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EQUITABLE RELEASE PROCEDURE IN EMPLOYER-EMPLOYEE TORT SITUATION

Aherron v. St. John's Mercy Medical Center

When an injured plaintiff brings a malpractice action against a hospital and its employee doctor, hospital liability is normally predicated upon the theory of respondeat superior. It is generally accepted law that if the injured plaintiff subsequently releases the employee doctor from all liability for the injury, then the plaintiff may no longer maintain the lawsuit against the hospital. A related, yet unsettled, area of the law concerns the situation where an injured plaintiff in a malpractice action releases the employer hospital from all liability for the doctor's negligence. In Aherron v. St. John's Mercy Medical Center, the Supreme Court of Missouri was confronted with the issue of what effect this situation has upon the ability of the injured plaintiff to maintain his cause of action against the employee doctor. A case of first impression in Missouri, the court adopted the minority position in the United States on this issue—the release of an employer has no effect on a later cause of action against the employee, except as to reduce the amount of damages recoverable by the amount of the earlier settlement. The Aherron case is significant because the court refused to adhere to the common law majority position on this issue, which provides that a release of an employer from all liability for a tort committed by its employee also acts as a release of the employee.

1. Aherron v. St. John's Mercy Medical Center, 713 S.W.2d 498 (Mo. 1986) (en banc).
2. See Mayfair Fabrics v. Henley, 101 N.J. Super. 363, 375, 244 A.2d 344, 352 (1968) ("In the usual case where an employer is held liable for negligent acts of an employee, the employer's liability is a vicarious one imposed under the doctrine of respondeat superior.").
4. 713 S.W.2d 498.
5. See Max v. Spaeth, 349 S.W.2d 1 (Mo. 1961). This case involved an auto accident where the plaintiff sued the driver of the other vehicle and his employer. The plaintiff released the driver from all liability for the accident, and then attempted to continue his suit against the employer. The court, in holding that a release of the servant also releases the master, said in dicta that a release of the master also operates as a release of the servant. Id. at 3.
7. For more examples of the common law position, see Hartigan v. Dickson,
Instead, the Aherron Court adopted the minority approach which brings about a more logical and equitable result.

This casenote will illustrate the propriety of the Aherron decision, which protects the injured party rather than the tortfeasor. Under this approach, an injured party is not unjustly prohibited from releasing one tortfeasor and pursuing an action against other responsible tortfeasors for the remaining damage. Instead, any amount obtained in the release settlement is deducted from any future recovery by the injured party to ensure against a double recovery.

The plaintiff, Thomas Aherron, sustained head injuries in an auto accident. He was transported to St. John’s Mercy Medical Center for treatment. At St. John’s, Dr. Robert Taylor, an employee of the hospital, took head x-rays. After diagnosing the injury as minor, Dr. Taylor sent Aherron home. The diagnosis, as it was later discovered, was incorrect, and Aherron was later readmitted to the hospital in a comatose state. Aherron had actually suffered a compound depressed skull fracture in the automobile accident. Aherron immediately underwent emergency surgery, but suffered severe neurological damage as a result of the injury.

The Aherrons proceeded to bring a malpractice action against Dr. Taylor and his employer, St. John’s Mercy Medical Center. Prior to trial, the hospital entered into a limited settlement agreement with the Aherrons whereby the hospital was discharged from all liability. The employee, Dr. Taylor, then moved for summary judgment on the suit against him, which the trial court granted, based upon their finding that a valid release of the master from all liability also acts as a release of the servant. The Missouri Court of Appeals reversed that decision and held that the limited release that the plaintiff entered into with the employer hospital did not operate as a release of the employee doctor from liability for his negligence.

The Missouri Supreme Court affirmed the appellate court decision, thereby allowing the injured plaintiff to settle with St. John’s and still sue Dr. Taylor for the remaining damages.


9. Id. at 2.

10. Id. St. John’s had filed two counts against the physician Taylor. The trial court earlier had dismissed the count for indemnification, and upon entering into the settlement St. John’s voluntarily dismissed the contribution claim against Taylor without prejudice. Id.

11. The trial court released Dr. Taylor even though Aherron specifically reserved a right in the release to sue Dr. Taylor for the remaining damages. Aherron, 713 S.W.2d at 499.

12. Aherron, slip op. at 2. In addition to reversing the trial court’s granting of a summary judgment in favor of Dr. Taylor on the Aherron’s medical malpractice claim, the court also reversed the dismissal of St. John’s cross-claim for indemnification against Taylor.

