#62(L) 7/13/66

Memorandum 66-36

Subject: Study 62(L) - Vehicle Code Section 17150 and Related Statutes

Attached are two copies of the tentative recommendation on this subject dated January 1, 1966. We plan to approve the proposed legislation for printing as a preprinted bill at the July meeting.

We plan to approve the printing of this recommendation (the pamphlet containing our recommendation to the Legislature) at our August meeting. Hence, we request that you mark any revisions you believe should be made on one copy of the tentative recommendation and return it to the staff at the July meeting. We have already received comments from Mr. Stanton on this tentative recommendation. Because he suggested substantial revisions in the first page of the tentative recommendation, we have revised it to incorporate his suggestions and to make other changes and attached the revised page as Exhibit I (pink pages).

We made every effort to publish this tentative recommendation and to obtain comments from interested persons. We placed a notice in various State Bar publications and legal newspapers that the tentative recommendation was available for distribution. We sent out a number of copies of the tentative recommendation to persons who responded to this notice. The tentative recommendation was published in full (except for proposed legislation and Comments) in at least one Los Angeles legal newspaper. (We read only one.) The ~~research study~~, tentative recommendation, and proposed legislation with Comments were published in full in the March 1966 issue of the U.C.L.A. Law Review. We sent the tentative recommendation to the State Bar and to the Judicial Council. The Judicial

Counsel advises us that they do not plan to comment on the tentative recommendation. The Committee on Administration of Justice has sent us a report (discussed below). We are advised that it will be sometime in October-December before we will get further comments from the Committee. Mr. Harvey has discussed the tentative recommendation with Perry Taft, legislative representative of the insurance industry, and he presently plans to take no position on the proposal when it is before the Legislature in 1967.

The only comments we received on this tentative recommendation come from the Committee on Administration of Justice of the State Bar. See Exhibit II (white pages) attached, page 13. That Committee approves the extention of vicarious liability under the Vehicle Code to include "a wrongful act or omission," as well as negligence.

C.A.J. has not completed its review of the recommendation insofar as it would abolish imputed negligence to bar recovery by the "owner" of the vehicle from the third person in a case where the driver was negligent. (The Committee will most likely approve this proposal. See footnote on page 13.)

C.A.J. unanimously opposes special contribution statutes. "If the principle of contribution is sound, it should apply in all cases and the procedure should be uniform." One reason for our recommendation was that we concluded we could test a broader contribution statute in a limited area without the need to face problems that would no doubt be presented by a broader contribution statute. Moreover, we are not authorized to recommend a broader contribution statute. We suggest we consider the contribution statute in connection with Memorandum 66-37 and that any changes made in the contribution statute proposed to deal with personal

injury damages recovered by married persons be incorporated in the proposed legislation on Vehicle Code Section 17150.

The staff recommends that no changes be made in the proposed legislation. We recommend that the proposed legislation be approved for printing. We further recommend that the Commission request authority to study contribution between joint tort feasors.

Respectfully submitted,

John H. DeMoully
Executive Secretary

#62
Memo 66-36

EXHIBIT I

Revised 7/12/66

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 make a study to determine whether damages awarded to a married person for personal injuries should be separate or community property. The underlying reason for the study was that the doctrine of imputed negligence between spouses as developed by the courts turned on the nature of the property interest in the award. Prior to the enactment of Civil Code Section 163.5 in 1957, damages awarded for a personal injury to a married person were community property. Therefore, if an injury to a married person resulted from the concurrent negligence of that person's spouse and a third party, the injured person was not permitted to recover damages; for to allow recovery would permit the negligent spouse, in effect, to recover for his own negligent act. Section 163.5 of the Civil Code provides that damages awarded to a married person for personal injuries are the separate property of the injured spouse, thereby removing the theoretical basis for the doctrine imputing the negligence of one spouse to the other. Section 163.5 has created other problems, however, which required the Commission to proceed with the study directed by the Legislature. See Tentative Recommendation Relating to Whether Damages for Personal Injury to a Married Person Should be Separate or Community Property, (January 1, 1966).

During the course of its study, the Commission realized that any recommendation it might make concerning the nature of the property interest in a personal injury damage award to a married person would not solve the problems that existed, for many if not most actions for damages in which the negligence

of a spouse is a factor arise out of vehicle accidents. Under Vehicle Code Section 17150, the negligence of a person operating a vehicle with the permission of the owner is imputed to the owner, with the result that the nature of the property interest in the vehicle involved in an accident causing personal injuries can be determinative on the issue of imputed negligence between spouses. Therefore, the Commission sought and was granted authority in 1962 to study whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner. To permit the Commission to prepare a comprehensive recommendation that would deal with all the problems arising under Vehicle Code Section 17150, this authority was extended by the 1965 Legislature which authorized the Commission to study whether Vehicle Code Section 17150 and related statutes should be revised.

