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# Shor v. Paoli, 353 So. 2d 825 (Fla. 1977)

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**Torts**—RIGHT OF CONTRIBUTION IS NOT BARRED BY DOCTRINE OF INTERSPOUSAL IMMUNITY IN FLORIDA—*Shor v. Paoli*, 353 So. 2d 825 (Fla. 1977).

On January 20, 1973, an accident occurred involving a vehicle owned by Sweet & Blossom, Inc. and operated by Gerald Paoli and a vehicle owned and operated by Minnie Shor. David Shor, Minnie's husband and a passenger in her car, was injured in the collision. Sweet & Blossom, Inc. sued Minnie Shor for the damages allegedly caused by negligent operation of her automobile. Mrs. Shor filed a counterclaim against Paoli for damages resulting from his alleged negligence. Intervening in the action, David Shor sought recovery for his injuries from Paoli. The jury found Paoli sixty-five percent at fault and Mrs. Shor thirty-five percent at fault, awarding David Shor $12,000 in damages against Paoli, Sweet & Blossom, Inc., and the company's insurer, Fireman's Fund Insurance Company.

On August 22, 1974, Paoli filed a complaint in the Broward County Circuit Court seeking contribution from Mrs. Shor as a joint tortfeasor under section 768.31, Florida Statutes.[1] He asked for fifty

1. (1977). Section 768.31 provides:

(1) SHORT TITLE.—This act shall be cited as the "Uniform Contribution Among Tortfeasors Act."

(2) RIGHT TO CONTRIBUTION.—

(a) Except as otherwise provided in this act, when two or more persons become jointly or severally liable in tort for the same injury to person or property, or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally (willfully or wantonly) caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement or in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This act does not impair any right of indemnity under existing law. When one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

percent of the $12,000 judgment, which he had previously satisfied.[2] Circuit Judge L. Clayton Nance denied Paoli's request for contribu-

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(g) This act shall not apply to breaches of trust or of other fiduciary obligation.

(3) PRO RATA SHARES.—In determining the pro rata shares of tortfeasors in the entire liability:

(a) Their relative degrees of fault shall be the basis for allocation of liability.

(b) If equity requires, the collective liability of some as a group shall constitute a single share.

(c) Principles of equity applicable to contribution generally shall apply.

(4) ENFORCEMENT.—

(a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) When a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants, by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right of contribution is barred unless he has either:

1. Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within 1 year after payment, or

2. Agreed, while action is pending against him, to discharge the common liability and has within 1 year after the agreement paid the liability and commenced his action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

(5) RELEASE OR COVENANT NOT TO SUE—When a release or a covenant 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 the same 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 the covenant, or in the amount of the consideration paid for it, whichever is the greater; and,

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

(6) UNIFORMITY OF INTERPRETATION.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

(7) PENDING CAUSES OF ACTION.—This act shall apply to all causes of action pending on June 12, 1975, wherein the rights of contribution among joint tortfeasors is [*sic*] involved and to cases thereafter filed.

2. Appellants' Brief at 3, Paoli v. Shor, 345 So. 2d 789 (Fla. 4th Dist. Ct. App. 1977). Paoli amended his complaint on August 19, 1975, naming Allstate Insurance Company, Mrs. Shor's insurer, as an additional defendant. *Id.* at 1.

tion from Mrs. Shor, citing the doctrine of interspousal immunity as a bar. On appeal, the Fourth District Court of Appeal of Florida[3] reversed the circuit court and certified the question at issue to the Florida Supreme Court.[4] The supreme court held that the doctrine of interspousal immunity does not bar contribution from a joint tortfeasor who is the spouse of the injured party.[5]

Prior to the enactment of the Uniform Contribution Among Tortfeasors Act (hereinafter referred to as the Act) by the 1975 Florida Legislature,[6] Florida did not allow contribution among joint tortfeasors.[7] Instead, Florida adhered to the longstanding common law rule against contribution among joint tortfeasors, which originated in England in 1799 in *Merryweather v. Nixan.*[8] In *Merryweather,* the court denied contribution between joint tortfeasors because the act in question was a willful and malicious joint wrong.[9] American courts eventually expanded the rule in *Merryweather* to include not only cases of willful and malicious joint conduct, but also cases in which the independent negligence of two or more persons caused a single harm.[10]

