d 879 (1933).

65. Lambert v. Southern Counties Gas Co., 52 Cal.2d 347, 340 P.2d 608 (1959); Milgate v. Wraith, 19 Cal.2d 297, 121 P.2d 10 (1942); Mooren v. King, 182 Cal. App.2d 546, 6 Cal. Rptr. 362 (1960); Birnbaum v. Blunt, 152 Cal. App.2d 371, 313 P.2d 86 (1957).

66. See cases cited in notes 64 and 65, supra.

67. Mooren v. King, note 65, supra; cf. Carroll v. Beavers, 126 Cal. App.2d 828, 273 P.2d 56 (1954).

68. Mooren v. King, 182 Cal. App.2d 546, 552, 6 Cal. Rptr. 362 (1960).

69. See letter from Sen. James A. Cobey who introduced the bill, cited in Comment, 9 Hast. L.J. 291, 295 note 23 (1958): "I might say that my intention was to outlaw the imputation of the contributory negligence of one spouse to another . . ."

70. Wilcox v. Berry, 32 Cal.2d 189, 195 P.2d 414 (1948).

71. This is the converse of Case 1. While normally the wife would be driving with the husband's consent in the absence of an express prohibition by him, it may be a question of fact whether the husband, as manager of the community property, expressly or impliedly consented to his wife's driving. See Rody v. Winn, 162 Cal. App.2d 33 39, 327 P.2d 579 (1958).

72. Cox v. Kaufman, 77 Cal. App.2d 449, 175 P.2d 260 (1946).

73. This case seems to be essentially the same as Case 1. However, there is authority indicating that the wife may not be allowed to prove in face of the registration that she is not the sole owner of the car, i.e. she might not be permitted to show that the car is community property. Dorsey v. Barba, 38 Cal.2d 350, 354, 240 P.2d 604 (1952). In such an event the situation might be treated like Case 11 and the injured husband blocked from recovering. But cf. Rody v. Winn, 162 Cal. App.2d 33, 39, 327 P.2d 579 (1958): "And it has been held that an automobile acquired during marriage is presumed to be community property notwithstanding that it is registered in the wife's name." In Dorsey v. Barba the spouses had separated, obtained an interlocutory decree of divorce, and the wife had actually consented to let her husband keep the car.

74. See note 71, supra. In this situation recovery would be allowed if the community property nature of the ownership may not be established

under Dorsey v. Barba, note 73, supra.

75. Wilcox v. Berry, 32 Cal.2d 189, 195 P.2d 414 (1948). In Krum v. Malloy, 22 Cal.2d 129, 137 P.2d 18 (1943), the court said that upon proof of co-ownership the normal inference is that the use of the property by one co-owner is with the consent of the other. Where both spouses are in the car at the time of the accident this inference would appear to be even stronger and in Mooren v. King, 182 Cal. App.2d 546, 6 Cal. Rptr. 362 (1960), the court recently indicated that driving in this situation may be with the consent of the co-owner as a matter of law, thereby preventing recovery.

76. O'Neill v. Williams, 127 Cal. App. 385, 15 P.2d 879 (1933). Consent would seem to be particularly likely to be found where both spouses are in the car.

77. See note 76, supra.

78. Redfield v. Oakland, C.S. Ry. Co., 110 Cal. 277, 42 Pac. 822 (1895); Fiske v. Wilkie, 67 Cal. App.2d 440, 154 P.2d 725 (1945).

79. Cervantes v. Maco Gas Co., 177 Cal. App.2d 246, 2 Cal. Rptr. 75 (1960). Witkin predicted this result. Witkin at 2713.

80. Kataoka v. May Dept. Stores, 60 Cal. App.2d 177, 188-189, 140 P.2d 467 (1943); Dull v. Atchison, Topeka & S.F. Ry. Co., 27 Cal. App.2d 473, 479, 81 P.2d 158 (1938).

81. Comment, 9 Hast. L.J. 291, 298 (1958).

82. Mooren v. King, note 65, supra.

83. See Table I, page , Case 11.

84. See Table I, page , Cases 1, 3 and 5.

85. In fact, the imputation clause which forms the last part of Vehicle

Code Section 17150 was a later addition to the provisions for an owner's liability to third persons. Stats. 1937, ch. 840, p. 2353.

86. Compare A.B. 3286 introduced at the 1957 session. See text at note 18, supra.

87. 35 S.B.J. 75 (1960) (Resolution No. 57). The Board of Governors of the State Bar referred the resolution to the Law Revision Commission for its information. Ibid. Compare the resolution adopted at the 1955 Conference of State Bar Delegates referred to in note 19, supra.

88. Statement of Reasons accompanying Resolution No. 57, note, 87, supra as contained in copy of resolution transmitted by the State Bar to the Law Revision Commission.