13. Aherron, 713 S.W.2d at 499. Treating this case as on original appeal
The issue involved in this case—whether or not a release of the master also acts as a release of the servant—is one of first impression in Missouri. When an injury complained of has resulted from the servant or employee's negligence alone (as in this case), any liability on the part of the master or employer is based upon the doctrine of respondeat superior. The employer's liability is not based upon any wrongdoing of its own, but rather is vicarious and based solely upon the employee's negligence. Therefore, it is logical that if an employee is released from all liability for his negligence, then any claim against the employer should also fail. A release of an employee eliminates the only ground upon which an employer might be held liable for an injury.

An employee's liability for his own negligence, however, is not dependent upon the negligence of the employer. Accordingly, there is no justification for extending the nonliability benefit of the employer to the employee. A federal court applying Missouri law on this issue found that a valid release of a city (employer) from all liability for its engineer's negligence also operated as a release to the city engineer. The Aherron Court, however, rejected that decision. Instead, it adopted the law and reasoning of a Delaware court which rejected the common law rule dealing with the release of a tortfeasor after examining the reasons underlying the common law rule.

Under article V, section 10 of the Missouri Constitution, the supreme court also reversed the trial court's judgment, which in essence was an affirmation of the appellate court decision. Id. 14. Another case addressed this issue but under different facts. Cox v. City of Freeman, 321 F.2d 887 (8th Cir. 1983). In Cox, the federal appellate court applied Missouri law where a contractor sued the city in tort for negligently hiring an engineer who allegedly caused delay in a construction project. The contractor entered into an agreement of accord and satisfaction with the city. The court held that under Missouri law a valid release of an employer from liability for tort operates to release an employee. Id. at 893.

15. State ex rel Algiere v. Russell, 359 Mo. 800, 803, 223 S.W.2d 481, 483 (1949) (en banc).
16. Aherron, slip op. at 3.
17. Id. Under the theory of respondeat superior, the master or employer has not committed an act for which he is independently liable, but is only liable through the act of his servant. Therefore, when a valid release of the servant is executed, that release extinguishes the master's liability. Id.
18. Id. at 3.
20. The Missouri Supreme Court in Aherron did not address this issue; however, the appellate court in Aherron stated that it was not bound by the federal decision in Cox for two reasons: first, the factual situation was different, and second, the state of Missouri was not bound by that federal decision. Aherron, slip op. at 3; see Morrow v. Caloric Appliance Corp., 372 S.W.2d 41 (Mo. 1963) (en banc). A federal court applying what they deem to be Missouri law is not binding upon a Missouri state court, and is to be considered only to the extent that it may shed some light upon what the law of the state is. Id. at 52.
The common law view found that where more than one tortfeasor has contributed to the injuries of a plaintiff, the release of one tortfeasor barred any recovery from the other tortfeasor. Because a master-servant tortfeasor relationship at common law was deemed indistinguishable from that of a joint tortfeasor relationship, the release rule applied to the master-servant relationship. Therefore, under the common law approach an injured plaintiff could not settle with or release an employer tortfeasor and still maintain his suit for remaining damages against the employee tortfeasor. The release of either the employer or the employee had the effect of releasing the other even though the document did not mention such a release and the parties did not in fact intend to accomplish that result. In fact, in some cases other tortfeasors were released from liability even where a release contained a statement specifically reserving a right of action against them.

The majority of courts still adhere to this common law rule that a release of the master from all liability for a negligent act of a servant also serves to release the servant. Although this is still the law in most jurisdictions, the case law supporting that position is relatively old, and recent decisions affirming that view have been sparse.

Missouri has chosen to adopt the minority view that a release of the employer does not act as a release of the employee. The approach that Missouri has adopted, although still a minority, appears to be the modern trend.

The appellate court in Aherron rejected the majority view because it recognized the important distinction between a release from liability of a

22. Clark, 377 A.2d at 369 (citing Brown v. City of Cambridge, 85 Mass. (3 Allen) 474 (1862)).
23. Id. A master and servant at common law were not considered joint tortfeasors because they could not procedurally be sued jointly, but the relationship was considered indistinguishable from joint tortfeasors in that a satisfaction from one still discharged both. Id.
24. See Clark, 377 A.2d at 369 (citing Annotation, Release of (or Covenant not to sue) Master or Principal as Affecting Liability of Servant or Agent for Tort, or Vice Versa, 92 A.L.R.2d 540, 540-45 (1963); Annotation, Release of (or Covenant not to sue) Master or Principal as Affecting Liability of Servant or Agent for Tort, or Vice Versa, 126 A.L.R. 1199, 1202-06 (1940)).
25. E.g., McLaughlin v. Siegel, 166 Va. 374, 377-78, 185 S.E. 873, 874 (1936) (citing Bland v. Warwickshire Corp., 160 Va. 131, 135, 168 S.E. 443, 444 (1933)). In Bland, the injured party executed a release to one tortfeasor while expressly reserving rights against the other. Bland, 160 Va. at 135, 168 S.E. at 444.
26. Aherron, slip op. at 3. (“There are cases from other jurisdictions on both sides of the issue, and the weight of authority favors the holding that release of the master also releases the servant.” (citation omitted)).
28. Aherron, 713 S.W.2d at 500.
29. Compare Hartigan v. Dickson, 81 Minn. 284, 83 N.W. 1091 (1900) and
master, and a release from liability of a servant, which the majority approach misses.20 The appellate court based its holding upon the principle that an employee's liability for his own negligence is not based upon the negligence of the employer.31 Therefore, if an employer is released from liability for a negligent act of an employee, the negligence of the employee is still present. While the employer is only secondarily liable, the employee is liable for one hundred percent of the harm caused by his negligent act.32

