#62(L) 12/9/65

Memorandum 65-79

Subject: Study No. 62(L) - Vehicle Code Section 17150 and related statutes

Accompanying this memorandum are two copies of a tentative recommendation (on gold paper) relating to ownership liability under the Vehicle Code. Two copies are provided so that you may mark suggested textual changes on one and return it to the staff at the December meeting.

The tentative recommendation has been revised to reflect the decisions made at the November meeting. The following matters should be particularly noted:

Recommendation generally

We have substantially revised the recommendation and the comments in order to take much of the policy discussion out of the comments. As revised, most of the policy discussion appears in the recommendation portion and the comments are utilized to explain what the section means and how it changes the law.

Pages 1-6 of the recommendation, discussing the study's background and the problem of visarious liability, are either new or substantially revised. Minor textual revisions have been made in response to Commissioners' suggestions on pages 6-8.

Pages 9-10 of the recommendation and the proposed amendment to Section 17158 have been included for the purpose of presenting the policy question whether Section 17158 should be amended as suggested. The merits of the proposed amendment are discussed below in the appropriate order.

Section 17150

The section was approved at the last meeting. The Commission asked us to revise the comment to support the vicarious liability provisions as a matter of policy. The comment has been substantially revised; but the policy discussion is contained in the recommendation, not the comment.

The risk created by the revised section appears to be insurable under the cases. Section 17707 and Section 17708 make the signatories to a minor's drivers license application and his parents vicariously liable for the damages caused by the operation of a vehicle by the minor, whether the damages result from negligence or wilful misconduct. In Arenson v. National Auto. & Cas. Ins. Co., 45 Cal.2d 81 (1955), it was held that a personal liability policy could (and did) cover vicarious liability for an intentional tort for which Insurance Code Section 533 would have prohibited insurance coverage had the insured himself committed the tort. The case involved the liability of a parent under Education Code Section 10606 for the damage caused by a fire wilfully started by his child. Insurance Code Section 533 was held not to prohibit insurance even though the child was an additional insured. In Fazzino v. Insur. Co. of North America, 152 Cal. App.2d 304, 313 P.2d 178 (1957), it was held that a parent's liability under Sections 17707 and 17708 was covered by a standard liability policy even though the minor was operating a vehicle other than that owned and insured by the parent. Although the minor's tort was not wilful, the language of the policy (in the light of Arenson) was clearly broad enough to cover vicarious liability for such torts:

> The coverage . . . is "To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages . . . arising out of the ownership, maintenance or use of the automobile." . . . [152 Cal. App.2d at 307.]

An extended coverage provision made the same coverage applicable "with respect to any other automobile."

In Hartwick, Reading Liability Policies, 13 HAST. L. J. 175 (1961), it is pointed out that such broad coverage is usual in standard liability policies.

Accordingly, we conclude that the liability provided is both insurable and now covered by most liability policies.

Section 17150.5

At the last meeting we asked the Commission to consider repealing the section as unnecessary in the light of the new registration provisions in the Vehicle Code by which title is fixed, not merely evidenced. The Commission asked us to consider revising the section to make it applicable to cars registered under the previous law. It seems to us that no amendment is necessary to accomplish this purpose. Because Sections 4150.5 and 5600.5 fix the title of all cars registered under their provisions, Section 17150.5 can apply only to cars registered under the prior law; for it is only as to those cars that presumptions can be resorted to in order to determine title.

Accordingly, we have concluded that amendment of the section is unneeded. The section could possibly be amended to make it clear from the face of the statute that it applies only to cars that are not registered under Sections 4150.5 and 5600.5. The section could also be given a time limit so that after a reasonable period of time owners of vehicles would have an incentive to bring them within the new registration act. The section could also be repealed outright to provide vehicle owners with such an incentive upon the effective date of the repealer.

Section 17151 was previously approved,

Section 17152

Pursuant to a suggestion made at the last meeting, we have revised the section to substitute a requirement of personal jurisdiction for a requirement of personal service within the state. The comment has been revised to reflect the change.

Sections 17153-17156 were previously approved.

Section 17158

We have included a suggested amendment to this section for the Commission to consider. We think the amendment is worth considering for the following reasons:

Section 17158 is basically designed to provide immunity from liability to a guest that arises from negligence. Guest cases usually involve an owner who is driving; and in such cases the owner is immune from liability in the case of simple negligence. But if the negligence of the owner results in an injury while the owner is not driving, he is fully liable--without any limitation of damages under Section 17151. Thus, if an owner negligently drives his car with faulty equipment as a result of which a guest is injured, there is no liability. But if the owner lets his brother drive the car with faulty equipment, the owner is liable to a guest for his negligence in letting the car go out with faulty equipment. This distinction seems to make little sense, and the only justification for it that we can find is the language of the section itself.

It seems likely that this direct liability of an owner for negligence may have developed as a way of getting around the owner's immunity from liability under Section 17150 for the wilful misconduct of the driver. [illegible] car

An escape from that immunity was particularly desirable since it seems likely that the driver's insurance carrier could not be held for the "wilful act" of the insured. INSUR. C. § 533. But since absolute liability for the misconduct of the driver, whether wilful or negligent, is being imposed under Section 17150, there seems to be no reason to continue the anomalous distinction that has developed under Section 17158.