The following statement by the Florida Supreme Court aptly summarizes the reasons why the legislature abolished the traditional rule against contribution and adopted the right of contribution among joint tortfeasors:

> There is no equitable justification for recognizing the right of the plaintiff to seek recovery on the basis of apportionment of fault while denying the right of fault allocation as between negligent defendants. Courts in other states which have receded from the doctrine of no contribution have emphasized the unfairness and injustice of placing the entire burden upon the one who happens to be called upon to pay the entire damages where such payment

3. Paoli v. Shor, 345 So. 2d 789 (Fla. 4th Dist. Ct. App.), *aff'd,* 353 So. 2d 825 (Fla. 1977).

4. 345 So. 2d at 790. The question certified was:

> DOES THE COMMON-LAW DOCTRINE OF INTERSPOUSAL IMMUNITY CONTROL OVER THE UNIFORM CONTRIBUTION AMONG JOINT TORTFEASORS ACT (75-108 LAWS OF FLORIDA, SECTION 768.31, FLORIDA STATUTES) TO PREVENT ONE TORTFEASOR FROM SEEKING A CONTRIBUTION FROM ANOTHER TORTFEASOR WHEN THE OTHER TORTFEASOR IS THE SPOUSE OF THE INJURED PERSON WHO RECEIVED DAMAGES FROM THE FIRST TORTFEASOR?

*Id.*

5. Shor v. Paoli, 353 So. 2d 825 (Fla. 1977).

6. FLA. STAT. § 768.31 (1977).

7. Lincenberg v. Issen, 318 So. 2d 386 (Fla. 1975).

8. 101 Eng. Rep. 1337 (1799).

9. Reath, *Contribution Between Persons Jointly Charged for Negligence—Merryweather v. Nixan,* 12 HARV. L. REV. 176, 179 (1898).

10. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 50, at 306 (4th ed. 1971).

> should in justice be shared by another who shared the responsibility for the injury.[11]

According to the 1975 Act, the following requirements must be met for the right of contribution among joint tortfeasors to attach: two or more persons must be jointly or severally liable in tort for the same injury to a person;[12] a tortfeasor must have paid more than his pro rata share of the common liability;[13] and the recovery must be limited to the amount paid by a tortfeasor in excess of his pro rata share of the common liability.[14] Additionally, the tortfeasor must not have intentionally caused or contributed to the injury.[15]

Shortly after the adoption of the Act, the First District Court of Appeal, in *Mieure v. Moore,*[16] specifically denied contribution from a joint tortfeasor whose spouse and children were the injured parties, holding that the doctrine of family immunity precluded common liability. In *Mieure,* a car driven by Moore and occupied by his family struck a parked tractor-trailer. Moore alleged that the tractor-trailer was negligently parked and sought damages for the injuries he and his family had sustained. The owners of the tractor-trailer counterclaimed for contribution from Moore for his pro rata share of any damages they might have to pay Moore's family.

The *Mieure* court held that under Florida law neither Moore's wife nor his children could sue him in tort for the injuries they had sustained in the accident. The court reasoned that because Moore was not liable to his family in tort, common liability did not exist between Moore and the owners of the tractor-trailer, so the owners could not seek contribution from Moore. However, the court did express some degree of dissatisfaction with this result and stated, "the time may be ripe for the abrogation of the family immunity doctrine. It appears that this would be consistent with the recent development that a loss should be apportioned among those whose fault contributed to the event, as well as providing for contribution among joint tortfeasors."[17]

The Florida Supreme Court in *Paoli* did not reach the issue of family immunity; it did abrogate the doctrine of interspousal immunity as a bar to contribution among joint tortfeasors. The court's ruling was premised on several points adopted from the district

11. Lincenberg v. Issen, 318 So. 2d 386, 391 (Fla. 1975).
12. FLA. STAT. § 768.31(2)(a) (1977).
13. *Id.* § 768.31(2)(b).
14. *Id.*
15. *Id.* § 768.31(2)(c).
16. 330 So. 2d 546 (Fla. 1st Dist. Ct. App. 1976).
17. *Id.* at 547.

court's earlier decision in the case. These points require a more extensive examination than that afforded by the supreme court's opinion.