EXHIBIT II

[Extract from 1966 Annual Report, Part I, Committee on Administration of Justice of the State Bar dated June 15, 1966.]

Note: This report represents the views of the Committee on Administration of Justice of the State Bar only. The Board of Governors has not taken a position upon the subject matter hereof.

V

LAW REVISION MEASURE - IMPUTED NEGLIGENCE - COMMUNITY PROPERTY CHARACTER OF RECOVERY FOR PERSONAL INJURIES.

Two tentative recommendations of the Law Revision Commission, referred to this committee for comment, related to imputed negligence in various situations. The proposed measures, in tentative form, each provide a special contribution procedure. The procedural aspects are generally the same, regardless of the situation calling for their application.

Imputation of Negligence Between Spouses - Character of Recovery for Personal Injuries.

This study of the Commission entitled "Whether Damages for Personal Injury to a Married Person Should be Separate or Community Property" principally provides for the following amendments or additions to the Civil Code and Code of Civil Procedure:

CC 163.5. This code section, now providing that such damages are the separate property of the spouse, would be amended to provide such damages shall be community property, except those paid by one spouse to the other.

CC 164.6, (new). This section would expressly abrogate the rule of imputed negligence based upon the community property character of the recovery.

CC 164.7 (new). This section would provide that the "community property" recovery could not be used to discharge the liability of the tortfeasor spouse to the injured spouse (interspousal tort) or to discharge his liability to "contribute" to a third person joint tort feasor, until his separate property is exhausted.

Contribution Procedure

By addition of new sections 900 et seq., to the Code of Civil Procedure a third person tortfeasor, sued by an injured (innocent) spouse, is permitted to cross complain for contribution against the wrongdoing spouse. Such a cross complaint would be required to be filed either at the time of answer or within 100 days after service of the complaint upon him, whichever is later. Each cross complainant has a right to jury trial on the question whether a negligent or wrongful act or omission of the "contribution cross defendant" (alleged wrongdoing spouse) was a proximate cause of the injury or damage to the plaintiff (innocent spouse). It appears implied that a separate trial is contemplated.

It is the view of this committee:

First, there should be no change in Section 163.5, now providing that the recovery of a married person is his or her separate property. In the view of a substantial majority, the 1957 changes made by Section 163.5 are working reasonably well. It may be questioned whether, practically speaking, there are many problems arising from classification of the recovery as separate property. It is believed that commonly the recovery

will be commingled and become part of community funds or by oral agreement will be transmuted into community funds. As to inheritance rights, it may be questioned whether in the usual case much will remain for disposition by will. As to recovery by a husband, even if the property is his separate property, the court in a divorce or separate maintenance action may reach it by requiring the payment of alimony or approving a support agreement. Also, recovery usually includes damages for pain and suffering. These damages are personal and should be separate property. Finally, recovery may include, in the case of injury to the husband, capitalized future earnings. In some cases, the marriage may be dissolved soon after recovery. In such case, it is unfair to give the wife an interest in earnings of the husband after dissolution of the marriage. In short, the complications raised by the proposal are greater than the disadvantages of the present law in some situations.

A small minority, in the review of this matter, favored the proposal changing the character of the property to community for the reasons stated in the Commission's Report. In addition, the minority points out that it cannot be presumed that most marriages will terminate shortly after the recovery. The Commission approach, they urge, avoids tax and inheritance questions and gives the court greater flexibility in case of a divorce or separate maintenance action.

Second, this committee unanimously opposes special contribution statutes. If the principle of contribution is sound, it should apply in all cases and the procedure should be uniform.

Vehicle Code Sec. 17150 and Related Sections - Abrogation of Rule Imputing Negligence to Owner By Reason of Ownership - General Vicarious Liability Under Vehicle Code.

This study of the Commission entitled "Vehicle Code 17150 and Related Sections" proposes several things:

Imputed Liability of Owner Under Vehicle Code.

By amendment of Veh. C. 17151 and other changes, the measure proposes to abolish imputed negligence on account motor vehicle ownership. Thus, the "owner" could recover for his personal injuries, notwithstanding his ownership.

The driver, however, would be subject to a cross complaint for contribution by the third party tortfeasor. See under Item immediately above.