Moreover, we think it is desirable for Section 17150 to describe completely the owner's liablity for the damage caused while the car is being used by someone else with his permission. It doesn't make a great deal of sense to provide complete immunity from negligence liability to a guest if the owner is driving, to limit his liability (in amount) when third persons are injured by the misconduct of the operator, and to provide unlimited negligence liability to a guest if the owner was not driving. The appellate cases that have arisen involving this direct liability have all involved misconduct--either negligent or wilful--of the operator. They have all involved guests. We have yet to see the theory applied in favor of a third party. Hence, in these cases, if a third person had been injured, it is likely that the owner's liability would be limited by Section 17151; but his liability to a guest is unlimited.

From a practical point of view, too, we think it is desirable to limit liability in accordance with established legislative policies where reason indicates that those policies apply when we are at the same time broadening liability in other areas. Repeal of imputed contributory negligence will result in a net increase in liability; for a complete defense has been replaced with a liability that will probably be covered by insurance. Broadening vicarious liability to include liability for wilful misconduct will also

result in a net increase in liability. We have some doubt, therefore, that the Legislature would look with approval upon a bill so substantially increasing liability if the bill contained nothing limiting liability in another area. The bill may never get passed; but we think that the proposed amendment to Section 17158 increases its chances.

Sections 17159 and 17707-17708 were previously approved.

Sections 17709-17710

These sections have been revised to avoid the use of the word "imputed."

Code of Civil Procedure Sections 900-907

These sections and the comments are essentially the same as those contained in the tentative recommendation relating to personal injury damages as separate or community property. Section 901 and its comment differ somewhat because of the different subject matter of this recommendation. Minor textual changes appear in the comment to Section 906 because of the differing subject matter.

When these bills are presented to the Legislature, we will integrate these two proposals into a single chapter that can accommodate the provisions of both proposals.

SEC. 17 was previously approved.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

#62 12/8/65

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

VEHICLE CODE SECTION 17150 AND RELATED SECTIONS

BACKGROUND

In 1957, the Legislature directed the Law Revision Commission to undertake a study to determine whether damages awarded to a married person for personal injuries should be separate or community property. The study involved more than a determination of the nature of the property interests in damages recovered by a married person; it also involved a determination of the extent to which the contributory negligence of one spouse should be imputed to the other, for the doctrine of imputed contributory negligence between spouses has been determined in the past by the nature of the property interests in the award.

During the course of the study, the Commission became aware that any recommendation it might make concerning imputed contributory negligence between spouses would not solve the problems that existed, for many if not most actions for damages in which the contributory negligence of a spouse is a factor arise out of vehicle accidents. Because contributory negligence is imputed to vehicle owners under Vehicle Code Section 17150, the Commission sought and was granted authority in 1962 to study the extent to which an operator's contributory negligence should be imputed to the vehicle owner under that section.

The Commission's study of imputed negligence under Vehicle Code Section 17150 revealed other sections involving the same problem. Moreover, the study revealed important defects in these and other sections involving related problems; for consideration of the policies underlying imputed contributory negligence necessarily involved consideration of the extent to which a vehicle owner should be responsible for damages resulting from the operation of the vehicle by another. The 1965 Legislature, therefore, extended the Commission's authority to consider all relevant aspects of Vehicle Code Section 17150 and related sections.

The Commission's study of these provisions of the Vehicle Code has focussed on three main questions: Should the vicarious liability of an owner under Vehicle Code Section 17150 (and similar sections) be limited to liability for negligence, or should it be equivalent to the vicarious liability imposed by Sections 17707 and 17708 (upon parents and signatories of minors' drivers license applications) and include vicarious liability for wilful misconduct? Should the contributory negligence of a vehicle operator bar an action by a person who is by statute vicariously liable for the negligence of the driver? Should the statutory immunity of an owner from liability for negligence to a guest depend on whether the owner's negligence resulted in an injury while the owner was driving?

RECOMMENDATIONS

Vicarious liability

Vehicle Code Section 17150 now provides that a vehicle owner is liable for the damages caused by the "negligence" of a person operating his vehicle with his permission. Vehicle bailees and estate representatives are subjected to similar liability by Sections 17154 and 17159. Section 17150

(that is, the statute that is now codified as Section 17150) was enacted "to place upon the owner of a motor vehicle liability for injuries in its operation by another with his permission, express or implied, and thus hold the owner answerable for his failure to place the instrumentality in proper hands." Weber v. Pinyan, 9 Cal.2d 226, 229, 70 P.2d 183 (1937).

But the section's limitation of the owner's vicarious liability to cases involving "negligence" and courts' narrow construction of the term "negligence" have made the section inapplicable in cases where the reason that gave rise to its enactment is of greatest force. Under existing law, the section is inapplicable when the owner entrusts his vehicle to the most irresponsible driver--the one who engages in wilful misconduct or who drives while intoxicated. Weber v. Pinyan, 9 Cal.2d 226, 70 P.2d 183 (1937) (intoxication and wilful misconduct in attempting to embrace passenger); Jones v. Ayers, 212 Cal. App.2d 646, 28 Cal. Rptr. 223 (1962)(wilful misconduct in disregarding boulevard stop sign and entering intersection at high speed); Stober v. Halsey, 88 Cal. App.2d 660, 199 P.2d 318 (1948) (intoxication and wilful misconduct in driving at high speed and removing hands from steering wheel). In rare cases, a person injured as a result of wilful misconduct or intoxication can recover from the owner on the theory that the owner negligently entrusted the operator with the vehicle. Benton v. Sloss, 38 Cal.2d 399, 240 P.2d 575 (1952). But in the absence of such proof, the owner is immune from liability for injuries caused by the wilful misconduct or intoxication of the operator.