If the employer has paid part of a damage claim in a settlement, then the tortfeasor employee is still liable to the plaintiff for the remainder of the claim, and to the employer for indemnification.33 If the employee is released however, then logically, the employer should also be released as the employee is not entitled to any contribution or indemnification from the employer.34 The Missouri State Court affirmed the appellate court's decision, but relied on a recently enacted Missouri statute which was held by the lower court to be inapplicable to the Aherron case.35 The injury to Aherron occurred in 1978, five years before the statute was passed in 1983.36 That fact appears to nullify the application of the statute to Aherron due to the fact that statutes are presumed to only operate prospectively.37


30. Aherron, slip op. at 4. The appellate court in Aherron reversed the trial court, and rejected the common law rule based not upon a statutory ground, but rather upon a judicial approval of the minority approach. Id. at 6-7.

31. Id. at 3.


33. See Losito v. Kruse, 136 Ohio St. 183, 187-88, 24 N.E.2d 705, 707 (1940). The Losito court held that, while a tortfeasor employee will always be liable to a settling employer for indemnification, the employer's settlement does not establish liability against the employee in favor of the injured plaintiff. Id. The employee will be responsible to the plaintiff for the remaining damages only if he is found liable. Id. at 188, 24 N.E.2d at 707.

34. Clark, 377 A.2d at 371.

35. Aherron, 713 S.W.2d at 501. The applicable Missouri statute is Mo. Rev. Stat. § 537.060 (Supp. 1986). After granting transfer of this case, the Missouri Supreme Court treated the case as on original appeal under Article V, section 10, of the Missouri Constitution. As a result, when the supreme court also reversed the trial court decision, in essence the supreme court was affirming the appellate court decision. Aherron, 713 S.W.2d at 499.

36. Aherron, slip op. at 6.

37. See Aherron, 713 S.W.2d at 502 (citing Lincoln Credit Co. v. Peach, 636 S.W.2d 31 (Mo. 1982) (en banc), appeal dismissed, 459 U.S. 1094 (1983)) ("It is
However, it is also true that this presumption only applies to those statutes which affect substantive rights as opposed to remedial rights. 38 Although the injury to Aherron occurred in 1978, the release was given to St. John’s several months after the 1983 Missouri statute was enacted. Therefore, the court stated that a retrospective application of the statute in Aherron did not affect any substantive right or create any new obligation on the part of Dr. Taylor. 39 The Act did not affect the rights or liabilities of Dr. Taylor because the plaintiff could have chosen to sue only the doctor; he didn’t have to release the hospital, and in fact did so only by chance. 40 When the release was finally given after the effective date of the statute, the parties knew or should have known of the provisions of the Uniform Act. 41 As a result, the Missouri Supreme Court, although affirming the appellate court decision to follow the minority rule, did so based upon statutory grounds. 42

The controlling statute is Mo. Rev. Stat. § 537.060 (1983), 43 which is Missouri’s version of the Uniform Contribution Among Tortfeasors Act (Uniform Act). 44 The statute provides in part that,

generally said that a statute is presumed to operate prospectively [sic] only, unless a contrary intent of the legislature appears.”). 38. See Aherron, 713 S.W.2d at 502 (citing Clark v. Kansas City, S.L. & C. R.R., 219 Mo. 524, 532-33, 118 S.W. 40, 43 (1909).

39. Aherron, 713 S.W.2d at 502; see also Smith v. Fenner, 399 Pa. 633, 161 A.2d 150 (1960). In Smith, a cause of action arose on June 4, 1950 against three defendants. At the time of the accident, this jurisdiction’s law was that had the plaintiff entered into a settlement with one of the tortfeasors, the other two tortfeasors would be released from all liability to the plaintiff. Although the Uniform Act changed the effect of such a release, it did not change the cause of action nor did it increase what could have been the liability of any of the tortfeasors at the time the cause of action arose. At the time the release was executed, under the new law (Uniform Act), none of the tortfeasors had any vested right to be released from liability. Id. at 642, 161 A.2d at 155.