The district court—and apparently the supreme court as well—observed that the doctrine of interspousal immunity is based on a desire to protect the family unit. Since the contribution Paoli sought from Mrs. Shor did not threaten the stability of the Shor family unit, it would be illogical in this instance for the doctrine of interspousal immunity to control over section 768.31. Paoli was not asking Mrs. Shor to sue Mr. Shor. He was asking only that he be relieved of the obligation to pay Mrs. Shor's pro rata share of Mr. Shor's judgment. Since it was not a direct suit between husband and wife, the court reasoned that no harm was done to the doctrine of interspousal immunity.[18]

Additionally, the district court noted that the purpose of contribution among tortfeasors is to apportion, among the negligent tortfeasors, the burden of payment to innocent injured third parties. The burden of payment to an innocent injured third party (Mr. Shor) would not have been apportioned if Mrs. Shor had not been required to pay her pro rata share. Thus the purpose of the Act could only be fulfilled by allowing Paoli to obtain contribution from Mrs. Shor.[19]

The court reasoned that it would be unfair for Paoli to pay for all of Mr. Shor's injuries when Mrs. Shor was partially responsible for them. As Judge James C. Dauksch, Jr. said for the majority, "[t]o say that Shor doesn't have to contribute and account for her wrongdoing would be unfair to Paoli and a windfall to Shor."[20]

Chief Judge Mager wrote a specially concurring opinion and noted that the Florida Legislature could have excepted the doctrine of interspousal immunity from the application of contribution, as it had excepted fiduciary obligations in section 768.31(2)(g).[21] Chief Judge Mager also pointed out that the right to contribution appeals to one's sense of justice, especially when the interspousal immunity is viewed in the modern-day setting.[22]

District Judge Alderman dissented from the majority position in *Paoli,* believing the court had diluted the doctrine of interspousal immunity. Judge Alderman stated that it was within the power of the Florida Supreme Court, not the district court, to make such a

18. 345 So. 2d at 790.

19. *Id. See* Frier's, Inc. v. Seaboard Coastline R.R., 355 So. 2d 208 (Fla. 1st Dist. Ct. App. 1978).

20. 345 So. 2d at 790.

21. *Id.* at 791.

22. *Id.* (citing a similar case, Zarrella v. Miller, 217 A.2d 673 (R.I. 1966)).

modification. Judge Alderman also objected to the majority's holding because Mrs. Shor and Mr. Paoli had no common liability to Mr. Shor since the doctrine of interspousal immunity precluded Mr. Shor from asserting a claim against his wife.[23]

In affirming the district court decision in *Paoli* the Florida Supreme Court did not consider relevant cases from other jurisdictions, most notably the seventeen other states which already had, at the time of the *Paoli* decision, adopted the Act.[24] Because the purpose of uniform laws,[25] of which the Act is one, is to make state laws uniform in certain areas, it is surprising that the court did not ask whether a uniform, majority view has emerged in other states which have adopted the Act. Apparently the court's decision was founded more on a desire for equity than on a desire for uniformity.

As of January 1, 1979, nineteen states had adopted the Act.[26] Contribution is allowed in at least fifteen additional states, pursuant to case law or statutes similar to the Act.[27] Those states that have adopted the Act require a common liability to the injured party for the right of contribution to attach.[28] Many states which

23. 345 So. 2d at 791.

24. The eighteen states that had adopted the Uniform Contribution Among Tortfeasors Act at the time of the *Paoli* decision were Alaska, Arkansas, Colorado, Delaware, Florida, Hawaii, Maryland, Massachusetts, Mississippi, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, and Tennessee. Wyoming has since adopted the Act. 12 UNIFORM LAWS ANN. *Contribution Among Tortfeasors* § 1 (Supp. 1979).

25. The Act is one of 22 Uniform Acts relating to civil procedure and remedial laws drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. *Id.* at iii-iv.