Thus, an owner may be held liable under Section 17150 for the simple negligence of an operator because of "his failure to place the instrumentality in proper hands"; but, incongruously, he is immune from liability for the

wilful misconduct or intoxication of an operator despite "his failure to place the instrumentality in proper hands." The more irresponsible the operator, the more difficult it is to impose liability on the person who provided the operator with the vehicle.

The courts have reached the results indicated above by construing the word "negligence" narrowly to exclude "wilful misconduct." Weber v. Pinyan, 9 Cal.2d 226, 70 P.2d 183 (1937). The term "wilful misconduct" does not appear in Section 17150. The term is used in Section 17158 to describe the kind of conduct for which an operator is liable to his guest. Nevertheless, the courts have held that the terms are mutually exclusive and that an owner cannot be held liable under Section 17150 for an operator's conduct that constitutes "wilful misconduct" under Section 17158. Benton v. Sloss, 38 Cal.2d 399, 240 P.2d 575; Weber v. Pinyan, 9 Cal.2d 226, 70 P.2d 183 (1937); Jones v. Ayers, 212 Cal. App.2d 646, 28 Cal. Rptr. 223 (1963); Stober v. Halsey, 88 Cal. App.2d 660, 199 P.2d 318 (1948).

To treat the terms as mutually exclusive disregards the diverse purposes underlying the two sections. Section 17158 is designed to prevent collusive or fraudulent suits. Emery v. Emery, 45 Cal.2d 421, 289 P.2d 218 (1955); Ahlgren v. Ahlgren, 185 Cal. App.2d 216, 8 Cal. Rptr. 218 (1960). Section 17150 is designed to protect third persons against the improper use of automobiles by financially irresponsible persons. Weber v. Pinyan, 9 Cal.2d 226, 70 P.2d 183 (1937). To shield himself from liability, the owner must either make sure that his driver is financially responsible or obtain insurance against his own potential liability. The exclusion of "wilful misconduct" from Section 17150 tends to defeat the purpose for which the section was enacted; for the innocent third person in a "wilful misconduct" case cannot look to the owner for relief, and it seems likely that operator's

conduct cannot be covered by insurance because of the restrictions of Insurance Code Section 533. Thus, third persons are provided by Section 17150 with the least protection against loss in the very cases where the need for such protection is greatest.

Recent cases interpreting "wilful misconduct" under Section 17158 will accentuate the problem if there continues to be an immunity from liability under Section 17150 for such conduct. Recent interpretations of the term "wilful misconduct" as used in the guest statute reveal that it includes conduct virtually indistinguishable from negligence. For example, in Reuther v. Viall, 62 Cal.2d 470, 42 Cal. Rptr. 456, 398 P.2d 792 (1965), the following conduct was held to be "wilful misconduct": The Reuthers and the Vialls were neighbors and friends. The Viall automobile was being used after a joint outing to return the Reuther's baby sitter to her home. Two small children of the Reuthers were in the car as well as the defendant's small daughter. The heat element of the cigaret lighter fell to the floor of the automobile, and Mrs. Viall, the driver, took her eyes off the road for a brief time and bent down to pick up the lighter. The car crossed the center line and collided with another automobile.

Of course, Mrs. Viall's action was misconduct--she should not have taken her eyes off the road. And, of course, her misconduct was wilful. But if this is wilful misconduct, much of what has been considered negligence can be characterized as wilful misconduct. Negligence frequently involves the wilful doing of some act when a reasonable person should be able to foresee that some harm will result therefrom. A person may wilfully drive too fast, roll through a stop sign, look away from the road, etc. Such misconduct is usually wilful and, under the Reuther case, may subject a driver to liability to a guest. Such an interpretation of the guest statute

may be proper and consistent with its purpose--to avoid collusive suits. But to apply this rationale to Section 17150 (as the courts have done in the past) and deny an owner's vicarious liability in such circumstances would virtually nullify the section.

Sections 17707 and 17708 of the Vehicle Code make certain persons (parents and signatories to drivers license applications) liable for damages caused by minors in the operation of vehicles. As originally enacted, these sections created vicarious liability only for negligence. Gimenez v. Rissen, 12 Cal. App.2d 152, 55 P.2d 292 (1936). When it became apparent that the sections provided no vicarious responsibility for the kinds of irresponsible driving that minors were most apt to engage in, the sections were amended to provide for vicarious liability for wilful misconduct as well as negligence. See Gimenez v. Rissen, supra.

The Commission recommends a similar revision of the ownership liability provisions of the Vehicle Code.

Imputed contributory negligence

Vehicle Code Section 17150 provides that the owner of a vehicle who permits it to be operated by another is liable for any injury caused by the negligence of the operator. Moreover, the negligence of the operator is imputed to the owner for all purposes of civil damages, thus barring the owner from recovering damages from a negligent third party if the driver was also negligent. Similar imputation provisions appear in Sections 17154, 17159, and 17708 of the Vehicle Code.