40. Aherron, 713 S.W.2d at 502. The court analogized the situation to provisions of the Uniform Contribution Among Tortfeasors Act which cover contribution among tortfeasors which have been held not to affect substantive rights. Each tortfeasor will be liable for the entire amount of judgment, and any reduction in liability resulting from a settlement by one joint tortfeasor would have been “a matter of chance rather than the result of a right which became fixed as of the time of the accident.” Augustus v. Bean, 56 Cal. 2d 270, 272, 363 P.2d 873, 875, 14 Cal. Rptr. 641, 643 (1961) (en banc); accord Village of El Portal v. City of Miami Shores, 362 So. 2d 275 (Fla. 1978).


42. The appellate court in Aherron did not make the distinction between the date of injury and date of release as the supreme court did. Rather the court found the statute to be inapplicable based upon the fact that injury occurred before the statute was passed. Aherron, slip op. at 6.


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When an agreement is given by release . . . to one of two or more persons liable in tort for the same injury or wrongful death, such agreement shall not discharge any of the other tortfeasors for the damage unless the terms of the agreement so provide; however, such agreement shall reduce the claim by the stipulated amount of the agreement, or in the amount of the consideration paid, whichever is greater.\(^4\)

The Missouri Supreme Court after determining the retrospective applicability of this statute, held that both St. John’s, a vicariously liable employer, and Dr. Taylor, a negligent employee, are “persons liable in tort for the same injury or wrongful death,” and are therefore subject to these statutory provisions controlling the release of a tortfeasor.\(^4\) Therefore, the court held that under this statute Aherron could release St. John’s from liability and still maintain a suit against Dr. Taylor for the remaining damages.\(^4\)

The Aherron Court relied heavily in its decision on a Delaware case, Clark v. Brooks,\(^4\) in which that state’s version of the Uniform Act was interpreted.\(^4\) The Delaware Court explained that prior to its adoption of the Uniform Contribution Among Tortfeasors Act, Delaware adhered to the majority rule regarding release of a tortfeasor in an employer-employee tort situation.\(^4\) With the adoption of the Uniform Act, however, that court re-


When a release . . . not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release . . . , or in the amount of the consideration paid for it, whichever is greater.

\textit{with Mo. Rev. Stat. § 537.060 (1983)}:

When an agreement is given by release . . . to one of two or more persons liable in tort for the same injury or wrongful death, such agreement shall not discharge any of the other tortfeasors for the damage unless the terms shall reduce the claim by the stipulated amount of the agreement, or in the amount of the consideration paid, whichever is greater.

\(^{45.}\) \textit{Mo. Rev. Stat. § 537.060 (1983)}.

\(^{46.}\) \textit{Aherron, 713 S.W.2d at 502}.

\(^{47.}\) \textit{Id. at 503}. After reversing the trial court on this issue, the cause was remanded to the trial court for reinstatement of Aherrons claim against Doctor Taylor. \textit{Id}.


\(^{49.}\) The statute involved was Delaware’s version of the U.C.A.T.A. \textit{Del. Code Ann. tit. 10, §§ 6301-6308 (1975)}.

jected the majority rule and interpreted the Uniform Act to allow an injured party to release an employer tortfeasor and pursue the employee tortfeasor for the remaining damages.\textsuperscript{51}

Like Missouri and Delaware, many jurisdictions have or are in the process of adopting statutes similar to the Uniform Contribution Among Tortfeasors Act which in essence rejects the majority view.\textsuperscript{52} Because of the changes in our society and protections afforded tortfeasors by these recently enacted statutes, the reasons underlying the establishment of the common law rules are no longer as compelling as they once were.

The reasoning behind the common law view is threefold. One reason behind the common law rule focused on the disparity of financial conditions between the employer and employee. It was thought that employees could not survive financially with the expense of paying a damages claim, and that therefore, it was more equitable to place the burden on the employer who had access to liability insurance.\textsuperscript{53} Today the liability insurance situation is much different since it has been shown that physicians are as fully equipped as the hospitals to absorb and distribute a damages claim.\textsuperscript{54}

The second major justification offered for the common law rule is that if a plaintiff settles with an employer for the precise injury which is the subject matter of his action against the employee, then that settlement is treated as a good faith election of damages to which the plaintiff must be content.\textsuperscript{55} This argument is weakened by the fact that there is a distinction between a release or settlement with the employer and a judgment against the employer. A suit carried to judgment against the employer, which would necessarily be for the full claim, if satisfied would be a bar to a suit against

\textsuperscript{51} Clark, 377 A.2d at 369.