26. *See* note 24 *supra.*

27. Cases showing adoption of contribution though not under the Act, in these 15 states are: *Texas,* Ft. Worth & Den. Ry. v. Threadgill, 228 F.2d 307 (5th Cir. 1955); *Virginia,* American Employers' Ins. Co. v. Maryland Cas. Co., 218 F.2d 335 (4th Cir. 1954); *New York,* American Mut. Liab. Ins. Co. v. Matthews, 182 F.2d 322 (2d Cir. 1950); *District of Columbia,* Knell v. Feltman, 174 F.2d 662 (D.C. Cir. 1949); *Louisiana,* Shannon v. Massachusetts Bonding & Ins. Co., 62 F. Supp. 532 (W.D. La. 1945); *Alabama,* Vandiver v. Pollak, 19 So. 180 (Ala. 1895); *California,* Augustus v. Bean, 363 P.2d 873 (Cal. 1961); *Georgia,* Eidson v. Maddox, 24 S.E.2d 895 (Ga. 1943); *Iowa,* Wright v. Haskins, 260 N.W.2d 536 (Iowa 1977); *Kentucky,* Elpers v. Kimbel, 366 S.W.2d 157 (Ky. 1963); *Michigan,* Caldwell v. Fox, 231 N.W.2d 46 (Mich. 1975); *Minnesota,* Skaja v. Andrews Hotel Co., 161 N.W.2d 657 (Minn. 1968); *Missouri,* State *ex rel.* McClure v. Dinwiddie, 213 S.W.2d 127 (Mo. 1948); *West Virginia,* Haynes v. City of Nitro, 240 S.E.2d 544 (W. Va. 1977); *Wisconsin,* Farmers Mut. Auto. Ins. Co. v. Milwaukee Auto. Ins. Co., 99 N.W.2d 746 (Wis. 1959).

28. Cases showing the requirement of common liability in several states that have adopted the Act: *South Dakota,* Highway Constr. Co. v. Moses, 483 F.2d 812 (8th Cir. 1973); *Tennessee,* Hill v. United States, 453 F.2d 839 (6th Cir. 1972); *Delaware,* Ici America, Inc. v. Martin-Marietta Corp., 368 F. Supp. 1148 (D. Del. 1974); *Rhode Island,* Rowe v. John C. Motter Printing Press Co., 273 F. Supp. 363 (D.R.I. 1967); *Arkansas,* Cox v. Maddux, 255 F. Supp. 517 (E.D. Ark. 1966); *Hawaii,* Oahu Ry. & Land Co. v. United States, 73 F. Supp. 707 (D. Hawaii 1947); *Maryland,* Ennis v. Donovan, 161 A.2d 698 (Md. 1960); *New Jersey,* Clare v. Fliegel, 180 A.2d 404 (N.J. Cape May County Ct. 1962); *New Mexico,* Beal v. Southern

allow contribution through case law or statute other than the Act also impose this requirement.[29] Common liability exists when multiple tortfeasors are each liable to the injured party.[30]

The common law doctrine of interspousal immunity has either been completely or partially abolished in at least twenty-seven states.[31] Nine of these states have adopted the Act.[32] Of the states which have adopted the Act and which have at least partially abrogated interspousal immunity, at least one—New Jersey[33]—expressly permits contribution from a tortfeasor who is the spouse of the injured party.

Pennsylvania and Rhode Island, which have adopted the Act, allow contribution from a tortfeasor who is the spouse of the injured

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Union Gas Co., 304 P.2d 566 (N.M. 1956); *North Carolina,* Iowa Nat'l Mut. Ins. Co. v. Surratt, 200 S.E.2d 220 (N.C. Ct. App. 1973); *Pennsylvania,* Brown v. Dickey, 155 A.2d 836 (Pa. 1959).

29. Cases showing the requirement of common liability as a prerequisite to the right of contribution in several states that allow contribution though not pursuant to the Act: *Texas,* Ft. Worth & Den. Ry. v. Threadgill, 228 F.2d 307 (5th Cir. 1955); *New York,* American Mut. Liab. Ins. Co. v. Matthews, 182 F.2d 322 (2d Cir. 1950); *Georgia,* Eidson v. Maddox, 24 S.E.2d 895 (Ga. 1943); *Iowa,* Wright v. Haskins, 260 N.W.2d 536 (Iowa 1977); *Kentucky,* Employers Mut. Liab. Ins. Co. v. Griffin Constr. Co., 280 S.W.2d 179 (Ky. 1955); *Michigan,* Caldwell v. Fox, 231 N.W.2d 46 (Mich. 1975); *Minnesota,* Skaja v. Andrews Hotel Co., 161 N.W.2d 657 (Minn. 1968); *Wisconsin,* Farmers Mut. Auto. Ins. Co. v. Milwaukee Auto. Ins. Co., 99 N.W.2d 746 (Wis. 1959).