The provision of Vehicle Code Section 17150 that imputes the contributory negligence of a driver to the owner of the vehicle did not bar an owner's

recovery of damages when injured by the concurring negligence of his operator and a third party prior to the amendment of Vehicle Code Section 17158[1] (the guest statute) in 1961. Prior to that time this provision merely prohibited the owner from recovering from the negligent third party. It did not affect his remedy against the driver. Thus, in effect, it forced an owner who was injured by the concurring negligence of his driver and a third party to obtain his relief in damages from his driver alone. At a time when contribution between tortfeasors was unknown to the law, the choice thus forced upon an owner of a vehicle was not an unreasonable one. After all, he selected the driver, therefore, he should bear the risk of that driver's negligence and ability to respond in damages rather than imposing the risk of the driver's negligence upon some third party. The amendment of the guest statute in 1961 deprived the owner of his right to recover from his driver damages for personal injuries caused while the owner was riding as a guest in his own car. The policy underlying the guest statute--to prevent collusive suits--is undoubtedly as applicable to owners riding as guests as it is to others riding as guests; but the amendment deprived the innocent owner of his only remedy for personal injuries caused by the concurring negligence of his driver and a third party.

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[1]Section 17158 provides:

> 17158. No person riding in or occupying a vehicle owned by him and driven by another person with his permission and no person who as a guest accepts a ride in any vehicle upon a highway without giving compensation for such ride, nor any other person, has any right of action for civil damages against the driver of the vehicle or against any other person legally liable for the conduct of the driver on account of personal injury to or the death of the guest during the ride, unless the plaintiff in any such action establishes that the injury or death proximately resulted from the intoxication or wilful misconduct of the driver.

Within recent years California has abandoned the traditional common law view that there is no contribution between tortfeasors. The contribution principle seems to be a fairer one than to require one tortfeasor to bear the entire loss caused only partially by his action. Applied to the case where an owner is injured by the concurring negligence of his driver and a third party, the principle of contribution offers a means for providing the owner with relief, preventing collusive suits between owners and operators, and relieving both the negligent third party and the driver from the entire burden of liability.

Accordingly, the Commission recommends the repeal of the provisions of the Vehicle Code that permit a third party tortfeasor to escape liability to an innocent owner because of the contributory negligence of the owner's driver. Instead, the third party tortfeasor, when sued by the owner, should have the right to join the operator as a party to the litigation, and if both are found guilty of misconduct contributing to the injury, the third party should have a right to contribution from the operator in accordance with the existing statute providing for contribution between tortfeasors. See CODE CIV. PROC. §§ 875-880.

Because an operator should be required to contribute not only when he is negligent but also when he is guilty of more serious misconduct, the recommended statute does not limit his duty to make contribution to those situations where he is found guilty of negligence. He is required to make such contribution when guilty of any negligent or wrongful act or omission in the operation of the vehicle. The third party tortfeasor, however, as under the existing contribution statute, is prohibited from obtaining contribution if he intentionally caused the injury or damage.

The guest statute

Vehicle Code Section 17158 provides, in effect, that a person who is injured while riding as a guest in a vehicle cannot recover damages from the operator or from anyone else who is responsible for the operator's conduct unless the operator was intoxicated or guilty of wilful misconduct. The operator is immune from liability under the section for his negligence; and the owner is immune from liability under the section for the operator's negligence.

The cases considering this section have held that it "was enacted to protect the owner against fraudulent claims of those riding as guests who, in many cases, were the only witnesses to the accident." Weber v. Pinyan, 9 Cal.2d 226, 229, 70 P.2d 183 (1937). See also Emery v. Emery, 45 Cal.2d 421, 289 P.2d 218 (1955); Ahlgren v. Ahlgren, 185 Cal. App.2d 216, 8 Cal. Rptr. 218 (1960).

The statute is not, however, fully adequate to carry out its purpose. The courts have held that an owner of a vehicle may be held liable to a guest for his negligence in entrusting the vehicle to an operator who is subsequently negligent or guilty of wilful misconduct. Benton v. Sloss, 38 Cal.2d 399, 240 P.2d 575 (1952)(wilful misconduct); Nault v. Smith, 194 Cal. App.2d 257, 14 Cal. Rptr. 889 (1961)(negligence). An owner may also be liable to a guest for negligently permitting his car to be used while in a defective condition. Benton v. Sloss, supra. Yet, if the guest's injury occurred while the owner was operating the defective car, the owner would be immune from negligence liability. Spencer v. Scott, 39 Cal. App.2d 109, 102 P.2d 554 (1940), and cases cited therein. See also Warren v. Sullivan, 188 Cal. App.2d 150, 10 Cal. Rptr. 340 (1961). And where the injury is caused by the

negligence of the operator, the operator is immune from liability for his negligence under Section 17158, yet the owner is liable for his negligence. See Nault v. Smith, 194 Cal. App.2d 257, 14 Cal. Rptr. 889 (1961).

The theory of these cases is that the language of Section 17158 does not immunize an owner from liability for his negligence so long as he is not operating the vehicle himself. If the owner is the operator, then he is immune from liability to a guest for his negligence. There is no apparent reason for the distinction made between the negligence of the owner in operating the car and his negligence in entrusting the car. It is his own negligence for which he is immune or liable in either case. The policy underlying the statute would seem to require that it be made applicable in either case. In fact, there seems to be more reason to apply the statute in a case where the operator is charged merely with negligence, for in such a case the operator is immune from liability and has little to lose in testifying in a manner calculated to assist the injured guest's cause.

Accordingly, the Commission recommends that Section 17158 be amended to eliminate the distinction now made between the owner's negligence as an operator and the owner's negligence in entrusting the vehicle. The owner's liability as an owner should be limited to that prescribed in Section 17150.