\textsuperscript{52} See U.C.A.T.A., 12 U.L.A. 61 (Supp. 1986). Twenty-one states have officially adopted the Uniform Act. \textit{Id}. Other states such as Missouri have adopted statutes so similar to U.C.A.T.A. that they have been interpreted to have the same effect of abolishing the common law rule concerning release of a tortfeasor. E.g., Holve v. Draper, 95 Idaho 193, 505 P.2d 1265 (1973) (Although Idaho has not officially adopted the Uniform Contribution Among Tortfeasors Act, its state version of the Uniform Act was held by this court to abolish the common law rule concerning release of a tortfeasor).


\textsuperscript{54} See Rutigliano, \textit{Insurance Crisis for Doctors?}, 22 \textit{TRIAL} 28 (1986). According to a 1983 American Medical Association annual survey, the average physician paid only $5,800 for his 1982 malpractice premium, while his net income was $99,500. \textit{Id}

\textsuperscript{55} See Hartigan v. Dickson, 81 Minn. 284, 286, 83 N.W. 1091, 1092 (1900). In this case, a written release was given by an injured employee to the employer railroad company for which he worked. The court held that this release also operated as a release to the negligent foreman of the railroad. \textit{Id}.
the employee. However, a partial settlement with the employer does not amount to an adjudication of the entire claim. Therefore, that settlement cannot logically be used as a bar to a further suit against the servant if the plaintiff has not been fully compensated for his injuries.

According to the defendant Dr. Taylor in Aherron, this situation is analogous to that of a master settling with the plaintiff for the amount of his (master's) insurance policy. Under this argument, if the settlement does not cover the total amount of the plaintiff's damages, then he should not have settled. Since he did, it is presumed that his damages in principle have been covered, and he can no longer maintain his suit against the negligent servant because there are no more damages to be compensated for.

This theory is supported in some jurisdictions, the analysis apparently being that the damages for the tort are entire and not severable, and therefore the injured party is entitled to but one satisfaction. It has been stated, however, that the employee's liability for his own negligence is not dependent upon the negligence of the employer. Accordingly, there is no justification for extending the nonliability benefit of the employer to the employee. As long as the plaintiff is not recovering in excess of the damage amount entitled to, he should be able to settle with the hospital for less than the full amount of damages and still retain a cause of action against the doctor.

The third reason behind the common law rule derives from the fear of unjust enrichment on the part of the plaintiff; the notion being that if the plaintiff were allowed to settle with one tortfeasor and still sue another for additional damages, he might obtain a double recovery. This fear of unjust enrichment is adequately countermanded by the statutory rule adopted by the Aherron Court, which requires that any consideration paid for the release

58. Aherron, slip op. at 5.
61. Courts following this reasoning provide that any payment made by the master or employer reduces the claim of the injured plaintiff against the employee "pro tanto," but it cannot do more. In other words, any amount recovered from the settlement with the employer will be subtracted from the damages amount that the injured party will be entitled to recover in a later suit. See Losito, 136 Ohio St. at 190, 24 N.E.2d at 708.
62. Clark, 377 A.2d at 369 (citing Brown v. City of Cambridge, 85 Mass. (3 Allen) 474 (1862)).
be applied to reduce the plaintiff's total recovery for his injuries.63

Although the modern trend is now fueled by a statutory rejection of the common law rule, this trend began when a few courts responded judicially to the inequity of the common law rule. A few courts at common law were reluctant to apply the release principle applicable to joint tortfeasors to the employer-employee relationship.64 The view that a release of a master or employer does not release a servant or an employee was first taken in Losito v. Kruse,65 and then later adopted in Hamm v. Thompson.66 The main justification centered on the fact that in many states, at that time, there was no contribution among joint tortfeasors.67 Therefore, to adopt a rule that an employer and employee are to be considered joint tortfeasors to the extent that a release of the master acts as a release of the servant would operate as a grave injustice. By doing so, the released employee wrongdoer would be let off the hook. He would no longer be liable to the injured party as a result of the release, and would not be responsible to the employer due to the prohibition against contribution.68

These early cases rejected the common law rule based not upon any statutory authority, but rather upon a judicial disdain for the inequitable result of the common law rule. It is true, however, that the majority of cases decided in the absence of a specific statute still support the view that a valid

63. Aherron, 713 S.W.2d at 501. The statute provides that a release by an injured plaintiff to one of two or more persons liable in tort for the same injury "shall reduce the claim by the stipulated amount of the agreement, or in the amount of consideration paid, whichever is greater." Mo. REV. STAT. § 537.060 (Supp. 1986).

64. Granquist v. Crystal Springs Lumber Co., 190 Miss. 572, 577, 1 So. 2d 216, 218 (1941) (held that common law rule prohibiting contribution between joint tortfeasors did not apply to parties whose liability is based upon respondeat superior). Although the Granquist court considers the liability between master and servant to be joint and recognizes that they may be joined in one action, they are not joint tortfeasors. Id.