This committee opposes a special contribution statute for the reasons previously noted.

On the merits of amendments abrogating the rule of imputed liability to the "owner" of a motor vehicle, this committee has not completed its review. This phase will be carried forward.*

Vicarious Liability. The Commission's measure would extend vicarious liability under the Vehicle Code to include "a wrongful act or omission," as well as negligence.

The committee approves these changes, on the ground that present laws create arbitrary and fine distinctions, in practical application.

*See 1964 CAJ Report, 39 S. B. Jnl. p. 496, 512, recommending a statute abolishing imputed negligence as between spouses by reason of ownership of a motor vehicle. The Board declined to sponsor this legislation. The North during the past year has again reviewed this measure and a majority again favored its introduction in the Legislature. 1965 Conf. Res. 12 pertains to this subject. No final action has been taken on it by this committee.

STATE OF CALIFORNIA

C A L I F O R N I A L A W

R E V I S I O N C O M M I S S I O N

TENTATIVE RECOMMENDATION

relating to

VEHICLE CODE SECTION 17150 AND RELATED SECTIONS

January 1, 1966

California Law Revision Commission
30 Crothers Hall
Stanford University
Stanford, California

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

#62 1/1/66

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 make 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 two 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 include vicarious liability for wilful misconduct as do Sections 17707 and 17708 (imposing vicarious liability upon parents and signatories of minors' drivers license applications)? 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?

RECOMMENDATIONS

Vicarious liability of vehicle owners, bailees, and estate representatives

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 provide the public with protection against the "growing menace of death or injury in the operation of motor vehicles" by the "financially irresponsible." See Bayless v. Mull, 50 Cal. App.2d 66, 69-71, 122 P.2d 608 (1942). The section was based on the view that an automobile is "a dangerous instrumentality . . . in the hands of an incompetent or irresponsible driver." Ibid.

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 operator is guilty of wilful misconduct or 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 the operator's 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, but, incongruously, he is immune from liability for the wilful misconduct or intoxication of an operator. The more irresponsible

the operator, the more difficult it is to impose liability on the person who provided the operator with the vehicle and the less financial protection the public has against injuries caused by the operator.

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. Bayless v. Hull, 50 Cal. App.2d 66, 122 P.2d 608 (1942). 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 may be that the operator's

conduct cannot be covered by insurance because of the restrictions of Insurance Code Section 533. See Escobedo v. Travelers Ins. Co., 227 Cal. App.2d 353, 38 Cal. Rptr. 645 (1964); Escobedo v. Travelers Ins. Co., 197 Cal. App.2d 118, 17 Cal. Rptr. 219 (1961). Thus, third persons are provided by Section 17150 with the least protection against financial loss in the very cases where danger of death or injury 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. The term "wilful misconduct" as used in the guest statute has been interpreted as including 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 conduct described hereafter 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

seems to reflect a judicial propensity to construe it as being inapplicable whenever possible in order that a guest injured by the misconduct of another might be compensated. But to carry over such an interpretation of "wilful misconduct" to Section 17150 and deny an owner's vicarious liability when the driver's conduct is of a similar character 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 are 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 operator 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 was added to the California

law in 1937. Cal. Stats. 1937, Ch. 840, § 1. From that time until Vehicle Code Section 17158[1] (the guest statute) was amended in 1961, this provision merely prohibited the owner from recovering from the negligent third party. It did not affect his remedy against the negligent operator. 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. If the owner were not forced to recover his damages from the driver whom he selected, he probably would look only to the third party for relief regardless of the relative fault of the parties. By barring the remedy against the third party, the law prevented the owner from showing such favoritism. Since he selected the driver, the law required him to bear the risk of the driver's negligence and ability to respond in damages.

An amendment to the guest statute in 1961, however, has deprived an owner of his right to recover from his driver damages for personal injuries caused while the owner is 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 has 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.

Repeal of the provision of Section 17150 that imputes contributory negligence from operator to owner would restore the owner's right to recover from the negligent third party. This, however, would force the third party to bear the whole loss that his negligence caused only in part.

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 requiring both the negligent third party and the driver to share the burden of liability arising from their concurrent wrongful actions.

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.

It is recommended that an operator be required to contribute when he is 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, should not be permitted to obtain contribution if he intentionally caused the injury or damage.

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, 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 900-910 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 deceedent~~ , 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 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. 9. 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. 10. 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. 11. 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. 12. 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. 13. 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. 14. 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. 15. 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 or seeks to recover 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 or sought 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 or seeks tort damages upon his cross-complaint. Similarly, the defined term "defendant" includes a cross-defendant against whom a tort judgment has been rendered or is sought. 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.