RECOMMENDED LEGISLATION

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 17150, 17151, 17152, 17153, 17154, 17155, 17156, 17158, 17159, 17707, 17708, 17709, 17710, and 17714 of the Vehicle Code, to add a new chapter heading immediately preceding Section 875 of, and to add Chapter 2 (commencing with Section 900) to Title 11 of Part 2 of, the Code of Civil Procedure, relating to liability arising out of the operation of vehicles.

The people of the State of California do enact as follows:

SECTION 1. Section 17150 of the Vehicle Code is amended to read:

17150. Every owner of a motor vehicle is liable and responsible for ~~the~~ death ~~of~~ or injury to person or property resulting from ~~negligence~~ a negligent or wrongful act or omission 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~~.

Comment. Under the prior language of Section 17150, a vehicle owner was not liable for injuries caused by the wilful misconduct or intoxication of the operator. Weber v. Pinyan, 9 Cal.2d 226, 70 P.2d 183 (1937); Jones v. Ayers, 212 Cal. App.2d 646, 28 Cal. Rptr. 223 (1963); Stober v. Halsey, 88 Cal. App.2d 660, 199 P.2d 318 (1948). Under Section 17150 as amended, a vehicle owner will be liable (within the statutory limits prescribed by Section 17151) for the damages caused by the wilful misconduct or intoxication of an operator using the vehicle with the owner's permission.

The last clause of Section 17150 has been deleted because it, together with Section 17158, prevents an innocent vehicle owner from recovering any

damages for a personal injury caused by the concurring negligence of his driver and a third party. Instead of barring an owner's cause of action in such a case, he is permitted to recover his damages from the negligent third party who, in turn, can obtain contribution from the negligent operator under Sections 900-907 of the Code of Civil Procedure.

SEC. 2. Section 17151 of the Vehicle Code is amended to read:

17151. The liability of an owner, bailee of an owner, or personal representative of a decedent ~~for imputed negligence~~ imposed by this chapter and not arising through the relationship of principal and agent or master and servant is limited to the amount of ten thousand dollars ($10,000) for the death of or injury to one person in any one accident and, subject to the limit as to one person, is limited to the amount of twenty thousand dollars ($20,000) for the death of or injury to more than one person in any one accident and is limited to the amount of five thousand dollars ($5,000) for damage to property of others in any one accident.

Comment. This amendment merely conforms the section to Section 17150 as amended.

SEC. 3. Section 17152 of the Vehicle Code is amended to read:

17152. In any action against an owner, bailee of any owner, or personal representative of a decedent on account of ~~imputed negligence as~~ liability imposed by Sections 17150, 17154, or 17159 for the negligent or wrongful act or omission of the operator of ~~the~~ a vehicle ~~whose negligence is imputed to the owner, bailee of an owner, or personal representative of a deceased~~, the operator shall be made a party defendant if ~~personal~~ service of process can be ~~had upon the operator within this State~~ made in a manner sufficient to secure personal jurisdiction over the operator. Upon recovery of judgment, recourse shall first be had against the property of the operator so served.

Comment. This amendment conforms the section to Section 17150 as amended. It also requires that the operator be made a party if personal jurisdiction over him can be obtained in any manner. Code of Civil Procedure Section 417 and Vehicle Code Sections 17450-17463 prescribe various ways in which personal jurisdiction can be secured other than by personal service within the state.

SEC. 4. Section 17153 of the Vehicle Code is amended to read:

17153. If there is recovery under this chapter against an owner, bailee of an owner, or personal representative of a decedent ~~based on imputed negligence~~, the owner, bailee of an owner, or personal representative of a decedent is subrogated to all the rights of the person injured or whose property has been injured and may recover from the operator the total amount of any judgment and costs recovered against the owner, bailee of an owner or personal representative of a decedent.

Comment. This amendment merely conforms the section to Section 17150 as amended.

SEC. 5. Section 17154 of the Vehicle Code is amended to read:

17154. If the bailee of an owner with the permission, express or implied, of the owner permits another to operate the motor vehicle of the owner, then the bailee and the driver shall both be deemed operators of the vehicle of the owner within the meaning of Sections 17152 and 17153.

Every bailee of a motor vehicle is liable and responsible for ~~the~~ death ~~of~~ or injury to person or property resulting from ~~negligence~~ a negligent or wrongful act or omission in the operation of the motor vehicle, in the business of the bailee or otherwise, by any person using or operating the same with the permission, express or implied of the bailee ~~, and the negligence of such person shall be imputed to the bailee for all purposes of civil damages~~ .

Comment. This amendment to Section 17154 is in substance the same as the amendment to Section 17150. See the Comment to Section 17150.

SEC. 6. Section 17155 of the Vehicle Code is amended to read:

17155. Where two or more persons are injured or killed in one accident, the owner, bailee of an owner, or personal representative of a decedent may settle and pay any bona fide claims for damages arising out of personal injuries or death, whether reduced to judgment or not, and the payments shall diminish to the extent thereof such person's total liability on account of the accident. Payments aggregating the full sum of twenty thousand dollars ($20,000) shall extinguish all liability of the owner, bailee of an owner, or personal representative of a decedent for death or personal injury arising out of the accident which exists ~~by reason of imputed negligence,~~ pursuant to this chapter, and did not arise through the ~~negligence~~ negligent or wrongful act or omission of the owner, bailee of an owner, or personal representative of a decedent nor through the relationship of principal and agent or master and servant.