65. 136 Ohio St. 183, 24 N.E.2d 705 (1940). Losito involved an action by plaintiff Losito against Kruse and Kruse's employer for injuries sustained by Losito while riding in an automobile driven by defendant Kruse. Losito entered into a written settlement agreement with Kruse's employer while expressly reserving rights against Kruse. The court held that a partial settlement with the employer cannot act as a bar to a further suit against the employee except as to reduce damages. Id. at 190, 24 N.E.2d at 708.

66. 143 Colo. 298, 353 P.2d 73 (1960). Hamm involved an action for damages sustained when a car driven by defendant Hamm collided with a car driven by plaintiff, Thompson. The court held that the employer of defendant Hamm was liable under the doctrine of respondeat superior for negligence of his employee, but that a release of the employer did not constitute a release of its employee. Id. at 305, 353 P.2d at 76.

67. E.g., id. at 301, 353 P.2d at 75 ("[T]here is no contribution among conventional tortfeasors in this jurisdiction.").

68. Id.
release of one of the parties to the master-servant relationship releases the other.\textsuperscript{69}

Perhaps the major problem with this common law approach is that it fails to take into account the intent of the written release. Instead the approach emphasizes the existence of only one wrongful act for which there can be only one satisfaction and by doing so may effect a release of a tortfeasor when no such result was intended.\textsuperscript{70} Anticipating this inequity, many jurisdictions are enacting statutes in this area which focus on the intent of the parties involved in executing this type of release.\textsuperscript{71} Those jurisdictions dismiss the common law fiction that an injured party is entitled to a solitary satisfaction, whether it be for the full amount of damages or not.\textsuperscript{72}

There are four types of statutes which have been held to govern the question of whether or not a release of one of the parties in the master-servant relationship releases the other from liability for a tort committed by the servant. One type of statute provides that a release of one joint tortfeasor shall release all others unless clear intent to do otherwise is shown.\textsuperscript{73} The next type of statute looks solely to the release to ascertain the intent of the parties.\textsuperscript{74} The next category comprises statutes which provide that a plaintiff may release one tortfeasor without impairing his rights against the others.\textsuperscript{75} The fourth recognized type of statute, which includes the Uniform Contribution Among Tortfeasors Act, provides that the release of one joint tortfeasor shall not release the others unless an expression of contrary intention.


\textsuperscript{70} E.g., McLaughlin v. Siegel, 166 Va. 374, 377-78, 185 S.E. 873, 874 (1936) (citing Bland v. Warwickshire Corp., 160 Va. 131, 135, 168 S.E. 443, 444 (1933)). In \textit{Bland}, the court completely disregarded the intent of the party executing the release to one tortfeasor even though the injured party expressly reserved rights against the other tortfeasor. 160 Va. at 135, 168 S.E. at 444.

\textsuperscript{71} E.g., U.C.A.T.A. § 4, 12 U.L.A. 63 (1975). A release “does not discharge any of the other tortfeasors from liability for injury . . ., unless its terms so provide.” \textit{Id.} Although the various state contribution statutes discern the parties intent in a written release in different manners, emphasis is still placed to some degree on whether a plaintiff intended to release other tortfeasors from liability.

\textsuperscript{72} The common law approach allowed an injured plaintiff only one satisfaction for his damages; therefore, once a release was given to one tortfeasor, all others were released regardless of the plaintiff's intent involved in executing a written release. This “one satisfaction rule” even went so far as to deny a plaintiff's claim against one tortfeasor even though an express reservation of rights as to that tortfeasor had been included in a written release. \textit{See McLaughlin}, 166 Va. at 377-78, 185 S.E. at 874 (citing Bland v. Warwickshire Corp., 160 Va. 131, 135, 168 S.E. 443, 444 (1933)).

\textsuperscript{73} E.g., La. CIV. CODE ANN. art. 2203 (West 1952).

\textsuperscript{74} E.g., Ala. CODE § 12-21-109 (1975).

\textsuperscript{75} E.g., W. VA. CODE § 55-7-12 (1981).
This relatively recent shift to consideration of the parties' intent involved in executing a release derives from the problems associated with allowing just one satisfaction per injury, whether it be for the full claim or not. This "one satisfaction rule" not only discourages settlements, but also promotes injustice in that it protects the remaining tortfeasors, and may prevent the injured party from recovering his full damages.77