30. 18 AM. JUR. 2d *Contribution* §§ 7-8 (1965).

31. Cases showing complete or partial abrogation of interspousal immunity: *Alabama,* Bonner v. Williams, 370 F.2d 301 (5th Cir. 1966); *Colorado,* McSwain v. United States, 291 F. Supp. 386 (E.D. Pa. 1968); *Alaska,* Armstrong v. Armstrong, 441 P.2d 699 (Alas. 1968); *Arkansas,* Leach v. Leach, 300 S.W.2d 15 (Ark. 1957); *California,* People v. Pierce, 395 P.2d 893 (Cal. 1964); *Connecticut,* Menczer v. Menczer, 280 A.2d 875 (Conn. 1971); *Idaho,* Rogers v. Yellowstone Park Co., 539 P.2d 566 (Idaho 1975); *Indiana,* Brooks v. Robinson, 284 N.E.2d 794 (Ind. 1972); *Kentucky,* Layne v. Layne, 433 S.W.2d 116 (Ky. 1968); *Louisiana,* Gremillion v. Caffey, 71 So. 2d 670 (La. Ct. of App. 1954); *Massachusetts,* Lewis v. Lewis, 351 N.E.2d 526 (Mass. 1976); *Michigan,* Mosier v. Carney, 138 N.W.2d 343 (Mich. 1965); *Minnesota,* Beaudette v. Frana, 173 N.W.2d 416 (Minn. 1969); *Nevada,* Rupert v. Stienne, 528 P.2d 1013 (Nev. 1974); *New Hampshire,* Lundberg v. Hagen, 316 A.2d 177 (N.H. 1974); *New Jersey,* Immer v. Risko, 267 A.2d 481 (N.J. 1970); *New Mexico,* Flores v. Flores, 506 P.2d 345 (N.M. Ct. App. 1973); *North Carolina,* Jernigan v. Jernigan, 72 S.E.2d 912 (N.C. 1952); *North Dakota,* Fitzmaurice v. Fitzmaurice, 242 N.W. 526 (N.D. 1932); *Oklahoma,* Courtney v. Courtney, 87 P.2d 660 (Okla. 1938); *South Carolina,* Algie v. Algie, 198 S.E.2d 529 (S.C. 1973); *South Dakota,* Scotvold v. Scotvold, 298 N.W. 266 (S.D. 1941); *Vermont,* Richard v. Richard, 300 A.2d 637 (Vt. 1973); *Virginia,* Surratt v. Thompson, 183 S.E.2d 200 (Va. 1971); *Washington,* Freehe v. Freehe, 500 P.2d 771 (Wash. 1972); *Wisconsin,* Haumschild v. Continental Cas. Co., 95 N.W.2d 814 (Wis. 1959); *New York,* N.Y. GEN. OBLIG. LAW § 3-313 (McKinney 1978). *See also* Mosier v. Carney, 138 N.W.2d 343 (Mich. 1956); Casey, *The Trend of Interspousal and Parental Immunity—Cakewalk Liability,* 45 INS. COUNSEL J. 321 (1978). *See generally* Note, *Interspousal Immunity in Tort: Its Relevance, Constitutionality, and Role in Conflict of Laws,* 21 U. FLA. L. REV. 484 (1969).