Comment. This amendment merely conforms the section to Section 17150 as amended.

SEC. 7. Section 17156 of the Vehicle Code is amended to read:

17156. If a motor vehicle is sold under a contract of conditional sale whereby the title to such motor vehicle remains in the vendor, such vendor or his assignee shall not be deemed an owner within the provisions of this chapter ~~relating to imputed negligence~~, but the vendee or his assignee shall be deemed the owner notwithstanding the terms of such contract, until the vendor or his assignee retake possession of the motor vehicle. A chattel mortgagee of a motor vehicle out of possession is not an owner within the provisions of this chapter ~~relating to imputed negligence~~.

Comment. This amendment merely conforms the section to Section 17150 as amended.

SEC. 8. Section 17158 of the Vehicle Code is amended to read:

17158. No person riding in or occupying a vehicle owned by him and driven by another person with his permission and no person who as a guest accepts a ride in any vehicle upon a highway without giving compensation for such ride, nor any other person, has any right of action for civil damages against the driver of the vehicle, against the owner of the vehicle or a bailee of the owner or a personal representative of a decedent owner, or against any ~~other~~ person legally liable for the conduct of the driver on account of personal injury to or the death of the guest during the ride, unless the plaintiff in any such action establishes that the injury or death proximately resulted from the intoxication or wilful misconduct of either the driver or the person from whom damages are claimed.

Nothing in this section affects any liability for breach of an express or implied warranty.

Comment. Although Section 17158 has made a vehicle owner immune from liability to a guest for his own negligence in the operation of the vehicle, it has left him liable to a guest if his negligence does not occur in the operation of the vehicle. Benton v. Sloss, 38 Cal.2d 399, 240 P.2d 575 (1952); Nault v. Smith, 194 Cal. App.2d 257, 14 Cal. Rptr. 889 (1961). The section as amended will provide an owner with immunity from liability to a guest on account of his own negligence whether that negligence occurs in the operation of the vehicle or not. However, if the injury to the guest resulted from the wilful misconduct or intoxication of the operator, the owner will be liable (within statutory limits) for the damages under Section 17150.

SEC. 9. Section 17159 of the Vehicle Code is amended to read:

17159. Every person who is a personal representative of a decedent who has control or possession of a motor vehicle subject to administration for the purpose of administration of an estate is, during the period of such administration, or until the vehicle has been distributed under order of the court or he has complied with the requirements of subdivision (a) or (b) of Section 5602, liable and responsible for ~~the~~ death ~~of~~ or injury to person or property resulting from ~~negligence~~ a negligent or wrongful act or omission in the operation of the motor vehicle by any person using or operating the same with the permission, express or implied, of the personal representative ; ~~and the negligence of such person shall be imputed to the personal representative for all purposes of civil damages~~ .

Comment. This amendment to Section 17159 is in substance the same as the amendment to Section 17150. See the Comment to Section 17150.

SEC. 10. Section 17707 of the Vehicle Code is amended to read:

17707. Any civil liability of a minor arising out of his driving a motor vehicle upon a highway during his minority is hereby imposed upon the person who signed and verified the application of the minor for a license and the person shall be jointly and severally liable with the minor for any damages proximately resulting from the ~~negligence or wilful misconduct~~ negligent or wrongful act or omission of the minor in driving a motor vehicle, except that an employer signing the application shall be subject to the provisions of this section only if an unrestricted driver's license has been issued to the minor pursuant to the employer's written authorization.

Comment. This amendment to Section 17707 merely substitutes the term that has been used in Vehicle Code Section 17001 and in Sections 17150-17159 for that which now appears in Section 17707. The substitution has been made in order to make clear that the same meaning is intended. No substantive change is made by the revision.

SEC. 11. Section 17708 of the Vehicle Code is amended to read:

17708. Any civil liability ~~negligence or wilful misconduct~~ of a minor, whether licensed or not under this code, arising out of his ~~in~~ driving a motor vehicle upon a highway with the express or implied permission of the parents or the person or guardian having custody of the minor ~~shall be imputed to~~ is hereby imposed upon the parents, person, or guardian, ~~for all purposes of civil damages~~ and the parents, person, or guardian shall be jointly and severally liable with the minor for any damages proximately resulting from the ~~negligence or wilful misconduct~~ negligent or wrongful act or omission of the minor in driving a motor vehicle .

Comment. The same reasons which justify the deletion of the provisions for imputed contributory negligence from Section 17150 justify the removal of the similar provisions from Section 17708. The language of the section has been revised to conform to that used in Section 17707.

SEC. 12. Section 17709 of the Vehicle Code is amended to read:

17709. No person, or group of persons collectively, ~~to whom negligence or willful misconduct is imputed~~ shall incur liability for a minor's negligent or wrongful act or omission under Sections 17707 and 17708 in any amount exceeding ten thousand dollars ($10,000) for injury to or death of one person as a result of any one accident or, subject to the limit as to one person, exceeding twenty thousand dollars ($20,000) for injury to or death of all persons as a result of any one accident or exceeding five thousand dollars ($5,000) for damage to property of others as a result of any one accident.

Comment. This amendment merely conforms the section to Sections 17707 and 17708 as amended.

SEC. 13. Section 17710 of the Vehicle Code is amended to read:

17710. ~~Negligence or wilful misconduct shall not be imputed to~~ The person signing a minor's application for a license is not liable under this chapter for a negligent or wrongful act or omission of the minor committed when the minor is acting as the agent or servant of any person.

