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Release - Construction and Operation - Joint Tortfeasors

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tion without weakening his other right to relief.[13]

Several states have adopted statutes which require an express agreement to condone acts constituting the cause for divorce on the grounds of cruelty.[14] Under such statutes express forgiveness in cases of cruelty is required,[15] and acts of sexual intercourse alone are not enough to establish the defense of condonation.[16] The law of condonation in North Dakota is governed by such a statute,[17] which requires in cases of cruelty, an express agreement to condone the offense.[18]

It is submitted that the result reached by the majority in the instant case was the correct one; as implying forgiveness as a matter of public policy will not save a marriage which has all but failed. Of course, divorce should not be encouraged nor allowed without cogent proof of marital discord; but in the same vein the defense of condonation should be one that must be established by more than mere physical acts of the parties without any intent to restore conjugal rights.

PAUL A. MUEHLER

RELEASE—CONSTRUCTION AND OPERATION—JOINT TORTFEASORS—The plaintiff was a passenger in an automobile which was involved in a collision with defendant's truck. The release he gave to the driver of the automobile recited the release of the driver and any and all other persons of any and every claim or cause of action arising out of the collision. The plaintiff later brought an action against the defendant as a joint tort-feasor. The Supreme Court of Pennsylvania *held*, two justices dissenting, that under the Uniform Contribution Among

13. Brown v. Brown, 171 Kan. 249, 232 P.2d 603 (1951) (stating that the patient endurance by one spouse of the ill-treatment of the other should never be allowed to weaken his or her right to relief); Fansler v. Fansler, 344 Mich. 569, 75 N.W.2d 1 (1956).

14. An example of such an enactment is: Cal. Civil Code § 118. "Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from excessive acts of ill-treatment which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone."

15. Whinnery v. Whinnery, 21 Cal. App. 59, 130 Pac. 1065 (1913); Brennan v. Brennan, 183 Ore. 269, 192 P.2d 858 (1948).

16. Schletewitz v. Schletewitz, 85 Cal. App. 2d 366, 193 P.2d 34 (1948).

17. N.D. Cent. Code § 14-05-13 (1961). ". . . .When the cause of divorce consists of a course of offensive conduct or arises in cases of cruelty from successive acts of ill treatment, which aggregately may consitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone."

18. Fleck v. Fleck, 79 N.D. 561, 58 N.W.2d 765 (1953).

Joint Tortfeasors Act[1] the release extinguished the defendant's liability. *Hasselrode v. Gnagey*, 172 A.2d 764 (Pa. 1961).

Prior to the adoption of the Uniform Contribution Among Joint Tortfeasors Act in Pennsylvania, this jurisdiction had ruled that a release of one joint tortfeasor operated as a release of the other joint tortfeasors, even though it was intended that the other wrongdoer should not thereby be released.[2] A number of other jurisdictions also followed this strict common law rule.[3] The reason given was one single injury could have but one satisfaction and the release, being most strictly construed against the releasor, is conclusive evidence of satisfaction.[4] Jurisdictions finding this rule too harsh have held that a joint tortfeasor will not be discharged in the presence of an express reservation of rights.[5] The rule that a mere covenant not to sue one joint tortfeasor does not relieve the remaining tortfeasor's liability is a further narrowing of the scope of the common law rule.[6]

The modern view, which further repudiates the common law rule, makes the intention of the parties to the release the test of whether or not the other joint tortfeasors not parties thereto are affected.[7] Some jurisdictions test whether the release was intended as full satisfaction of the releasor's entire claim.[8] This test is supplemented by the rule that, in general, release imports such compensation.[9] Without adoption of the Uniform Act itself, statutes have been enacted specifying that the release of one joint tortfeasor does not release others.[10]

1. Pa. Stat. Ann. tit. 12, § 2085 (1959). "A release by the injured person of one joint tortfeasor, whether before of after judgment, does not discharge the other tortfeasors unless the release so provides, but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release. . ."

2. Union of Russian Society v. Koss, 348 Pa. 574, 36 A.2d 433 (1944).

3. Shapiro v. Embassy Dairy Inc., 112 F. Supp. 696 (D.C.N.C. 1953); Morris v. Diers, 134 Colo. 39, 298 P.2d 957 (1956); Davidow v. Seyforth, 58 So. 2d 865 (Fla. 1952); Short v. Hudson Supply and Equipment Co., 191 Va. 306, 60 S.E.2d 900 (1950); Getzenlaner v. United Pacific Insurance Co., 52 Wash. 2d 61, 322 P.2d 1089 (1958).