32. Alaska, Arkansas, Massachusetts, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, and South Dakota.

33. Immer v. Risko, 267 A.2d 481 (N.J. 1970).

party despite retention of interspousal immunity.[34] In essence, this is the Florida position after *Shor v. Paoli.* For this reason, it seems odd that the Florida Supreme Court did not mention or discuss the Pennsylvania Supreme Court decision in *Fisher v. Diehl*[35] or the Rhode Island Supreme Court decision in *Zarrella v. Miller.*[36]

The facts of *Fisher v. Diehl* were almost identical to those in *Paoli.* Mr. Fisher's automobile, in which his wife was a passenger, collided with Diehl's truck. Diehl sought to have Mr. Fisher made an additional defendant in order to protect his right to contribution if a judgment were entered against him. The court reasoned that "[t]he legal unity of husband and wife and the preservation of domestic peace and felicity between them are desirable things to maintain where they do not produce injustice to the wife and where they do not inflict injustice upon outsiders and deprive them of their legal rights."[37] The court allowed Diehl contribution from Mr. Fisher. The court noted that the judgment against the tortfeasor spouse was not enforceable by the injured spouse and did not inure to the benefit of the injured spouse, but rather to the benefit of the nonspouse joint tortfeasor.[38]

The facts and outcome in *Zarrella* were also substantially similar to those in *Paoli.* The Rhode Island Supreme Court based its holding on a belief that a joint tortfeasor is a joint tortfeasor regardless of the relationship between the tortfeasor and the injured party. Therefore, the court concluded, justice requires a joint tortfeasor-spouse to contribute as any other joint tortfeasor would.[39] The *Zarrella* court explored the Rhode Island Legislature's intent in adopting the Act and determined that the interspousal immunity doctrine was not intended to be an exception to the statute allowing contribution among tortfeasors.[40]

The court reasoned that the doctrine of interspousal immunity is based upon public policy considerations that do not apply to actions for contribution. It decided that the term "liable in tort" as used in the Act means that the culpability of one tortfeasor is not lessened because that tortfeasor is the spouse of the injured party. Interspousal immunity in Rhode Island is a procedural matter which does not negate the existence of the cause of action referred to by the term "liable" in the statute, but merely negates the right to

34. Fisher v. Diehl, 40 A.2d 912 (Pa. 1945); Zarrella v. Miller, 217 A.2d 673 (R.I. 1966).
35. 40 A.2d 912.
36. 217 A.2d 673.
37. 40 A.2d at 917.
38. *Id.*
39. 217 A.2d at 676.
40. *Id.*

enforce that cause of action.[41]

After *Shor v. Paoli,* in Florida, contribution clearly may be sought from a joint tortfeasor who is the spouse of the injured party despite the doctrine of interspousal immunity. Although the Florida Supreme Court did not state specifically that section 768.31 will always control over the doctrine of intrafamily immunity, it seems clear that it will, especially since the court expressly overruled *Mieure.*[42] As well as interspousal immunity, *Mieure* involved the relationship of intrafamily immunity to contribution among joint tortfeasors.[43]

The holding in *Shor v. Paoli* is not as clear, however, in regard to the status of common liability with respect to the right of contribution. Since the court did not address explicitly the issue of whether common liability is a prerequisite to the right of contribution, it cannot be assumed that Florida does not require common liability. In fact, section 768.31(2)(b) specifically requires that common liability exist before the right of contribution exists, and current case law has so construed the statute.[44]

The language in *Shor v. Paoli* suggests that the Florida court views common liability as the Rhode Island court did in *Zarrella v. Miller.* The issue turns then on whether there is a cause of action, not on whether the cause of action can be enforced. Thus, Mr. Shor had a cause of action against Mrs. Shor in negligence that could not be exercised because of the doctrine of interspousal immunity. With this in mind, it is clear that common liability and contribution from the tortfeasor who is the spouse of the injured party can coexist without damage to either.

In making its decision in this case, the Florida Supreme Court perhaps should have inquired into the positions of the other states which have adopted the Act. This would serve the ends of uniformity as well as equity. Despite the court's narrow inquiry, its holding and the current state of the law after *Shor v. Paoli* appear both reasonable and logical. The purpose of contribution, to apportion the financial responsibility for the injury between the wrongdoers, is upheld, and since the contribution allowed in *Paoli* does not permit a direct suit between husband and wife, no real harm is done to the legitimate interests which are served by the doctrine of interspousal immunity.

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41. *Id.*
42. 353 So. 2d at 826.
43. 330 So. 2d 546.
44. United Gas Pipeline Co. v. Gulf Power Co., 334 So. 2d 310 (Fla. 1st Dist. Ct. App. 1976).