Comment. This amendment merely conforms the section to Section 17707 as amended.

SEC. 14. Section 17714 of the Vehicle Code is amended to read:

17714. In the event, in one or more actions, judgment is rendered against a defendant under this chapter based upon the negligent or wrongful act or omission of a minor in the ~~negligent~~ operation of a vehicle ~~by a minor~~, and also by reason of such act or omission ~~negligence~~ rendered against such defendant under Article 2 (commencing with Section 17150) of Chapter 1 of Division 9, then such judgment or judgments shall be cumulative but recovery shall be limited to the amount specified in Section 17709.

Comment. This amendment merely conforms the section to Sections 17707 and 17708 as amended.

SEC. 15. A new chapter heading is added immediately preceding Section 875 of the Code of Civil Procedure, to read:

CHAPTER 1. CONTRIBUTION AMONG JOINT JUDGMENT TORTFEASORS

SEC. 16. Chapter 2 (commencing with Section 900) is added to Title 11 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2. CONTRIBUTION IN PARTICULAR CASES

900. As used in this chapter:

(a) "Plaintiff" means a person who recovers a money judgment in a tort action for death or injury to person or property.

(b) "Defendant" means a person against whom a money judgment is rendered in a tort action for death or injury to person or property.

(c) "Contribution cross-defendant" means a person against whom a defendant has filed a cross-complaint for contribution in accordance with this chapter.

Comment. The definitions in Section 900 are designed to simplify reference in the remainder of the chapter. The definition of "plaintiff" includes a cross-complainant if the cross-complainant recovers tort damages upon his cross-complaint. Similarly, the defined term "defendant" includes a cross-defendant against whom a tort judgment has been rendered. The "defendant" may actually be the party who initiated the action. "Contribution cross-defendant" means anyone from whom contribution is sought by means of a cross-complaint under this chapter. The contribution cross-defendant may, but need not, be a new party to the action.

901. If a money judgment is rendered against one or more defendants in a tort action for death or injury to person or property arising out of the operation of a motor vehicle, the operator, whether or not liable to the plaintiff, shall be deemed to be a joint tortfeasor judgment debtor and liable to make contribution in accordance with Title 11 (commencing with Section 875) of Part 2 of the Code of Civil Procedure where:

(a) The plaintiff is a person liable for the negligent or wrongful act or omission of the operator under Section 17150, 17154, 17159, 17707, or 17708 of the Vehicle Code; and

(b) The negligent or wrongful act or omission of the operator in the operation of the motor vehicle is adjudged to have been a proximate cause of the death or injury.

Comment. Sections 900-907 are added to the Code of Civil Procedure to permit a defendant who is held liable to an owner of a vehicle, or to some other person who is made statutorily liable for the conduct of the vehicle's operator, to obtain contribution from the operator if he can establish that the injury was caused by the operator's concurring negligence or wrongdoing.

Until 1961, Section 17150 forced a vehicle owner injured by the concurring negligence of a third party and the vehicle operator to seek relief solely from the operator. In 1961, Section 17158 was amended to deprive him of that remedy, leaving him with no remedy for his tortiously inflicted injuries.

A fairer way to protect him against fraudulent claims while still providing the innocent owner with a remedy for his injuries is to require contribution between the joint tortfeasors. These sections provide a means for doing so.

Section 901 establishes the right of the third party tortfeasor to obtain contribution. Under Section 901, a right of contribution can arise only if the third party tortfeasor is held to be liable to the plaintiff. In those instances where the contributory negligence or contributory wrongdoing of the operator is imputed to the plaintiff--as in master-servant situations--the third party is not liable to the plaintiff and, hence, no question of contribution can arise. Thus, Section 901 can apply only where the relationship of master-servant did not exist between the plaintiff and the operator insofar as the operator's acts were concerned.

Under Section 901, if the third party tortfeasor is held liable, he is entitled to contribution from the operator in the event that the operator's negligence or misconduct is adjudged to have been a proximate cause of the injury involved in the case. To obtain an adjudication that is personally binding on the operator, the defendant must proceed against the operator by cross-complaint and see that he is properly served. See Section 902 and the Comment thereto. Usually the fault of the defendant and the fault of the operator will be determined at the same time and by the same judgment. But if the defendant's cross-action against the operator is severed from the plaintiff's action and tried separately, the showing required by Section 901 for an adjudication that the operator is a joint tortfeasor consists merely of the judgment against the defendant and the fault of the operator. Section 901 does not permit a contest of the merits of the judgment against the defendant in the trial of the cross-action.

After the defendant has obtained a judgment establishing that the operator is a joint tortfeasor, his right to contribution is governed by Sections 875-880 of the Code of Civil Procedure, relating to contribution among joint tortfeasors. Thus, for example, the right of contribution may be enforced only after the tortfeasor has discharged the judgment or has paid more

than his pro rata share. The pro rata share is determined by dividing the amount of the judgment among the total number of tortfeasors; but where more than one person is liable solely for the tort of one of them--as in master-servant situations--they contribute one pro rata share. Consideration received for a release given to one joint tortfeasor reduces the amount the remaining tortfeasors have to contribute. And the enforcement procedure specified in Code of Civil Procedure Section 878 is applicable.

