

#62

2/12/65

Memorandum 65-5

Subject: Study No. 62 - Imputed Contributory Negligence Under
Vehicle Code Section 17150

You have received Professor Friedenthal's study relating to the above subject. In it he recommends the repeal of the last clause of Vehicle Code Section 17150. The reasons for his recommendation are fully discussed in the study and need not be summarized here. But, in connection with this proposal, the Commission should consider the possible limitations on the plaintiff's right of recovery discussed at pages 67-68 of the study.

In this regard, the doctrine of imputed contributory negligence may be viewed not so much as a bar to the plaintiff's recovery of any relief as it is a legislatively determined choice of which negligent person is to pay for the plaintiff's relief. In this light, the requirement of joinder and contribution might be fairer to all parties than either requiring the permittee to bear the entire burden (as at present) or the third party to bear the entire burden (as might be likely if Section 17150 is modified as suggested).

If the Commission decides that imputed contributory negligence should not be repealed, it should then consider the alternatives proposed on page 74 of the study.

Respectfully submitted,

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