4. Abb v. Northern Pac. Ry., 28 Wash. 428, 68 Pac. 954 (1902).

5. Devy v. Connecticut Co., 89 Conn. 74, 92 Atl. 883 (1915); Liouzis v. Corliss, 94 N.H. 377, 54 A.2d 365 (1947); Garke v. Holloran, 150 Ohio St. 476, 83 N.E.2d 217 (1948); see Connelly v. United States Steel Co., 161 Ohio St. 448, 119 N.E.2d 843 (1954).

6. Fagerhey v. Phoenix Flour Mills Co., 50 Ariz. 227, 71 P.2d 1022 (1937); Laurenzi v. Vranizan, 25 Cal. 2d 806, 155 P.2d 633 (1945); Martin v. Burney, 160 Fla. 183, 34 So. 2d 36 (1948); Hicklin v. Anders, 201 Ore. 128, 253 P.2d 897 (1953).

7. Daniel v. Turner, 320 S.W.2d 135 (Ky. 1959); Gronquist v. Olson, 242 Minn. 119, 64 N.W.2d 159 (1954); Welden v. Lehmann, 226 Miss. 600, 84 So. 2d 796 (1956); Black v. Martin, 88 Mont. 256, 292 Pac. 577 (1930).

8. Colby v. Walker, 86 N.H. 568, 171 Atl. 774 (1934); Burke v. Burnham, 97 N.H. 203, 84 A.2d 918 (1951); Fitzgerald v. Union Stockyards, 89 Neb. 393, 131 N.W. 612 (1911).

9. Colby v. Walker, 86 N.H. 568, 171 Atl. 774 (1934); Burke v. Burnham, 97 N.H. 203, 84 A.2d 918 (1951).

10. W. Va. Code Ann. § 5481 (1961). Effect of Statute discussed in Hardin v. New York Cent. R.R., 116 S.E.2d 697 (W. Va. 1960).

The Uniform Contribution Among Joint Tortfeasors Act, adopted in nine states,[11] also reverses the common law rule.[12] The basic purpose of the Act is to achieve a "sharing of common responsibility according to equity and natural justice".[13] The Act does not create new liability in tort, but merely creates the right to contribution among those already liable. Recourse is now allowed by the injured party against the tortfeasors remaining after the release for their pro-rata shares,[15] unless said tortfeasors were specifically discharged.[16]

Whether a release of one joint tortfeasor would release all in North Dakota has not been decided by the courts. Inasmuch as the Act was designed to reverse the common law rule,[17] the adoption of the Act by the Legislature[18] would indicate that release of all tortfeasors would require a release specifically stating the same. A release in the general terms used in this case would appear not to come within the spirit and letter of the Act.

DAVID E. NETHING

TORT—PARENT AND CHILD—CHILD'S RIGHT TO SUE PARENT—An unemancipated minor child brought an action against her father for personal injuries sustained by his simple negligence in the driving of an automobile in which the child was a passenger. The Superior Court granted the father's motion for a summary judgement and the plaintiff appealed. The appeal was certified to the Supreme Court. The Court, in a split decision, invoked the parental immunity doctrine. It *held* that an unemancipated minor child could no maintain a cause of action against her father. Proceeding further, the Court held that even though the father had an automobile liability policy obligating his insurer to pay all sums for which he was legally responsible, the suit could not be maintained. The three dissenting justices, advocating the general harshness and injustice of the rule, prayed for its overthrow. *Hastings v. Hastings,* 163 A.2d 147 (N.J. 1960).

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11. Arkansas, Delaware, Hawaii, Maryland, New Mexico, North Dakota, Pennsylvania, Rhode Island, and South Dakota.
12. Ginoza v. Takai, 40 Hawaii 691 (1955); Hackett v. Hyson, 72 R.I. 132, 48 A.2d 353 (1946).
13. Judson v. Peoples Branch and Trust Co., 17 N.J. 67, 110 A.2d 24 (1954).
14. Steger v. Egyud, 219 Md. 331, 149 A.2d 762 (1959).
15. Daugherty v. Herskberger, 386 Pa. 367, 126 A.2d 730 (1956).
16. Hilbert v. Roth, 395 Pa. 270, 273, 149 A.2d 648, 651 (1959) (dictum).
17. Hackett v. Hyson, 72 R.I. 132, 48 A.2d 353 (1946).
18. N.D. Cent. Code § 32-38-04 (1961).