902. If a money judgment is rendered against a defendant in a tort action for death or injury to person or property arising out of the operation of a motor vehicle, a contribution cross-defendant, 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 contribution cross-defendant was the operator of the vehicle;

(b) The plaintiff is a person who is made 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

(c) A 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 900-910 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, the provision of Section 17150 that imputes an operator's negligence to the vehicle owner limited the remedies available to an owner who was injured by the concurring negligence of a third party and the vehicle operator to damages from the operator alone. The imputed contributory negligence of the operator barred the owner's remedy against the negligent third party. In 1961, Section 17158 (the guest statute) was amended to

deprive the owner of his remedy against the operator, leaving him with no remedy for his tortiously inflicted personal injuries.

A fairer way to achieve the guest statute's purpose of guarding 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 902 establishes the right of the third party tortfeasor to obtain contribution from the operator whose misconduct contributed to the owner-plaintiff's loss. Under Section 902, 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 902 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 902, if the defendant (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 905 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 902 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 902 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 902 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 (the guest statute) as against the owner, he may still be held liable for contribution under Section 902. 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.

903. If a money judgment is rendered against a defendant in a tort action for death or injury to person or property arising out of the operation of a motor vehicle by the defendant, a contribution cross-defendant, 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 who is made liable for the negligent or wrongful act or omission of the defendant in the operation of the motor vehicle under Section 17150, 17154, 17159, 17707, or 17708 of the Vehicle Code; and

(b) A negligent or wrongful act or omission of the contribution cross-defendant is adjudged to have been a proximate cause of the death or injury.

Comment. Section 902 establishes the right of a judgment tortfeasor to obtain contribution from a vehicle operator whose concurring negligence or wrongdoing was a proximate cause of the damage or injury and the plaintiff is a person who is made liable by the Vehicle Code for the conduct of the vehicle operator. Section 903 is designed to give a negligent operator an equivalent right of contribution from a third party tortfeasor in those cases where, despite the guest statute (VEH. CODE § 17158), the operator may be held liable to a person who by statute is made vicariously liable for his misconduct. But see Section 910.

905. A defendant's right to contribution under this chapter must be claimed, if at all, by cross-complaint in the action brought by the plaintiff. The defendant shall file a cross-complaint for contribution at the same time as his answer or within 100 days after the service of the plaintiff's complaint upon the defendant, whichever is later.

Comment. Section 905 provides that the right to contribution created by this chapter 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 905 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 905 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).

Under existing law a cross-complaint must be filed with the answer unless leave of court is obtained to file the cross-complaint subsequently. CODE CIV. PROC. § 442. Under Section 905, however, a cross-complaint for

contribution may be filed as a matter of right within 100 days after the service of the plaintiff's complaint on the defendant even though an answer was previously filed. This additional time is provided because it may not become apparent to a defendant within the brief period for filing an answer (10-30 days) that the case is one where a claim for contribution may be asserted. Section 905 also limits the time within which a cross-complaint for contribution may be filed in order that the assertion of the contribution claim might not be unduly delayed.

Inasmuch as no right to contribution accrues until the liability of the defendant has been adjudicated and he has paid more than his pro rata share of the judgment, there is no time limit on the right to file a cross-complaint for contribution other than the limitation prescribed in Section 905. A plaintiff's delay in filing his complaint for damages until the end of his limitations period will have no effect on the defendant's right to file a cross-complaint for contribution within the time limits prescribed here.

906. For the purpose of service under Section 417 of a cross-complaint for contribution under this chapter, the cause of action against the contribution cross-defendant is deemed to have arisen at the same time that 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 906 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 906 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.

907. Each party to the cross-action for contribution under this chapter has a right to a jury trial on the question whether a 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 907 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.

908. 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 908 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.

909. 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 tortfeasors. Without such a provision, a plaintiff's settlement with one tortfeasor would provide that tortfeasor with no assurance that another tortfeasor would not seek contribution at a later time. Here, however, the close relationship of the parties involved would encourage plaintiffs to give releases from liability, not for the purpose of bona fide settlement of a claim, but merely for the purpose of exacting full compensation from the third party tortfeasor and defeating his right of contribution. To permit such releases to defeat the third party's right of contribution 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.

910. 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 910 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 910, 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 910 applies to intentionally caused property damage, whereas Section 875(d) appears to apply only to intentionally caused personal injuries.

SEC. 16. 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.