The Uniform Contribution Among Tortfeasors Act has facilitated the declining acceptance of the old common law rule pertaining to the release of a tortfeasor. Most cases which have interpreted the state versions of the Uniform Act in the employer-employee context have abolished the harsh majority rule which barred an injured party from releasing one and suing the other.78 However, certain jurisdictions are in dispute as to whether or not the employer-employee situation is covered under the Uniform Contribution Among Tortfeasors Act.79 The dispute concerns a reference to joint tortfeasors contained in the 1939 version of the Uniform Act.80 It is recognized generally that a master and servant are not considered to be joint tortfeasors because the liability of the master is solely derivative.81 "The common law denied contribution among tortfeasors based upon the theory that wrongdoers did not deserve the assistance of the courts in achieving equal or proportionate distribution of a common burden."82 In 1939 the

77. The "one satisfaction rule" protects remaining tortfeasors to the extent of the difference between the plaintiff's total damages and the amount received by the plaintiff from the settling tortfeasor. Although the employee tortfeasor will be liable to the settling employer tortfeasor for indemnity, the employee tortfeasor will be released from any liability to plaintiff for remaining damages.
79. Compare Blackshear v. Clark, 391 A.2d 747 (Del. 1978) (held U.C.A.T.A. was applicable to situation where employer-hospital and employee-physician were severally liable for same injury) and Smith v. Raparot, 101 R.I. 565, 225 A.2d 666 (1967) (applying an act of the same wording as in Clark, this court held that the employer-employee relationship was within the definition of joint tortfeasor as used in the act) with Craven v. Lawson, 534 S.W.2d 653, 656 (Tenn. 1976) (provision of Uniform Contribution Among Tortfeasors Act that a release or covenant not to sue one tortfeasor does not discharge any other tortfeasor would have no application to master-servant or employer-employee relationship in which liability was solely derivative).
81. An employer and employee are not considered joint tortfeasors because no right of contribution exists between them, as it does in joint tortfeasor relationships. The liability of the employer is vicarious, in that it is based solely upon the negligence of the employee, as opposed to joint tortfeasors where liability of each tortfeasor is actual.
82. See Craven, 534 S.W.2d at 656.
commissioners on Uniform State Laws promulgated the first Uniform Act providing for contribution among joint tortfeasors. The 1939 Act and its release provisions were made applicable only to joint tortfeasors, whose definition appeared to exclude employer-employee tortfeasors. With a view towards reconciling this and other serious problems that existed within the Uniform Act, the commissioners in 1955 promulgated a revised version of the Uniform Act. The 1955 revised Uniform Act deleted the term joint tortfeasors and replaced it with "two or more persons liable in tort for the same injury." The decisions which have interpreted that 1955 revised version of the Uniform Act in similar state contribution statutes are almost unanimous in holding that this definition includes the employer-employee situation. The reason for this interpretation is that an employer and employee, while not jointly liable in terms of contribution, are severally liable in tort for the same injury. Thus, the basis of liability (joint or vicarious) is irrelevant; it is only the fact that an employer and employee are severally liable that causes the relationship to come under the Uniform Act.

In addition, although it is true that when a tort is committed by an employee, the employer and employee are not considered joint tortfeasors in terms of liability, the relationship is considered indistinguishable from that of joint tortfeasors in a release context. This means that under the common law, the employer and employee are considered as two or more persons liable in tort for the same injury. The common law considered the master-servant relationship and common law joint tortfeasor relationship to be indistinguishable, not upon any consideration of liability to the injured party, but upon a desire to prevent unjust enrichment on the part of the injured plaintiff. Therefore, whether the liability of the tortfeasors was joint or otherwise was inconsequential. See Brown v. City of Cambridge, 85 Mass. (3 Allen) 474 (1862).
law rule, it was inconsequential as to the effect of that release on the other tortfeasors whether the other party was a joint tortfeasor or an employee. That release operated as a release to the other tortfeasor, regardless of whether liability was joint or otherwise. The failure on the part of the common law to distinguish between the master-servant relationship and joint tortfeasors in a release context lends credence to the belief that modern joint tortfeasor rules should apply to the master-servant relationship; hence the applicability of the Uniform Contribution Among Tortfeasors Act to the master-servant tortfeasor relationship.

A second dispute involving the Uniform Act concerns the fact that when a tort is committed by an employee, although both the employee and employer will be liable for damages, only the employer has a right to indemnification. Where the right to indemnity exists between tortfeasors, no right of contribution exists. The proposition has been advanced that where no right of contribution exists, the Uniform Contribution Among Tortfeasors Act does not apply. Most courts have rejected that argument, because although the Uniform Act deals primarily with contribution, it expressly recognizes tort situations where indemnity is available.

In spite of the modern trend, a number of jurisdictions have adhered to the majority rule pertaining to release of a tortfeasor and are divided on the issue of why they have done so. Some courts have reasoned that a partial

90. The minority view takes the opposite approach that a release of a tortfeasor from all liability does not always release other tortfeasors from liability, regardless of whether the liability is joint or otherwise. If an employee-tortfeasor is released from liability, then the minority view follows the majority approach, and extends that release from liability to the employer-tortfeasor. However, the minority view does distinguish between joint and vicarious liability in a release when an employer tortfeasor is released from liability for the negligence of an employee. Under the minority approach, the release from liability would not be extended to the employee tortfeasor as the majority approach would do. Clark, 377 A.2d at 371.