Under Section 901 the defendant is entitled to contribution from the operator even though the operator might not be independently liable to the plaintiff. For example, if the operator has a good defense based on Vehicle Code Section 17158 as against the owner, he may still be held liable for contribution under Section 901. The policy underlying Vehicle Code Section 17158 is to prevent collusive suits between the owner and the operator by which an insurance company can be defrauded. The reasons justifying Section 17158 are inapplicable when the operator's negligence is sought to be established by a third party who would be liable for all of the damage if the operator's concurring negligence or misconduct were not established. The third party and the operator are true adversaries and there is little possibility of collusion between them.

902. A defendant's right to contribution under Section 901 must be claimed, if at all, by cross-complaint in the action brought by the plaintiff.

Comment. Section 902 provides that the right to contribution created by Section 901 must be asserted by cross-complaint. If the person claiming contribution began the litigation as a plaintiff and seeks contribution for damages claimed by cross-complaint, Section 902 authorizes him to use a cross-complaint for contribution in response to the cross-complaint for damages.

The California courts previously have permitted the cross-complaint to be used as the pleading device for securing contribution. City of Sacramento v. Superior Court, 205 Cal. App.2d 398, 23 Cal. Rptr. 43 (1962). Section 902 requires the use of the cross-complaint so that all of the issues may be settled at the same time if it is possible to do so. If for some reason a joint trial would unduly delay the plaintiff's action--as, for example, if service could not be made on the contribution cross-defendant in time to permit a joint trial--or if for some other reason a joint trial would not be in the interest of justice, the court may order the actions severed. CODE CIV. PROC. § 1048. See Roylance v. Doelger, 57 Cal.2d 255, 261-262, 19 Cal. Rptr. 7, 368 P.2d 535 (1962).

903. For the purpose of serving under Section 417 a cross-complaint for contribution under this chapter, the cause of action against the contribution cross-defendant is deemed to have arisen when the plaintiff's cause of action arose.

Comment. Section 417 of the Code of Civil Procedure permits a personal judgment to be rendered against a person who is personally served outside the state if he was a resident of the state at the time of service, at the time of the commencement of the action, or at the time the cause of action arose. Section 903 has been included in this chapter to eliminate any uncertainty concerning the time a cause of action for contribution arises for purposes of service under Section 417. Section 903 will permit personal service of the cross-complaint outside the state if the cross-defendant was a resident at the time the plaintiff's cause of action arose.

904. Each party to the cross-action for contribution under this chapter has a right to a jury trial on the question whether the negligent or wrongful act or omission of the contribution cross-defendant was a proximate cause of the injury or damage to the plaintiff.

Comment. If the contribution cross-defendant were a codefendant in the principal action, he would be entitled to a jury trial on the issue of his fault. Section 904 preserves his right to a jury trial on the issue of his fault where he is brought into the action by cross-complaint for contribution. After an adjudication that the contribution cross-defendant is a joint tortfeasor with the defendant, neither joint tortfeasor is entitled to a jury trial on the issue of contribution. Judgment for contribution is made upon motion after entry of the judgment determining that the parties are joint tortfeasors and after payment by one tortfeasor of more than his pro rata share of that judgment. CODE CIV. PROC. §§ 875(c), 878. The court is required to administer the right to contribution "in accordance with the principles of equity." CODE CIV. PROC. § 875(b). As the issues presented by a motion for a contribution judgment are equitable issues, there is no right to a jury trial on those issues.

905. Failure of a defendant to claim contribution in accordance with this chapter does not impair any right to contribution that may otherwise exist.

Comment. Section 905 is included to make it clear that a person named as a defendant does not forfeit his right to contribution under Code of Civil Procedure Sections 875-880 if a joint tortfeasor is named as a codefendant in the original action and he fails to cross-complain against his codefendant pursuant to this chapter.

906. Subdivision (b) of Section 877 of the Code of Civil Procedure does not apply to the right to obtain contribution under this chapter.

Comment. Section 877(b) of the Code of Civil Procedure provides that a release, dismissal, or covenant not to sue or not to enforce a judgment discharges the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors. The policy underlying this provision of the Code of Civil Procedure is to permit settlements to be made without the necessity for the concurrence of all of the defendants. Without such a provision, a plaintiff's settlement with one defendant would provide that defendant with no assurance that another defendant would not seek contribution at a later time. Here, however, the close relationship of the parties involved would encourage plaintiffs to release operators from liability merely for the purpose of exacting full compensation from the third party tortfeasor and defeating his right of contribution. To permit such releases to discharge an operator's duty to contribute under these sections would frustrate the purpose underlying this law. Hence, the provisions of Code of Civil Procedure Section 877(b) are made inapplicable to contribution sought under this chapter.

907. There is no right to contribution under this chapter in favor of any person who intentionally injured the person killed or injured or intentionally damaged the property that was damaged.

Comment. Section 907 may not be necessary. Section 875(d) provides: "There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person." Section 907, however, is included to make clear that this substantive provision in the chapter relating to joint judgment tortfeasors applies to the right of contribution under this chapter. Moreover, Section 907 applies to intentionally caused property damage, whereas Section 875(d) appears to apply only to intentionally caused personal injuries.

SEC. 17. This act does not confer or impair any right or defense arising out of any death or injury to person or property occurring prior to the effective date of this act.

Comment. This act creates new liabilities and abolishes old defenses. In order to avoid making any change in rights that may have become vested under the prior law, the act is made inapplicable to the rights and defenses arising out of events occurring prior to the effective date of the act.