91. Id. at 370.

92. F. MECHEN, LAW ON AGENCY § 1293-4, at 937-38 (1914); 42 C.J.S. Indemnity § 21, at 597-98 (1944); RESTATEMENT (SECOND) OF Restitution § 96, at 418-21 (1937).


94. Clark, 377 A.2d at 371. The defendant in this case argued that apportionment of damage liability was one-directional, in that the employer is entitled to indemnification, while the employee is not. Therefore, the defendant claimed that title 10, section 6304 of the Delaware Code (Delaware's Uniform Act) was inapplicable to the case, because both tortfeasors were not entitled to contribution. Id.

95. U.C.A.T.A. § 1(f) commissioner's note, 12 U.L.A. 63, 67 (1965). But see Craven, 534 S.W.2d at 656 (the court accepted this argument in rejecting applicability of U.C.A.T.A. to an employer-employee tort situation). "Where no right of contribution exists, the Act does not purport to intrude. Thus the section providing that a covenant not to sue discharges the covenantee from contribution and does not discharge any other tortfeasor, has no application to the master-servant relationship, where liability is solely derivative." Id.
release and an acceptance of satisfaction of judgment are in principle the same and have a similar effect. That effect is that the release operates to extinguish the cause of action against other tortfeasors, even if the injured plaintiff has reserved the right to sue other tortfeasors. Some jurisdictions claim that it is impermissible to apportion the damages among those responsible by releasing one party and then showing that one party was liable and the other not. The most recent cases advocating the old rule do look more to the intent of the release, but, in the absence of a specific statute, adhere to the majority rule that a valid release of one tortfeasor to the master-servant relationship releases the other.

Many reasons have been suggested for abandoning the common law rule. Some courts use an intent/full satisfaction test wherein an action against the servant is not denied unless the injured plaintiff intended to release the other tortfeasor, and the settlement was intended to be in full satisfaction of the claim. Other cases have held that the consequences of the release of a master or servant vis-a-vis the other are no different than the release of one actual joint tortfeasor vis-a-vis another, and therefore find no release if that is the intent of the parties.

Other cases hold that a tortfeasor threatened with a lawsuit has the right to buy his peace. This settlement, however, operates as a release only to the party affected, and if the damages claimed have not been fully satisfied, the plaintiff may sue the other tortfeasor for the remaining amount.

These courts recognize what the Uniform Contribution Among Tortfeasors Act is attempting to change about the majority rule on this issue. The primary concern in these situations is that an injured party receive whatever sum he is entitled to. The propriety of the Uniform Act and these cases is that they are designed to protect the injured party rather than the wrongdoer. This is done without any prejudice against the wrongdoer because the plaintiff is entitled to one full satisfaction and no more. Of course, if the plaintiff receives full satisfaction from one tortfeasor, the others will be released.

The approach that the Aherron Court adopted is much more logical and equitable than the common law rule. Although it is still the minority rule, other courts are likely to approve of this approach in the future. The de-

96. See McLaughlin v. Siegel, 166 Va. 374, 381, 185 S.E. 873, 875 (1936).
97. Hartigan v. Dickson, 81 Minn. 284, 286, 83 N.W. 1091, 1092 (1900).
departure from the common law rule of releases was originally formulated in the context of concurrent acts of negligence, where each tortfeasor was actually liable, rather than being vicariously liable. It is logical however, that this departure from the common law rule be extended to the employer-employee tortfeasor relationship. Although both tortfeasors are not actually liable, each is independently liable to the injured plaintiff. Therefore, the rationale behind this departure from the common law rule “is equally apposite whether the liability is actual or vicarious — namely, that plaintiff is entitled to pursue all those who are independently liable to him for his harm until one full satisfaction is obtained.”

The Aherron decision is also important because the Missouri Supreme Court recognized that its adopted view that a release to one tortfeasor does not discharge other tortfeasors until full satisfaction has been made, while still a minority, is better reasoned than the majority view. This trend has been fueled by a recent acknowledgement that the Uniform Contribution Among Tortfeasors Act is applicable to employer-employee situations. The trend also has the effect of encouraging settlements, which is a welcome contribution to the law. Finally, the Aherron decision is significant in that it directs the parties towards an equitable solution. The injured plaintiff is assured of a satisfaction that is proportionate to the damages to which he or she is entitled. Therefore, a plaintiff’s cause of action against each and every party liable in tort for the damages is not unjustly restricted.

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104. Id.
105. Id.